



Intellectual Property Basics

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What is Intellectual Property?

- A product of the intellect that may have *commercial value*
- A creation of the **mind**, such as inventions, literary and artistic works, symbols, names, images, and designs used in commerce

Intellectual Property

Was Deemed So

Important

that It Was

Enshrined

in Our

Constitution



thusly...

From the U.S. Constitution.
Article 1. Section 8
Powers of Congress

“... To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries; ...”

There Are Four Ways to Protect Intellectual Property

1. Copyrights
2. Trade Secrets
3. Patents
4. Trademarks

1. ©opyright

Protects "original works of authorship" fixed in a *tangible form* of expression

Arts

Scholarship

Media

Copyright protection is...

...automatic, even without registration, once a work is created

...registered with the Copyright Office, part of the Library of Congress

...enforced through civil litigation

...often claimed by using the ©

Copyrightable Works



**ETA-NEHISI
COATES**
—
**BETWEEN
THE WORLD
AND ME**
"This is required reading." —Toni Morrison



More Copyrightable Works

- Audiovisual works, such as TV shows, movies, and online videos
- Sound recordings and musical compositions
- Written works, such as lectures, articles, books, and musical compositions
- Visual works, such as paintings, posters, and advertisements
- Video games and computer software
- Dramatic works, such as plays and musicals

A Copyright Owner Has Exclusive Rights to ...

- ✓ Reproduce the Work
- ✓ Prepare derivative works
- ✓ Distribute copies
- ✓ Perform the work publicly
- ✓ Display the work publicly
- ✓ Or to Authorize others to do so

A Note about Fair Use...

Unlicensed use of copyright-protected works is permitted in certain circumstances:

criticism

comment

news reporting

teaching

scholarship

research

Transformative uses (e.g.: parody)

For more information, see <https://www.copyright.gov/fair-use/more-info.html>

2. Trade Secrets

examples: recipes/algorithms/formulas



Trade Secrets Have Real Advantages...

- No fees
- No registration
- **No time limits**



- Gives the business an advantage over competitors

...and Real Disadvantages

- The need for secrecy
- Difficulty keeping secrets in the digital age
- Corporate espionage
- Limited protection if secret gets out
- Someone else can reverse engineer your invention and patent it themselves

(note: the America Invents Act added protections for Trade Secrets with at least one year of prior use, but you lose exclusivity)

3. Patents

WWW.USPTO.GOV

uspto UNITED STATES PATENT AND TRADEMARK OFFICE

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"I'll do it myself"
How chipped china inspired Josephine Cochran to invent the dishwasher. [READ MORE >](#)

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Quick links to applications and tools.

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New to IP?
Learn the basics of intellectual property.

Patent basics >
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Comment on proposed trademark fee changes
Review the proposed fees and submit your comments by September 30, 2019.

Op-ed: New U.S. counsel rule
Director Iancu and Commissioner Denison write about the USPTO's initiatives to ensure accuracy and integrity of the Trademark Register.

Update to Trial Practice Guide

“ Human advancement has been consistently pushed forward by our inventors. They are our heroes. It is our inventors who will continue to push human development to even greater heights.



U.S. Patent and Trademark Office

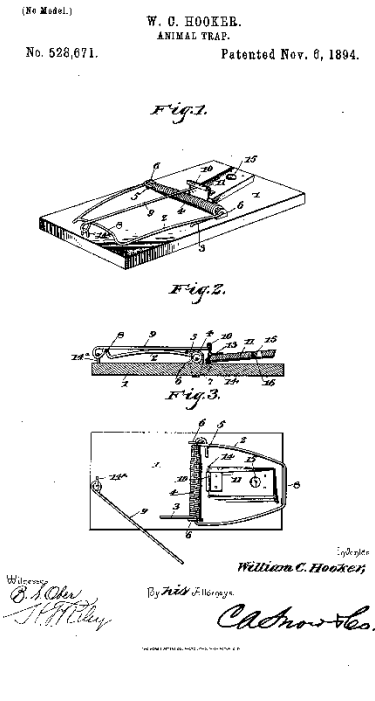
- Examines patent applications and grants patents
- Examines trademark applications and registers trademarks
- Disseminates information about patents and trademarks



- more than **80** libraries belong to the program
- assist customers using specialized training

What Can Be Patented?

- Machine, Article of Manufacture, Process, Composition of Matter, Business Methods (since mid-90's court decision)
- Any new, useful improvement of the above
- Term: 20 years from filing date.



(Utility Patent example)

Design Patents

- **Granted for a new, original and ornamental design for an article of manufacture.**
- **Only the *appearance* is protected.**
- **Term: 14 years from the date the patent is granted**



Plant Patents

March 28, 1944.

W. E. LAMMERTS

Plant Pat. 621

PEACH TREE

Filed Nov. 27, 1943



Inventor
Walter E. Lammerts
By *Robert Stobb*
Attorneys

From USPTO.gov:

“The law also provides for the granting of a patent to anyone who has invented or discovered and *asexually reproduced* any distinct and new variety of plant, including cultivated sports, mutants, hybrids, and newly found seedlings, other than a tuber-propagated plant or a plant found in an uncultivated state.

Asexually propagated plants are those that are reproduced by means other than from seeds, such as by the rooting of cuttings, by layering, budding, grafting, inarching, etc.”

To Be Granted a Patent...

Your idea must have:

- ❖ Novelty
- ❖ Nonobviousness
- ❖ Utility

Researching Prior Art

(To make sure someone has not already invented your idea)

- ✓ **U.S. Patents and published patent applications**
- ✓ Foreign Patents and published patent applications
- ✓ Journal and magazine articles
- ✓ Books, manuals, and catalogs
- ✓ Websites
- ✓ Conference proceedings
- ✓ Scientific papers

Preliminary Patent Search

A preliminary U.S. patent search is ideally a classification search of granted U.S. patents and published U.S. patent applications conducted to determine patentability of an invention.

