

*International Convention on IP & Competitiveness of MSME's, Rome, ITALY
December 11th, 2009*

Differentiation Strategies; The Role of IP in Building Brands for MSME's

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*Advisory TPAC Member
US Department of Commerce PTO*





**Center for Research in
Technology & Innovation**



Mohan Sawhney

McCormick Tribune Professor of Technology Mohanbir Sawhney conducts research in the areas of network-centric innovation, innovation typology, marketing frameworks, marketing in new media environments and branding and social identity. His work on innovation typology has been published in publications like *Harvard Business Review*, *MIT Sloan Management Review* and *Financial Times*. His work on the Innovation Radar, co-authored with Robert C. Wolcott and Inigo Aroniz, has been widely cited and used by corporations worldwide. He has also written extensively on community-centric innovation and innovation in networked environments in publications like *California Management Review* and *Journal of Direct Marketing*. His work on network-centric innovation was the subject of his fourth book – *The Global Brain: Your Roadmap for Innovating Faster and Smarter in a Networked World*, published in November 2007. He is currently developing models for a marketing process architecture as well as a framework for organizing and measuring the performance of marketing in large corporations called the Three Horizons of Marketing.



Mohan Sawhney directs the Center's bi-monthly Faculty and Staff meeting Photo © Nathan Mandell

- **Team**
- **Mission**
 - Scholarship
 - Leadership
 - Partnership
- **Organization**
 - Networks
 - Students, Postdocs
Fellows
- **Partners**
- **Work Product**

James Conley

James Conley and his post-doctoral students are examining how intangible assets in general and intellectual properties in particular are changing the nature of competition for firms in both developed and developing economies. This research examines public domain IP databases in a novel and rigorous manner and has implications for strategy, marketing and technology professionals. The outlets for this research include journals, management reviews and more mainstream media such as the *Wall Street Journal*. Additionally, he is leading workshops for academics and diffusing CRTI research findings through custom executive programs. In June of 2008, he was called to serve



James Conley, clinical professor of technology, offers feedback to a post-doctoral research fellow.

Today's Agenda

- Differentiation strategy and the logic of why MSME's do what the do
- Simplifying the arcane lexicon of IP law, from product function to brand.
- Management concepts for IP such as value transference, value articulation, Dolby case
- Dynamics in markets and contexts, convergence of Design and Marketing
- Semiotics & Brands

From Michael Porter's *What is Strategy?*

Harvard Business Review, 12/1996

“the essence of strategy is choosing to perform activities differently than rivals do.....a company can out perform rivals only if it can establish a difference that it can preserve”

How do firms preserve differentiation and or sustain competitive advantage?

Defendable property rights in ideas, inventions and and knowledge!!!

▪ The Intellectual Properties

- Functional ideas/Inventions **Patents**
- Expression of ideas/Innovations **Copyrights**
- Brand/Source of ideas/Innovations **Marks/Dress**
- Confidential Information **Trade Secrets**

Multiple regimes of intellectual property protection ... a portfolio of intangible assets, rights and management options

RELATIONSHIPS AMONG TRADE SECRETS, PATENTS, TRADENAMES, TRADEMARKS, AND COPYRIGHTS

	Origin of Rights	Prerequisites to Protection	Scope of Protection	Life	Test for Infringement
Trade Secret	Investment of time and money	Recognition of value and utility	Confidential subject matter	Life of confidentiality	Derivation
Utility Patent	Grant by Federal Gov't. on application by inventor	New, useful, and non-obvious subject matter	Useful process, machine, article of manufacture, or composition of matter	17 years from date of grant or 20 years from date of application	Manufacture, use or sale in U.S. of claimed invention
Design Patent	Grant by Federal Gov't. on application by inventor	New, original and ornamental subject matter	Ornamental design for article of manufacture	14 years from date of grant	Designs look alike to eye of ordinary observer
Copyright	Creation of "works of authorship"	Originality-Registration and Copyright Notice required if publicly distributed	Works of authorship	Variable-on the order of 100 years or longer; life of author plus 70 years	Copying
Tradename Trademark Service Mark	Adoption & Use	Use to identify and distinguish business, goods or services	Words, names, symbols, or other devices	As long as property used	Likelihood of confusion, mistake or deception

Strategy for “Profiting from Technological Innovation”

Published in RESEARCH POLICY, Volume 15 (1986), pages 285-305.

Market context of a firm influences the ability to profit from innovation.

Innovators ability to realize profit is also dependent on “appropriability regimes”. Copiers want loose regimes. Original innovators want tight regimes. Hence, continuous policy struggle w.r.t. IP rights. WTO, WIPO etc

Profiting from technological innovation: Implications for integration, collaboration, licensing and public policy

David J. TEECE *

School of Business Administration, University of California, Berkeley, CA 94720, U.S.A.

Final version received June 1986

This paper attempts to explain why innovating firms often fail to obtain significant economic returns from an innovation, while consumers, imitators and other industry participants benefit. Business strategy – particularly as it relates to the firm’s decision to integrate and collaborate – is shown to be an important factor. The paper demonstrates that when imitation is easy, markets don’t work well, and the profits from innovation may accrue to the owners of certain complementary assets, rather than to the developers of the intellectual property. This speaks to the need, in certain cases, for the innovating firm to establish a prior position in these complementary assets. The paper also indicates that innovators with new products and processes which provide value to consumers may sometimes be so ill positioned in the market that they necessarily will fail. The analysis provides a theoretical foundation for the proposition that manufacturing often matters, particularly in innovating nations. Innovating firms without the requisite manufacturing and related capacities may die, even though they are the best at innovation. Implications for trade policy and domestic economic policy are examined.

1. Introduction

It is quite common for innovators – those firms which are first to commercialize a new product or process in the market – to lament the fact that competitors/imitators have profited more from the innovation than the firm first to commercialize it! Since it is often held that being first to market is a source of strategic advantage, the clear existence and persistence of this phenomenon may appear perplexing if not troubling. The aim of this article is to explain why a fast second or even a slow third might outperform the innovator. The message is particularly pertinent to those science and engineering driven companies that harbor the mistaken illusion that developing new products which meet customer needs will ensure fabulous success. It may possibly do so for the product, but not for the innovator.

