

	PATENTS	TRADEMARKS	COPYRIGHTS	TRADE SECRETS
Description of subject matter protected	Any new and useful process, machine, manufacture, business method, or composition of matter, or new and useful improvement thereof; new variety of plant; new, original, and ornamental design for an article of manufacture.	Mark by which the goods or services ("service mark") of one party may be distinguished from the goods or services of others.	Original works of authorship fixed in a tangible medium. Works may be literary, musical, dramatic, pantomime, choreographic, audiovisual, audio, architectural, software	Any secret formula, pattern, device, or compilation of information which is used in business, and which give owner an opportunity to obtain an advantage over competitors.
Ownership of the protected right	Inventor(s), unless assigned.	First user of the mark who establishes the association of the mark with the goods.	Author, who may be an employer or fictitious party, unless under "work for hire" agreement.	Developer of the trade secret, who may be an employee under agreement.
Protection by federal law or state law	Total federal preemption (federal protection supercedes state protection)	No federal preemption. Federal registration precludes later-acquired common law and state rights.	Total federal preemption for works which fall within the scope of the federal statute.	No federal preemption.
How protection obtained	By application submitted to and approved by the United States Patent Office. Provisional application may be filed to reserve, but not confer, protection. Must file before legal "novelty" is lost	Common law protection obtained through use of the mark. Federal registration requires application to and approval by United States Trademark Office. State registration available through application of the Secretary of State's office.	Copyright attached as soon as the work is "fixed in a tangible medium." Marking not necessary but recommended. Federal registration may be obtained upon application to the Copyright Office.	Common law basis, but consider state trade secret statutes and Restatement of Torts (1939) Section 757. Protection arises from lack of disclosure from the time the secret is developed.
Notice of protection to others	Mark articles with "Patent Pending" or "Patent Applied For", meaning an application for patent has been filed in the U.S. Marking with "Patent (number)" (e.g., "Patent No. 6,333,666") means the article, or portion thereof, or process for making is covered by that patent. Falsely marking is sanctionable.	"TM," "SM" gives notice that the mark is being used as a trademark or servicemark; mark need not be registered. "®" or "Reg. U.S. Pat. & Tm. Off." or "Registered in U.S. Patent and Trademark Office" means mark is federally registered	Copyright notice example is "© 2003 Terry Morris", which means that the work was published in 2003, and Terry Morris claims copyright in the work. No registration needed to use this.	Useful but not required; notice may be implied. Notice which discloses details of secret can destroy secret.

Nature of the protection	Owner is granted the right to exclude others from making, using, offering to sell, selling, or importing the patented invention as defined by the patent claims as well as a varying range of equivalents. Right to practice the claim invention by the patent owner is not conferred or guaranteed.	Protection against other marks which are "likely to cause confusion." Proper determination must take into account similarity in marks and goods, trade channels, and strength of mark. Generic marks are not protectable; descriptive marks must acquire distinctiveness. Should be used as an adjective, not a noun.	Expression or form of the work are protectable; idea and content of the work are not. Intrinsic utilitarian functions are not protectable. Expression may not be protectable if it is the only way to express the idea. Owner has exclusive right to: Reproduce, prepare derivatives of, distribute copies of, publicly perform, and display the work	Protection against wrongful appropriation and use of the subject matter by another. No protection against independent development or reverse engineering.
Length of protection available	Utility and Plant patents, filed before June 8, 1995, the greater of 17 years from issue or 20 years from filing; filed on or after June 8, 1995: 20 years from the filing date; utility patent extendible for delays in FDA approval of certain inventions; Design patent, 14 years. No Renewals, Maintenance fees required	For as long as qualified use continues. Federal registration granted for 10 years with 10 year renewals available.	Works created after 1/1/78: life of author plus 50 years. Where author is a corporation: shorter of 75 years from 1st publication and 100 years from creation. Copyrighted pre-1978 works: 75 years (with renewal). Non-registered, non-published pre-1978 works: life of the author plus 50 years	Potentially unlimited duration but must be able to demonstrate intent and diligent effort to keep secret. Public disclosure destroys a trade secret. License of trade secrets should provide control over disclosure.
Transfer of right	Assignable by instrument in writing; recordation within 3 months from issue protects against later purchasers and mortgagees. Rights can also be licensed. Duty to assign may be in employment contract	Assignable by instrument in writing; recordation within 3 months protects against later purchasers and mortgagees. Assignment must include goodwill associated with the mark. Can be licensed provided the owner exercises control over the quality of the goods or services provided under the mark	Copyright or any portion thereof may be assigned or licensed. Duty to assign applies only to works made for hire. Licensor or Assignor may terminate license or assignment generally from 35 to 40 years from date of grant.	Can be licensed or sold as business know-how. Appropriate control of disclosure to others required as a public disclosure would destroy the trade secret.
How protection is enforced	Federal cause of action against infringer of patent without permission of an owner of the patent or against anyone who contributes to or induces infringement by another.	Federal cause of action, if federally registered; otherwise common law state cause of action. Can be based on common law unfair competition; often combined with other forms of unfair competition.	Federal cause of action, if federally registered, against one who reproduces, prepares derivatives of, distributes copies of, publicly performs, or displays the work without the permission. There is an exception for fair use.	State cause of action for wrongful appropriation, use or disclosure of trade secrets. Federal cause of action under limited circumstance.

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