Intellectual Property

Intellectual property (IP) is a legal term that refers to creations of the mind, such as, music, literature and art works; inventions; and, symbols, names, images, and designs used in commerce. Under intellectual property law, the holder of these properties has exclusive rights to the creative work, commercial symbol or invention. These rights are for a limited period, established by law.

There are four different forms of US intellectual property protections: trade secrets, copyright, trademarks, and patents. Each provides different levels of protection. In general, IP protects the owner from entities or persons producing, copying, distributing, marketing, and exporting/importing protected matter. It is up to the IP owner, though, to protect or enforce their IP rights.

Trade Secrets

Trade secrets cover all forms and types of financial, business, scientific, technical, economic, or engineering information, whether tangible or intangible, and whether stored, compiled, or memorialized physically, electronically, graphically, photographically, on in writing.

The owner has to take reasonable measures to keep such information secret. The information must derive independent economic advantage over competitors or customers, actual or potential, from not being generally known to, and not readily knowable through proper means by the public.

A company can protect its confidential information through non-compete and/or non-disclosure contracts with its employees (within the constraints of employment law). The law of protection of confidential information effectively allows a perpetual monopoly in secret information – it does not expire as would other intellectual property. The lack of formal protection, however, means that a third party is not prevented from independently duplicating and using the secret information once it is discovered.

There are various state and federal laws covering trade secrets. Redress can be found in both federal secrets (economic espionage) and state courts.

Copyright

Copyright is a form of protection provided by law to authors or creators of “original works,” including literary, dramatic, musical, artistic, and certain other intellectual works. US copyright protection begins from the time the work is created in fixed form and the authors immediately become the copyright holder/owner. In the case of works made for hire, the employer and not the employee is considered to be the author.

Copyrightable works include the following categories:

- Literary works (including computer code)
- 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
- Vessel hull designs

These categories are viewed broadly. For example, computer programs and most “compilations” are registered as “literary works”; maps and architectural plans are registered as “pictorial, graphic, and sculptural works.”
Several categories of material are general not eligible for federal copyright protection. These include among others:

- Works that have not been fixed in a tangible form of expression (for examples, choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded.
- Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listing of ingredients or contents.
- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from description, explanation, or illustration.
- Works consisting entirely of information that is common property and containing no original authorship (for examples: standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources).

For more information, visit the United States Copyright Office Circulars web site.

**Trade and Service Marks**

A mark is a word, phrase, symbol or combination identifying a product or service in the marketplace. This covers logos, marketing slogans, and brand names. Marks can also cover shapes (such as a bottle), sounds, colors or smells. Registered marks are trademarks granted additional legitimacy by the appropriate government agency. Business names are not trademarks, however, that are often used interchangeably. U.S. business names are protected under other legislative laws. State governments also register tradem and services marks. In most countries, but not all, registration of a mark is not required to gain legal protection. Most marks are not registered, and are legally protected by “common law,” to a lesser degree. All of these types of marks can be used to stop others from using identical or similar marks.

Trade and service marks help consumers identify products and services and distinguish them from products and services made, sold, or provided by others. The primary purpose of a mark is to prevent consumers from becoming confused about the source or origin or a product or service. As consumers become familiar with particular marks, and the goods or services they represent, marks can acquire “secondary meaning” as indicators of quality. Thus, established marks help consumers answer another question: “Is this product or service a good one to purchase?” For this reason, the well-known marks of reputable companies are extremely valuable business assets and worthy of protecting.

United States trademark examiners use a “likelihood of confusion” test to determine whether a conflict exists with other U.S. registered marks. Likelihood of confusion is dependent not on a side by side comparison of two products or services but the “fallible recollection of an average purchaser who normally retains a general rather than a specific impression of trademarks.” The principal factors considered by the examining attorney in determining whether there would be a likelihood of confusion are:

- The similarity of the mark (Example: sound meaning, appearance); and
- The commercial relationship between goods and/or services listed in the application

To find a conflict, the marks do not have to be identical, and the goods and/or services do not have to be the same. It can be enough that the marks are similar and the goods and/or services related.

This is not a complete list of all possible grounds for refusal. See chapter 1200 of the Trademark Manual of Examining Procedure (TMEP).

**Patents**

A patent is a legal document that secures the owner’s right to exclude others from making, using, importing, or selling the claimed invention for a set time period (20 years from date of filing). A patent can be considered a contract between the inventor and the government in which the inventor agrees to disclose the invention in exchange for certain rights.

To be patentable the inventions must fall within one of the following categories:
• **Utility patents**: Granted to anyone who invents or discovers any new and useful processes, machines, manufactured articles, compositions of matter, animals, any new useful improvement thereof, and some methods of doing business. A granted patent period lasts for 20 years from the date of application. Prior to 1994, a utility patent grant lasted 17 years from issuance.

• **Plant patents**: Covers asexually reproducible plants. A granted patent period lasts 20 years from the date of application. Prior to 1994, a plant patent grant lasted 17 years from issuance.

• **Design patents**: Covers the unique, ornamental, nonfunctional or visible shape or design of an object. The granted patent period last for 15 years from issuance. Prior to May 13, 2015, a design patent grant lasted 14 years from issuance.

• **Industrial design**: covers designs at an international level. The United States signed in 2015 the Hague Agreement joining other national signatories in recognizing industrial design patents. Lasting 5 years with an additional 5 years possible.

• **Utility model**: Sometimes called a “petty patent,” is a design that is also functional. Utility model patents usually have a shorter term (often 6 to 10 years) and are examined with less stringent patentability requirements. Only a few countries allow this type of patent.

For more information on the United States patents and patent laws see [Manual of Patent Examining Procedure (MPEP)](https://www.uspto.gov/). According to USPTO Patent Commissioner Report, in the year 2018, the pendency rates, at first office action, average 15.5 months. Total pendency rate is 24.3 months. Computer software pendency rates are 4-6 years. Covered business methods pendency is taking 8-12 years. There are many considerations to determining whether or not to pursue patent protection domestically or internationally. It is in your best interest to consult with a registered patent practitioner before proceedings. To find registered patent practitioners check the [USPTO Office of Enrollment and Discipline](https://www.uspto.gov/) web site.

### Useful Web Sites

**Copyright**
United States Copyright Office

Copyright Clearance Center

Canada Copyrights

United Kingdom Intellectual Property Office

World Intellectual Property Organization – copyrights and Related Rights

Directory of Intellectual Property Offices – Worldwide

Japan Copyright Research and Information Center

**National and International Trademark**
United States Patent and Trademark Office – Trademarks

Ohio Secretary of State – Trade and Service Marks

Canadian Trade-marks

Community Trademark System – European Union

WIPO Trademark Gateway

**Patents**
United States Patent and Trademark Office – Patents
European Patent Office
Japanese Patent Office
Canadian Patent Office
WIPO – World Intellectual Property Organization

Major Patents
United States Patents

Worldwide Patents – Espacenet European Patent Office


Korean Patents – Korean Intellectual Property Office

China Patents – State Intellectual Property Office

Classification, Identification and Documentation Numbering Systems
United States Trademark Office ID Manual

United States Trademark Office Design Code Manual

International Patent Classification – IPC WIPO

Cooperative Patent classification System – CPC EPO