

Patentable subject matter in New Zealand

JAMES & WELLS

**CHAMPIONS
OF INNOVATION.**

Patents can provide protection for a broad range of subject matter embodied in new and inventive products or processes which also have an industrial application. However not everything is patentable.

The following provides an overview of the patentability of different types of subject matter in New Zealand.

Combination of known features

A new combination of known features is patentable provided the combined features work together to produce a new and improved result. Often these inventions are obtained on the basis of a synergistic effect, i.e. the features work together to achieve a greater result than if each feature worked individually. In contrast, where each feature performs its own function independently of the others, then that combination is not patentable. For more detailed information regarding new uses or combinations of known technology, see ["Patentable subject matter in New Zealand: new uses or combinations of known technology"](#).

Selection inventions

The discovery that a subset of a class of known items possesses a special advantage over other items in the same class can be patentable provided the subset has not previously been identified. Selection inventions are often used to protect chemical compounds or pharmaceuticals.

Methods of medical treatment

Diagnostic, therapeutic and surgical methods of treating humans are not patentable in New Zealand. However such methods applied to non-human animals and diagnostic tests performed *in vitro* on samples removed from the human body are patentable. In addition, cosmetic methods of treating humans can be patentable provided the treatment has no therapeutic effect, e.g. toothpastes or a method of treating baldness. Medical apparatus can also be patentable.

It is also possible to obtain patent protection for a second medical use of a known substance or composition.

Business methods

Business methods may be patentable provided the method is commercially useful, produces an artificially created state of affairs and involves the essential use of a tangible apparatus in at least one method step. In contrast, pure business methods in the form of a scheme or plan defined in a way that does not require the use of an item of apparatus are not patentable.

Software

Computer programs are patentable in New Zealand provided the technical contribution of the invention is not based purely on it being a computer program.

For example, a new and improved method of operating a washing machine controlled by a computer program may be eligible for patent protection while a computer program for completing legal documents using user supplied answers may not. Note that the patentability of software or computer-implemented inventions is a rapidly changing area of law and we recommend seeking the advice of a patent attorney before deciding on a patent strategy.

Plants, animals and microbes

Plants, animals (excluding humans) and microbes are patentable provided their production means they do not exist naturally. DNA sequences must be provided with the patent specification. In addition, the deposit receipt of any new micro-organism needs to be filed as soon as possible during the application process.

New genetically stable varieties of plants developed through traditional breeding techniques cannot be patented, but may be protected under a Plant Variety Right (PVR).

Food and beverage technology

New innovative foods and beverages can be, and often should be, patented to attract lucrative licensing deals and /or to prevent competitors from leveraging off your clever technology. Read our article "[Clever ways to patent your food innovation](#)" which provides information on types of food and beverage technology that can be patented, and some examples on when it is particularly recommended to do so.

Mathematical algorithms

Mathematical algorithms can be patentable in the context of their application to solve a technical problem.

In practice, this is likely to be linked to implementation using software, the patentability of which is discussed above.

Printed material

Printed material is not patentable if it is purely artistic. However if there is a mechanical purpose to the way the material is printed then is the material or the method of making it may be patentable. Printed or artistic material is entitled to separate protection under copyright.

Packaging

Packaging is patentable if a new physical result is achieved as a result of the packaging, for example the mixing of ingredients to produce a new type of packaging product, or a new packaging design that has a novel mechanical way of working.. A new aesthetic design or "look" to packaging may not be patentable, but may be protectable by a registered design. For further information on design protection, please see the information sheet "[Is my design registerable?](#)"

It is always important to discuss your specific requirements with your IP advisor to ensure maximum protection can be taken from your intellectual property.

Disclaimer

The above is provided for general information purposes only and does not take the place of specific legal advice. For more specific advice on all aspects of intellectual property law please contact us. In New Zealand, there are a number of civil enforcement procedures to combat counterfeit goods. In most cases these are similar to the procedures carried out in overseas countries.