Protecting Your Ideas

It's not easy to think about ideas as property, but for some businesses it's vital. Most of us have had an idea for a new product or service only to dismiss, postpone, or neglect it. Sometimes we later find that others had the same idea, but took it to market before we did. By that time, it is too late for us to take advantage of the idea.

Ideas are relatively easy to come by, but inventions are more difficult. It takes knowledge, time, money, and effort to refine an idea into a workable invention, even on paper. Turning an invention into an innovation—a new product accepted by the marketplace—takes a lot of effort and a little luck. There are substantial barriers in the path of those who pursue innovation. Overcoming them requires careful planning and plenty of input from others.

Hundreds of thousands of inventors and innovators file each year for protection under U.S. patent, trademark, and copyright laws. However, it can be hard to decide which of the three vehicles is most appropriate for the protection of a particular invention. Although a single product or service may require a patent, a trademark, and a copyright, each category protects a distinct aspect of a creative work or expression.

Patents, copyrights, and trademarks, as well as know-how or trade secrets, are often collectively referred to as intellectual property. Many firms have such property without even being aware of it or of the need to take measures to protect it.

Many people's notions of intellectual property are unrealistic. Some believe, for example, that simply having a patent on a product will enable one to succeed in the marketplace. Consequently, they may spend thousands of dollars to obtain the exclusive rights to market something that no one wants or can afford to buy. Others may decide that intellectual property protection is not worth the trouble.

People who may not be interested in protecting their own rights must still take precautions to avoid infringing on the rights of others. This calls for more than the avoidance of copying. Some copying is unavoidable, but one can easily infringe on the rights of others without deliberately imitating specific features of goods or services.

Intellectual Property (Copyrights and Patents) FAQs

What is a copyright?
The owner of a registered copyright enjoys the ability of blocking the unauthorized copying or public performance of a work protected by copyright. Depending on how old a work is, whether or not copyright was renewed, when the work was published (if at all), and whether or not it is a work for hire, the U.S. copyright term for a work may be 28 years, 56 years, the life of the author plus 50 years, 75 years from the publication date, or 100 years from the date of creation. These terms are much longer than the 17-year or 20-year term of a U.S. utility patent.

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What exactly does copyright protect?
Copyright, a form of intellectual property law, protects original works of authorship, including literary, dramatic, musical, and artistic works such as poetry, novels, movies, songs, computer software, and architecture. Copyright does not protect facts, ideas, systems, or methods of operation, although it may protect the way these things are expressed. For more information refer go to the U.S. Copyright Office website (**http://www.copyright.gov**).

What is a patent and how do I know if my invention is eligible for a patent?
A patent for an invention is the grant of a property right to the inventor issued by the U.S. Patent and Trademark Office. Patent holders have the right to exclude others from making, using, or selling the invention described in the patent deed. The intent of patents is to give the developer of a new product time to recover development expenditures and startup costs without having to fight competition. Eligibility patents cannot be obtained for inventions that have been publicly disclosed, are in use, or marketed in the United States for one year prior to the filing of the patent application. Secondly, a thorough patent search, preferably done by a professional, must be conducted to make certain that the applicant's idea hasn't already been patented.

What is a provisional patent?
Provisional applications are like temporary placeholders; they allow inventors to file inexpensively without a formal patent claim, oath, or declaration. Once the application is filed, the applicant has one year to investigate the feasibility, marketability, patentability, and potential license interest of the invention before deciding to file a formal patent application. Meanwhile, the term patent pending can be applied to the invention, and the inventor enjoys a calendar edge on other inventors who may file for the same invention.

Can you give me some information on companies that can help with my invention?
Invention development companies are research companies (both public and private) that help inventors develop, patent, and promote their ideas so they can be commercially licensed or sold. While many of these organizations are legitimate, some are not. Here are seven tips to help you make smart invention development decisions:

- **Learn about the patent process.** When you understand the basics of how to get a patent, you will know when invention marketers are making promises they or the patent system can't deliver.
- **Do your homework.** Check the organization's references, ask for credentials, and then check them.
- **Be realistic.** Not every invention is patentable. Be wary of any developer willing to promote virtually any invention.
- **Know where your money is going.** Ask the organization how your money will be spent. Be on guard against large upfront fees.
- **Protect your rights.** DO NOT disclose your invention to a developer over the phone before first signing a confidentiality agreement. You could forfeit valuable patent rights.
- **Track your invention's progress.** Once you decide to use an invention-development organization, deal directly with the agent or patent attorney who will be handling your patent application.
- **Get professional help.** The patent process can be very complicated, so you will probably need professional help. There are many good patent agents and attorneys that can help you. The U.S.