In this paper, a framework is offered which identifies the factors which determine who wins from innovation: the firm which is first to market, follower firms, or firms that have related capabilities that the innovator needs. The follower firms may or may not be imitators in the narrow sense of the term, although they sometimes are. The framework appears to have utility for explaining the share of the profits from innovation accruing to the innovator compared to its followers and suppliers (see fig. 1), as well as for explaining a variety of interfirm activities such as joint ventures, coproduction agreements, cross distribution arrangements, and technology licensing. Implications for strategic management, public policy, and international trade and investment are then discussed.

* I thank Raphael Amit, Harvey Brooks, Chris Chapin, Thomas Hatcher, Richard Gilbert, Heather Horvath, Mel Horvath, David Halbert, Carl Jacobson, Michael Porter, Gary Pisano, Richard Rasmell, Raymond Vernon and Sergio Walter for helpful discussions relating to the subject matter of this paper. These anonymous referees also provided valuable criticism. I gratefully acknowledge the financial support of the National Science Foundation under grant no. SRS-8420556 to the Center for Research in Management, University of California Berkeley. Earlier versions of this paper were presented at a National Academy of Engineering Symposium (sing “World Technology and National Sovereignty”, February 1986, and at a conference on innovation at the University of Venice, March 1986.

Research Policy 15 (1986) 285–305
North-Holland

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Multiple regimes of intellectual property protection ... a portfolio of intangible assets, rights and management options

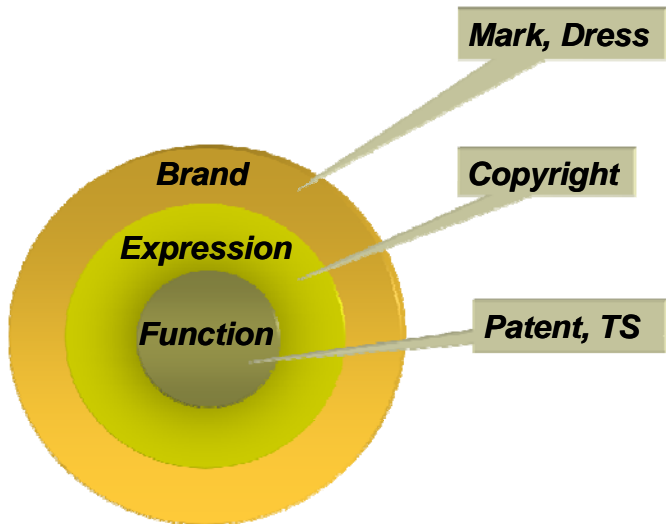
RELATIONSHIPS AMONG TRADE SECRETS, PATENTS, TRADENAMES, TRADEMARKS, AND COPYRIGHTS

Trade Secret	FUNCTION
Utility Patent	FUNCTION
Design Patent	FORM
Copyright	EXPRESSION
Tradename Trademark Service Mark	SOURCE IDENTITY/BRAND

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IP Regimes Reconciled:

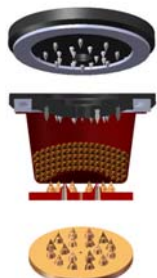


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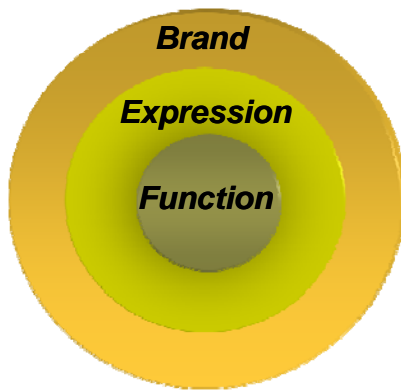
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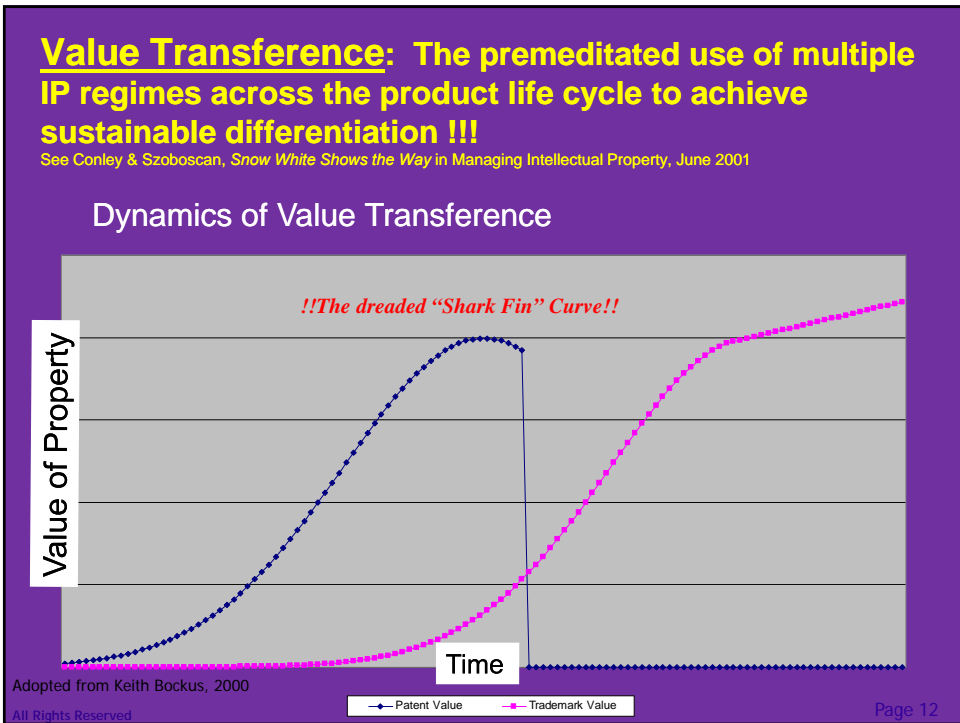
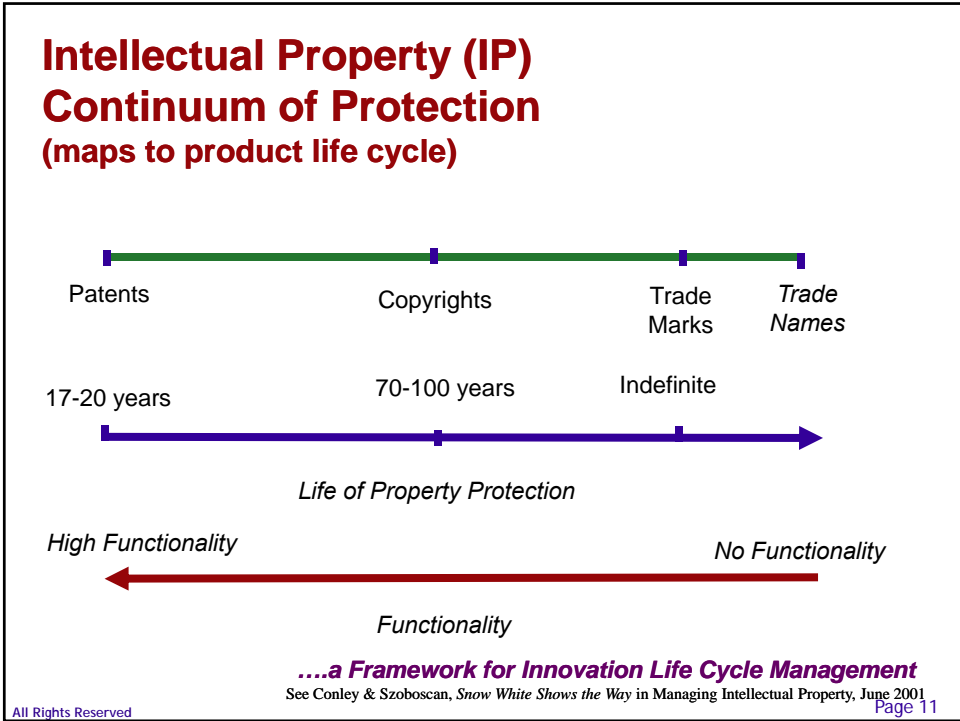
IP Regimes Reconciled: Monodor Case

