Intellectual Property (IP) for Startups

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TYPES OF PROTECTION

- Patents
- Trademarks
- Copyrights
- Trade Secrets
- Contracts (e.g., nondisclosure agreements, licensing)
Scenario: Pete has figured out how to get 90% of people viewing the company web site to purchase products using a special sequence of screen formats:

- Red Screen – old product
- Yellow Screen – celebrity discusses prior use of old product
- Green Screen – celebrity with new product, and success
Patents – What Kinds Are There?

• Utility Patents

• Other Types of Patents
  – plant patents - grafting or genetic alteration
  – design patents - how products "look," apart from utilitarian features

• Provisional "Patent“ (Application!)
  – not really a patent, as such, but allows claim of "patent pending"
  – two unanswerable questions:
    • what kind of patent protection can the applicant ultimately get?
    • if a patent is to issue, when will it issue?
Patents - Examples

• recipe with natural ingredient combination that enhances shelf life
• medical instrument that speeds up operations
• software program predicts mortality by monitoring driving habits
• hospital clothing design that eases dressing stationary patients
• method of drilling for oil that saves energy
• method of selling homes using vanity license plates
• ornamental tractor front end design
MACHINE FOR SLICING AN ENTIRE LOAF OF BREAD AT A SINGLE OPERATION

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3 Sheets—Sheet 1

UNITED STATES PATENT OFFICE

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MACHINE FOR SLICING AN ENTIRE LOAF OF BREAD AT A SINGLE OPERATION

Application filed November 26, 1930. Serial No. 351,931.

This invention relates to bread slicing machines and particularly to machines for slicing an entire loaf of baked bread in a single operation.

One of the objects of the present invention is to provide a new and improved machine for slicing bread which embodies a plurality of continuous cutting bands.

Another object is to provide means in a slicing machine for a plurality of continuous cutting bands for maintaining a substantially uniform tension in the cutting bands.

Another object is to provide a slicing machine having a plurality of continuous cutting bands with improved means for simultaneously changing the spacing between the bands.

Another object is to provide a bread slicing machine having a plurality of endless cutting bands with means for driving adjacent bands in opposite directions.

A further object is to provide a bread slicing machine having a plurality of endless cutting bands with means for moving the bread to and through the cutting bands.

A further object is to provide a bread slicing machine with a plurality of endless cutting bands arranged with their cutting edges in the same vertical planes.

A still further object is to provide a bread slicing machine having a plurality of endless cutting bands with means for receiving the sliced bread from the bands which is particularly adapted to cooperate with a bread wrapping machine.

With the above and other objects in view, the present invention may be said to comprise the apparatus as illustrated in the accompanying drawings, hereinafter described and particularly set forth in the appended claims, together with such variations and modifications thereof as will be apparent to one skilled in the art to which the invention appertains.

In the drawings which illustrate a suitable embodiment of the present invention,

Figure 1 is a plan view of the bread slicing machine showing the means for delivering the bread to the slicing apparatus and the means for receiving the sliced bread from the slicing apparatus.

Fig. 2 is a transverse section taken on the line 2—2 of Fig. 1 showing the means for driving the delivery conveyor.

Fig. 3 is a side elevation of the slicing machine shown in Fig. 1 showing the general arrangement of the cooperating parts.

Fig. 4 is an enlarged front elevation of the slicing apparatus showing the means for guiding and driving the cutting bands.

Fig. 5 is a section taken on the line 5—5 of Fig. 4 showing the arrangement of the driving rollers for the cutting bands.

Fig. 6 is an enlarged plan view of the bar which supports the band idler pulleys.

Fig. 7 is a transverse section taken on the line 7—7 of Fig. 6.

Fig. 8 is a transverse section taken on the line 8—8 of Fig. 6.

Fig. 9 is a partially diagrammatic view of Fig. 6 showing the means for attaching the band adjusting lever to the adjusting screw.

Fig. 10 is a longitudinal section taken on the line 10—10 of Fig. 4 showing the means for attaching the band adjusting lever to the adjusting screw.

Fig. 11 is an enlarged perspective view of the spiral bevel gears for driving the band rollers.

Fig. 12 is a partial plan view of the adjacent ends of the feed and delivery conveyors showing the same positioned at each side of the cutting bands and showing the conveyor fingers extending between and beyond the cutting bands.

