

Types of Intellectual Property (IP)

Patents

Types of Patents

Utility

Protects any new, useful, and nonobvious process, machine, manufacture, or composition of matter, or any new and useful improvement thereof. This term begins on the date a patent issues and ends 20 years from the filing date of the application or the earliest U.S. benefit date claimed (except provisional filing date).

Types of Utility Patent Applications

Provisional

- Not examined or published
- Automatically abandoned one year after its filing date.
- A low-cost way to establish an earlier effective U.S. filing date for a non-provisional application.
- Will never become a patent.
- Cannot claim benefit of a previously-filed application, either foreign or domestic.

Non-Provisional

- Examined by a patent examiner.
- Published 18 months from earliest filing date (unless a grantable request for a non-publication at filing)
- Can become a patent.

Design

- Protects any new, original, and ornamental design for an article of manufacture.
- No maintenance fees.
- Cannot be filed as a provisional application.
- Cannot claim the benefit of a provisional application.
- A design patent's term is 15 years from the date of issuance.

Plant

- A plant patent is granted by the government to an inventor who has invented or discovered and asexually reproduced a distinct and new variety of plant, other than a tuber propagated plant or a plant found in an uncultivated state.
- Can be filed as a provisional or a non-provisional application.
- The term of a plant patent is 20 years from the filing date of the application or the earliest U.S. benefit date claimed (except provisional filing date).

Controlling Law, Rules & Reference

- 35 United States Code (U.S.C.)
- 37 Code of Federal Regulations (C.F.R.), Chapter 1, Subchapter A
- Manual of Patent Examining Procedure (MPEP)

Filing Office

United States Patent and Trademark Office

Examples

Utility Patents

- Semiconductor circuits
- Touch screen functionality
- Battery/Power control
- Antenna functionality
- Speaker functionality
- Device housing functionality

Design Patents:

- Form of overall device
- Placement of button(s) and/or speaker(s)
- Surface finish
- You can claim a portion of the article



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Types of Intellectual Property (IP)

Trademarks

A trademark is a word, phrase, symbol, or design, or a combination thereof, that is used in commerce to identify and distinguish 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.

Types of Trademark Protection

Federal Registration

The ® symbol signifies that a mark is registered with the USPTO. Although not required in the United States to obtain protectable rights, a federal registration for a mark provides significant benefits, including public notice of your ownership claim and legal presumptions that you own the mark and have the exclusive right to use it nationwide on or in connection with the goods/services listed in the registration. A federal registration can last for as long as the mark is in use and the proper maintenance and renewal documents are submitted and accepted.

State Registration

You can register your mark with one or more states, but state registration provides protection only within the borders of that one state.

Common Law

You can establish “common law” rights in a mark based simply on use of the mark in commerce, without a registration. However, unlike federally-registered marks, legal protection of an unregistered mark is typically limited to the geographic areas where it is used or known.

DISCLAIMER

This flyer is only intended to be educational. It is not intended as an all-inclusive and comprehensive list of requirements for each type of intellectual property (IP). References to particular products, patents, trademarks, companies and/or organizations are for illustrative and informational purposes only and do not constitute or imply endorsement by the USPTO or the U.S. Government.

This flyer should not be used as a quoted source nor should it be considered legal advice.

Owners seeking to protect their IP may contact one of the Filing Offices for general information about the application process. For legal advice on how to protect your IP, you should contact a private attorney who specializes in IP. For patents and trademarks, applicants are encouraged to review the “Learning and Resources” pages on the USPTO’s website at www.uspto.gov.

Controlling Law, Rules & Reference

- 15 United States Code (U.S.C.) (Lanham Act) §§ 1051 - 1127
- 37 Code of Federal Regulations (C.F.R.), Chapter 1, Part 2
- Trademark Manual of Examining Procedure (TMEP)

Filing Office

Federal

United States Patent and Trademark Office

State

Each state has an agency that handles applications for state trademark registrations

Examples

Trademarks can be almost anything that indicates a source,

WORDS

NIKE

DESIGNS



SOUNDS



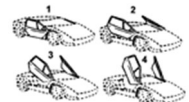
COLORS



SHAPES



MOTION



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Copyrights

Copyright is a legal protection for original works of authorship, including literary, dramatic, musical, artistic, and certain other creative works, both published and unpublished.

The term of protection for a copyrighted work may vary according to a variety of factors. For works created on or after January 1, 1978, the basic term of protection is the life of the author plus 70 years, but in some cases (e.g., works made for hire, or works by anonymous or pseudonymous authors) the term is the shorter of 95 from publication or 120 years from creation of the work.

Copyright Registration

Copyright registration is required before commencing a lawsuit for copyright infringement. The copyright owner must submit an application for registration to the Copyright Office along with the applicable fee, and must deposit a copy of the work. While registration may be made at any time within the life of the copyright, registration before the infringement commenced or within three months of publication of the work qualifies the applicant to seek additional monetary remedies (i.e., statutory damages and attorney's fees) in successful copyright infringement litigation. A registration made before or within five years of publication, will establish prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate. Finally, registration allows the owner of the copyright to record the registration with the United States Customs Service for protection against the importation of infringing copies.

Additional Information

U.S. Patent & Trademark Office — Patents

www.uspto.gov/patent

U.S. Patent & Trademark Office — Trademarks:

www.uspto.gov/trademark

U.S. Copyright Office:

www.copyright.gov/

Trade Secret Policy:

www.uspto.gov/patents-getting-started/international-protection/trade-secret-policy

Controlling Law, Rules & Reference

- 17 United States Code (U.S.C.)
- 37 Code of Federal Regulations (C.F.R.), Chapter 2
- Compendium of United States Copyright Office Practices, Third Edition

Filing Office

United States Copyright Office
(a Department of the Library of Congress)

Examples



Other Examples

- Text and images on product packaging
- Advertising and promotional materials
- Instruction manuals
- Educational materials
- Software source code
- Website content

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Types of Intellectual Property (IP)

Trade Secrets

Trade secrets consist of information and can include a formula, pattern, compilation, program, device, method, technique or process. Not all definitions of a trade secret are identical, but most commonly the information (1) must have value by virtue of not being known to others, (2) must have value to others who cannot legitimately obtain it, and (3) must be subject to reasonable efforts to maintain its secrecy.

Patents vs. Trade Secrets



Patents



Trade Secrets

Utility patent term begins on the date a patent issues and ends 20 years from the filing date of the application or the earliest U.S. benefit date claimed (except provisional filing date).

You must clearly describe how to make and use your invention within your application.

There may be legal remedies should someone make, use, sell or import your invention without your permission.

Someone can still try and improve upon what you have done and may get a patent on that improvement.

Trade secrets last as long as they remain a secret.

You must take reasonable steps to keep your trade secret secure.

There are legal remedies should someone steal your trade secret.

Trade secrets can be legitimately discovered through methods such as reverse engineering and accidental disclosure.

Controlling Law, Rules & Reference

- State law generally based on the Uniform Trade Secrets Act.
- Defend Trade Secrets Act of 2016

Filing Office

None

Examples

- Formula for producing Coca-Cola®
- Recipe for Krispy Kreme® doughnuts
- Source code for software

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Trade Secret Policy

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