

Section 1

“US Patents: Definitions & Patentability”

Chapter 1

What is a Patent?

A patent is the core legal protection for inventors and their inventions. The purpose of this protection is to provide an inventor with the necessary time and space to make, use and sell his or her invention without the threat of competition. In essence, it is the right to exclude others, for a specified time period, from simultaneously building, using or selling that particular invention in the market place.

In exchange, the government—specifically the United States Patent and Trademark Office or (USPTO), requires that the inventor, using written descriptions, or through pictures, diagrams, figures, and drawings, disclose in intricate detail the precise way to make and use the invention he or she wishes to patent.

The patent office then tests the invention using the disclosed instructions and information. They recruit a hypothetical Person of Ordinary Skill in the Art POSTIA for short

To illustrate, let's say there is an invention currently under review for automobile motors and engines. The chosen POSITA would be

an average automotive engineer. For the invention to qualify, the hired engineer would need to be able to pick up that patent application, read it, and know exactly how to go build and use it.

As the owner of a US patent, one can exclude others from copying, recreating, or offering to sell their invention in the United States. It's almost as though one were granted a temporary monopoly. Not only is the inventor guaranteed to be the only one legally allowed to use that particular invention—whether publicly or privately—they are also the only one that is able to sell the invention in the United States.

Other Types of Intellectual Property

While the scope of this book focuses on the patent, there are actually four (4) main types of Intellectual Property (IP) protection.

1. Patent
2. Trademark
3. Copyright
4. Trade Secret

To better understand the patent, we will first need to understand the difference between it and the three other types of IP protection.

Trademark

A trademark is a designation of a good, or service, used to notify a customer, or potential customer, of precisely what good, or service they can expect to receive when they see that mark associated with its sale or advertisement.

A good example of a famous trademark is the Nike Swoosh. If that mark, the swoosh, appears on an article or clothing or a pair of shoes, for example, that product is immediately recognized as part of the Nike brand.

Trademarks can be powerful symbols in the marketplace, as it both instantly represents the manufacturer (and its reputation) as well as informs the consumer. Therefore, the very essence of trademark law is to help prevent confusion in the market place. If someone were to open up a Steakhouse and use two golden arches as part of its logo or on any advertising, the public may erroneously construe that this restaurant might be affiliated with McDonald's Restaurants.

Not that the owners of this Steakhouse necessarily intended to steal McDonald's already built up customer traction, but that it could. If a consumer cannot trust that a logo or mark is legally protected, the less the value of the mark.

Copyright

The tenets of copyright law are designed to protect creative works. “Creative work” is a broad category indeed. This is the artist’s domain. Paintings, drawings, sketches, sculptures, books, be they fiction or nonfiction, and music, are all basic examples of IP that can be protected by a copyright.

To obtain a copyright, however, the work has to be “fixed in a tangible means.” In short, it has to be published somehow. If the work is virtual, it could be “fixed” in an MP3 file. It could be a wave file, or it could be more traditional, such as a film reel, or a VHS tape, cassette, CD, book, etc. This recording or publication and its concomitant rights in the marketplace are then protected by the copyright designation.

Trade Secret

Trade secret law, though enforced under state, rather than federal law, protects any proprietary methods or formulae of a company or an individual that have immediate, economic value to competitors.

For instance, a well-known trade secret is the Coca-Cola recipe. The formula for the popular beverage, how to get its precise flavor, the chemicals used, the mixture, the heats, the treatments, etc. are all protected under a trade secret designation. Even the delivery and packaging can be considered part of a trade secret. Value brands, such as RC or Safeway would love to know Coke’s formula. This an

important protection, preventing companies from potentially stealing another's method and undercutting or destroying the value of the company that it was stolen from.