(A) mHealth and protecting your IP assets

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#healthcare #intellectualproperty

mHealth – a definition

"the provision of **healthcare** or **health-related information** through the use of **mobile devices** (typically **mobile phones**, but also other **specialised medical mobile devices**, like **wireless monitors**)."

PWC Paper "Emerging mHealth: Paths for growth", 2014

mHealth - IP Strategy

- What's unique?
- Protect with IP
- Keep out competitors

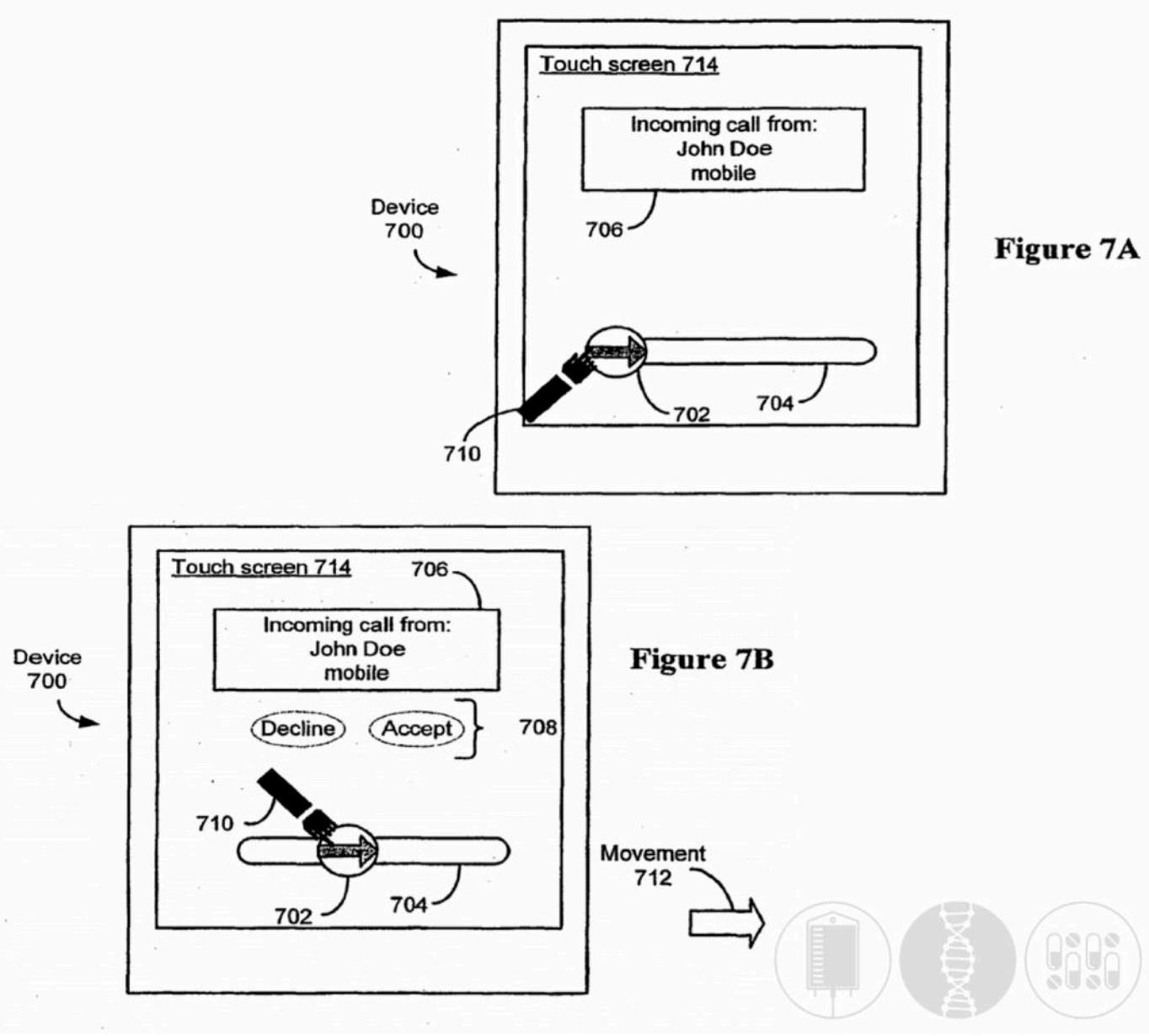
Patents

- Patents available for hardware
- “a program for a computer” is not an invention
- But, get-out
- Requires a technical benefit outside the computer

