

Endeavour2005

imagine. create. innovate.

- Introducing the Endeavour2005 team.
- Talk by Mark Summerfield from Watermark Patent & Trade Mark Attorneys.



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The Team

- Rob Hooke – Finance & Logistics
- Nyssa Muir – University & Schools
- Ephraim Mrad – Marketing & IT
- Shalini Verma – Industry & Sponsors

Our Contact Details

- (03) 8344 9212
- endeavour2005@ee.mu.oz.au
- 'Masters Learning Centre' Room 313 in the SEECS Building
- down the hall from the 4th year lab.

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1. Survey

- Please hand in at the end or to the general office.
- We value your opinions.

2. Project Descriptions

- Please pick up a form at the end – one per group.
- Hand in at the general office OR email all the necessary info to us.
- endeavour2005@ee.mu.oz.au

3. Photo Sessions

- Will be on Thursdays.
- Start in 2 weeks.
- You will be informed where/when in due time.

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Surveys & Project Descriptions

DUE

Thursday 21st April 2005 – Week 7

Please make welcome

Mark Summerfield





Overview of Intellectual Property Rights

Mark Summerfield
Watermark Patent and Trade Mark Attorneys

7 April 2005

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Summary

- Introduction to Intellectual Property (IP) rights
- Overview of some IP protection regimes
 - Trademarks and Registered Designs
 - Patents
- Conclusion
- Proposed Watermark Award for Innovation

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What are Intellectual Property Rights?

- The general rule in a competitive marketplace is...

IT IS OK TO COPY!
(monopolies are bad)

- Intellectual property rights, conferred by law, are exceptions to this rule
 - rights to prevent copying; and/or
 - rights to exclusive use

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Some Rationales for IP Rights

- IP rights may
 - support and provide incentive for innovation, creativity and originality
 - protect investment in the goodwill of a business
 - protect consumers from deceptive or confusing behaviour by competing businesses

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Sources of Rights

- Most IP rights are created by statute (i.e. Acts of Parliament)
- IP rights are jurisdictional
 - protection/enforcement on national basis
 - access/reciprocal recognition treaties
- Rights may
 - exist automatically (unregistered); or
 - **require a formal registration procedure**

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Unregistered IP Rights

- Unregistered rights include
 - Copyright
 - Common Law rights
 - trade indicia and get-up, unregistered trade marks TM
 - confidential information / trade secrets
 - Circuit Layout Rights
- No formal record of unregistered rights
 - can be difficult to identify and/or enforce

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Registered IP Rights

- Registered rights include
 - Patents
 - Registered Trade Marks ®
 - Registered Designs
- Formal register of rights maintained
 - typically by government authorities
 - provide a record of the scope of rights that may be enforceable
 - searchable to identify existing rights

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Trade Marks

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What is a Trade Mark?

• Trade mark is a “badge of origin”

- “a sign used, or intended to be used, to distinguish goods or services dealt with or provided in the course of trade by a person from goods or services so dealt with or provided by any other person”

• “Sign” includes

- any letter, word, name, signature, numeral, device, brand, heading, label, ticket, aspect of packaging, shape, colour, sound or scent.

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Australian TM No. 940056

- COCA-COLA (word)
- Goods/Services

Class 30: Iced confections; ice drinks; sherbets; confectionery; coffee; tea; cocoa; sugar; breads and cereals; biscuits; cookies; boiled lollies; jelly lollies; candy; ices; honey; treacle; preparations in this class for the manufacture of beverages; beverages in this class including tea based beverages; flavourings for beverages; cakes; chewing gum; chocolate; essences for foodstuffs; frozen yoghurt and ice cream

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Australian TM No. 714074

STRIPE, CURVED & TAPERED FORMS
SYMBOL, CORRECT OR SUNVISOR



• Goods/Services

Class 28: Scientific apparatus, including instruments for measuring, testing, weighing, determining, analysing, separating, fractionating, concentrating, distilling, rectifying, purifying, filtering, screening, sieving, separating, sorting, grading, classifying, measuring, gauging, recording, transmitting, reproducing, or otherwise processing information; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers; recording discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus

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Australian TM No. 844282

FIVE TONE AUDIO PROGRESSION



• Goods/Services

Class 9: Computer hardware and software, including, microprocessors, integrated circuits, integrated circuit chips, semiconductor devices, chipsets, computers, computer peripherals, computer components, computer programmes, printed circuit boards, voice, data, image and video accelerators, flash memory devices, computer memory devices, computer telecommunications and networking equipment including operating system software, modems

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Australian TM No. 820449

"The trade mark consists of the colour ORANGE (Pantone 151) as depicted in the representation attached to the application form."