Fig. 13 is a transverse section taken on the line 13—13 of Fig. 12 showing the adjustable means for securing the feeding fingers to the transverse cover plate.

Fig. 14 is a front elevation of one of the driving fingers.

The slicing machine in general comprises a plurality of endless cutting bands arranged with their cutting edges in the same vertical plane so that the cutting edges simultaneously engage the loaf of bread fed thereto. These bands are so operated that adjacent bands move in opposite directions to prevent crushing and displacement of the bread, as well as to facilitate the delivery of the sliced bread.
What I claim is:

1. In a bread slicing machine having a frame and a series of continuous cutting bands mounted thereon, an adjusting mechanism comprising a plurality of arms pivoted at one end to the frame, a series of guides mounted upon each arm adjacent to and bearing upon the cutting bands, and means for varying the inclination of the arms to the vertical axis of the frame.

2. In a bread slicing machine having a frame and a series of continuous cutting bands mounted thereon, an adjusting mechanism comprising a plurality of arms pivoted at one end to the frame, a series of guides mounted upon each arm adjacent.
Patents – What Do You Need?

• fits one of the legal categories of protectable inventions (a mechanical device, a machine, a compound, a composition, a method, or a process, for example)

• useful (has an identifiable benefit, and is capable of use)

• new (e.g. no one else has, before certain prescribed dates, either patented, used, sold or otherwise publicly disclosed the invention which is sought to be patented)

• not "obvious" to persons skilled in the relevant field of technology, when viewed in light of knowledge such persons would ordinarily possess
WITHIN ONE YEAR OF THE EARLIEST OF:

• first printed publication or patent issued (anywhere in the world) in which the invention was described

• first sale or offer for sale in the United States

• first public use in the United States
Patents – How Do You Get One?

• Disclosure

• Optional Search

• Optional Provisional Application

• Regular Utility Application (national or international)

• Prosecution
  – Appeal

• Issue/Maintenance Fees – lasts for 20 years after filing
Pete the Programmer - Conclusion

Pete should be able to get a patent on his idea if ...

• it has not already been disclosed elsewhere, or if it has, the disclosure was less than a year ago

• he can overcome all novelty and obviousness rejections by the Patent Examiner

• he has the money to complete prosecution
Scenario: Mary has come up with a new name to use in conjunction with a product line of toys to combat the “Video Game Menace”.

“KOMPUTER KIDS” for dolls
Trademarks - Defined

TRADITIONAL DEFINITION
A word, symbol, or device that is used to distinguish one’s goods or services from others. Simply put, a trademark is a “source identifier.”

EXPANDED DEFINITION
Includes slogans, colors, shapes, sounds, smells, trade dress and product configurations.
What Determines the Strength of a Trademark?

- **FANCIFUL** - coined words with no meaning to the public - like EXXON® gasoline, KODAK® cameras, XEROX® copiers.

- **ARBITRARY** - common words not associated with the goods or services - like APPLE® computers, BABY RUTH® candy bars.

- **SUGGESTIVE** - requires some imagination - like COPPERTONE® suntan oil, SWEETARTS® candy.

- **DESCRIPTIVE** - conveys an immediate idea of ingredients, qualities or characteristics - like PARK’N FLY® for parking at the airport and catching a plane.
  - Needs Secondary Meaning as acquired through extensive or exclusive use, advertising, or promotion.

- **GENERIC** - common name for an article or service and can never be a mark - like telephone, pump, paint.
• Rights are acquired first and foremost through use in the United States (most other countries are first to file). You must use your mark and use it correctly. Otherwise, you might lose your rights in the mark!

• Common law use of a trademark extends to a certain geographical area of operation and a reasonable zone of expansion.

• Rights are territorial – use or registration in the U.S. does not extend protection to another country.

• Potentially unlimited lifetime.
• Gives constructive notice to the public.
• Your mark will show up on searches performed by others.
• There is a presumption of ownership, which becomes conclusive after 5 years (i.e., the ownership is “incontestable”).
• Nationwide priority for federal registration. State registration is also possible.
• Gives the owner the ability to stop importation of infringing goods.
Trademarks – Registration Process

• Search - to find potential conflicts

• Application - description of goods/services critical, priority

• Examination - format, registrable, confusingly similar to others?