Patent Examples

Amazon 1-Click®

Apple Swipe-to-unlock



Copyright

- Can subsist in Literary, Dramatic, Musical and Artistic works
- Automatic
- Lasts a long time

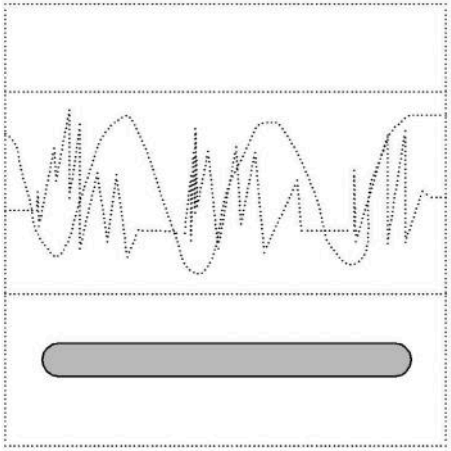
Design Rights

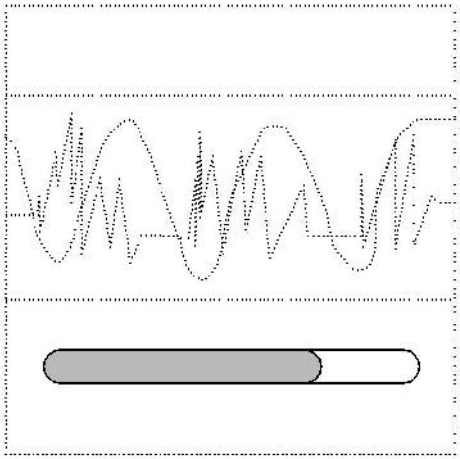
Design rights protect aesthetic appearance, not functionality

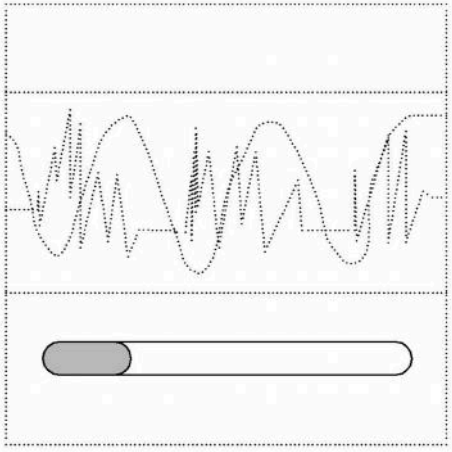
Can include mobile health devices and GUIs

ASUSTEK Computer Inc.

Smart watch variant – EU 005298304-0001







Unregistered

- Exist automatically
- 3 year duration – EU
- 10 year duration - UK
- Must be new and have individual character to be novel

Registered

- File application in territory of interest
- Differing terms of protection worldwide - UK/EU 25 years
- Must be new and have individual character to be valid
- One year grace period in UK/EU but not in all countries

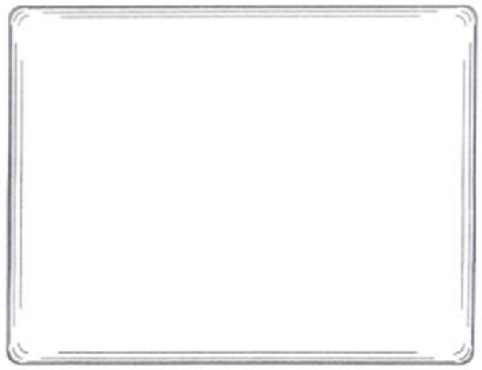
Why register?