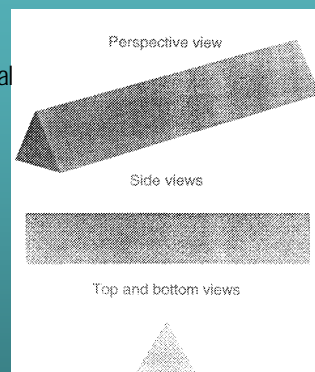
• Goods/Services

- Class 35: Retail and wholesale of telecommunications and communication apparatus, instruments and systems, electrical apparatus and instruments, computer hardware and software
- Class 37: Installation, maintenance and repair of computer and telecommunications systems, networks and equipment
- Class 38: Telecommunications and communication services including telecommunication of information, computer programs and other data, telecommunication services relating to telephone, facsimile, voice mail, paging and data communication services...

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Australian TM No. 706778

"The trade mark consists of the three dimensional shape of the triangular packaging as illustrated."



• Goods/Services

- Class 30: Chocolate confectionery

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Registrability Requirements

- Trade mark must be capable of distinguishing the applicant's goods/services
 - descriptive words can be difficult to register
- Trade mark must not be confusingly similar to an existing application or registration in relation to similar goods/services

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Scope of Protection

- It is an infringement to use
 - *as a trade mark*
 - in relation to *the same* or *similar* goods/services
 - a sign that is *substantially identical with* or *deceptively similar to* a registered mark
- Very famous marks may be afforded broader protection
- Mark may remain registered/protected for as long as it is in use

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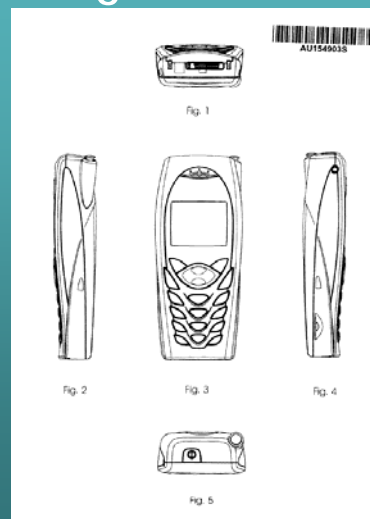
Registered Designs

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What is a Design?

- A *design* is used (and registered) in relation to a particular product
 - e.g. design of a mobile phone handset
- Visual appearance is protected
 - in most countries, design may be functional



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Registered Design Rights

- “New and distinctive” designs may be registered
- Exclusive right is to exploit the design in relation to the registered product
 - infringement is unauthorised exploitation of the design, or a design “substantially similar in overall appearance”
- Protection for up to ten years