Patent Monodor
1990



Air + Water + Coffee Oil
Aerodynamics + Hydraulics...





IP Strategy & Value Transference genesis: Supporting articles from Law Literature

Managing Intellectual Property
http://www.managingip.com

Features

June 2001

Snow White shows the way

By James G. Conley and John Szobocsan

In today's dynamic and uncertain business environment, doing things faster and better than your competition is no longer a sustainable form of competitive advantage. Our competitors have access to the same information technology and network tools to speed design around solutions or reasonable imitations. In fact, having a few strong patent claims may not be enough to build competitive advantage that survives the ravages of time. Patents after all do expire.

How is it that some firms continually manage to hold dominant positions in markets that are extremely competitive? How is it that Disney (media), Searle (food/pharmaceuticals), Intel (integrated circuits), Microsoft (software) and others maintain such powerful market positions in the face of so much competition?

We think (and most readers of MIP would probably agree) that one answer to this rather loaded question is related to the management of intellectual properties. We further submit that staying power and long-term market dominance can be achieved by combining the advantages of multiple forms of intellectual property protection, a technique that can be simply illustrated with a handy tool known as the intellectual property continuum of protection. In this article, we explore the relationship between ideas, innovations/creations, intellectual properties and their all-important role in sustaining competitive advantage in dynamic markets. We then draw some analogies between financial securitization and IP securitization. Finally we examine these ideas in the light of a number of contemporary examples.

The economics of wealth creation

As many of us involved with intellectual property either as inventors, asset managers or legal advocates are aware, the percentage of market valuation for companies in information rich industries that are associated with intangible assets has grown substantially during the past 15 years. In fact, this trend is not limited to information rich industries, but instead related to almost all industries. Over the past decade even traditional smokestack industries have witnessed increasing market value to book value ratios. Investors are beginning to place increasing value in the intangible assets of corporations.

Most of these intangible assets can be described as intellectual capital, a broad term that builds on an important idea put forth by 20th century economist Joseph Schumpeter. Schumpeter observed that in the long term, the only source of real value creation is innovation. Those firms or economies that innovate and can sustain innovation have a long-term engine for wealth creation.

Economist Lester Thurow put a more contemporary spin on the significance of innovation when he said: "Skills and knowledge

VIRGINIA LAW REVIEW

VOLUME 88 NOVEMBER 2002 NUMBER 7

ARTICLE

TOWARDS AN INTEGRATED THEORY OF INTELLECTUAL PROPERTY

Gideon Parchomovsky and Peter Siegelman***

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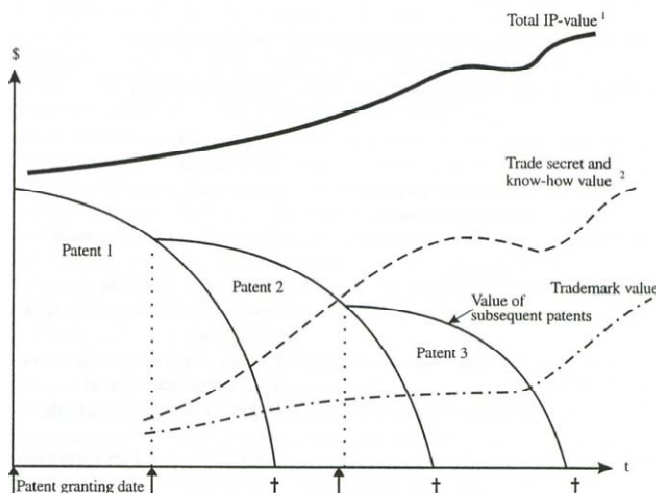
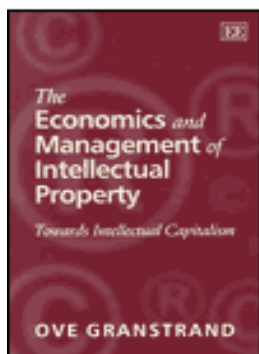
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* Associate Professor, University of Pennsylvania Law School.
** Associate Professor, Fordham Law School. We are indebted to Michael Abramowitz, Ian Ayres, Avi Bell, Omri Ben-Shahar, Yochai Benkler, Rachel Brewster, Hanoch Dagan, Zohar Goshen, Doug Lichtman, Kimberly Moore, Mark Patterson, Dan Richman, Alan Schwartz, Henry Smith, Steve Thel, Paul Wolfson, Ben Zupursky, and seminar participants at Georgetown, George Mason, University of Pennsylvania, and Yale for helpful comments. We are especially grateful to Walter Nicholson and Mark Lemley for insightful observation and criticism that substantially improved earlier drafts. Finally, we would like to thank Michael Pereira for excellent assistance, and

Economist Ove Granstrand and sequencing of IP Regimes



Legend:

↑ Patent granting date.