• Publication - possible opposition by anyone who believes they may be damaged

• Issue as registered mark - Principal Register or Supplemental Register

• Appeal
Trademarks – Use/Misuse

USE IT PROPERLY OR LOSE IT!

● Use ™ or ® as appropriate.
● Always use the trademark as an adjective/adverb followed by a generic term.
  - TIA ROSA® TORTILLAS
  - KOMPUTER KIDS™ DOLLS
● Never use as a noun, or in the plural, or possessive form.
● Distinguish the mark in the text by capitalizing, italicizing, or using a different type font.

ONCE A TRADEMARK, NOT ALWAYS A TRADEMARK

These were once proud trademarks, but are now just names (generic). Precautions were not taken to use them properly.

● Escalator
● Aspirin
● Trampoline

● Nylon
● Kerosene
● Dry Ice
• If search is negative, probably can get a trademark registration

• If use is contemplated out of state, federal registration is best

• Ensure proper use to maintain ownership

• Think about licensing opportunities (especially outside normal trade area, or with respect to other goods/services)
Scenario: Eva has just finished the compilation and editing process for an employee handbook that will be used to train printing press operators.
What Is A “Copyright”? 

• Protects original, creative *expressions* of ideas fixed in tangible form
  – software, paintings, statues, recorded, music, drawings, advertising, books

• Does NOT protect
  – ideas, procedures, mere facts, recipes
Bundle of Rights

These can all be assigned, or licensed ...

- Reproduction
- Derivative works
- Distribution
- Performance
- Display
When do Rights Vest?

• The Author
  – immediately upon fixation

• Anyone Else
  – upon written assignment by the Author
    (except possibly as “work for hire”)
How Long Do Rights Last?

• Known Author
  – author’s life plus 70 years

• Anonymous, or Work for Hire
  – shorter of 95 years from publication or 120 years from creation

A VERY LONG TIME!
Fair Use?

• Purpose of Use: commercial or nonprofit?

• Nature of Work: customary to use portions?

• Amount Copied: substantial amount?

• Market Effect: reduces potential value?
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Why Registration?

• Notice to the World
• Prima-Facie Evidence of Ownership
• Statutory Damages Available
• Training manuals almost certainly have copyrights attached
• Consider fair use and permission issues
• Register what might be stolen
• Licensing may also be useful
Programmer’s Mind Set:

REUSE, RECYCLE
Microsoft Windows NT 4.0
Workstation and Windows NT 4.0
Server Service Pack 6
(README.HTM)
General Rules

• Get Permission, or DON’T Use It

• Get a WRITTEN Assignment
Scenario: Pete has discovered a method to pack and ship goods on pallets that uses half the material and takes half the time.
TRADE SECRETS

A TRADE SECRET – WHAT IS IT?

– Must be Enforceable as a Trade Secret!
  • Has it been disclosed to the public?
  • Have measures been taken to guard secrecy?
  • Can the information be easily acquired independently?
  • Does the information include general employee knowledge?

– Absolute Secrecy Not Required

– Reverse Engineering is legitimate
TRADE SECRETS

• TYPICAL EXAMPLES

  – Technological Proprietary Information
    • specialized machines and manufacturing methods
    • chemical formulas, and recipes
    • technical data and manuals

  – Business Proprietary Information
    • customer/supplier lists
    • methods of figuring bids, marketing methods
    • customer service techniques
TRADE SECRETS

• Preserve Trade Secrets By:
  – using employment contracts having confidentiality and non-competition provisions
  – identifying secrets with specificity
  – establish a secrecy program in the workplace (notebooks, document control, access control, etc.)
TRADE SECRETS – REGISTRATION?

– No Form of "Registration" in the United States

– Contracts are Helpful to Establish Secrets with Specificity

– Copyrighted Software Can Be Registered as a Trade Secret
– Packaging program should qualify

– Agreements helpful to establish secrets with specificity

– Potentially unlimited lifetime, but must be kept SECRET (establish control program)

– Can be licensed, with care
A word about … Licensing Contracts

• Covenant Not to Sue

• License versus Complete Ownership (aka Assignment)

• “License-out” vs. “License-in”

• Broad range of business transactions
  – Can be little more than a source of easy royalty
  – Part of a global strategy
QUESTIONS

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