



Patents, Copyright and Trademarks- What's the Difference?

An Introduction to Intellectual Property

Presented By Business Government & Science,
Patent & Trademark Resource Center



What is Intellectual Property?

A product of the mind or intellect as opposed to physical property.

A broad descriptor that includes original works by authors, musicians, artists and inventors. These works may be protected in a number of ways.



- It is an asset just like your home, your car, or your bank account.
- Just like other kinds of property, intellectual property needs to be protected from unauthorized use.



Types of Intellectual Property

- Patents
- Trademarks
- Copyright
- Trade Secrets



Federal vs. State Intellectual Property

- Federal intellectual property registration entitles the owner to use trademarks, patents, and copyright throughout the United States and provides some protection internationally as well.
- State governments also allow for the registration of intellectual property, although the protection provided is comparatively limited.
- Furthermore, most state governments will only register trademarks and will not allow the registration of copyrights or patents.



Copyrights

- Copyright protects “original works of authorship” that are fixed in a tangible form of expression.
- Copyright protection lasts for the life of the author/creator plus 70 years after death of author/creator.



What Works Are Protected?

Copyrightable works include:

- literary works;
- musical works, including any accompanying words
- dramatic works, including any accompanying music
- pantomimes and choreographic works
- pictorial, graphic, and sculptural works
- motion pictures and other audiovisual works
- sound recordings
- architectural works



Who Can Claim Copyright?

- Copyright protection subsists from the time the work is created in fixed form.
- Only the author or those deriving their rights through the author can rightfully claim copyright.



What Is Not Protected by Copyright?

- Works that have not been fixed in a tangible form of expression.
- Titles, names, short phrases, and slogans;
- Familiar symbols or designs
- Variations of typographic ornamentation, lettering, or coloring;
- Mere listings of ingredients or contents.
- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices.
- Works consisting entirely of information that is common property and containing no original authorship.



Do I have to register my copyright to be protected?

No. In general, registration is voluntary.

- Copyright exists from the moment the work is created.
- Registration required to bring a lawsuit for infringement of a U.S. work.



Why should I register my work if copyright protection is automatic?

- Many choose to register their works because they wish to have the facts of their copyright on the public record and have a certificate of registration.
- Registered works may be eligible for statutory damages and attorney's fees in successful litigation.



How do I register my copyright?

- Submit a completed application form, a nonrefundable filing fee of \$85 for a paper filing.
- Forms available on the Copyright Office Web site <http://www.copyright.gov/forms/>.
- Forms also available from the Copyright Office in person, by mailing in a request, or by calling: (202) 707-3000 or (877) 476-0778, toll free.
- If your home computer can't download forms, most public libraries should be able help.



How Do I Register My Copyright? (continued)

- You can register electronically.
- The fee for this is lower - \$35 – for registering a basic claim.
- Refer to the Copyright Office's website (<http://www.copyright.gov/docs/fees.html>) to verify current fees.



WHAT IS A PATENT?

- A patent is a grant given by the U.S. Patent and Trademark Office to an inventor.
- A patent grants the right to exclude others for a period of up to 20 years from making, using, offering to sell, selling or importing the invention.
- In exchange for the exclusive rights, the inventor discloses how to make the invention in a document known as a patent.



DO YOU NEED A PATENT TO SELL AN INVENTION?

- No, you have the right to make, use, and sell your own invention as long as it does not violate someone else's patent.
- A patent gives you the right to exclude others from making, using, or selling your invention without your permission.
- A patent does not guarantee the market-worthiness of your invention.



THREE TYPES OF PATENTS

- Utility – how something works
- Design – how something looks
- Plant – new variety



Utility Patents

- New and useful process, machine, article of manufacture, or composition of matters, or any useful improvements thereof.
- Granted for 20 years.



Utility Examples:

- Process (Process for manufacturing polyester)
- Machine (upright fork lift truck)
- Composition of Matters (anti-depressant pill)
- Useful Improvement (mechanical pencil)



Design Patents

- New, original and ornamental design for an article of manufacture.
- Granted for 15 years.