† Patent expiration date.

— Total IP value.

- - - Patent value.

- . - . - Trade secret and know-how value.

- Trademark value.

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Value Transference and Semiotics: The frontier of brand design & strategy

ARTICLE REPORT

Design Management Review

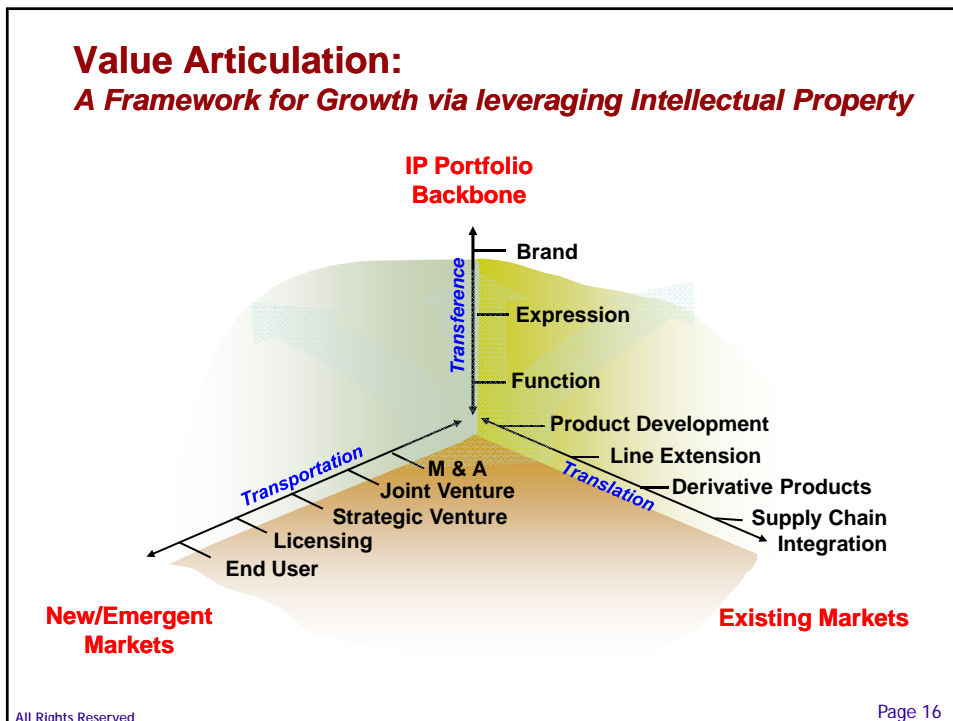
Inventing Brands: Opportunities at the Nexus of Semiotics and Intellectual Property

James G. Conley, Center for Research in Technology, Kellogg School of Management, Northwestern University
J. Duncan Berry, Applied Iconology, Inc.
Laura DeWitt, Iago
Mark Cornick, Industrial Design, Iago

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Building brands at the intersection of Design and Business Strategy
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PRODUCT	CONVENTIONAL APPROACH		BRAND VISUAL EQUITY	PROPOSED APPROACH	
	PATENT	TRADEMARK		SEMIOSIS	EMOTION
Pharmaceutical preparations for GERD and Heartburn, ppi	US patent 4325431 on omeprazole W/O patent 5427369 on esomeprazole	© on color purple on pill and container shape of © on Pillbox, Neutrin		Purple as symbolics of dependable magic	Distress Reduction, Fear Reduction
Artificial, low calorie Sweeteners	US Patent 3475403 and others	©'s on a swirl and Nutrosweet		Peppermint Candy and Hypnotic (Wheel)	Low Grade Enjoyment
Family friendly Entertainment	US Patent 2,201,619 and others	Disney's 2000+ TM's and ©'s		Character as personality icon for theme identity	Middle Intensity Enjoyment, Interest
Personal watercraft	US Patents 5511505	©'s on Yamaha WaveRunner name and dynamic spray of rooster tail		Rooster tail as index of speed (and, thus, fun)	Surprise, Fear, High Joy
Herbicide & Seeds	US Patent 4405356 on glyphosate Patents on GMO high yield seeds	©'s "Round-up" ©'s "Round-up ready" com		Protection from without; Cosmeitic growth from within	Anger Removal, Fear Reduction
Soft Drinks	Trade Secret on formula	©'s on shapes and silhouettes of the bottle		Victorian Feminine Figure; Iconically unique	Distress reduction, anger avoidance, enjoyment
Digital Music	Patent 6731312 on iTunes and US Patent D548746 of iPod	©'s shape of the iPod, iTunes, iPod, iPhone		Iconical software navigation	Enjoyment, Excitement
CE sound enhancement	US Patents 4460891 on A, S, and C type NR	©'s on Dolby and DD		Stereophony, letter, and processed ears	Enjoyment, Distress/Anger Reduction





What's All The Noise About?!



Dolby Labs An Effective Model For Leveraging IP

Pam Hawkins, Dotcy Isom III, Tiffany Smith-Peaches
Tech 913 Final Project

Business Model



“ I have a general principle that I follow. I don't go into any area that I can't get a patent on... [otherwise], you quickly find yourself manufacturing commodities.”

Ray Dolby (June 23, 1986 San Francisco Business Journal interview)

Business Model

718 registered trademarks in 98 countries; 81 in US

“Trademarks are one of Dolby’s most valuable assets.”—dolby.com, 2003

Note: All marks registered

Movies/Theaters

- Transferred sound know-how to film (16 consecutive “Oscars”)
- Dolby™ Stereo mark on theaters
- 1000 screens in 10 years
- Didn’t respond to digital
- DTS® & SDDS® take space
- Partnered w/ studios and recovered
- Same biz model: suppliers, (WB, Paramount, 20th CF) use Dolby, manufacturers [theaters] must follow

Month	Dolby	DTS	SDDS
May-93	0	0	0
Dec-93	0	0	0
Mar-94	0	0	0
Aug-94	0	0	0
Jan-95	0	0	0
Jun-95	0	0	0
Nov-95	0	0	0
Apr-96	0	0	0
Sep-96	0	0	0
Feb-97	0	0	0
Jul-97	0	0	0
Dec-97	0	0	0
May-98	0	0	0
Oct-98	0	0	0
Mar-99	0	0	0
Aug-99	0	0	0
Jan-00	0	0	0
Jun-00	0	0	0
Nov-00	0	0	0
Apr-01	0	0	0
Sep-01	0	0	0
Feb-02	0	0	0
Jun-02	16,500	12,000	7,000

