



## Chapter 12

### The Importance of Intellectual Property

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## Chapter Objectives

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1. Define the term “intellectual property” and describe its importance.
2. Specify the rules of thumb for determining whether a particular piece of intellectual property is worth the time and expense of protecting.
3. Discuss the four major forms of intellectual property – patents, trademarks, copyrights, and trade secrets.
4. Describe the six-step process for obtaining a patent.
5. Identify the four types of trademarks.

## Chapter Objectives

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6. Identify the types of material that are eligible for copyright protection.
7. Discuss the legal environment that facilitates trade secret protection.
8. Identify the most common types of trade secret disputes.
9. Describe some of the physical measures that firms take to protect their trade secrets.
10. Explain the two primary reasons for conducting an intellectual property audit.

## The Importance of Intellectual Property

- **Intellectual Property**
  - Is any product of human intellect that is intangible but has value in the marketplace.
  - It is called “intellectual” property because it is the product of human imagination, creativity, and inventiveness.
- **Importance**
  - Traditionally, businesses have thought of their physical assets, such as land, buildings, and equipment as the most important.
  - Increasingly, however, a company’s intellectual assets are the most important.

## Determining What Intellectual Property to Protect

### Criteria 1

Determine whether the intellectual property in question is directly related to the firm’s competitive advantage.

### Criteria 2

Decide whether the intellectual property in question has value in the marketplace.

## Common Mistakes Firms Make in Regard to Protecting Their Intellectual Property

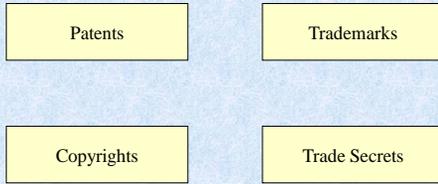
Not properly identifying all of their intellectual property.

Not fully recognizing the value of their intellectual property.

Not legally protecting the intellectual property that needs protecting.

Not using their intellectual property as part of their overall plan for success.

## The Four Key Forms of Intellectual Property



## Patents

- Patents
  - A patent is a grant from the federal government conferring the rights to exclude others from making, selling, or using an invention for the term of the patent. (See the next slide for a full explanation.)
- Increasing Interest in Patents
  - There is increasing interest in patents.
    - Since Patent #1 was granted in 1790, the U.S. Patent & Trademark Office has granted over six million patents.
    - The patent office is strained. It now takes an average of 35.3 months from the date of first filing to receive a U.S. patent.

## Proper Understanding for What a Patent Means

A patent does not give its owner the right to make, use, or sell an invention; rather, the right granted is only to exclude others from doing so.

As a result, if an inventor obtains a patent for a new kind of computer chip, and the chip would infringe on a prior patent owned by Intel, the inventor has no right to make, use, or sell the chip.

To do so, the inventor would need to obtain permission from Intel. Intel may refuse permission, or ask that a licensing fee be paid for the rights to infringe on its patent.

While this system may seem odd, it is really the only way the system could work. Many inventions are improvements on existing inventions, and the system allows the improvements to be (patented) and sold, but only with the permission of the original inventors, who usually benefit by obtaining licensing income in exchange for their consent.

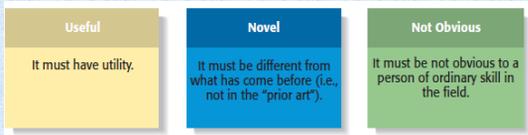
## Growth in Patent Applications in the United States

**TABLE 12.2 GROWTH IN PATENT APPLICATIONS IN THE UNITED STATES**

	2008	2009	2010
Applications received	496,886	486,499	509,367
Patents issued	182,556	190,122	233,127
Total patents pending	1,208,076	1,279,771	1,245,574
Average time for approval	32.3 months	34.6 months	35.3 months

Source: United States Patent and Trademark Office, *Performance and Accountability Report for Fiscal Year 2010*.