4. T[®]rademarks

What is a Trademark?

Any word, name, symbol,
Device (or any combination
thereof) used to identify
and distinguish goods or
services and to indicate
their source



Musical notation for the "G₃ E₄ C₄"
NBC chimes sequence¹⁾

COMPAQ

BORDERS[®]



Oldsmobile.



87370587

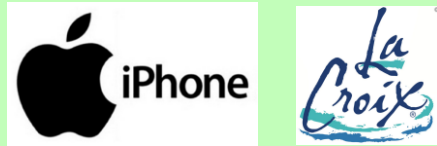


Trademarks

Certification Marks

Trademarks

Service Marks





Only trademarks that have received federal registration with the U.S. Patent and Trademark Office may use this symbol with their mark

Can You Use a Mark without Registering it?

Short answer: yes

Types of Trademark Protection



Common Law

Protection derived from use *in commerce*

State Registration

Registered with one or more U.S. States

Federal Registration[®]

Registered with the U.S. Patent and Trademark Office

Claiming an Unregistered Mark

→ TM

→ SM

Fun Fact!

The USPTO *only* searches the database of federally registered marks in deciding whether to register a mark.



So, What Affect Can that Have?

It means that even if you get a registration for your mark from USPTO, you may later get a *notice of opposition*, and have to give up your mark to someone who has been using your mark for some time.

How Do I Avoid That?

Do your due diligence before you file, and make sure no one else in your mark's category is using your mark or one similar enough to cause a *likelihood of confusion*.

Likelihood of Confusion

In order to find a likelihood of confusion, the marks do *not* have to be identical.

If marks...

- sound alike when spoken or...
- are visually similar and...
- are to be used in related goods and/or services or...
- create the same general commercial impression in the consuming public's mind, the marks may be considered confusingly similar

Likelihood of Confusion Analysis

- Similarity in sound, appearance, and/or meaning may be sufficient to support a finding of likelihood of confusion, depending on the relatedness of the goods and/or services.
- Is there a conflict with a registered mark or potential conflict with a prior-filed application?
- Would consumers be likely to believe in error that the goods (or services) come from the same company?
- If “yes” the TM examining attorney will refuse the application.

(USPTO)

Common Law Marks

Common Law Marks May Be Found In:

- ✓ Telephone, business and manufacturing directories
- ✓ Print and online catalogs
- ✓ Trade journals and magazines
- ✓ Web search engines and portals
- ✓ Newspapers, press releases and new product announcements

State Registered Trademarks

Registration is typically with each state's Secretary of State's Office.

There isn't a single *free* internet state trademark database for all 50 states.

Fee-based databases collect state trademark information.

A search engine can be your best friend here.



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Getting started

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State Trademark Information Links

To acquire trademark and/or service mark registration at the state level, applicants must file an application with the trademark office of the specific state in which protection is sought. For information about state registration requirements, applicants must contact the individual state trademark office.

State	Website Address
Alabama:	http://sos.alabama.gov/administrative-services/trademarks
Alaska:	https://www.commerce.alaska.gov/web/cbpl/corporations/trademarkregistra...
Arizona:	http://www.azsos.gov/business_services/tnt/
Arkansas:	http://www.sos.arkansas.gov/BCS/Pages/default.aspx
California:	http://www.sos.ca.gov/business/ts/ts.htm
Colorado:	http://www.sos.state.co.us/pubs/business/forms_main.html#Trademarks
Connecticut:	http://www.sots.ct.gov/sots/cwp/view.asp?a=3177&q=472426#trade
Delaware:	http://corp.delaware.gov/trademark.shtml
District of Columbia:	Use of a mark solely within the District of Columbia qualifies for federal registration. There is no D.C. trademark law. The District's trade name registry can be found at: http://dcra.dc.gov/service/register-trade-name
Florida:	http://form.sunbiz.org/cor_t.html

Trademarks are Organized by Types of Goods and Services

- You can't use the same or similarly sounding or spelled name for a product in the same category of goods and services
- But the same name can be used for something in another area of goods or services



Examples of the Same Name in Different Goods or Services



Courts Have Objected to the Following Marks when Used with Identical or Similar Products:

Seykos <> Seiko[®] (*for watches*)

Cleo Cola <> Coca Cola[®] (*beverages*)

S. O. <> Esso[®] (*petroleum products*)

Toro Rojo <> Red Bull[®] (*beverages*)

Oral-Angle <> Oral-B[®] (*toothbrushes*)

Reason: Likelihood of confusion

Example:



CANDIE Cones for “candy”

Versus

KANDI KONZ for “gum



- Likely that consumers would be confused by similar trademarks for the same or related goods

Examples: (slogan)



SN 234,171. Peter Hand Foundation, Inc., Waukegan, Ill.,
by change of name from Blatchford Calf Meal Company,
Waukegan, Ill. Filed Dec. 8, 1965.

GOOD TO THE LAST DROP

For **Livestock** Feeds for Both Mixing and Feeding Un-
mixed.

First use approximately 1801.

Trademark Fees

Filing by Paper

- **\$600 per International Class of goods/services**

Electronic Filing via Trademark Electronic Application System (TEAS) at www.uspto.gov

- ***\$400 per International Class***
- ***\$275 per International Class for TEAS RF***
- ***\$225 per class for TEASPlus per International Class***

Trademark Information Network Videos

www.uspto.gov/trademarks/process/TMIN.jsp