Dolby in Home Theater/DVD

Leveraged presence in cinema

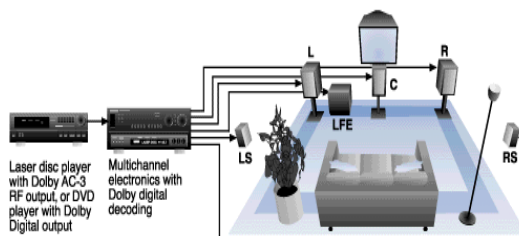
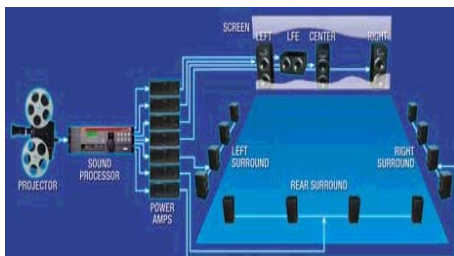
⇒ Video/DVD

Products

- Dolby Surround®
- Dolby Pro Logic®
- Dolby Pro Logic II®

DVD US standard

DVD world standard



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Dolby Digital Presence in HDTV

Leveraged their position in video & television production

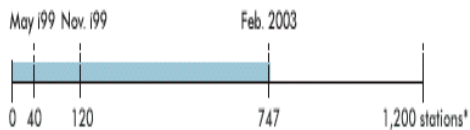
FCC standard

- Grand Alliance
- Cited testing (IC in the form of documented research)

Worldwide standard



Number of US terrestrial TV stations broadcasting Dolby Digital



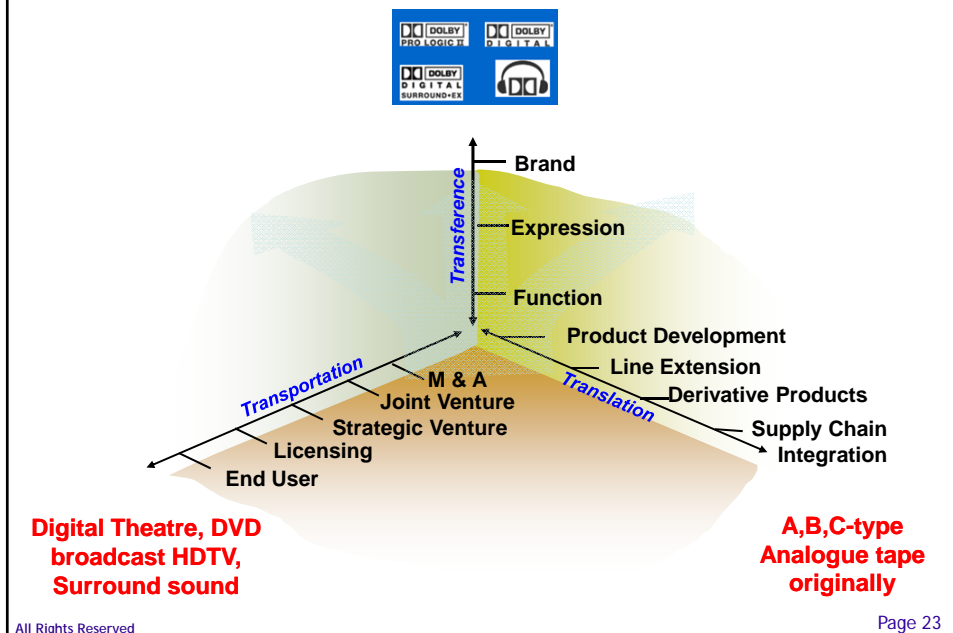
*Ongoing goal is to reach 1,200 stations

On February 4, 2003, the National Association of Broadcasters (NAB) announced that a total of 747 local broadcast television stations have flipped the switch to digital. DTV signals are now being transmitted in 181 markets that include over 96% of US TV households.

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Value Articulation by Dolby Laboratories



Dolby's business model shines..

Proprietor controls 94% of voting stock after the IPO!

Dolby Labs Raises \$495 Million in Initial Public Offering

By BLOOMBERG NEWS
Published: February 17, 2005

By Bloomberg News

Dolby Laboratories, a developer of music and motion picture sound systems, raised \$495 million in an initial public offering, putting a valuation on the company at \$1.2 billion. Dolby Laboratories sold 10.5 million Class A shares at \$18 each, while its founder sold 17 million shares, the company, based in San Francisco, said yesterday.

Dolby increased the offering price from the range of \$13.50 to \$15.50 it estimated earlier this month. The company developed a system in the 1960's that reduced background noise in tape recordings. In the 1970's, the Dolby surround-sound system was used in theaters for films including "Star Wars." Dolby products have been used in the production of more than 16,000 movies, thousands of DVD titles and hundreds of video games, the company said in a filing. Mr. Dolby, 71, founded the company in London in 1965 after he got a doctorate in physics from Cambridge University. He is board chairman and got \$306 million in the offering.

Mr. Dolby's share in the company is worth \$1.2 billion based on his 69.8 percent stake in the stock after the share sale. The company's market value is \$1.75 billion, based on its 97,362,125 Class A and Class B shares at \$18 each.

Control of the company will remain with Mr. Dolby through his holding of Class B shares, which carry 10 votes each. Class A shares are permitted one vote each. Mr. Dolby's total voting power is 93.6 percent, according to a filing yesterday with the Securities and Exchange Commission.

Ray Dolby and loan Allen, the company's senior vice president, won Academy Awards in 1978 and 1988 for their efforts to develop motion-picture sound.

In the 12 months ended Sept. 24, the company had net income of \$39.8 million on sales of \$289 million. Net income was \$30.9 million on revenue of \$217.5 million a year earlier.

