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# Chapter 1

# Introduction

Intellectual property refers to creations or ideas. Inventions, written and artistic works, and symbols and images used in business are all forms of intellectual property. ﻿Intellectual property rights stem from the basic principle that you are allowed to benefit from your own ideas and protect yourself from unfair competition. The thinking is that under these tenets, innovation will thrive and the economy will grow.

# CHAPTER 2

# LITERATURE REVIEW

# INTRODUCTION

# **2.1 PATENTS:**

A patents is a form of right granted by the government to an inventor or their successor-in-title, giving the owner the right to exclude others from making, using, selling, offering to sell, and importing an invention for a limited period of time, in exchange for the publics disclosure of the invention in the U.S. by the United States Patent and Trademark Office (USPTO)—patents grant property rights to the owner of an invention or new way of doing something. When something is patented, it cannot be used, sold, or made without the patent holder’s permission for the period of the patent (generally 20 years). ﻿

There are three main types of patents:

* Utility – This covers any new machine, process, or article of manufacture, or any new and useful improvement of one of these.
* Design – This covers any original, new and ornamental design for an article of manufacture.
* Plant – This covers someone who has invented or discovered and asexually reproduced a new variety of plant, such as a mutation or hybrid.

Not all businesses need patents, but they are crucial for entrepreneurs who are banking on a new invention to give them a competitive advantage.

# **2.2 Conditions of Patentability**

An invention must meet several criteria if it is to be eligible for patent protection. These include, most significantly, that the invention must consist of patentable subject matter, the invention must be industrially applicable (useful), it must be new (novel), it must exhibit a sufficient “inventive step” (be non-obvious), and the disclosure of the invention in the patent application must meet certain standards.

# **2.3 Industrial Applicability (Utility)**

An invention, in order to be patentable, must be of a kind which can be applied for practical purposes, not be purely theoretical. If the invention is intended to be a product or part of a product, it should be possible to make that product. And if the invention is intended to be a process or part of a process, it should be possible to carry that process out or “use” it (the general term) in practice.

“Applicability” and “industrial applicability” are expressions reflecting, respectively, the possibility of making and manufacturing in practice, and that of carrying out or using in practice.

The term “industrial” should be considered in its broadest sense, including any kind of industry. In common language, an “industrial” activity means a technical activity on a certain scale, and the “industrial” applicability of an invention means the application (making use) of an invention by technical means on a certain scale. National and regional laws and practices concerning the industrial applicability requirement vary significantly. At one end of the spectrum, the requirement of industrial applicability is met as long as the claimed invention can be made in industry without taking into account the use of the invention. At the other end of the spectrum, the “usefulness” of the claimed invention is taken into account for the determination of the industrial applicability. On the other hand, some countries do not require industrial applicability, but utility.

# **2.4 Novelty**

Novelty is a fundamental requirement in any examination as to substance and is an undisputed condition of patentability. It must be emphasized, however, that novelty is not something which can be proved or established; only its absence can be proved.

An invention is new if it is not anticipated by the prior art. “Prior art” is, in general, all the knowledge that existed prior to the relevant filing or priority date of a patent application, whether it existed by way of written or oral disclosure. The question of what should constitute “prior art” at a given time is one which has been the subject of some debate.

One viewpoint is that the determination of prior art should be made against a background of what is known only in the protecting country. This would exclude knowledge from other countries, if it was not imported into the country before the making of the invention, even if that knowledge was available abroad before the date of the making of the invention.

Another viewpoint is based on the differentiation between printed publications and other disclosures such as oral disclosures and prior use, and where such publications or disclosures occurred.

The disclosure of an invention so that it becomes part of the prior art may take place in three ways, namely:

- by a description of the invention in a published writing or publication in other form;

- by a description of the invention in spoken words uttered in public, such a disclosure being called an oral disclosure;

- by the use of the invention in public, or by putting the public in a position that enables any member of the public to use it, such a disclosure being a “disclosure by use.”

# **2.5 Copyrights**

You probably think of written work when you think of copyrights, but copyright protection applies to any number of mediums, including literary work, dramatic work, and musical and artistic work. Copyright protection usually starts at the moment of creation and lasts for 70 years after the creator has died.

Just like with trademarks, you don’t have to do anything to assert a copyright in the U.S. But, there are legal advantages if you register your [copyrighted works](https://www.thebalancesmb.com/copyright-definition-2948254) with the[U.S. Copyright Office](https://www.copyright.gov/registration/). (For instance, if you register within three months of publication, you’ll be eligible to recoup attorney’s fees in any future court actions, rather than just damages.) 7

Copyright law is a branch of that part of the law which deals with the rights of intellectual creators. Copyright law deals with particular forms of creativity, concerned primarily with mass communication. It is concerned also with virtually all forms and methods of public communication, not only printed publications but also such matters as sound and television broadcasting, films for public exhibition in cinemas, etc. and even computerized systems for the storage and retrieval of information.