Design Examples:

- Look of an athletic shoe
- Body of a car – Toyota Prius
- Handle of a kitchen gadget – OXO vegetable peeler
- Appearance of a smart phone



Plant Patents

- Invents or discovers and asexually reproduces any distinct and new variety of plant.
- Granted for 20 years.



More Patent Facts

- U.S. Patents are protected throughout the United States only
- No State patents
- Must file separately for foreign patents



Patents are granted on the basis of three factors:

- Novelty/uniqueness
- Non-obviousness
- Utility/usefulness (only for utility patents)



Remember ...

- *Do not think that just because your product is not on the market it doesn't exist already
- *Patents do not guarantee monetary success!



Before you apply for a patent ...

- Before you apply for a patent, you must do a thorough patent (prior art) search
- Patents are filed by class/subclass – not by keywords or titles
- The USPTO recommends following a 6-Step search strategy (for more info see www.uspto.gov)



Why do a patent search?

- Don't want to waste money, time investing in something that already exists
- May find your invention already patented, but can find a way to make an improvement



What does the USPTO do?

- Examines applications
- Publishes issued patents & various other publications related to the patent field
- Provides copies of patents to public
- Provides public search facility
- Provides forms & educational materials
- Provides 24 hour help line 1-800-786-9199
- Maintains PTRC program for local information



What the USPTO doesn't do

- Can't give legal advice on infringement or the enforcement of patents
- Not able to do the patent search for you
- Can't recommend attorney
- Not responsible for promotion or utilization of a patent or invention
- Not able to take action against promotion firm scams



Where to obtain forms

- You are strongly encouraged to apply online
- There is a surcharge to apply via paper forms
- All forms are available to download and print from the USPTO web site:
www.uspto.gov



How much is this going to cost me?

- Patents cost an average of \$4500 over the life of the patent if you meet the qualifications for “micro entity status”
- Includes maintenance fees 3.5, 7.5, 11.5 years
- Current fee schedule available on website



Do I have to hire an attorney?

- The patent application process is complex. The USPTO cannot assist in the preparation of patent application papers. If you are ready to apply for a patent, we suggest you contact a registered patent attorney or agent.
- Although the USPTO cannot recommend any particular attorney or agent, they do maintain a roster of patent attorneys and agents registered to practice before the USPTO. Only **registered attorneys and agents** may help others to obtain patents.



Helpful Hints

- Keep an inventor's notebook.
- Network with others in your field.
- Be aware of any form and fee changes.
- Be aware of marketing and promotion firm scams.



What is a Trademark?

- A **trademark** is a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs, that identifies and distinguishes the source of the goods of one party from those of others.
- A **service mark** is the same as a trademark, except that it identifies and distinguishes the source of a service rather than a product.



TRADEMARK EXAMPLES





Federal Trademarks

- Federal trade and service marks are registered with the US Patent & Trademark Office (www.uspto.gov).
- Can use the TM or SM symbol to assert a claim, even if not registered.
- MUST be federally registered to use or phrase “Reg U.S.Pat.& TM Off.”





Is registration of my mark required?

No. Rights are based on legitimate use of the mark.

However, owning a federal trademark registration on the Principal Register provides several advantages:

- constructive notice to the public of the registrant's claim of ownership of the mark;
- a legal presumption of the registrant's ownership of the mark and the registrant's exclusive right to use the mark nationwide on or in connection with the goods and/or services listed in the registration;
- the ability to bring an action concerning the mark in federal court;
- the use of the U.S registration as a basis to obtain registration in foreign countries; and
- the ability to file the U.S. registration with the U.S. Customs Service to prevent importation of infringing foreign goods.



What does the USPTO do?

- The United States Patent and Trademark Office (USPTO) reviews trademark applications for federal registration and determines whether an applicant meets the requirements for federal registration.
- They do not decide whether you have the right to *use* a mark (which differs from the right to register). Even without a registration, you may still *use* any mark adopted to identify the source of your goods and/or services.
- Once a registration issues, it is up to the owner of a mark to enforce its rights in the mark based on ownership of a federal registration.



What the USPTO Doesn't Do

USPTO employees cannot:

- conduct trademark searches for the public;
- comment on the validity of registered marks;
- answer questions on whether a particular mark or type of mark is eligible for trademark registration; or
- offer legal advice or opinions about common law trademark rights, state registrations, or trademark infringement claims .