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For more information on Dolby:

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Northwestern Journal of Technology and Intellectual Property

Volume 2, Number 1 (Fall 2010)

A Profile of Dolby Laboratories: An Effective Model for Leveraging Intellectual Property

Pamela Hawkins Williams,* Dotcy Isom, III,** Tiffini D. Smith-
Peaches***

I. INTRODUCTION

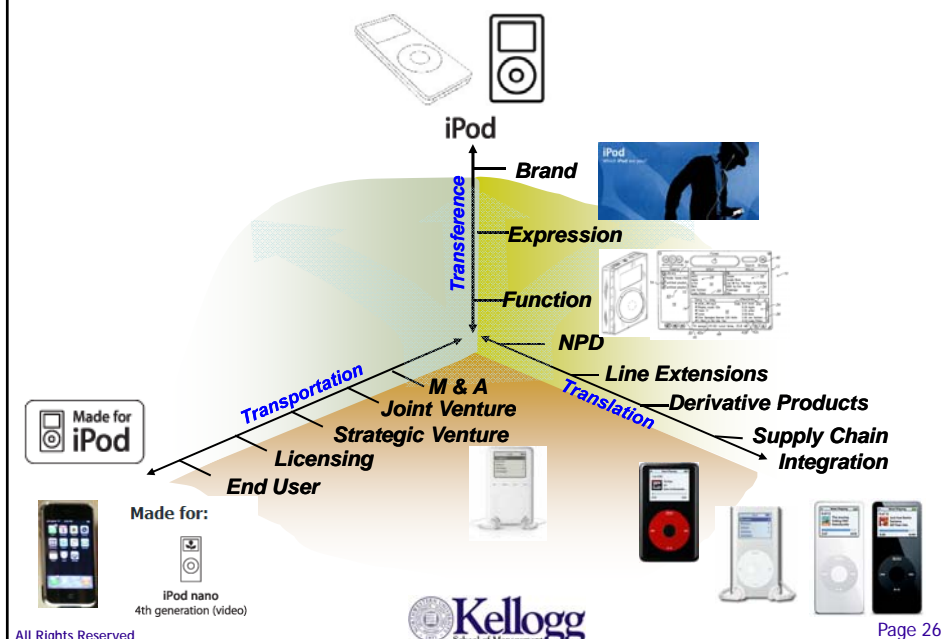
¶1 The story of Dolby Laboratories, Inc. ("Dolby Labs") is in many ways the story of Ray Dolby.¹ By all accounts, Ray Dolby is the consummate engineer and inventor who created and sustained a thirty-seven year dynasty in an industry characterized by rapid development. Ray Dolby, an electrical engineer and physicist, helped develop the first consumer VCR while still a college student working part-time at Ampex Corporation.² Although founded in London, Dolby Labs was established as a New York corporation and then relocated its headquarters to San Francisco, California in 1976.³ For the next twenty-five years, almost every innovation in analog tape noise reduction would originate from the company's San Francisco and London locations. Through his mastery of leveraging intellectual property ("IP"), Ray Dolby built alliances with the recording industry, reproduction manufacturers, and consumer electronics manufacturers that arguably exceeded Microsoft's[®] Windows[®] dominance in the computer industry.⁴ Even today, "[t]he most popular analogue noise reduction system [in] tapes is the Dolby[®] noise reduction ("Dolby[®] NR")."⁵ Virtually all cassette players, from the cheapest portables to

* Pamela Hawkins Williams is a 2004 J.D. Candidate at Northwestern University School of Law. She received her MBA from Washington University in St. Louis and her B.S. in Civil Engineering from the University of Kansas.

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iPod Value Articulation



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From WSJ 5/12/08 Business Insights Section

http://online.wsj.com/article_print/SB121018802603674487.html



May 12, 2008

BUSINESS INSIGHT Joint with the Sloan Management Review

Shape of Things to Come

How Apple's trademark for its iPod protects its brand -- and offers lessons for other companies on how to leverage their intellectual property

By DAVID OROZCO AND JAMES CONLEY

On Jan. 8, the U.S. Patent and Trademark Office granted **Apple Inc.** a trademark for the three-dimensional shape of its iPod media player.

This was more than a recognition of an innovative product design. It also was Apple's capping piece in a multiyear marketing and legal campaign that pushed intellectual-property rights to new competitive advantage for the company.

In many ways, Apple is benefiting from an expansion of U.S. trademark rights, beyond the traditional names, images, logos and two-dimensional symbols trademarks usually secure. In recent years, trademarks have been granted for such things as product shapes, colors and scents that companies can claim are linked exclusively to the source company in consumers' minds.

These nontraditional marks are difficult to obtain. But unlike more commonly used utility and design patents, which exist to cover functions and the ornamental look and feel of products and expire after a set number of years, trademarks can remain in force potentially forever.

The iPod shape trademark gives Apple a new weapon in the fiercely competitive market for media players. While competitors may eventually appropriate the iPod's inner workings, as utility patents expire, they will risk litigation if their products come too close to the trademarked shape of the iPod, including its popular circular-touchpad interface.

Moreover, trademark law allows the holder to sue not only manufacturers but also distributors of competing products whose attributes so resemble those of the protected mark that they create the likelihood of confusion in the marketplace.



STEP BY STEP Apple first sought a trademark for a two-dimensional iPod symbol (top left), then for a mark for corded products (bottom left), and finally for the three-dimensional shape of its players

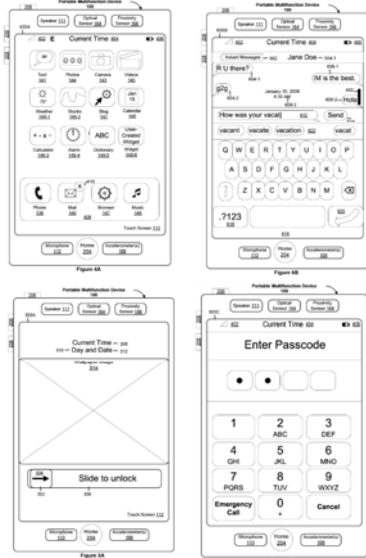
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The iPhone Value Transference

Software
Function

Product
Form

Brand



TRADE-MARK:



