



watermark

Intellectual Asset Management

Patents and Designs

Trade Marks

IP Legal

IP Strategy & Management

R&D Tax

Competitive Business Intelligence

Our locations:

Victoria

New South Wales

Western Australia

 @WatermarkIAM

IAM: more than patents, beyond trade marks, way past IP.
Fresh thinking from Watermark.

Read our blog:
intellectualassetmanagement.com.au

The R&D Tax Incentive: Claiming tax offsets for 'Foreign owned R&D' conducted in Australia

Familiarity with the requirements for identifying eligible Research and Development (R&D) activities is key to maximising benefit from the R&D Tax Incentive scheme, operating since 1 July 2011.

Eligible R&D activities are primarily those undertaken and owned in Australia (with the exception of pre-certified R&D activities undertaken offshore and subject to specific requirements).

However, the R&D Tax Incentive scheme also provides a benefit for 'Foreign owned R&D activities' undertaken by an Australian entity in Australia, where those activities are owned and paid for by an offshore affiliated company.

Therefore, a clear distinction exists between:

- R&D activities carried out offshore on behalf of an Australian entity, which form part of an 'Australian owned R&D' claim; and
- 'Foreign owned R&D' carried out in Australia on behalf of a foreign affiliated entity.

To make a claim for the R&D tax offset an Australian R&D entity would ordinarily be required to show ownership of the R&D results and financial risk in respect of the R&D expenditure. However, where the requirements for eligibility of Foreign owned R&D, as outlined below, are satisfied the need to show ownership of the R&D results and financial risk is suspended.

While for Australian subsidiaries of foreign corporations this might seem too good to be true, there are a number of very

specific requirements which must be met before the R&D tax incentive can be claimed:

- R&D activities must qualify for the R&D tax incentive under the same definitions and requirements as Australian owned R&D.
- the R&D activities must be registered with AusIndustry within 10 months of the year end, in line with requirements for Australian owned R&D activities.

In addition, and as outlined in the Income Tax Assessment Act 1997, all of the following specific requirements must be met before a tax offset is available for 'Foreign owned R&D' expenses:

- the foreign entity must be incorporated under a foreign law, and
- be a taxation resident of a country with which Australia has a comprehensive Agreement for the Avoidance of Double Taxation, and
- activities must be solely conducted in Australia or an external territory, and
- the foreign entity and the Australian entity must be connected or affiliated for Australian taxation purposes, and
- the R&D must be conducted in accordance with a binding written agreement between the Australian entity and the foreign entity. The agreement cannot be sub contracted. This agreement must be in force in respect of the R&D activities being claimed.

A permanent establishment of a foreign entity (as defined in the relevant

In this issue:

IP considerations before an IPO – [page 2](#)

Manufacturing in Australia – [page 3](#)

IAM: Watermark – [page 4](#)

End of Year Closure Dates

Watermark's offices will be closed from 24 December 2014 to 5 January 2015.

Incoming mail will not be monitored during this period. Limited services will be provided on Friday 2 January. Any urgent matter should be directed to mail@watermark.com.au

Agreement for the Avoidance of Double Taxation) may carry out R&D activities either on its own behalf or for its foreign entity and still take advantage of the R&D tax incentive.

Many foreign corporations undertake business activities in Australia through either a subsidiary company or a permanent establishment. Where these entities carry out R&D activities in this country, an analysis should be undertaken to establish whether the activities would qualify for the R&D tax offset, either as 'Australian owned R&D', or 'Foreign owned R&D'.

For the 2014 financial year, the benefit of the R&D tax incentive is:

- a tax offset of 40% of R&D expenses, for companies with an aggregated turnover of \$20 million dollars or greater per annum, or
- a tax offset of 45% of R&D expenses for companies with an aggregated turnover of less than \$20 million.

This reflects the foregone tax deduction

– continued on page 3



Dealing with IP issues when a Company seeks to list on the ASX

Key Points -

- **Companies seeking to list on the Australian Stock Exchange should conduct IP due diligence and prepare a report of IP assets.**
- **Determine correct ownership or entitlement to IP assets.**
- **Listed companies must meet stringent compliance requirements – be prepared.**

There is a current trend among emerging technology companies in Australia to seek to list on the Australian Stock Exchange (ASX). Among the benefits of listing is the ability of the company to raise capital which can be used to fund expansion plans. The founders also have the opportunity to realise the value of shares in the company, subject to rules which may prohibit the founders from selling shares for a period of time.