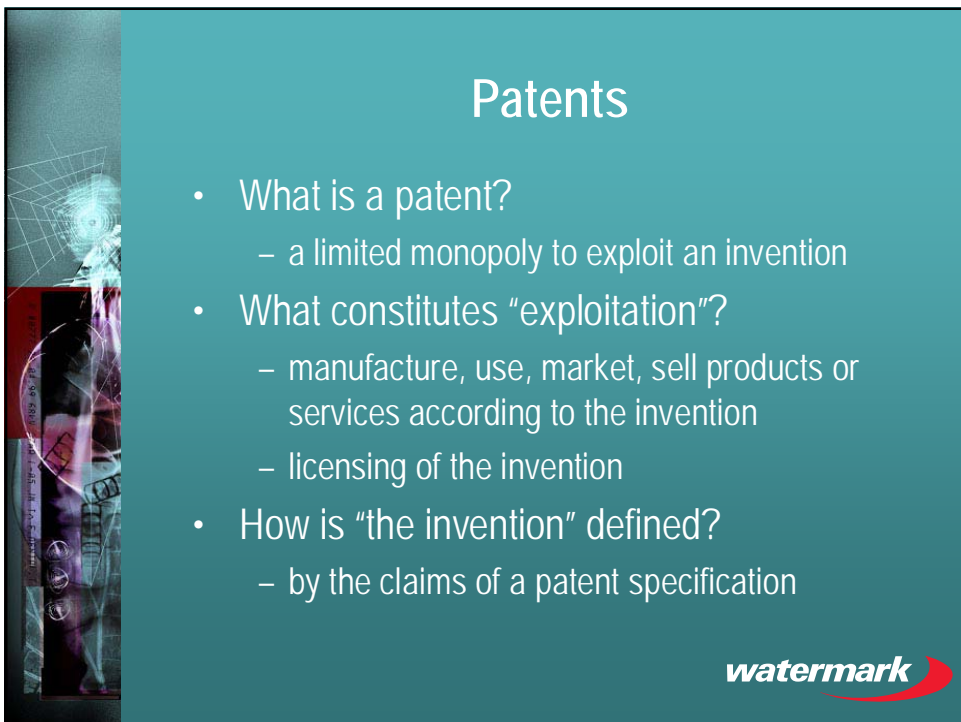
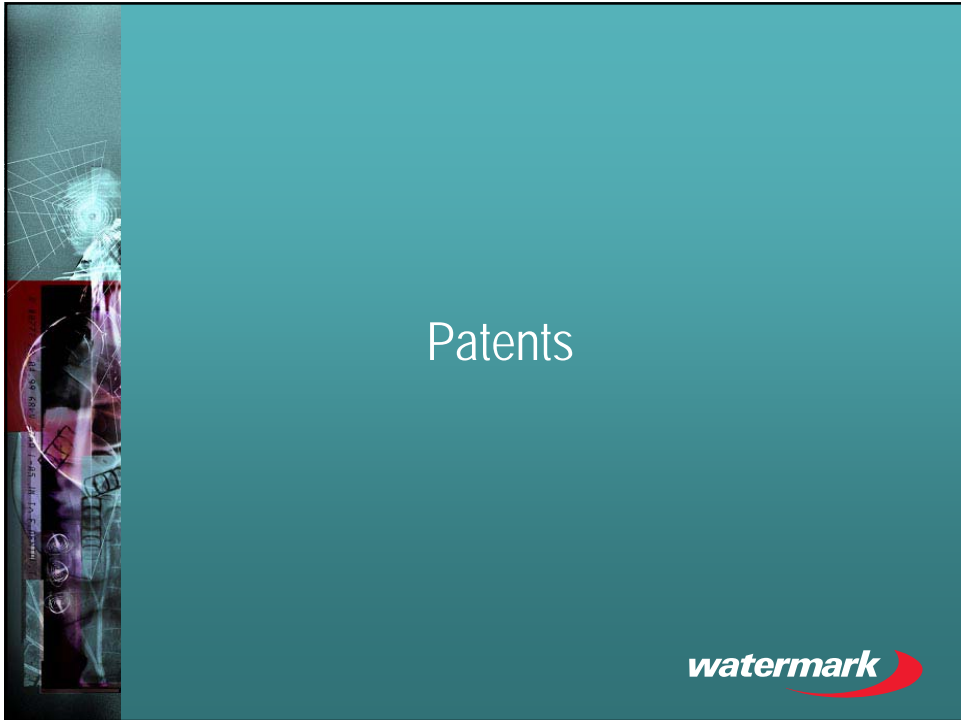
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Timing of Application

- Industrial use of a design extinguishes copyright
- Exploitation of a design also invalidates a subsequent application
 - *no* grace period
- ***Must*** apply for registration before commencing production / sale

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Patentable Subject Matter

- The following are patentable in Australia:
 - an apparatus, machine, or a part of an apparatus or machine
 - methods of making or using products, apparatus or substances
 - software, methods of data processing and signal processing
 - methods of delivering services or doing business, e.g. via the Internet

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Not Patentable...

- The following are not patentable in Australia
 - mathematical algorithms, discoveries, scientific theories and laws of nature *per se*
 - but applications of these may be patentable
 - artistic works
 - human beings and the biological processes for their generation

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Innovation Threshold

- To be patentable, an invention must be
 - useful / industrially applicable
 - but need not be commercially viable!
 - novel
 - not previously disclosed, published or used anywhere in the world
 - inventive / non-obvious
 - to a skilled person, when compared with what was previously published or used

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Novelty Requirement

- Not previously...
 - prior to the first application date (“priority date”)
- ...disclosed, published or used...
 - includes disclosure by the inventor(s)
- An application ***must be filed*** before disclosure or commercial use
- Limited exceptions include
 - confidential disclosures
 - periods of grace in some jurisdictions
 - e.g. 1 year in US, Canada, Australia