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Patent and Trademark Office maintains a nationwide register of attorneys and agents who meet our legal, scientific, and technical requirements (**https://oedci.uspto.gov/OEDCI**).

Trademarks FAQs

What is a trademark?
A trademark includes any word, name, symbol, or device or any combination used or intended to be used in commerce to identify and distinguish the goods of one manufacturer or seller from goods manufactured or sold by others and to indicate the source of the goods. In short, a trademark is a brand name.

What is a service mark?
A service mark is any word, name, symbol, or device or any combination used or intended to be used in commerce to identify and distinguish the services of one provider from services provided by others and to indicate the source of the services.

What is a certification mark?
A certification mark is any word, name, symbol, or device or any combination used or intended to be used in commerce with the owner's permission by someone other than its owner to certify regional or other geographic origin, material, mode of manufacture, quality, accuracy, or other characteristics of someone's goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.

What is a collective mark?
A collective mark is a trademark or service mark used or intended to be used in commerce by the members of a cooperative, an association, or other collective group or organization, including a mark which indicates membership in a union, an association, or other organization.

Do I need to register my trademark?
No. However, federal registration has several advantages including notice to the public of the registrant's claim of ownership of the mark, a legal presumption of ownership nationwide, and the exclusive right to use the mark on or in connection with the goods or services set forth in the registration.

What are the benefits of federal trademark registration?

- Constructive notice nationwide of the trademark owner's claim.
- Evidence of ownership of the trademark.
- Jurisdiction of federal courts may be invoked.
- Registration can be used as a basis for obtaining registration in foreign countries.
- Registration may be filed with U.S. Customs Service to prevent importation of infringing foreign goods.

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Do I have to be a U.S. citizen to obtain a federal registration?
No. However, an applicant's citizenship must be set forth in the record. If an applicant is not a citizen of any country, then a statement to that effect is sufficient. If an applicant has dual citizenship, then the applicant must choose which citizenship will be printed in the Official Gazette and on the certificate of registration.

Where can I find trademark information and forms?
You may access the trademark forms, plus information about applying for a trademark at **http://www.uspto.gov/teas/index.html**. The forms may be downloaded, filled out and mailed in, or, by clicking **PrinTEAS**, you can fill out, validate and print trademark and service mark applications via the PTO website. You may contact the Trademark Assistance Center at 800-786-9199 for a hard copy of the Basic Facts brochure. If you live in Northern Virginia, the number is 703-308-9000.

Are there federal regulations governing use of the "TM" or "SM" designations?
No. Use of the symbols "TM" or "SM" (for trademark and service mark, respectively) may, however, be governed by local, state, or foreign laws and the laws of the pertinent jurisdiction must be consulted. These designations usually indicate that a party claims rights in the mark and are often used before a federal registration is issued.

When can I use the registration symbol (the letter R enclosed within a circle-O) with the mark?
The federal registration symbol may be used once the mark is actually registered in the U.S. Patent and Trademark Office. Even though an application is pending, the registration symbol may not be used before the mark has actually become registered. The federal registration symbol should only be used on goods or services that are the subject of the federal trademark registration. Note: Several foreign countries use the letter R enclosed within a circle to indicate that a mark is registered in that country. Use of the symbol by the holder of a foreign registration may be proper.

How do I find out whether a mark is already registered?
In order to determine whether any person or company is using a particular trademark, a trademark search can be conducted. Searches can be performed at 2900 Crystal Drive, 2nd Floor, Arlington, Virginia. Also, word marks may be searched at over 70 Patent and Trademark Depository Libraries located throughout the country. For a listing of these locations, go to **http://www.uspto.gov/products/library/ptdl/locations/index.jsp**.

Is a federal registration valid outside the United States?
No. Certain countries, however, do recognize a United States registration as a basis for registering the mark in those countries. Many countries maintain a register of trademarks. The laws of each country regarding registration must be consulted.

Should I search the PTO records before filing an application?
Yes. The USPTO Trademark Database is available for searching on the World Wide Web by anyone who has Internet access at (omit www.) **http://tess2.uspto.gov/bin/gate.exe?f=searchss&state=4010:a53mer.1.1**

Taken from **http://www.sba.gov/smallbusinessplanner/start/protectyourideas/index.html**