



# Intellectual Property and how it relates to science fairs

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Photo: Chris Williams

## What is intellectual property?

Intellectual property (IP) is the umbrella term for human innovations and creativity that are capable of being protected under national laws and international treaties. IP includes a diverse range of assets, like trade marks for marketing goods and services, patents for new inventions and registered designs for eye-appealing product design features. IP rights allow people to control and be rewarded for their innovative and creative efforts. IP rights can be bought, licensed and sold.

## What has IP got to do with science and technology fairs?

Science fairs and other student project showcases are wonderful opportunities for students to use their creative and investigative abilities to explore solutions to everyday problems. Many student project scientific and creative endeavours are exceptional and may have commercial potential. It is important to consider the IP students are creating and to make sure they have the opportunity to protect it from unauthorised exploitation.

Several IP assets can be tied up in student science and technology fair projects. Project posters are copyright works. The student may have created a brand/trade mark to market a project product and even filed a patent or design application to seek protection for their new invention or product design.

A key requirement under New Zealand patent and design law is that the invention or product design must be 'new' at time of filing. An article in a school newsletter or community paper before an application is lodged could result in the application being rejected.

A simple solution to help prevent this situation is to 'gazette' all science fairs and student showcases, and to be aware of the need not to publicise the invention or product design outside of the gazetted event.

# What is gazetting?

Gazetting is the process of asking the Commissioner of Patents and Designs to officially record an event as an industrial exhibition. Once approved, the event is advertised in the Intellectual Property Office of New Zealand (IPONZ) Journal.

Gazetting opens up a six month window of opportunity to file a New Zealand patent or design application after an invention or product design has been displayed at a gazetted event. In this situation, no one can use the information displayed or presented at the gazetted industrial exhibition to challenge the novelty of the application filed within the 6 month window. Publicity or use of the invention outside of the event (e.g. discussions with potential developers, customers or media articles) is not covered and must therefore be avoided if a patent or design application is to be made.

## ■ How do I gazette our science fair or student showcase?

The procedure is not complicated and no fee is required. The science fair coordinator needs to complete a Request and send it to IPONZ. A Request template for you to complete (see next page).

## ■ How long will it take?

Generally, a decision will be made within five working days of receiving your Request. IPONZ cannot accept any requests to gazette an event after it has opened.

## ■ Where will the event be recorded?

The official notice will appear in the monthly IPONZ Journal. The event will also be added to the [list of Gazetted Exhibitions](#) on the IPONZ website.

You might like to display the Journal Notice near a public entrance at the venue. You can also mention that the event has been officially gazetted by the New Zealand Commissioner of Patents and Designs in school newsletters and on promotional posters.

# Gazetting Request

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We,

\_\_\_\_\_  
*(School or Organising Committee name)*

request that the following event be gazetted under the relevant section of the New Zealand Patents and Designs Act. We ask that the official notice includes student oral presentations.

Event :

\_\_\_\_\_  
*(Name of the event)*

Location:

\_\_\_\_\_  
*(Venue name and address)*

\_\_\_\_\_

\_\_\_\_\_

Date of the event:

\_\_\_\_\_

Signed by:

\_\_\_\_\_

*Name of the Event Coordinator/Principal*

\_\_\_\_\_

*Signature*

Dated this

of

\_\_\_\_\_  
*(day)*

\_\_\_\_\_  
*(month)*

\_\_\_\_\_  
*(year)*

Telephone Number

\_\_\_\_\_

Email address

\_\_\_\_\_

Return your completed Request by email to: [mail@iponz.govt.nz](mailto:mail@iponz.govt.nz)

For assistance completing this Gazetting Request, please call 0508 4 IPONZ (0508 447 669).

# A cautionary tale!

## ■ Great Potential

Innovative Imogene created a “widget” toy for her School Science & Technology Fair. It could squeeze into tight spaces, stick to an object, turn around and follow its trail back home. It was much better at retrieving things than her dog, Waddles. Waddles only moved when he felt like it and left ping pong balls under the fridge for the family to retrieve.

## ■ Actions

Imogene’s project was a popular display at the School Fair. There were lots of inquiries from classmates, parents and teachers who wanted to buy a WIDGET™. Imogene was delighted but wanted to improve the design and develop a protective chassis with decorative interchangeable tops. Her parents collected the contact details of potential customers.

Imogene’s project received the Year 9 merit award and was entered in the regional final. The local paper published a photo of Imogene holding up the WIDGET™ model next to her winning project.

Imogene was allowed to include a new model with her display at the Regional Science & Technology Fair. This model had retractable wheels and a mouse shaped, cat nip filled top. A local toy distributor brought the mouse model and collected it after the show.

