



PATENTS, TRADEMARKS, AND COPYRIGHT

Research Network Tip Sheet

The Research Network regularly does research on the various types of intellectual property. While we have fee-based resources that we can use for research, these free websites can help you gather information as well.

Intellectual property (IP) refers to creations of the mind, and IP protections include copyrights, trademarks, patents, and servicemarks. For your business, the first step is to determine if you actually need IP protection, and which kind. If you do, then you must determine if someone else already has a copyright for the same work, a patent for the same invention, or a trademark for the same image. If not, then you must make the decision to pursue protection by applying to the United States Patent and Trademark Office (USPTO) or the Copyright Office of the Library of Congress.

Definitions

Copyright - Copyright is a form of protection provided to the authors of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works (such as software), both published and unpublished.

Trademarks & Servicemarks - A trademark is a word, name, symbol, or device that is used in trade with goods to indicate the source of the goods and to distinguish them from the goods of others. A servicemark is the same as a trademark except that it identifies and distinguishes the source of a service rather than a product.

Patents - Patents are awarded to inventions judged to be novel, non-obvious, and usable in some kind of industry. A patent for an invention is the grant of a property right to the inventor, issued by the USPTO. Generally, the term of a new patent is 20 years. There are three types of patents:

1. **Utility patents** may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof.
2. **Design patents** may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture.
3. **Plant patents** may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant.

Patent Eligibility Law (35 U.S.C. 101) - Whoever 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 therefor, subject to the conditions and requirements of this title.

Steps to Filing a Patent

1. Keep careful records of the development of your invention
2. Make sure that your invention is patentable
3. Assess the commercial potential of your invention
4. Do a thorough patent search
5. Prepare and file an Application with the USPTO

Sources of additional information

U.S. Patent & Trademark Office (<http://www.uspto.gov/>) – Their website provides separate databases that allow for free searching of a) existing and pending patents and b) active and inactive U.S. trademarks.

Google Patents (www.google.com/patents) – This tool also allows for free patent searching, and results can be limited by date, status and type. Search results offer a better view of a patent's accompanying drawings. Also, results include current applications for patents as well.

U.S. Copyright Office (<http://www.copyright.gov/>) – Basic copyright information as well as a search function to view copyright records.

Electronic Frontier Foundation (<https://www.eff.org/issues/intellectual-property>) - Information on copyright and IP law. Site includes case law summaries, white papers, and news articles.

World Intellectual Property Organization (<http://patentscope.wipo.int/>) - PATENTSCOPE searches millions of international and national patent documents and applications.

Intellectual Property Infringement and Other Unfair Acts (http://www.usitc.gov/intellectual_property/) - U.S. International Trade Commission claims regarding IP rights, including allegations of patent infringement and trademark infringement by imported goods.

StopFakes.gov - A one-stop shop for U.S. government tools and resources on IP rights.

Special Cases

Recipes can be patentable subject matter and protectable either by defining a “new and useful process” or as a “composition of matter”. For example, the steps to make a secret sauce are a process, while the resulting sauce is a composition of matter. Both can be patented if the other patentability requirements are satisfied.

Software (computer code) is not patentable. **However**, an invention that **uses** software to produce a useful result is patentable. So “software patents” are really software-based inventions. There is a lot of debate on what software is or is not patentable or even whether software should be patentable ever.

Tips

- It is expensive to obtain and maintain a patent. It can cost up to \$1500 just to file a patent application, and that is with no legal assistance.
- Even if you are unable to find an existing patent for an invention you have created, it does not mean that there isn't one out there. USPTO examiners review other documents besides existing patents (including foreign patents, patents still in the application phase, and databases for articles that may have mentioned the invention being examined). Until you have actually received confirmation from the USPTO that you have been granted your patent, there is no guarantee.
- You can either file a full-blown regular patent application (RPA) or a **provisional patent application** (PPA). A PPA is much less expensive and applying for a PPA requires less documentation and detail, but a PPA is not an actual application for the patent itself. You must file a RPA within a year of filing the PPA for the patent filing date to stay the same.
- Legal assistance from an intellectual property lawyer can provide invaluable assistance and experience with the filing process. It will be an added expense that is technically not required, but highly recommended.