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Application and Term

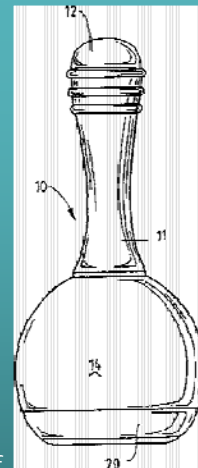
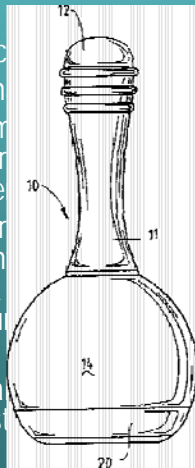
- An application for a patent includes
 - a written description of the invention
 - any drawings required to illustrate the description
 - claims defining the scope of the invention
- The application is examined by the Patent Office
- Term of protection is up to 20 years

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Example – “Maraca Bottle”

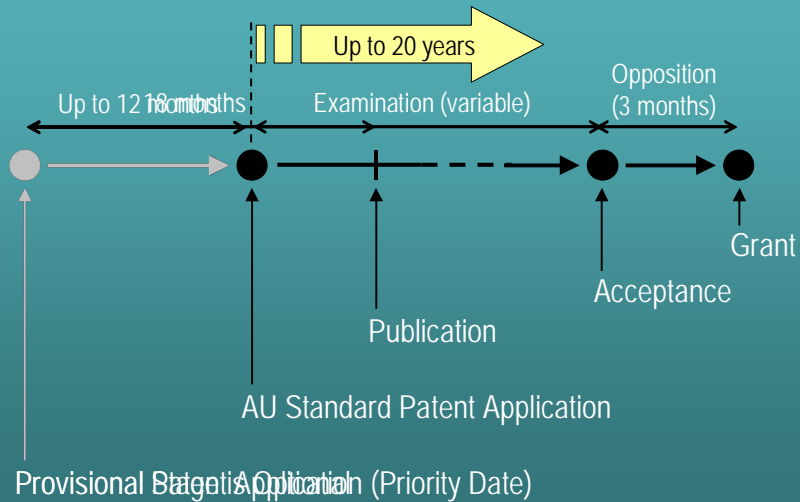
A bottle (10)

- including a first chamber (11) and a second chamber (12) separated from the first chamber by a neck (13) containing particulate matter (14)
- the first chamber (11) containing a receipt of content (15) including a neck (16) and a removable closure (17) at one end thereof
- the neck portion (13) being substantially in the shape of a handle suitable for grasping the bottle to be shaken as a percussion instrument



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Patent Process (Australia)