## ■ Repercussions

The next day, the Principal received a call from David Aroha’s lawyer. The lawyer explained that Aroha Ltd had registered the trade mark WIDGET® in class 28 for domestic pet toys and children’s electronic toy and games. Aroha Ltd was a family firm which had been selling these products over the last ten year under the WIDGET brand. Aroha Ltd would not pursue the matter if Imogene ceased using the trade mark or any word which was close to WIDGET®.

The School was concerned and contacted a patent attorney. The patent attorney confirmed that Aroha Ltd had a current registration, NZ TM No. 990001, and could take legal action if Imogene continued to use the WIDGET brand to promote or sell her invention.

The patent attorney also asked if the School Science & Technology Fair had been gazetted by the Commissioner of Patents and Designs. Unfortunately, the request asking IPONZ to record this event as an industrial exhibition under the Patents and Design Acts had been overlooked. The teacher co-ordinator had an accident two weeks before the event and was still at home recuperating. When a draft email to IPONZ was discovered in the ‘Fair file’ on opening day, the school secretary filled in the missing information, got the Principal to sign it and then emailed the completed Gazetting Request to IPONZ. Unfortunately by law, IPONZ couldn’t process the Request as it was received after the fair had opened.

The patent attorney confirmed that gazetting requests must be processed before the event starts. Consequently, any information, use or publicity at or resulting from the Fair could be used to challenge the novelty of a patent or design application made by any of the student competitors.

The toy distributor sent the toy brought at the Regional Fair to one of his main suppliers in the United States. They saw the commercial potential and started developing their own version based around Imogene’s original concept. A US patent application was filed. Nine months later their invention was on the market in New Zealand without infringing copyright in Imogene’s original designs.

# A tall tale!

## ■ A creative mind

Motivated Mahutonga liked challenges and finding practical solutions to everyday problems. The Ranui family had a court-sized shed where Mahutonga worked on his top secret projects. His latest invention was a portable, play anywhere backboard. He had designed a detachable foldaway hoop for basketball but the board could be used for anything from darts to a movie screen. One special feature was that the board tension could be altered for more or less 'bounce'. This was ideal for rebound and jump-ball practice.

## ■ Support

Mahutonga had been on the Royal Society of New Zealand's 'Realise the Dream' programme. He learnt how inventions could be protected and found out more about IP from the [IPONZ website](#). The online patent application process was not too complicated but Mahutonga and his parents who helped build the prototype didn't feel confident enough to write the patent specification. They needed professional help. They looked in the Yellow Pages® and telephoned a patent attorney firm.

The patent attorney was very helpful, going over all the options and giving them a rough idea of costs. The family talked it over and decided to go ahead with a patent application without making a novelty search to keep costs down. A lunchtime appointment was made.

Mahutonga took along the prototype and instructions on how to set the backboard up for team and single player basketball practice. The patent attorney asked if the family wanted to set up a business to sell the backboards. No one was keen. Mahutonga just liked inventing and his parents were too busy with the farm. The family still wanted to try for a patent even if it was just for the fun of it. The best plan was to file a New Zealand patent application with a provisional specification and sell or licence the rights before the time limit for completing the application ran out.

## ■ Reward

Mahutonga kept to the plan and managed to sell his rights in the backboard invention to Huffy Sports Corporation. The New Zealand patent attorney helped to negotiate a fair price and Huffy paid for all the legal work and novelty search report. The company directors, Mahutonga and his parents signed a Confidentiality Agreement to keep the purchasing details secret and invention under wraps until it was ready for commercial production. A deed of assignment was signed as proof that Mahutonga sold his rights in the invention to Huffy. This document was filed at IPONZ and Huffy was recorded as the new owner on the New Zealand patent register. Huffy continued with the New Zealand patent application and filed more overseas patent applications. They ended up owning a family of twenty-three patents which all named Mahutonga as the inventor.

Huffy liked Mahutonga's suggestion to call the backboard a BackAtU™ and gave him a set of tools and LA Lakers® gear as a reward for coming up with the brand name. Huffy made a search of the trade mark registers to check that the brand was available for use before filing in ten key countries and regions. Their IP portfolio tally was 23 patents and 10 trade mark registrations all sparked from Mahutonga's creative ideas.

## ■ How do I find out more about intellectual property?

For more information about IP, visit the [IPONZ](#) and [World Intellectual Property Organization \(WIPO\)](#) websites.

For legal advice, we recommend you contact a patent attorney or a legal professional who is familiar with intellectual property law. See: the [New Zealand Patent Attorney Register](#).

# Glossary

## ■ Assignment

An assignment is a sales contract transferring ownership of IP rights in the listed IP assets, from the current owner (assignor) to the new owner (assignee). An assignment must be signed and dated by the parties and their witnesses.

## ■ Confidential Disclosure Agreement

A Confidential Disclosure Agreement (CDA) clarifies what information is to be kept confidential, who owns it (the proprietor) and to whom the owner has agreed to disclose it (the recipient). CDAs can be used to guard against public disclosure while an invention is under development or when entering into discussions with a potential business partner. CDAs are also known as secrecy, non-disclosure and confidentiality agreements.