There are typically two ways in which an ASX listing can be done:

- Through an Initial Public Offering (IPO) where the existing company becomes listed after meeting the rigorous requirements of the Corporations Law. This involves issuing a Prospectus which must fully disclose to the public the risks involved in investing. The preparation of a compliant Prospectus can take several months and the company will often need to improve its compliance and governance standards before the Prospectus can be issued.
- An alternative is a Reverse Take Over (RTO) which involves an existing ASX-listed company purchasing the shares or assets of the target technology company whose shareholders are issued with shares in the listed company. In this way, the listed company takes over the operations of the technology company which are then run through the listed company. Since the end of the resources investment boom, some listed resources companies have used the RTO route to morph into listed technology companies.

The RTO process is sometimes referred to as a 'back door listing' and is seen as an easier option compared with an IPO with its compliance issues. However, the requirements for an RTO can be nearly as demanding as an IPO and it is no easy short cut to the ASX.

Whichever procedure is used, the technology company needs to get its intellectual property (IP) in order. Often the IP will be the most important asset of the technology company (e.g. the patents of a biotech company or the copyright in the software of a software development company). With an IPO, the Prospectus may need to contain a report prepared by lawyers and patent attorneys giving details of the IP owned by the technology company.

At the very least, the technology company will need to conduct a due diligence of its IP assets and prepare a report on them. This will involve:

- Identifying all IP assets both registered (e.g. patents and trade marks) and unregistered (e.g. copyright).
- Establishing that the technology company owns the IP.
- Taking steps to protect IP (e.g. apply for trade marks used but not registered).
- Securing ownership (e.g. obtaining written assignments of copyright).
- Putting agreements in place with suppliers and customers to replace informal relationships
- Reviewing any licences of the IP.
- Establishing systems and procedures for capturing and exploiting future IP.



Ownership of the IP is often the most contentious issue. For example, a software development company may have out-sourced some of the development without securing ownership of the copyright in the resulting software. In such circumstances, it may be necessary to ask the developer to assign copyright at a time when there is no ongoing relationship or, worse, the relationship has broken down.

Where a technology company has emerged out of a 'start up' culture, there may have been little consideration given to compliance and legal issues during the early stages of the company's development. Such a company may need to undergo an IP and governance 'make-over' before it can contemplate an IPO or being party to a RTO.

Further, the disclosure and other requirements imposed on an ASX listed company are onerous and ongoing. A company which is not able to meet the compliance requirements should not be seeking to list.

Even if listing is a distant prospect, an emerging technology company should be conscious of IP issues and be prepared to undergo an IP audit. It is an investment in the future of the company.

By Guy Provan

Contact Guy:

g.provan@watermark.com.au



Advanced Manufacturing in Australia

Key Points -

- **Despite media pessimism on the state of the manufacturing industry in Australia, there is a growing confidence in the future of advanced manufacturing technologies**
- **Carbon composite technology finds a niche in aerospace and automotive component manufacturing in Australia**
- **Patent landscape mapping can help to identify mature and growth potential technology areas**

With the imminent closure of the automotive industry in Australia, there is much doom and gloom in the media, and in the community generally, about manufacturing in Australia. But the recent Australian Manufacturing Summit highlighted so many examples of successful Australian manufacturing companies that it was impossible not to be drawn into the energy of the event and optimism of the delegates.

Watermark was pleased to sponsor the inaugural Australian Manufacturing Summit on 10-11 November 2014 in Sydney. A key theme of the Summit was the need to 'talk up' rather than 'talk down' Australian manufacturing. The media feeds community pessimism as it focuses on factory closures and job losses. But there are many successful Australian manufacturing companies competing globally - examples presented at the Summit ranged from medical devices (Cochlear and ResMed) through to microphones (RØDE) and aerospace (Quickstep).

Quickstep is a Watermark client and we were very pleased to introduce

the company as a manufacturer of advanced carbon fibre composites for the aerospace, defence and automotive industries. It operates state-of-the-art aerospace manufacturing facilities in Sydney and has recently announced the opening of an Automotive division at Deakin University in Geelong, Victoria.

A key technology of Quickstep, patented through Watermark, is its heated fluid curing process which allows much faster and cheaper manufacture of carbon fibre components. It is this process which will be used to produce high quality components at the new Automotive division.

Watermark undertook some research to assess where Quickstep's heated fluid curing technology sits relative to other competing technologies. One tool to do this is a 'patent map' (see top right) which attempts to visually depict the technology landscape by clustering similar patents together. White mountain peaks represent high intensity of patent activity in a closely



related technology. The Quickstep patent (red dot) is not on a mountain peak but instead on a much lower hill, thereby indicating that the technology is relatively unique, and thus inventive.

Quickstep is one example of many Australian companies developing truly innovative technologies and products for world markets. This advanced manufacturing capability is a reason to be more optimistic about the future of Australian manufacturing.

