

# The Importance of Copyright and Patent Protection in Start-Up Businesses

## Background

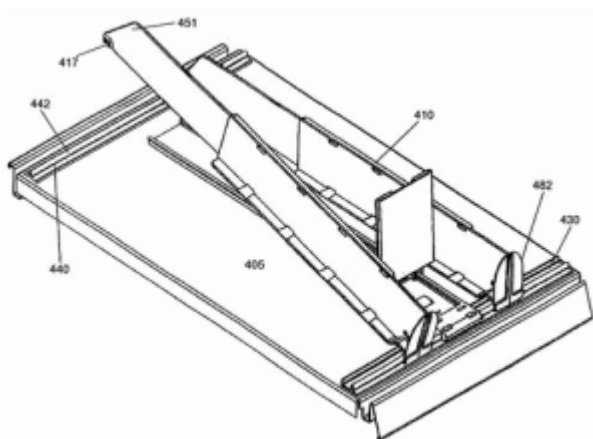
In the fiercely competitive retailing industry, shop owners cannot afford to leave anything to chance, and even less so their shops' interior fitting: to maximize business profitability, retailers use shopfitters to manufacture and supply specialized products for the display of goods for sale in their outlets.

Frank Carroll, the founder of Kleerex Group, started off in a small way as owner of a one-man business in the shopfitting industry: he would design display systems, have them made up (usually in acrylic plastic) and fit them. As time progressed, an increase in orders from important customers led him to set up Kleerex to make and sell a range of display products including shelving systems, racks and point of sale items.

## Patents

Even before setting up Kleerex, Mr. Carroll was aware that competitors appeared to be using some of his ideas in their designs. He consulted intellectual property (IP) experts and was advised that while he could have some redress under copyright, it was possible that some of his designs could also qualify for patent protection.

With financial support from the Irish Institute for Industrial Research and Standards, patents for the two main display products to be manufactured and sold by Kleerex were filed. "If they had not covered the cost of patents of our first two products we would not have been able to afford protection", Mr. Carroll says.



Shelf management system drawing as submitted in PCT Application No. PCT/IB2002/002697 (PATENTSCOPE®search)

## IP Infringements and Enforcement

One of the products Kleerex had filed a patent application for quickly became very successful, and before the corresponding patent was granted, copies of this product

appeared in the marketplace. An action on copyright against a British company was successful in that the copying ceased without the need to go to court.

A more substantial competitor began manufacturing and selling a product very similar to the leading product in the Kleerex range. A patent infringement action was started. As is normal in such cases, the alleged infringer sought to have the Kleerex patent declared null and void. Legal exchanges between the companies went on for approximately two years.

Eventually a legal device was agreed by Kleerex and the alleged infringer so that the action did not actually go to court. However, although the action never came to court and the competitor never completely desisted, the respite obtained by the legal exchanges allowed Kleerex the time to become well established in the market in terms of product quality, customer loyalty and product range.

The shopfitting industry is notoriously competitive and copying is normally rife. Kleerex was the first company to file patent applications and actively police them. Other competitors who might have considered copying held back when they heard of Kleerex's action against alleged infringers. Distributors and customers were also wary of handling the allegedly infringed products for fear of being drawn into the legal action.

## **Business Results**

Originally a small products-only business, Kleerex evolved into a fully-fledged retail services group whose products and services include design, store interior fit-outs, fixtures and displays, installation, merchandising and supply chain services. The group is growing quickly both organically and by acquisition and now employs more than 350 persons.

In 2008, Kleerex won a prestigious contract to design, manufacture and install new Irish national lottery terminal surrounds and playstands for use in over 2,800 outlets nationwide. Other clients include Marks & Spencer, Sainsbury's, Tesco, Vodafone, Wilkinsons, Coca Cola, Materfoods and BP.

With an overall investment of €2 million annually in research and development (R&D), IP continues to be a vital part of the company strategy. The group's R&D program aimed at expanding its product range includes IP protection for new products and has resulted in several filings of [national](#) and [international patent](#) applications and industrial design applications.

Mr. Carroll, who has now sold his interest in the company and retired on the considerable income he received, acknowledges that his success has depended heavily on a willingness to take patents seriously: without patent protection in the start-up phase, there would have been many copiers and the company would not have survived.

This case study is based on information from:

- <http://cordis.europa.eu/documents/documentlibrary/28779851EN19.doc>

- <http://cordis.europa.eu/itt/itt-en/97-4/dossier.htm>
- <http://www.kleerex.ie/>