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Intellectual property protection

What is intellectual property?

Intellectual property (abbreviated as “IP”) refers to creations or ideas of the mind, which can be inventions, literary, artistic, works, designs, symbols, names and images used in commerce.

Why does it need protection?

Ideas are basically the product of one’s mental capabilities in terms of creativity, as such these ideas which have been well thought and processed by one’s mind, should not be claimed by another like it was theirs. So thus the intellectual property protection was established in order to protect the intellectual properties of individuals.

There are mainly 4 types of recognized intellectual properties in business, namely;

* Patents
* Trade secrets
* Copyright
* trademarks

1. **Patents:**

A patent grants property rights on an invention, which allows the patent holder to prevent others from making, selling, or using the conceived invention. A patent can be gotten by filing for application from the U.S. Patent and Trademark Office (USPTO).

There are 3 types of patents:

* **Utility**
* **Design**
* **Plant**

**A**[**utility patent**](https://www.upcounsel.com/utility-patent) is the most common type, covering any process, machine, article of manufacture, or composition of matter, or any new and useful improvements thereof.

To qualify for a utility patent, three conditions must be met

* It should be novel
* It must be non-obvious
* It must have some form of usefulness

Novel mans that the invention must have been new and not known by anyone else. nonobvious means that it can't be immediately obvious to someone having ordinary skills in the industry.

**A**[**design patent**](https://www.upcounsel.com/design-patent) covers any new, original, and [ornamental design](https://www.upcounsel.com/ornamental-design) for an article of manufacture.

A [**plant patent**](https://www.upcounsel.com/plant-patent) covers any new variety of asexually produced plant. A design patent lasts for 14 years, and a utility or plant patent lasts for 20 years.

When granted [patent protection](https://www.upcounsel.com/patent-protection), the patent holder can take legal action against anyone who copies the patented invention, design, or discovery. Without this legal protection, anyone can use similar designs, products, and processes without risk. if you don't file for patent protection on your invention within 12 months of releasing it in a public setting, the opportunity to patent it will be gone.

Other companies or individuals can also file for a patent on your idea, taking away your chance to do so first. When reviewing patent applications and violations, the USPTO will usually default to the individual who submitted the application first, since proving who used something first is nearly impossible.

Before filing for a patent, you should determine who will own the idea. Some companies file for patents on their protected inventions, but if an employee came up with the idea, the individual may be granted holder of the patent. If your business owns the patent, you must protect the patent with the company by having employees involved in the invention process sign an agreement stating that the idea belongs to the company.

The [patent application process](https://www.upcounsel.com/patent-application-process) is complicated, one that could take up to six years and cost thousands of dollars, so the USPTO recommends that you hire a qualified [patent attorney](https://www.upcounsel.com/patent-attorney) or agent to file your patent. To maintain the force of the patent, you must pay fees due at 3 1/2, 7 1/2, and 11 1/2 years after the patent grant. The total amount of maintenance fees for a small entity, such as an independent inventor, is $4,430, while for others the total is $8,860.

1. **Trade secrets:**

A trade secret is a formula, process, device, or other business information that companies keep private to give them a business advantage over their competitors. There are 4 types of trade secret

* **Soda formulas**
* **Customer lists**
* **Survey results**
* **Computer algorithms**

Unlike the other types of intellectual property, you cannot obtain protection by registering your trade secret. Instead, protection lasts only if you take the necessary steps to control disclosure and use of the information.

Businesses resort to the use of nondisclosure agreements, restricted access to confidential information, post-employment restrictive covenants, and other security practices to maintain trade secrets.

1. **Copyright:**

Copyrights is a form of intellectual property protection designed to protect original works of authorship, such as literary works, music, dramatic works, pantomimes and choreographic works, sculptural, pictorial, and graphic works, sound recordings, artistic works, architectural works, and computer software. With copyright protection, the holder has the exclusive rights to modify, distribute, perform, create, display, and copy the work. In order to qualify under copyright laws, the work must be fixed in a tangible medium of expression, such as words on a piece of paper or music notes written on a sheet. A copyright exists from the moment the work gets created, so registration is voluntary. However, registered works may be eligible for statutory damages and attorneys’ fees in a copyright infringement suit, one can register their copyright online by completing an application, submitting a non-refundable fee of $35, and sending in a non-returnable copy of your work.

The average processing time for e-filed copyright applications is 2 1/2 months and a little more than 5 1/2 months for paper filing. Copyright duration depends on several factors, but generally for works created after Jan. 1, 1978, the copyright lasts for the life of the author plus an additional 70 years and is non-renewable.

1. **Trademarks:**

A trademark is a word, phrase, symbol, or design that distinguishes the source of products (trademarks) or services (service marks) of one business from its competitors. In order to qualify for patent protection, the mark must be distinctive. For example, the tommy Gucci "swoosh" design identifies fashion items made by Gucci.

To apply, you must have a clear representation of the mark, as well as an identification of the class of goods or services to which the mark will apply. You can submit an online application, and filing fees vary according to several factors, including the form type and the number of classes of goods or services. Trademarks expire after 10 years, and renewal terms are 10 years.

Before receiving approval from the USPTO, companies and people can use the TM symbol to indicate ownership of the mark. Upon approval, the maker can legally add the registered trademark symbol (®) to your mark. The TM symbol doesn't hold any legal weight, but it can indicate to other businesses or people in your industry that the maker intends to claim the mark.

To register a trademark, one can **apply for a "use" application after using the mark or apply for an "intent to use" application before using the mark.**