



# Protecting a Great Idea

By Tamara H. Bennett, Esq.

Do great minds really think alike or is it simply that more than one person can conceive the same idea? A philosopher I am not, so let's turn to how the law protects ideas.

The first place to start is by looking at what areas of law do not protect ideas. Copyright law does not protect ideas, but rather the expression of the idea. If you conceive a great new book story line, but do not write the story line out, it is not protected by copyright law.

Trademark law does not protect ideas. You can have an idea for the name of a new clothing line, but until you either

- (a) file an intent to use federal trademark application, or
- (b) use the trademark in conjunction with the clothing line,

you do not gain any trademark rights.

Three areas of the law that can protect ideas are patent law, trade secret law and contract law.

The patent laws specify the general fields of subject matter that can be patented and the conditions under which a patent may be obtained. Patent protection is under federal law, not state law. In the language of the statute, any person who "invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a

patent," subject to the conditions and requirements of the law.

But, you as the "inventor" have to flesh out your idea into an acceptable technical drawing of your invention as well as outline the purposes for your invention. A patent cannot be obtained upon a mere idea or suggestion. The patent is granted upon the new machine, manufacture, etc., as has been said, and not upon the idea or suggestion of the new machine. A complete description of the actual machine or other subject matter for which a patent is sought is required.

If you keep a process or perhaps a recipe or formula secret, and that secret gives you a competitive edge in your business, it is a trade secret. The key to protecting a trade secret is simple: keep it secret. A famous trade secret is the Coca Cola formula. Trade secrets can also include customer identities and preferences, vendors, product pricing, marketing strategies, company finances, manufacturing processes and other competitively valuable information.

Contracts, if properly drafted and utilized can provide protection for an idea. Non-disclosure/confidentiality/non-use agreements can be effective tools for protecting your disclosure of confidential "ideas" to third parties who may be interested in developing or purchasing your "idea." Please be aware that if a third party signs an

agreement, but still discloses or uses your idea, you have the burden of enforcing the agreement, which can often be difficult.

Before you tell your next-door-neighbor, or the manufacturing plant downtown your latest, greatest idea, make sure you have investigated what it takes to protect your interests. In some situations, one or more of the methods discussed can be used. Also, not all ideas are protectable. Don't be surprised if you do not tell anyone your next invention and suddenly you see it on a home shopping network.

Remember, it is possible for great minds to think alike!

## Closed for Holidays

The DCBA office is closed on

December 24, 2005  
December 26, 2005  
January 2, 2006

## What's Inside

<i>From the Civil Side</i> .....	2
<i>Around the County</i> .....	3
<i>CLE</i> .....	4
<i>Sponsors</i> .....	6
<i>From the Civil Side (cont.)</i> .....	7
<i>Announcements</i> .....	8