

Introduction to Protection of Ideas

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Products of the mind touch almost all areas of commerce in our industrial society. They are the single most important source of innovation and progress and range from useful and break-through chemical compounds to publishable novels and poems to attention-getting catchwords and phrases identifying commercial items. These products of the mind come into tangible form through many channels, including writing on paper or in books, blueprints, films, advertisements, labels and new products.

If individuals have no way to protect their ideas, they are likely to hide them from others. If ideas are kept silent, or simply undeveloped because of lack of financial or other incentives, society is deprived of the benefits these ideas may generate. For example, if an idea for a solution to the world's energy crisis or a cheap and sure cure for cancer is never disclosed, the rest of the world may plod along, spending billions of dollars in search of similar answers to the same problems.

Means of protecting ideas

Four legal means protect an individual's ideas and an individual's right to benefit from those ideas. They are patents, copyrights, trade secrets and trademarks and other marks. Each of these legal protections are the subject of a separate guide sheet in this series.

Patents

The U.S. Patent and Trademark Office, a branch of the Department of Commerce, is responsible for examining and issuing patent registration. Inventors can file disclosures of inventions for patenting through this office. Patent protection falls into three distinct categories: utility, design and plant.

Copyrights

The Copyright Office of the Library of Congress administers the registration of copyrights, which protect an author's right to original creative works.

Trade secrets

Trade secrets are not protected through registration with a governmental agency. They are protected, however, through federal, state and local laws enforced by the courts.

Trademarks and other marks

Trademarks and other marks are registered at both state and federal levels with the secretary of state and the U.S. Patent and Trademark Office. Patents and copyrights, however, are controlled solely by the federal government.

Comparison of means of protecting ideas

Table 1 compares the various means of protecting ideas. Any innovator or author should be familiar with these options so an intelligent decision can be made on the proper protection needed for each idea.

Different options offer very different kinds of protection. For example, the Coca-Cola Company has elected to protect the ingredients, mixing and brewing of its principal product, Coca-Cola, as trade secrets. This decision does not prevent another company that claims to have discovered these secrets through legitimate channels from marketing or patenting a similar product. The trade secret approach, however, protects the Coca-Cola Company's information for as long as it remains secret.

Had the company patented these formulas, the knowledge would have been dedicated to the public 17 years after the patent was issued.

Many ideas that are protected as trade secrets cannot be patented. On the other hand, an item that is patentable can theoretically be protected as a trade secret. If the idea can be easily discovered through reverse engineering, however, a patent is the only practical choice for protection.

A trademark is not patentable, but some things can be both patented and registered as a trademark. For example, the particular configuration of the Coke bottle may be registered as a trademark while the artistic and ornamental appearance of the bottle may be protected by a design patent.

These two types of protection are different. A Coke bottle design patent would guard against the production of bottles of the same configuration, regardless how the bottles were used and if any product confusion resulted. A registered trademark of the Coke bottle would guard against the use of the same or similar bottle configuration only in connection with a product that could be confused with Coke.

A copyright prevents others from using an author's work. A trademark generally cannot be copyrighted. But a label which includes a trademark can be copyrighted if it presents original printed matter. A brand name, however, cannot be protected by copyright. For labels, trademark protection is generally better than copyright protection. The enforcement of copyright statutes is more limiting than enforcement under the Trademark Act. Any minor change in a label may be enough to take it out of copyright, even though the copied label may carry the same message as the one that is copyrighted.

Table 1. Comparison of means of protecting ideas.

Category/ Means	Utility patents	Design patents	Plant patents	Trademarks	Copyrights	Trade secrets
Idea or subject matter	New and useful processes, machines, articles of manufacture and compositions of matter.	New ornamental designs for articles of manufacture.	Plants asexually reproduced other than tuber- propagated or found in an uncultured state.	Words, names, symbols or other devices that serve to distinguish goods or services.	Writings, music, works of art and the like that have been reduced to a tangible medium of expression.	Almost anything that is secret, substantial valuable.
Sources of protection	U.S. Patent and Trademark Office	U.S. Patent and Trademark Office	U.S. Patent and Trademark Office	Registration with the U.S. Patent and Trademark	Federal law protects only a tangible	Common law protection through

	patent.	patent.	patent.	Office. Registration expression. with the Enforceable secretary of state. Common law protection through courts office. as long as proper use continues.	medium of	courts.
Terms of protection	17 years from patent date.	14 years from patent date.	17 years from patent date.	10 years from registration with federal office; renewable for additional 10-year terms.	Life of author, plus 50 years for works created after Jan. 1, 1978.	For as long as it remains a secret.
Tests for infringement	Making, using or selling invention described in patent claim.	Making, using or selling design shown in patent claim.	Making, using or selling plant described in patent claim.	Likelihood of confusion, mistake or deception.	Copying of protected subject matter.	Taking of trade secret by breach of trust or violation of a confidential relationship.

Before protecting an idea, an individual should consider all types of protection available and consult an attorney. For more information contact:

Patent and Trademark Office, Department of Commerce Washington, D.C. 20231, phone (703) 308-4357.

Copyright Office Library of Congress, Washington, D.C. 20559, phone (202) 707-9100.

Secretary of State, 209 State Capitol, Jefferson City, MO 65102, phone (573) 751-4936.

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