

Intellectual Property A Go-Go



By Eric Sinrod,

As life moves more and more online, companies and individualize realize that just like on terra firma, they also need to protect their intellectual property and confidential materials in cyberspace. It is important, therefore, to understand the different types of protection that are available. A brief crash IP course is provided below.

Patents issued by the U.S. Patent and Trademark Office (PTO) essentially provide a government approved monopoly for inventions for certain period of years. The grant of patent rights excludes others from exploiting patented inventions during these time periods. In essence, inventors are rewarded for their specific descriptions as to how to create and implement their inventions such that others may take advantage of the inventions after the expiration of the operative patent time periods.

To obtain a patent, the subject invention must be new, nonobvious and useful - it must have utility and it must be novel such that the invention cannot have been anticipated in "prior art." In the last decade patents have evolved such that the PTO has issued ""business method patents." However, in its *KSR International v. Co. Teleflex, Inc.* decision of last year, the United States Supreme Court appeared to cut back on the scope of potential patentable matters by holding that a patent must provide an improvement that is more than the predictable uses of prior art elements according to their established functions.

Trade secrets can include a broad array of commercial or technical information that is utilized in the course of a company's business. The key is that the information must be treated as a business secret and the information should provide a competitive business advantage. There is no fixed time limit applicable to trade secrets.

So long as trade secrets are kept confidential, protection can remain in force. Importantly, competitors cannot be precluded from taking advantage of what otherwise would constitute trade secrets, so long as the competitors independently developed or discovered the information.

Copyrights pertain to original literary, artistic or other creative works and they normally are protected for the period of the creator's life plus seventy years. Different than patents, copyrights protect expression - not actual ideas, processes or procedures.

Copyright protection attaches at the point when an original work is fixed in a tangible medium of expression; this can happen when a work is written, recorded, photographed, etc. Registration of copyrights can lead to enhanced remedies in the event of violation of those copyrights.

Trademarks are words, phrases, symbols, designs and alphanumeric combinations that relate to and indicate the commercial source of products and services. Trademarks, if properly policed and protected, do not expire.

Trademark rights can arise upon actual use or upon registration with the PTO. Trademark rights can lapse if not actively used for certain periods of time, depending on the jurisdiction. Registration of trademarks, as opposed only to use, potentially lead to greater scope of remedies.

The creation of trademarks deserves care and attention, as they ultimately will cause the public to associate the related goods and services with their source and their quality.

The foregoing is a very abbreviated overview of different types of intellectual property. It is important that companies and individuals retain skilled counsel in the development and protection of their intellectual property portfolios. The failure to develop and protect IP can be tantamount to giving away the crown jewels.

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