

Trade Secrets Compared with Patent Law

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Article provided by Timothy B. McCormack, Seattle Copyright Attorney working in area of copyright litigation, procurement and development. This article is a continuation in the series of Software Copyright articles.

PATENT v. TRADE SECRET

	<u>PATENT</u>	<u>TRADE SECRET</u>
SUBJECT MATTER	specific and limited by statute (machines, articles of manufacture, processes, and compositions of matter)	applies to broad range of intellectual property and business information
REQUIREMENTS	must be useful must be novel must not be obvious	must be potentially useful must not be generally known need not be novel or obvious
DEFINITION	defined strictly by language of the “claims”	often difficult to define with equal precision, but can be as broad as the “equities” of a particular case require
DISCLOSURE	required	any disclosure must be limited and controlled

PROTECTION	defined by narrow but specific statute monopoly granted	varies depending upon circumstances and court; based on many theories protection only against “unfair” users; none against those who independently discover or reverse-engineer
DURATION	20 years from filing	potentially unlimited
EXPENSE	procuring policing infringement	protecting from unauthorized disclosure or use
RISK	invalidity	independent discovery or inadvertent disclosure difficult to prove theft
MARKETABILITY	licensing easier	licensing more difficult, and requires policing of licensee security measures