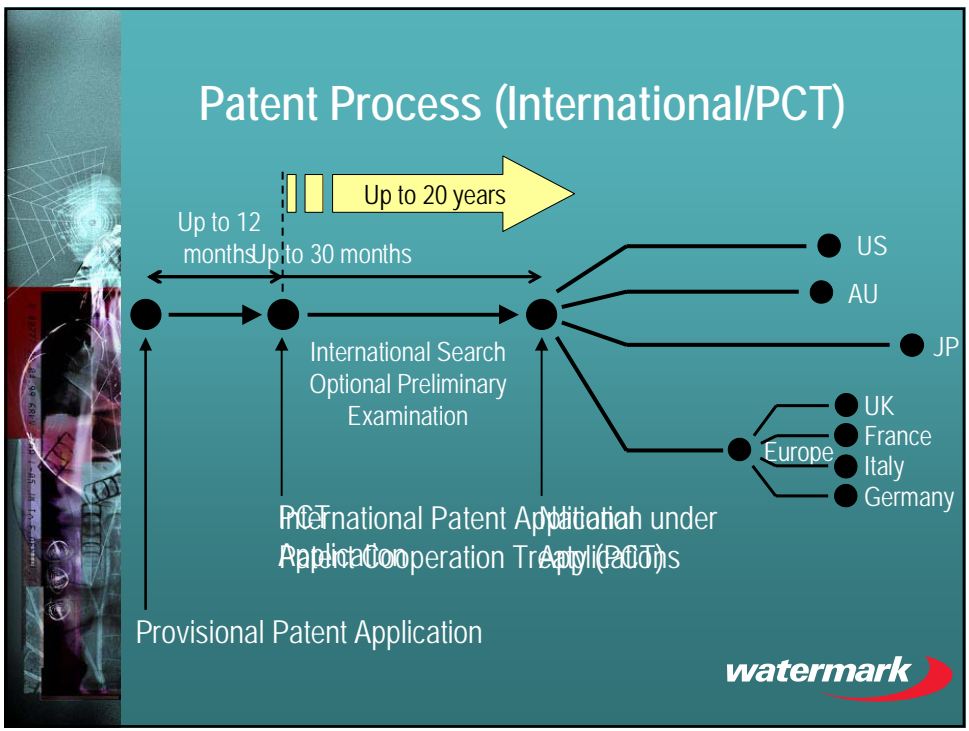
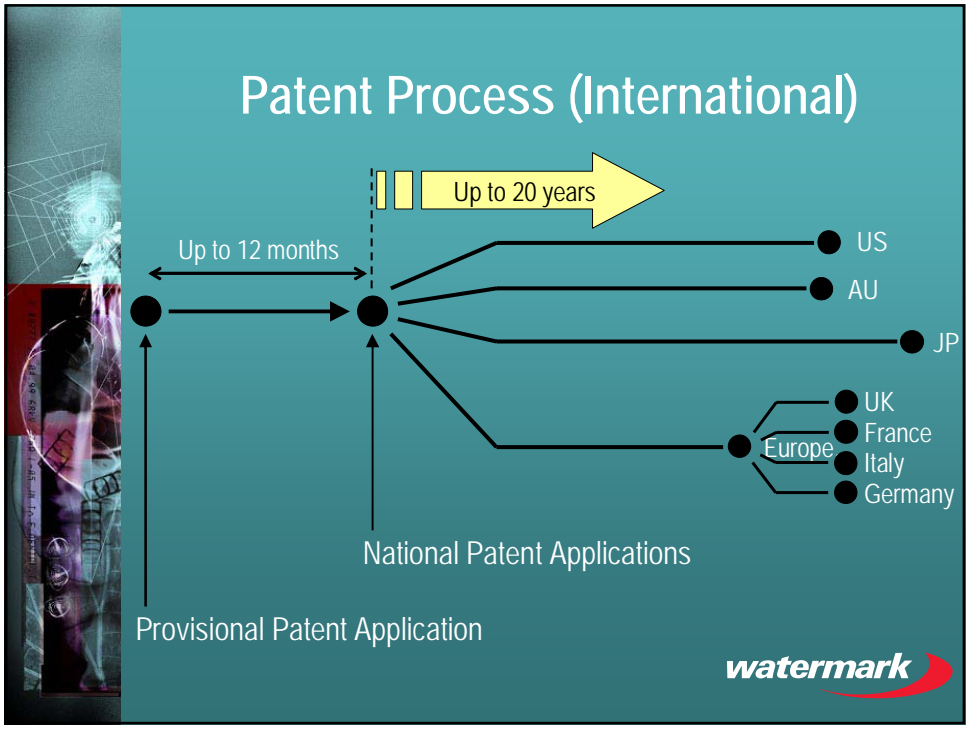


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Examination Procedure

- Patent Office search
 - claimed invention compared with closest prior documents (known as "prior art")
- Examination report
 - objection raised if claims are not considered novel/inventive by examiner
- Response to report
 - amend claims and/or dispute examiner's contentions
- Repeat as required...

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Conclusion

- IP rights are exceptions to the general rule that copying is acceptable in a competitive market
 - legal monopolies
 - patents protect inventions / function
 - trade marks help to protect brands
 - registered designs protect distinctive appearance
- Disclosure and commercial use can affect the ability to secure protection
 - strategy for protection of IP should be considered early in the R&D process

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Proposed Watermark Award for Innovation

- Endeavour Exhibition requires disclosure
- Patents are potentially enormously valuable, but costs are not insignificant
 - typical cost for preparation and filing of a provisional patent application in the ICT field is around \$5000
- Difficult for students to secure a priority date prior to disclosure

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What We Will Be Looking For

- Innovative technology with commercial potential
- Entrepreneurial team
- IP primarily owned by students
- No existing source of funds for IP protection
 - e.g. industry partner, research funding

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The Proposed Award

- Preparation of a provisional patent application, including filing costs
- Application to be filed shortly prior to the Exhibition
- Full details of eligibility criteria and application process to be advised

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Melbourne University Entrepreneur's Challenge

- MUEC is the premier annual business plan competition initiated by Melbourne Business School MBA students in 1999. It provides an excellent opportunity for members of the Melbourne University community to refine their new venture creation and business planning skills.
- Yet to commence for 2005
- Watch www.muec.org

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Project Summaries

- At this stage, most projects may be described in terms of the background, and a problem that the project will aim to solve
- Invention may arise in *how* the problem is solved
- It is usually the means of achieving the result, not the problem or general objectives, that must not be disclosed

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