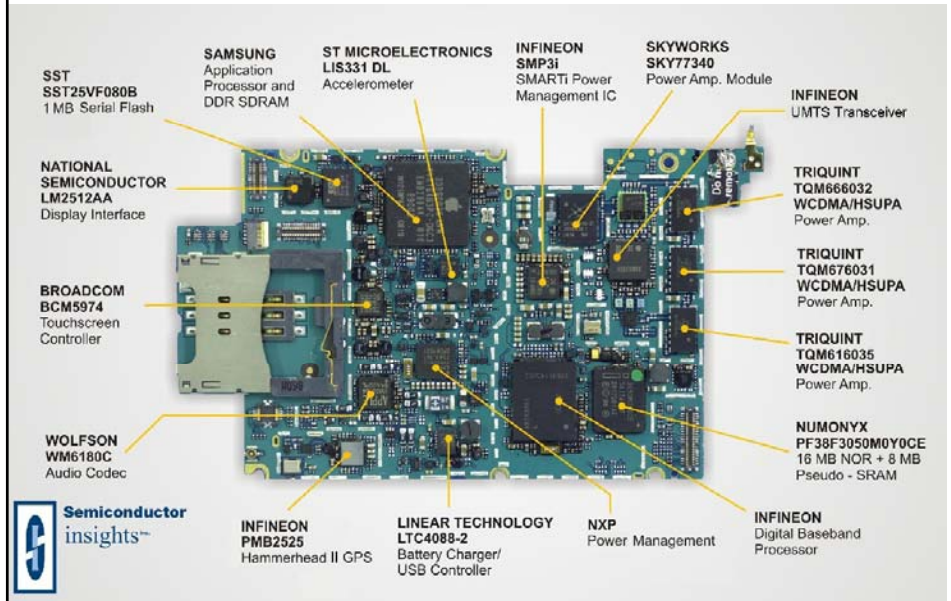
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Utility Patent

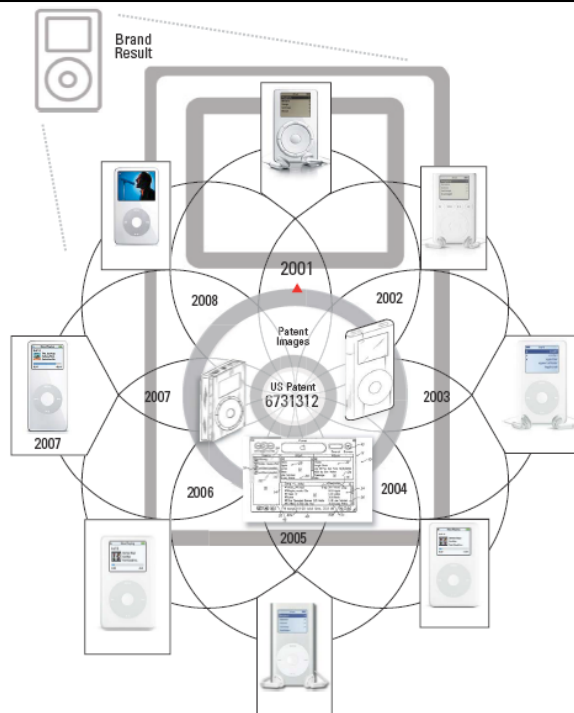
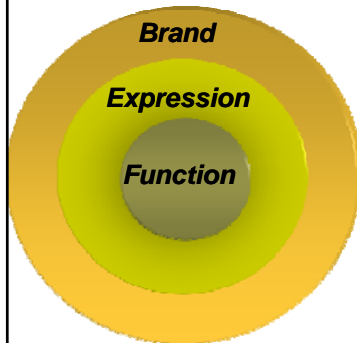
Design Patents

Marks/dress

iPhone 3G Teardown & everyone else's technology...



Temporal reconciliation of iPod IP

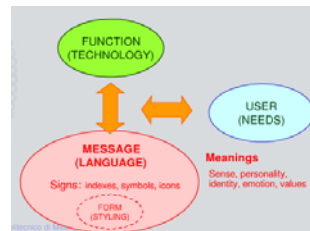


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Design converges on marketing

- **Form follows function**
Louis H. Sullivan
- **Form follows emotion**
Harmut Esslinger
- **Form follow meaning**
Roberto Verganti



SEMIOTICS

The science of signs — derives from Σημειον — Greek word for Sign: ANYTHING that stands for something else

Semiotics reveals performance of signs and the role of MEANING

Meaning IS Value

*To expand meaning is to build value, and enhance **profit***

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ORIGINS OF SEMIOTICS

Charles Sanders Peirce

Ferdinand de Saussure



1839 -1914

American Scientist & Logician



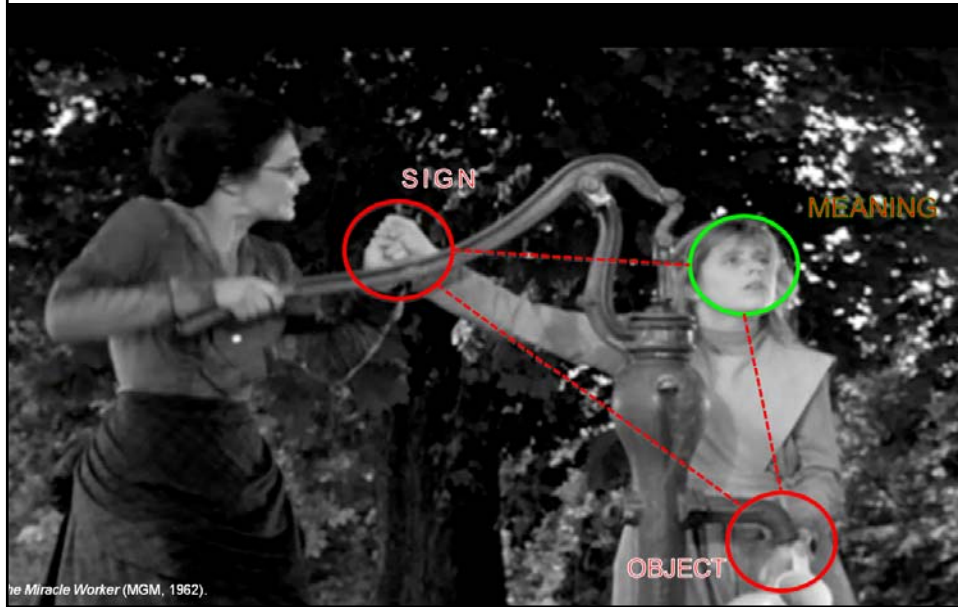
1857-1913

Swiss Linguist

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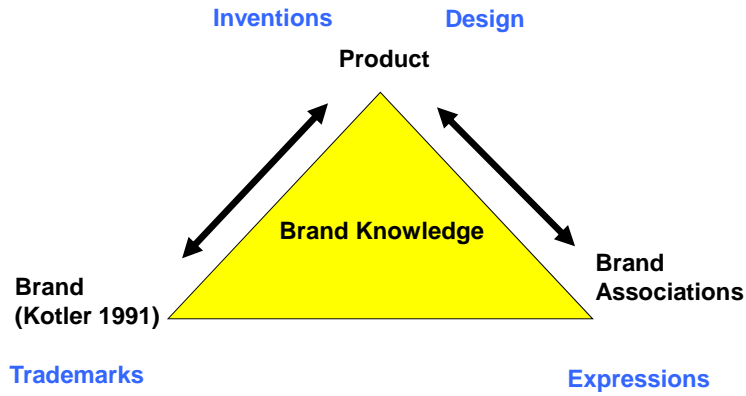
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From Semiotics