Copyright law, however, protects only the form of expression of ideas, not the ideas themselves. The creativity protected by copyright law is creativity in the choice and arrangement of words, musical notes, colors, shapes and so on. Copyright law protects the owner of rights in artistic works against those who “copy”, that is to say those who take and use the form in which the original work was expressed by the author.

# **2.6 Rights Comprised in Copyright**

The owner of copyright in a protected work may use the work as he wishes—but not without regard to the legally recognized rights and interests of others—and may exclude others from using it without his authorization.

Therefore, the rights bestowed by law on the owner of copyright in a protected work are frequently described as “exclusive rights” to authorize others to use the protected work.

The original authors of works protected by copyright also have “moral rights”, in addition to their exclusive rights of an economic character.

What is meant by “using” a work protected by copyright? Most copyright laws define the acts in relation to a work which cannot be performed by persons other than the copyright owner without the authorization of the copyright owner.

Such acts, requiring the authorization of the copyright owner, normally are the following: copying or reproducing the work; performing the work in public; making a sound recording of the work; making a motion picture of the work; broadcasting the work; translating the work; adapting the work.

# **2.7 Right of Reproduction and Related Rights**

The right of the owner of copyright to prevent others from making copies of his works is the most basic right under copyright. For example, the making of copies of a protected work is the act performed by a publisher who wishes to distribute copies of a text-based work to the public, whether in the form of printed copies or digital media such as CD-ROMs. Likewise, the right of a phonogram producer to manufacture and distribute compact discs (CDs) containing recorded performances of musical works is based, in part, on the authorization given by the composers of Such works to reproduce their compositions in the recording. Therefore, the right to control the act of reproduction is the legal basis for many forms of exploitation of protected works.

Other rights are recognized in national laws in order to ensure that the basic right of reproduction is respected. For example, some laws include a right to authorize distribution of copies of works. The right of distribution is usually subject to exhaustion upon first sale or other transfer of ownership of a particular copy, which means that, after the copyright owner has sold or otherwise transferred ownership of a particular copy of a work, the owner of that copy may dispose of it without the copyright owner’s further permission, for example, by giving it away or even by reselling it. Another right which is achieving wider and wider recognition, including in the TRIPS Agreement, is the right to authorize rental of copies of certain categories of works, such as musical works included in phonograms, audiovisual works, and computer programs. The right of rental is justified because technological advances have made it very easy to copy these types of works; experience in some countries has shown that copies were made by customers of rental shops, and therefore, that the right to control rental practices was necessary in order to prevent abuse of the copyright owner’s right of reproduction. Finally, some copyright laws include a right to control importation of copies as a means of preventing erosion of the principle of territoriality of copyright; that is, the legitimate economic interests of the copyright owner would be endangered if he could not exercise the rights of reproduction and distribution on a territorial basis**.**

# **2.8 Performing Rights**

Another act requiring authorization is the act of public performance—for example, public readings, dramatic and musical performances before an audience. The right to control this act of public performance is of interest not only to the owners of copyright in works originally designed for public performance, but also to the owners of copyright, and to persons authorized by them, when others may wish to arrange the public performance of works originally intended to be used by being reproduced and published. For example, a work written originally in a particular way in order to be read at home or in a library may be transformed (“adapted”) into a drama designed to be performed in public on the stage of a theater.

# **2.9 Limitations on Copyright Protection**

**Temporal**

Copyright does not continue indefinitely. The law provides for a period of time, a duration, during which the rights of the copyright owner exist.

The period or duration of copyright begins with the creation of the work. The period or duration continues until some time after the death of the author. The purpose of this provision in the law is to enable the author’s successors to have economic benefits after the author’s death. It also safeguards the investments made in the production and dissemination of works.

**Geographic**

The second limitation or exception to be examined is a geographical limitation. The owner of the copyright in a work is protected by the law of a country against acts restricted by copyright which are done in that country. For protection against such acts done in another country, he must refer to the law of that other country. If both countries are members of one of the international conventions on copyright, the practical problems arising from this geographical limitation are very much eased.

**Permitted Use**

Certain acts normally restricted by copyright may, in circumstances specified in the law, be done without the authorization of the copyright owner. Some examples of such exceptions are described as “fair use.” Such examples include reproduction of a work exclusively for the personal and private use of the person who makes the reproduction; another example is the making of quotations from a protected work, provided that the source of the quotation, including the name of the author, is mentioned and that the extent of the quotation is compatible with fair practice.

# **3.0 Trademarks**

A [trademark](https://www.thebalancesmb.com/how-to-select-a-good-trademark-2948672) is a symbol, design, phrase or word that distinguishes the source of a product or service. Having one means people can differentiate you and your business from similar goods and services offered by the competition. For example, the flowing Coca-Cola script that you see on cans of the popular soda is a registered trademark.

Trademarks are meant to avoid confusion between products and services from different companies, but do not prevent competitors from making the same thing

If you’ve heard of a registered trademark, you may be wondering if you have to register. The answer is no. In the U.S., a person or business can assert “common law” rights based on simply using a specific trademark. ﻿However, there are legal advantages to registering a trademark with the USPTO. However, not all marks can be registered. In fact, the most common reason applications are rejected is that there’s a likelihood of confusion with another trademark.