- Cost-effective
- More impact against competitors
- Presumption of validity
- No need to prove copying

Infringement

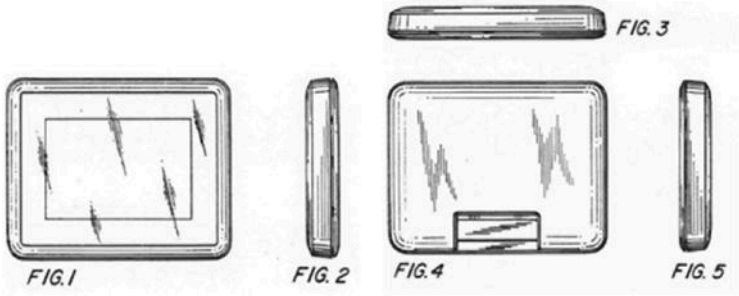
Apple v Samsung

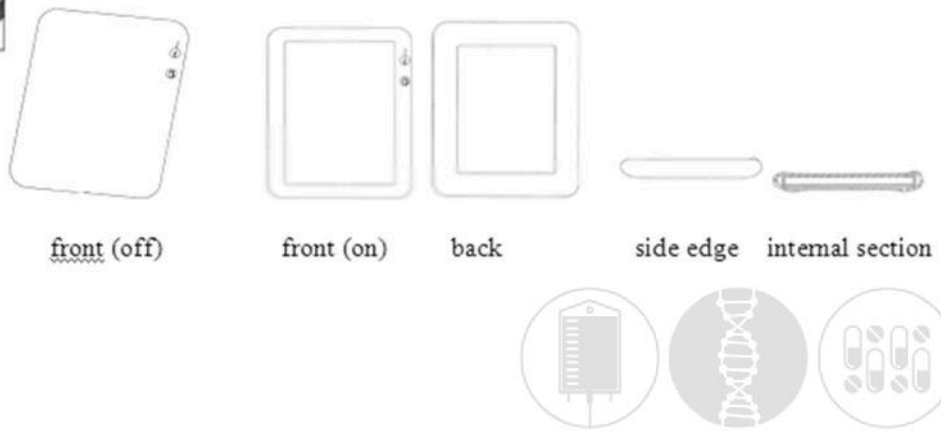
Apple alleged Samsung's design infringed its design registration



Prior art

Does Samsung's design sit closer to the prior art or Apple's design?