By Ray Tettman

Contact Ray:

r.tettman@watermark.com.au

The R&D Tax Incentive: Claiming tax offsets for 'Foreign owned R&D' conducted in Australia

of 30% (as the R&D expenses become notional deductions only), and an incentive portion of either 15% or 10%. To the extent of any tax losses, after adjustment for the notional deduction, the 45% rate of tax offset can be 'cashed out' by way of a refund.

As announced in the recent Australian Commonwealth government budget, the rate of company tax is set to fall from 30% to 28.5% from 1 July 2015, a decrease of 1.5%. Correspondingly, the rate of the tax offset falls by 1.5% to 38.5% and 43.5% respectively, for the 2015 financial year. Notably, this fall in the tax offset is 12 months in advance of the fall of the Company tax rate, as the new and lower R&D tax incentive rate has effectively been introduced from 1 July 2014 to take effect for the current 2015 financial year.

In light of the decrease in the R&D tax offset rate, it is prudent to determine whether your company or permanent establishment

has a claim in the 2014 financial year to benefit from the higher tax offset rate.

So the message is, whether you are identifying a new 'Foreign owned R&D' claim, or are maximising a 2014 R&D tax incentive claim, it is time to start preparing for registration. Time slips by all too quickly during the coming festive season and close of registrations for 30 June financial year end entities will soon be upon us, as 30 April 2015 will loom large in the new year.

The Watermark team can assist with general advice or specific assistance relating to the R&D tax incentive scheme. Please contact us on the email below.

By Kate Mahady & Cleo la Harpe

Contact Kate: k.mahady@watermark.com.au

Contact Cleo: c.delaharpe@watermark.com.au



IAM: Watermark

Congratulations Guy & Leanne

Watermark congratulates Guy Provan on his appointment as Legal Director of Watermark Intellectual Property Lawyers. We also congratulate Leanne Oitmaa on her appointment as Special Counsel.

New Day Box

Watermark's staff contributed to New Day Box collection in the lead up to the festive season. New Day Box aims to give boxes filled with goodies to women living in domestic violence crisis accommodation in Victoria over the Christmas period. In 2014 1,200 boxes will be distributed.

Snowdome Great Shake Up Event raises over \$550,000 for blood cancer

The Snowdome Foundation 'Great Shake-Up' 2014 fundraising event held on 15 October has raised \$550,000. This money will be used to directly fund clinical trials for blood cancer patients in Australia and support research in the area of epigenetics. Snowdome's Gala Auction raised \$54,500 and an additional \$43,000 will fund a Clinical Trial Nurse and Research Scientist. More than 2,500 people across 100 boardrooms including Watermark's Melbourne boardroom participated in the virtual event.



Watermark is a founding supporter of the Snowdome Foundation.

WA Innovator of Year

Watermark congratulates our clients Quickboats Pty Ltd and Bombora Wave Power Pty Ltd, finalists in the recent Western Australia Innovator of the Year Awards 2014.

The awards ceremony was held on 5 November 2014, attended by 250 people from industry, science, government, professional services and university commercialisation departments.

Although no awards were taken home by Bombora Wave Power or Quickboats, Bombora Wave Power was one of four companies to be a finalist in the WA IOTY2014 Emerging Innovation (pre-revenue) category, and Quickboats similarly one of four companies in the Growth (post-revenue) category. Mark Pullen, Principal at Watermark and Chairman of the WA IOTY2014 program, is pictured with Deryck Graham (right) and James Graham (left) of Quickboats at the ceremony.



Videos showcasing the finalists' innovative technologies included the Bombora Wave Power wave energy convertor and announced a trial wave energy convertor system to be located in the Swan River near Perth. Quickboats showed their unique composite material folding boat able to be unpacked, erected and in the water in just one minute.

The awards ceremony was attended by the Honourable Michael Mischin, WA Attorney General and Minister for Commerce, and Professor Fiona Wood AM, patron of the WA IOTY2014 program. Watermark has been involved with the WA Innovator of the Year Awards program since its inception in 2006, and we are a proud sponsor and supporter of the program.

Meet Ken Bolton

As a mechanical engineer by trade, Ken Bolton has over 20 years patent experience.



Ken has written patents for a wide range of industries, including inkjet printers, molecular diagnostic devices, and anti-counterfeiting measures on banknotes.

After several years as a Patent Examiner, it seemed like a natural progression to become a Patent Attorney.

A Patent Attorney has a front row seat to cutting-edge developments in a range of technologies and the people who create these developments are constantly driving their industries forward.

Having seen all sides of the patent world, as an Examiner, a client and an Attorney, Ken has a unique 360° view in his approach to his clients.

Contact Ken:

k.bolton@watermark.com.au

Season's Greetings

The Principals and staff wish our clients and friends a happy festive season and successful 2015.

Proceeds from this year's Season's Greetings cards will go to Kids Helpline & The Heart Foundation.