How do I file a Trademark Application with the USPTO?

- You can fill out an application online, check it for completeness, and file it over the Internet using the Trademark Electronic Application System (TEAS), at <http://www.uspto.gov/teas/e-TEAS/index.html>.
- Filing electronically via TEAS is \$400 per class.



Do I have to hire an attorney?

- **No.** However, if you prepare and submit your own application, you must comply with all requirements of the trademark statute and rules.
- If you choose to appoint an attorney to represent your interests before the USPTO, they will correspond only with your attorney.
- **The USPTO cannot help you select an attorney.**



State Trademarks

- Registering a trademark or service mark allows you to establish an identity between your products and/or services and your organization.
- Your organization has the sole authority regarding the rules and regulations of its use.
- To register a trademark or service mark, you must first submit an application to the Ohio Secretary of State's office.
- Cost is \$125.00 for an Ohio trademark/servicemark



Common Law Trademarks

- Fancy name for unregistered marks
- Since rights to a mark are derived by using a mark in commerce, any indentifying name or phrase can be a trademark.



So what is the difference?

- Copyright protects original works of authorship
- A patent protects inventions or discoveries
- A trademark protects words, phrases, symbols, or designs identifying the source of the goods or services of one party and distinguishing them from those of others.



Trade Secrets

- Trade secrets may include customer lists, recipes and formulas, special processes, devices, methods, techniques, business plans, research and development information, etc.
- Benefits include: no fees, no registrations and no time limits or expirations.
- It's a secret!



What is a trade secret?

- Provides the owner of the information with a competitive advantage in the marketplace, and
- is treated in a way that can reasonably be expected to prevent the public or competitors from learning about it, absent improper acquisition or theft.



How do businesses put trade secrets to use?

- Trade secrets often protect valuable technical information that cannot be sheltered under other forms of intellectual property law, such as the formula for Coca-Cola. Trade secrets may also:
- protect ideas that offer a business a competitive advantage, thereby enabling a company or individual to get a head start on the competition
- keep competitors from learning that a product or service is under development and from discovering its functional or technical attributes -- for example, how a new software program works



Putting Trade Secrets to Use (continued)

- protect valuable business information such as marketing plans, cost and price information and customer lists -- for example, a company's plans to launch a new product line
- protect "negative know-how" -- that is, information you've learned during the course of research and development on what not to do or what does not work optimally -- for example, research revealing that a new type of drug is ineffective
- protect any other information that has some value and is not generally known by your competitors -- for example, a list of customers ranked by how profitable their business is.



How can a business protect its trade secrets?

- Simply calling information a trade secret will not make it so. A business must affirmatively behave in a way that proves its desire to keep the information secret.
- Some companies go to extreme lengths -- for example, the formula for Coca-Cola (perhaps the world's most famous trade secret) is kept locked in a bank vault that can be opened only by a resolution of the Coca-Cola Company's board of directors. Only two Coca-Cola employees ever know the formula at the same time; their identities are never disclosed to the public and they are not allowed to fly on the same airplane.



Can I legally enforce the rights in my trade secrets?

- The owner of a trade secret may obtain an injunction in court to prevent the wrongful use of his or her trade secret. Damages may also be awarded.
- It may also be a crime to steal someone else's trade secret, and criminal charges may be brought against the wrongdoer.



RESOURCES

- Copyright information can be found at www.copyright.gov
- Patent and Trademark information can be found at www.uspto.gov
- Ohio Secretary of State, Business Services Division at <https://www.sos.state.oh.us/businesses/>
- Trade Secret information can be found at various places on the internet or your local library.
 - www.nolo.com, and type “trade secrets” in search box.
- Microbusiness Center located 1st floor of Main Library
- Small Business Administration www.sba.com



Resources (continued)

- Akron Score Chapter 81 www.akron.score.org
- Akron Makerspace <http://akronmakerspace.org/>
- Akron-Summit County Public Library
Business Government & Science
330-643-9020 bgsdiv@akronlibrary.org
www.akronlibrary.org



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