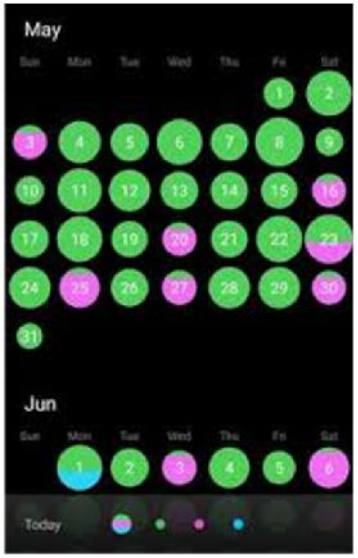




Designs – Case Study

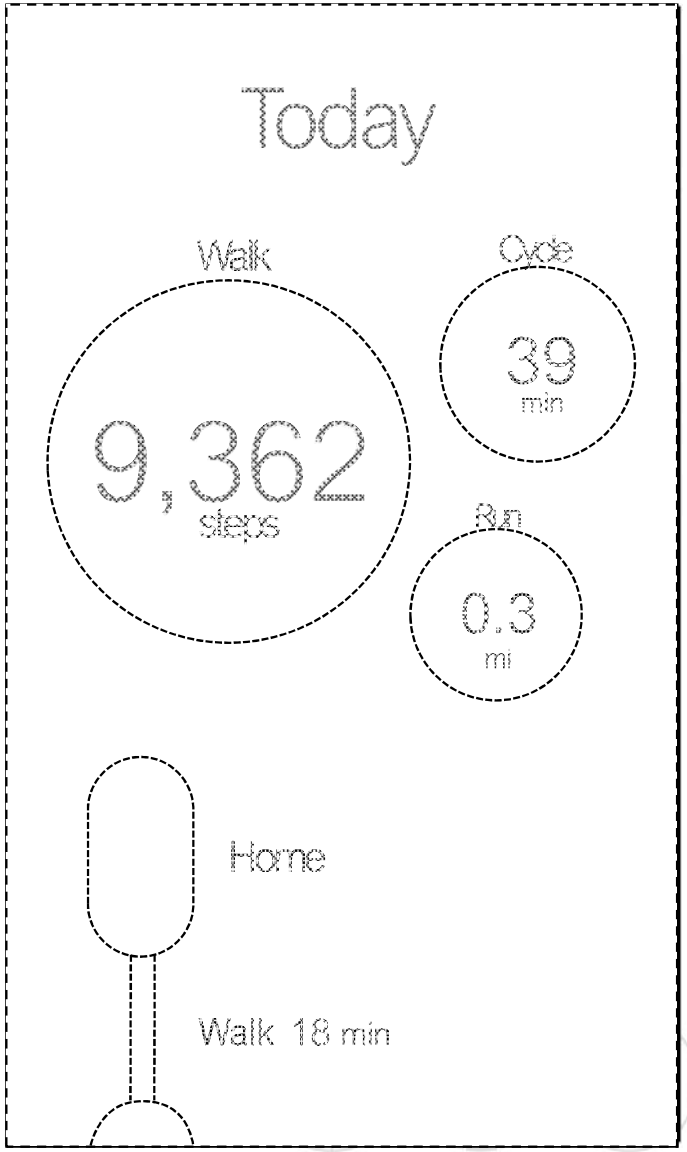
Moves App

- Fitness tracker for smartphone



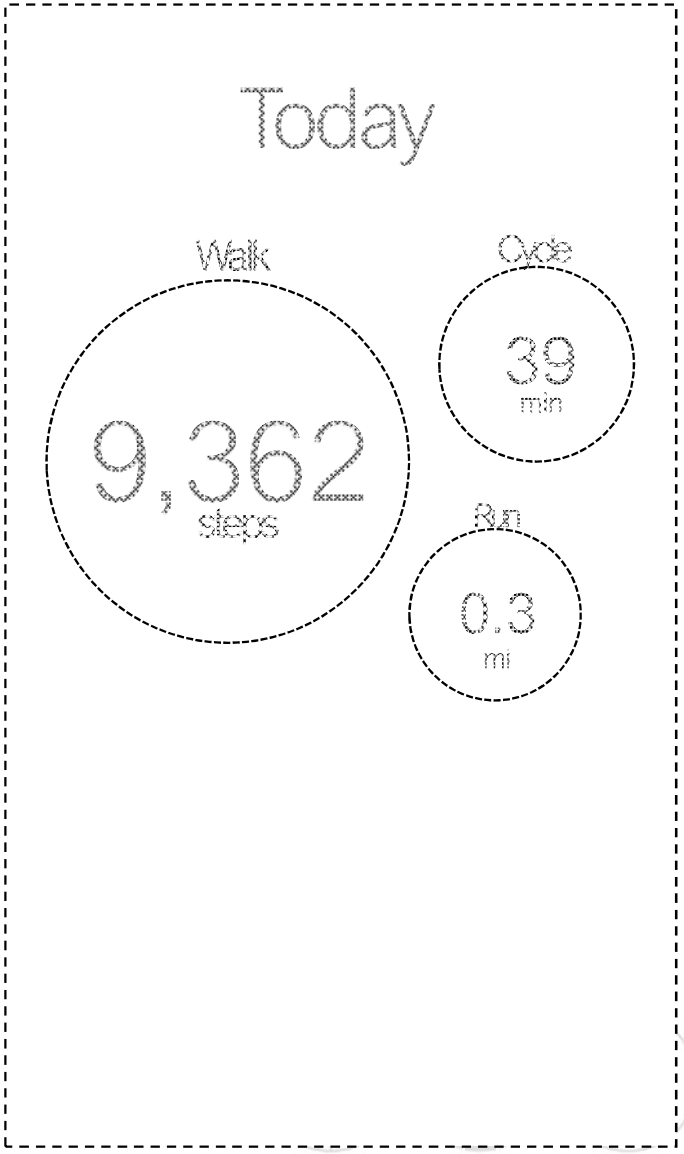