## ■ Copyright

The term “copyright” refers to a bundle of exclusive rights given to owners of original works like prototype drawings, photographs and music recordings. In New Zealand, copyright is an automatic unregistered right that comes into existence every time an original work is created, published or performed. There can be a number of copyright layers in a work. For example, a piece of original music could have copyright protection for the lyrics, score and sound recording; and a product design could have copyright protection in the 2D drawing and the visual appearance of the 3D article.

The internationally recognised copyright indicator uses the © symbol followed by the name of the copyright owner and the year the copyright work was first created. Although not required by law, it is a good idea to include a copyright indicator or statement on a work.

## ■ Gazetting

Gazetting is the process of asking the New Zealand Commissioner of Patents and Designs to officially record an event as an industrial exhibition.

## ■ IP Infringement

IP infringement is the unauthorised use of an IP owner’s IP rights. IP infringement includes illegal

activities like peer-to-peer file sharing without the copyright owner’s permission; copyright piracy of music and films, selling a patented invention that wasn’t made by the New Zealand patent owner or their authorised licensee; and using an identical or similar-looking/sounding brand to a competitor’s trade mark.

## ■ Intellectual property (IP)

Intellectual property is the umbrella term for ‘creations of the mind’. IP assets include patents for new inventions, trade marks for identifying a trader’s goods or services, designs for eye-appealing product features, and copyright for original works.

## ■ IP Symbols

® = registered trade mark

™ = trade mark

© = part of the copyright indicator

## ■ Licence

A licence is a contract where the IP owner (licensor) gives permission to a licensee to use but not own the IP assets under agreed terms and conditions. Terms may include a time limitation and market territory restriction. Conditions may include quality testing and royalty payments. Terms and conditions need to be negotiated. There is no model licence and it is important for the two parties to get independent legal advice.

## ■ Patent

A patent is an exclusive right granted by the Government for a new invention. The owner of the patent (*the patentee*) may then exclude others from exploiting the invention as claimed for up to 20 years, providing all renewal fees are paid. When the patent expires, the invention as claimed and described can be made by anyone.

Although there is no such thing as a ‘world-wide patent’, there is the Patent Co-operation Treaty (PCT) that can assist New Zealand applicants to obtain patents in other PCT territories. The PCT is administered by the International Bureau of WIPO and IPONZ is a Receiving Office for PCT international applications.



## Glossary (continued)

### ■ Patent Attorney

A patent attorney is a person who has qualified and registered as a patent attorney. Registered patent attorneys can prepare patent specifications for IP owners and provide legal advice on IP issues.

### ■ Patent specification

A patent specification is a written description of an invention, often including drawings and tables, to show how it is made and works. In New Zealand, a patent application can either be filed with either 1) a provisional specification or 2) a complete specification. A provisional specification broadly describes the invention and how to perform it. A complete specification accurately describes the invention and the best method of carrying it out, and ends with one or more claims that define the scope of the invention. If filing option 1 is chosen, a complete specification must be filed within the set deadline to keep the application alive.

### ■ Plant Variety Right

The grant of a plant variety right (PVR) gives the owner the exclusive right to sell plants and propagating material of the protected variety. The full term of a PVR is 20 years in the case of non-woody plant varieties and 23 years for woody plant varieties, providing the annual renewal fees are paid. The term starts from the date of grant.

### ■ Registered Design

Registration of a design provides statutory protection for the external appearance of a manufactured article. It gives the owner the exclusive right to make, import, sell or license the design for up to 15 years providing all renewal fees are paid.

To qualify for registration, the design must be 'new or original' and materially different from any other design in New Zealand. Designs cannot be registered for works of sculpture, wall plaques, medals or for any printed matter of a literary or artistic character, such as book jackets, stamps or advertisements. These are all covered by copyright.

### ■ Trade Mark

A trade mark is a unique identifier, often referred to as a 'brand' or 'logo'. Trade marks can include words, logos, colours, sounds, smells – or any combination of these, as long as they can be graphically represented. Once a trade mark is registered, the ® symbol can be legally used against the trade mark. A ™ symbol indicates that a trader is using a sign as a trade mark but does not indicate whether a sign is registered.

Not all trade marks can be registered. They must meet certain standards to be registered. A trade mark should not be a term that other traders might reasonably wish to use, e.g. surnames, place names, and words which describe or praise the goods or services.

The registration of a trade mark gives the owner the exclusive right to use the trade mark for an unlimited period of time, provided the renewal fees are paid.

The Madrid Protocol for the international registration of marks is a treaty administered by the International Bureau of WIPO. It allows trade mark owners to apply for protection of their trade mark in other Madrid system territories by simply filing one application directly with their national trade mark office. The Madrid Protocol came into force in New Zealand on 10 December 2012.