## Three Basic Requirements for Obtaining a Patent



## Types of Patents

Type	Type of Invention Covered	Duration
Utility	New or useful process, machine, manufacturer, or composition of material or any new and useful improvement thereof.	20 years from the date of the original application.
Design	Invention of new, original, and ornamental design for manufactured products.	14 years from the date of the original application.
Plant	Any new varieties of plants that can be reproduced asexually.	20 years from the date of the original application.

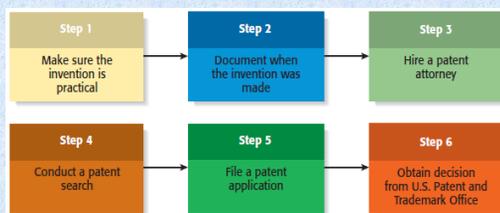
## Business Method Patents (Special Utility Patent)

- **Business Method Patent**
  - A business method patent is a patent that protects an invention that is or facilitates a method of doing business.
  - The most notable business method patents that have been awarded:
    - Amazon.com's one-click ordering system.
    - Priceline.com's "name-your-price" business model.
    - Netflix's method for allowing customers to set up a rental list of movies to be mailed to them.

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## The Process of Obtaining a Patent



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## Patent Infringement

- **Patent Infringement**
  - Takes place when one party engages in the unauthorized use of another party's patent.
  - The tough part (particularly from a small entrepreneurial firm's point of view) is that patent infringement cases are costly to litigate.
    - A typical patent infringement case costs each side at least \$500,000 to litigate.

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## Trademarks

- **Trademark**
  - A trademark is any word, name, symbol, or device used to identify the source or origin of products or services and to distinguish those product or services from others.
  - Trademarks also provide consumers with useful information.
    - For example, consumers know what to expect when they see a Macy's store.
    - Think how confusing it would be if any retail store could use the name Macy's.

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## Types of Trademarks

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Type	Types of Marks Covered	Duration
Trademark	Any word, name, symbol, or device used to identify and distinguish one company's goods from another. Examples: <i>Apple, d.light, Dry Soda, ModCloth, and Zeo.</i>	Renewable every 10 years, as long as the mark remains in use.
Service mark	Similar to trademarks; are used to identify the services or intangible activities of a business, rather than a business's physical products. Examples: <i>1-800-FLOWERS, Amazon.com, Mint.com, and Zipcar.</i>	Renewable every 10 years, as long as the mark remains in use.

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## Types of Trademarks

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Type	Types of Marks Covered	Duration
Collective mark	Trademarks or service marks used by the members of a cooperative, association, or other collective group. Examples: <i>Rotary International and International Franchise Association</i>	Renewable every 10 years, as long as the mark remains in use.
Certification mark	Marks, words, names, symbols, or devices used by a person other than the owner to certify a particular quality about a good or service. Examples: <i>100% Napa Valley and Underwriters Laboratories</i>	Renewable every 10 years, as long as the mark remains in use.

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## What is Protected Under Trademark Law

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Item	Example(s)
Words	YouTern, PledgeMusic, GiftZip
Numbers and letters	3M, MSNBA, 1-800-FLOWERS
Designs and logos	Nike swoosh logo
Sounds	MGM's lion's roar

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## What is Protected Under Trademark Law

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Item	Example
Fragrances	Stationery treated with a special fragrance
Shapes	Unique shape of the Apple iPhone
Colors	Nexium—the “purple pill”
Trade dress	The layout and décor of a restaurant

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## Exclusions From Trademark Protection

Item	Example
Immoral or scandalous matter	Profane words
Deceptive matter	Labeling oranges “Fresh Florida Oranges” that aren't grown in Florida
Descriptive marks	Phrases like “golf ball” and “fried chicken” are descriptive and can't be trademarked
Surnames	Common surnames like “Anderson” or “Smith” can't be trademarked

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## The Process of Obtaining a Trademark



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## Copyrights

- Copyrights
  - A copyright is a form of intellectual property protection that grants to the owner of a work of authorship the legal right to determine how the work is used and to obtain the economic benefits from the work.
  - A work does not have to have artistic merit to be eligible for copyright protection.
    - As a result, things such as operating manuals and sales brochures are eligible for copyright protection.

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## What is Protected By a Copyright?

