

## **Overview of Intellectual Property**

Patents are intended to protect inventions of a functional or design nature. Trademarks provide protection for indicators of the source of products and services used in commercial trade, such as words or logos. Copyrights provide protection for literary and artistic expressions. Patents, trademarks and copyrights are collectively referred to as intellectual property.

### **Patents**

Patents are granted by the federal government to protect inventions for a limited period of time. There are three types of patents: utility patents, design patents, and plant patents. A utility patent gives the patent holder the right to exclude others from making, using, importing, offering to sell and selling his or her invention for a period of 20 years from the date of filing a patent application.

A utility patent may be obtained for processes, machines, articles of manufacture, or compositions of matter if the invention meets three basic criteria. (1) It must be useful; (2) it must be novel, in that it has not been previously known by others; and (3) it must be sufficiently different from what was previously known that it would not be obvious to someone having ordinary skill in that field. Design patents are available for new and original ornamental designs for an article of manufacture. A design patent protects the design for 14 years from the grant of the patent. Plant patents may be obtained for certain types of asexually reproduced plants that do not occur naturally, for example, new varieties of roses.

An inventor may prepare and file a patent application directly with the U.S. Patent and Trademark Office. However, the availability and scope of protection depend on how a patent application is prepared, so it is recommended that an inventor first consult a registered patent attorney or agent.

At the outset, the attorney or agent may suggest that a novelty search be performed to see if a similar invention has been described in a previously issued patented. If an invention appears to be sufficiently different from what is known to exist, he or she can prepare the necessary papers to apply for a patent.

Utility patent applications include a detailed description and drawings of the invention, as well as claims that legally define what protection is requested. It is possible to file a temporary application, referred to as a provisional application, before filing a regular utility application. A provisional application also must have a detailed description and drawings of the invention, but is not examined. A regular utility patent application that is filed within one year of the provisional application will be treated as though it was filed when the provisional application was filed.

There are strict statutory requirements in the United States regarding the time within which a patent application must be filed after an invention has been publicly used, or sold, or offered for sale. It is important that an inventor be prompt in seeking help in protecting his or her invention. If your invention has been in public use, offered for sale, sold or otherwise commercialized for more than one year before your patent application is filed, the inventor is barred from obtaining a patent in the U.S. unless the inventor can show that the public use was primarily experimental.

Other countries have different bars, which are generally much more strict than those in the U.S., so it is best to consult a patent attorney or agent before you do anything to commercialize your invention or disclose it to others.

The words "patent applied for" or "patent pending" mean that an application has been filed in the U.S. Patent and Trademark Office. Such notices create no legal rights, however, as patent rights are created when the patent is granted.

A United States patent provides no protection in foreign countries; however, filing a patent application in the United States prior to any non-confidential disclosure of the invention will temporarily preserve the inventor's rights in most foreign countries, so long as applications are filed in those countries within one year after the U.S. filing date.

A patent is a property right that may be held for one's own use, sold outright to another, or licensed to others.

After a patent is issued, the federal government does not police the market for violations or infringements. If others infringe the patent, it is up to the patent owner to assert his or her rights.

## **Trademarks**

A trademark is a word, a name, a symbol, a device, a combination of these, or other indicator used exclusively to identify the source of products and distinguish them from others. Examples are "Kodak" for cameras, and "Chevrolet" for automobiles. Service marks are like trademarks, except that they identify services. Examples of these would be "McDonald's" for restaurants, and "Holiday Inn" for motels.

There is a hierarchy of protection for trademarks and service marks. The strongest are coined or arbitrary marks that in no way suggest or describe the product or service. An example is "Kodak" which was a coined or made-up word when first adopted.

Next, and also protectable, are marks that merely suggest the product or service or suggest some characteristic or quality of the product or service.

At the bottom of the list, and generally not readily protectable, are descriptive marks. Generic terms can never become valid trademarks.

Rights in a trademark or service mark are acquired in the United States by being the first to use the mark in commerce on or in connection with the goods or services. Rights also may be established by filing an application for trademark registration in the U.S. Patent and Trademark Office based on a bona fide intention to use a mark at a later date. A mark cannot be registered until it has actually been used on a product or service.

It is not necessary to register a trade or service mark. It can be protected under state and federal laws without registration. However, it is beneficial to register the mark, either with the Secretary of State, or if interstate commerce is involved, with the U.S. Patent and Trademark Office.

When a mark is registered, particularly at the federal level, the registration provides to others notice of the registrant's claim of ownership, and it gives federal courts jurisdiction to hear infringement claims. Once a trademark is registered with the U.S. Patent and Trademark Office, it may be accompanied by the notice symbol ® (an "R" in a circle), or by some other notice indicating that it is registered in the U.S. Patent and Trademark Office.

Before you adopt a mark for use on either a product or service, it is recommended to have a search performed to determine if someone else has previously established rights in the same or a similar mark.

Additional information on patents and trademarks is also available at the web site of the U.S. Patent and Trademark Office, [www.uspto.gov](http://www.uspto.gov).

## **Copyrights**

Copyrights seek to promote literary and artistic creativity by protecting what the U.S. Constitution broadly calls "writings of authors". Copyrightable works include literary works, musical and dramatic works, sculptures, motion pictures and other audio-visual works, sound recordings and computer programs.

A copyright protects only the particular expressions of ideas and not the ideas themselves. To be protectable, a work must be original and it must evidence some creativity. Depending on the nature of the work, the owner of copyright has the exclusive right to reproduce the work, to prepare derivative works, to distribute copies of the work, to perform the work, to display the work, and to authorize others to do these things.

Once a copyrightable work has been created and fixed in a tangible form, such as being written down or recorded, it is protectable, whether it has been published or not. If it is to be published, all copies of the work that are published should preferably bear a copyright notice. The statutory copyright notice consists of the symbol © (a "C" in a circle) or the word "copyright," the year of first publication, and the name of the owner of the copyright. In the case of sound recordings, a "P" in a circle must be used in place of the "C" in a circle. Audio-visual works should bear both the circle "P" and circle "C" indicators.

Copyrights may be registered with the Copyright Office in the Library of Congress. As of 1989, it is no longer necessary to place a copyright notice on a work, nor is it a requirement to apply for registration with the Library of Congress, but such notices and filings are strongly recommended to obtain advantages in the event that a copyright is to be enforced in a court of law. For example, registration is still required to bring a lawsuit, and the existence of a registration prior to an infringing act may entitle the copyright owner to additional monetary awards by a court.

An individual's copyright lasts for the author's lifetime plus 70 years. A copyright registered anonymously, under a pseudonym or as an entity lasts 120 years from creation or 95 years from the date it is first published, whichever expires first.

Additional information about copyright is also available at the web site of the U.S. Copyright Office, [www.copyright.gov](http://www.copyright.gov).