Worked Example

"Today"

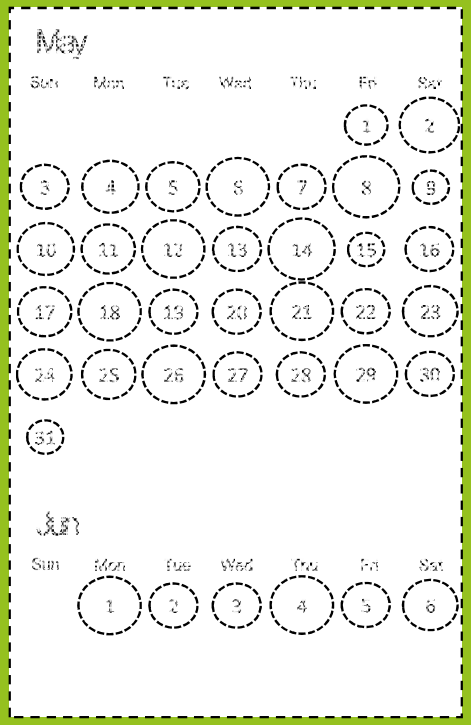


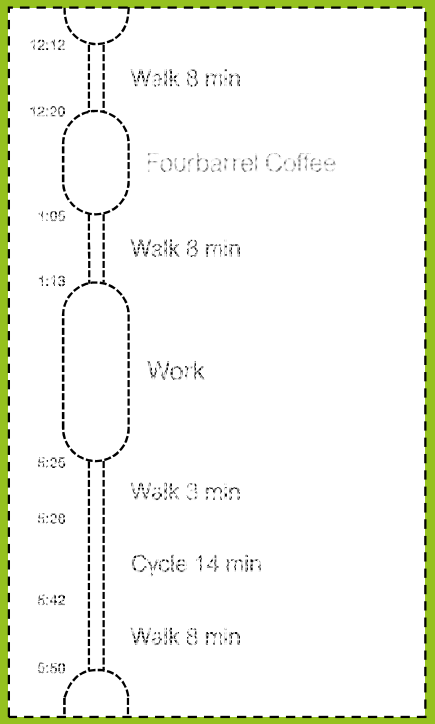
Worked Example

"Today"



Worked Example – “Today”