# **3.1 Signs which May Serve as Trademarks**

It follows from the purpose of the trademark that virtually any sign that can serve to distinguish goods from other goods is capable of constituting a trademark. Trademark laws should not therefore attempt to draw up an exhaustive list of signs admitted for registration. If examples are given, they should be a practical illustration of what can be registered, without being exhaustive. If there are to be limitations, they should be based on practical considerations only, such as the need for a workable register and the need for publication of the registered trademark.

If we adhere strictly to the principle that the sign must serve to distinguish the goods of a given enterprise from those of others, the following types and categories of signs can be imagined:

- Words: This category includes company names, surnames, forenames, geographical names and any other words or sets of words, whether invented or not, and slogans.

- Letters and Numerals: Examples are one or more letters, one or more numerals or any combination thereof.

- Devices: This category includes fancy devices, drawings and symbols and also twodimensional representations of goods or containers.

- Combinations of any of those listed above, including logotypes and labels.

- Colored Marks: This category includes words, devices and any combinations thereof in color, as well as color combinations and color as such.

- Three-Dimensional Signs: A typical category of three-dimensional signs is the shape of the goods or their packaging. However, other three-dimensional signs such as the three-pointed Mercedes star can serve as a trademark.

- Audible Signs (Sound Marks): Two typical categories of sound marks can be distinguished, namely those that can be transcribed in musical notes or other symbols and others (e.g. the cry of an animal).

- Olfactory Marks (Smell Marks): Imagine that a company sells its goods (e.g. writing paper) with a certain fragrance and the consumer becomes accustomed to recognizing the goods by their smell.

# **3.2 Criteria of Protectability**

The requirements which a sign must fulfill in order to serve as a trademark are reasonably standard throughout the world. Generally speaking, two different kinds of requirement are to be distinguished.

The first kind of requirement relates to the basic function of a trademark, namely, its function to distinguish the products or services of one enterprise from the products or services of other enterprises. From that function it follows that a trademark must be distinguishable among different products.

The second kind of requirement relates to the possible harmful effects of a trademark if it has a misleading character or if it violates public order or morality.

**Requirement of Distinctiveness**

A trademark, in order to function, must be distinctive. A sign that is not distinctive cannot help the consumer to identify the goods of his choice. The word “apple” or an apple device cannot be registered for apples, but it is highly distinctive for computers. This shows that distinctive character must be evaluated in relation to the goods to which the trademark is applied.

The test of whether a trademark is distinctive is bound to depend on the understanding of the consumers, or at least the persons to whom the sign is addressed. A sign is distinctive for the goods to which it is to be applied when it is recognized by those to whom it is addressed as identifying goods from a particular trade source, or is capable of being so recognized.

The distinctiveness of a sign is not an absolute and unchangeable factor. Depending on the steps taken by the user of the sign or third parties, it can be acquired or increased or even lost. Circumstances such as (possibly long and intensive) use of the sign have to be taken into account when the registrar is of the opinion that the sign lacks the necessary distinctiveness, that is, if it is regarded as being not in itself distinct enough for the purpose of distinguishing between goods and services.

**Lack of Distinctiveness**

If a sign is not distinguishable, it cannot function as a trademark and its registration should be refused. The applicant normally need not prove distinctiveness. It is up to the registrar to prove lack of distinctiveness, and in the case of doubt the trademark should be registered. Some trademark laws put the onus on the applicant to show that his mark ought to be registered. This practice may be considered strict, however, and sometimes prevents the registration of marks that are demonstrably capable of distinguishing their proprietor’s goods. And yet the modern trend, as reflected in Article 3 of the EC Harmonization Directive and also in Section 23.2(1) of the Draft Law, is clearly to treat lack of distinctiveness as a ground for refusing an application for registration of a trademark.

# **3.3Trade Secrets**

A [trade secret](https://www.thebalancesmb.com/how-to-protect-your-trade-secrets-4590019) is information that gives your business a competitive edge over those who don’t possess it. It can be a formula, process, device, or program, among other things.8

﻿ Examples include computer algorithms, customer lists, survey results, and soda formulas.

In a way, trade secrets are the inverse of patents because they’re meant to be kept hidden, while patents announce to everyone that you have exclusive rights over your idea. While there’s no application or registration process, requiring non-disclosure or confidentiality agreements for your employees can help prevent trade secrets from being misused.

If you've got trade secrets that do get misused, there are now both federal and state laws to protect you. The Defend Trade Secrets Act of 2016 created a federal cause of action for trade secret disputes so people can choose whether to file suit in federal or state court.8

# **CONCLUSION**

Understanding the different types of intellectual property protection is the first step in being proactive to keep your competitive edge. As you grow your business, particularly if you are an inventor or entrepreneur, make sure you take out any appropriate patents

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