Literary works	Musical compositions
Computer software	Dramatic works
Pantomimes and choreographic works	Pictorial, graphic, and sculptural works

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## Exclusions From Copyright Protection

- **The Idea-Expression Dichotomy**
  - The main exclusion is that copyright laws cannot protect ideas.
    - For example, an entrepreneur may have the idea to open a soccer-themed restaurant. The idea itself is not eligible for copyright protection. However, if the entrepreneur writes down specifically what his or her soccer-themed restaurant will look like and how it will operate, that description is copyrightable.
    - The legal principle describing this concept is called the idea-expression dichotomy.
    - An idea is not copyrightable, but the specific expression of an idea is.

## Obtaining a Copyright

- **How to Obtain a Copyright**
  - Copyright law protects any work of authorship the moment it assumes a tangible form.
  - Technically, it is not necessary to provide a copyright notice or register work with the U.S. Copyright Office.
  - The following steps can be taken, however, to enhance copyright protection.
    - Copyright protection can be enhanced by attaching the copyright notice, or “copyright bug” © to something.
    - Further protection can be obtained by registering the work with the U.S. Copyright Office.

## Copyright Infringement

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- **Copyright Infringement**
  - Copyright infringement occurs when one work derives from another or is an exact copy or shows substantial similarity to the original work.
  - To prove infringement, a copyright owner is required to show that the alleged infringer had prior access to the copyrighted work and that the work is substantially similar to the owner's.

## Copyright Infringement

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- The illegal downloading of music is an example of copyright infringement.
- Copyright infringement costs the owners of copyrighted material an estimated \$20 billion per year in the U.S. alone.

## Trade Secrets

- **Trade Secrets**
  - A trade secret is any formula, pattern, physical device, idea, process, or other information that provides the owner of the information with a competitive advantage in the marketplace.
  - Trade secrets include marketing plans, product formulas, financial forecasts, employee rosters, logs of sales calls, and similar types of proprietary information.
  - The Federal Economic Espionage Act, passed in 1996, criminalizes the theft of trade secrets.

## What Qualifies for Trade Secret Protection?

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- **Trade Secret Protection**
  - Not all information qualifies for trade secret protection.
  - In general, information that is know to the public or that competitors can discover through legal means doesn't qualify for trade secret protection.
  - Companies protect trade secrets through physical measures and written documents.

## What Qualifies for Trade Secret Protection?

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The strongest case for trade secret protection is information that is characterized by the following.

- Is not known outside the company.
- Is known only inside the company on a “need-to-know” basis.
- Is safeguarded by stringent efforts to keep the information confidential.
- Is valuable and provides the company a competitive advantage
- Was developed at great cost, time, and effort.
- Cannot be easily duplicated, reverse engineered, or discovered.

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## Physical Measures for Protecting Trade Secrets

Restricting access

Labeling documents

Password protecting confidential computer files

Maintaining logbooks for visitors

Maintaining logbooks for access to sensitive material

Maintaining adequate overall security measures

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## Conducting an Intellectual Property Audit

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- Intellectual Property Audit
  - The first step a firm should take to protect its intellectual property is to complete an intellectual property audit.
  - An intellectual property audit is conducted to determine the intellectual property a firm owns.
  - There are two reasons for conducting an intellectual property audit:
    - First, it is prudent for a company to periodically determine whether its intellectual property is being properly protected.
    - Second, it is important for a firm to remain prepared to justify its valuation in the event of a merger or acquisition.

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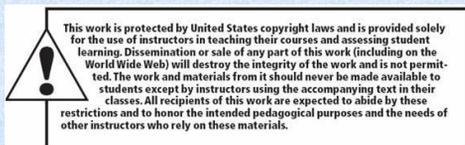
## Conducting an Intellectual Property Audit

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- The Process of Conducting an Intellectual Property Audit
  - The first step is to develop an inventory of a firm’s existing intellectual property. The inventory should include the firm’s present registrations of patents, trademarks, and copyrights.
  - The second step is to identify works in progress to ensure that they are being documented and protected in a systematic, orderly manner.

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