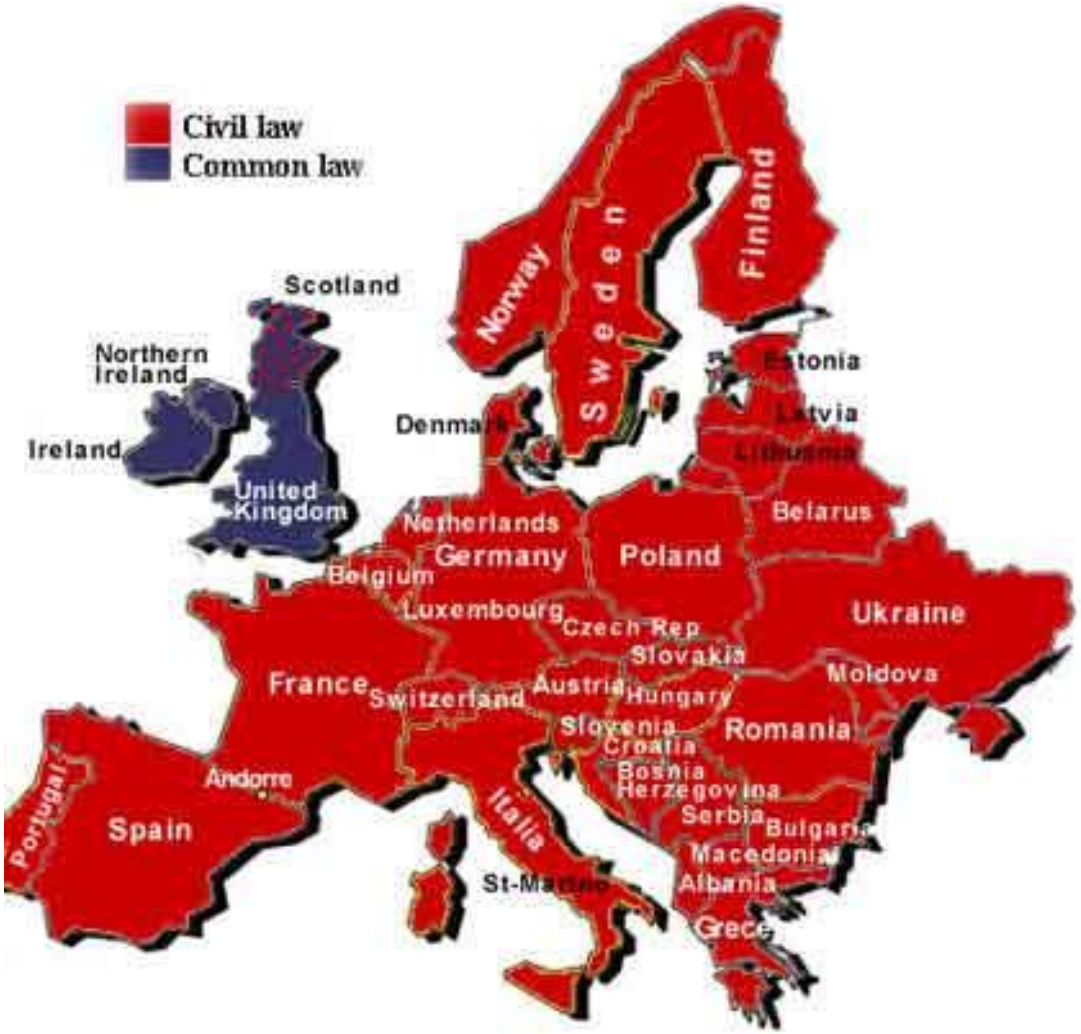


Trade marks

- ‘Badge of origin’ - source identifier
- Quality function
- Advertising function
- Investment function

Unregistered

- Common law rights in UK
- Limited to locality
- Must prove goodwill and passing off
- Not available in all territories



Registered

Monopoly right in territory of protection

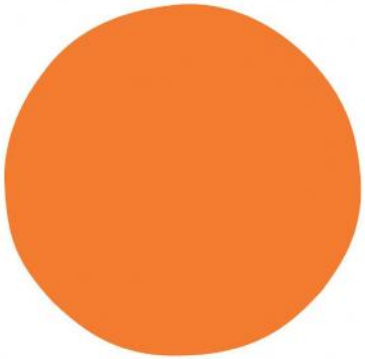
No time limit on securing protection

Renewable indefinitely

What to register?

Can register any sign that is distinctive – capable of distinguishing your goods/services from those of others

App names, logos, slogans, app icons and characters



What to register?

Define goods and services in application

Broad or specific?

Class 9: Downloadable mobile application software in relation to/for the purpose of…

Class 42: Providing online non-downloadable application software in relation to/for the purpose of…

When and where?

Where will the brand be being used, promoted?

Commercial gains?

Where are your next target markets?

Summary

- Patents can be useful but not always available for mHealth software

- Look to designs and trade marks to protect your distinctive features and keep out competitors

Thank you

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