The IP Ecosystem

A lens to resolve product character

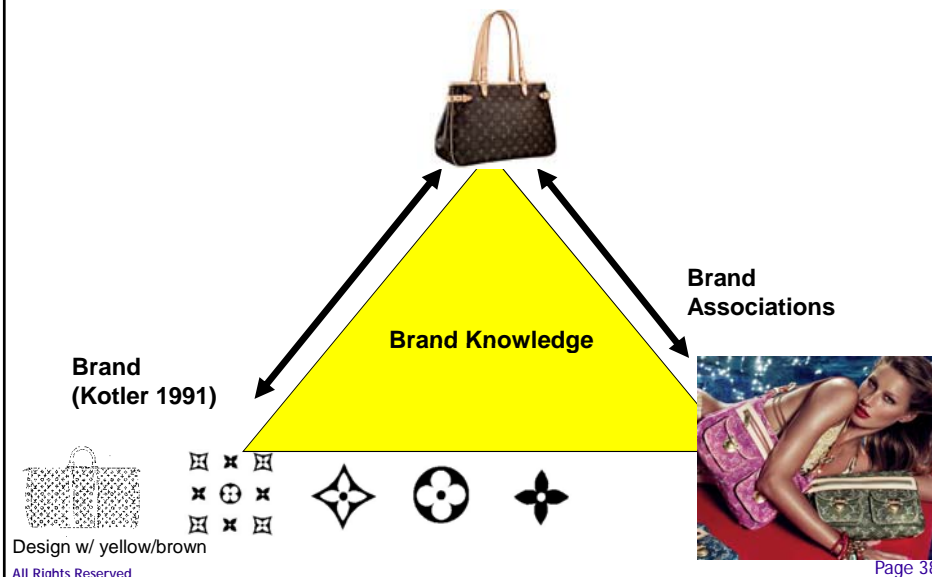


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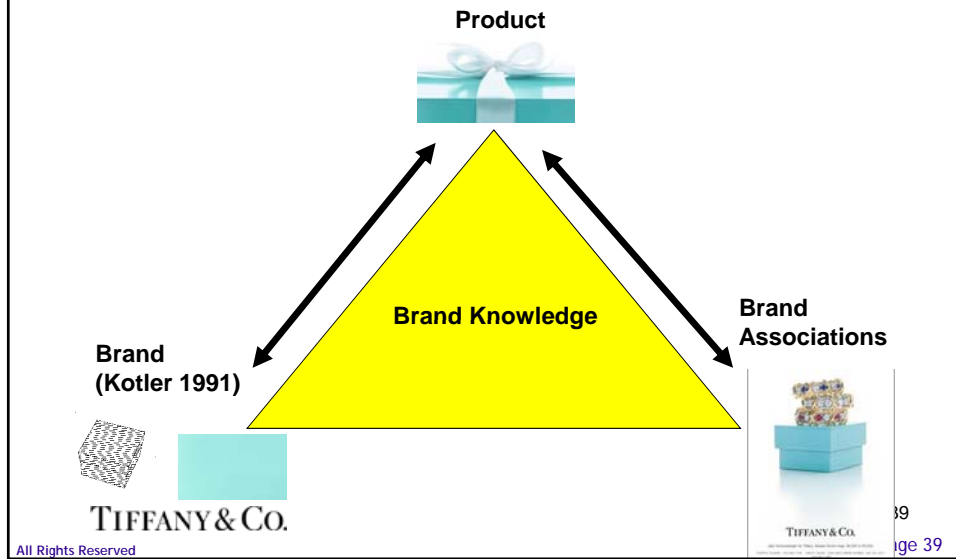
Case Study – Product Design



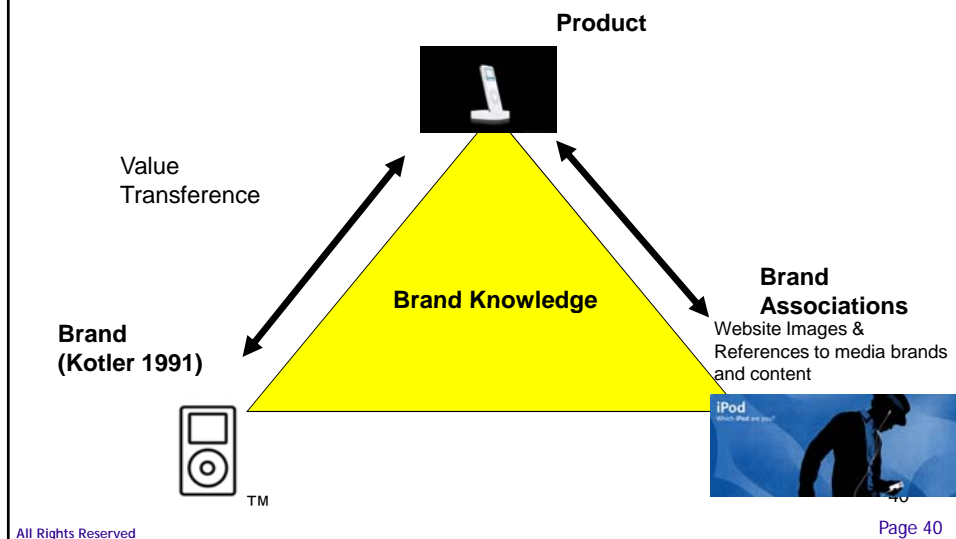
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Case Study – Packaging



Case Study – Product Design



Today's Agenda

- Differentiation strategy and the logic of why MSME's do what the do
- Simplifying the arcane lexicon of IP law, from product function to brand.
- Management concepts for IP such as value transference, value articulation, Dolby case
- Dynamics in markets and contexts, convergence of Design and Marketing
- Semiotics & Brands

Questions?

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