IP – THE CREATOR'S TOOLBOX

BY DAVE S. CHRISTENSEN

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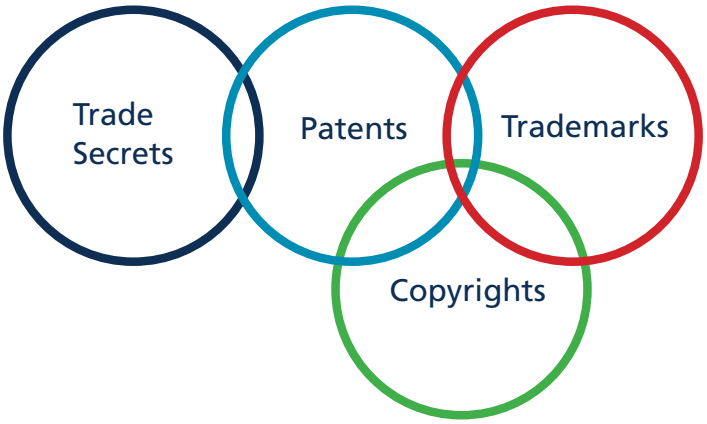
An Introduction to Intellectual Property

Over the years I've discovered there are a number of common questions that new inventors and business owners have. This is the first in a series of articles covering intellectual property (IP) that will give you a basic understanding of how the various systems operate and interrelate. Hopefully this knowledge will prepare you for meeting with an attorney and obtaining the best result to protect your interests. These articles are written from the standpoint of a U.S. practitioner and client, but we will touch on aspects of IP (particularly the patent processes) in other countries.

There are four basic types of IP: patents; trademarks; copyrights; and trade secrets. You may also sometimes hear of some more specialized forms of IP called industrial design patents or trade dress, which are more specialized tools that protect a look and feel of a product. In some countries there are still other forms of IP, known as a utility models or petty patents. The word "tool" is a good description of what IP is for inventors, authors, artists and businesses. These tools are provided by statute and the Constitution to protect the work of creators, whether it be a book, a painting, a car engine, a product name or advertising. Most governments in the world recognize that there is a benefit to society if creators are allowed to capitalize on new ideas. To accomplish this, the creator is granted a limited monopoly, usually for a limited period of time. This monopoly allows them to prevent others from duplicating the creator's work.



One thing that confuses many people is that these IP tools have overlapping coverage. In other words, multiple forms of IP may protect a given product. For example, someone who develops a better mouse trap may have a utility patent that protects the new functionality: a trademark on the name of the product; a copyright on the software code (if it is computer-controlled); and a trade secret on the process for making the spring. This overlapping coverage is important because copycats will try to get around the protections of each individual type of IP. Therefore, a broad, well-reasoned strategy makes use of all the protections available.

The four types of IP may be summarized as follows:

- Trademarks protect the source of goods. In other words, a trademark protects the branding of a product. When a customer buys a soft drink labeled "Coke," they want to know that it is made by the Coca-Cola Company. Trademarks allow the brand owner to prevent cheap counterfeit products from taking advantage of the goodwill generated by the brand owner.
- Patents come in two forms: utility patents and design patents. Utility patents protect the function of an invention, while design patents protect the look of the product. Utility patents are what people typically think of when the word patent is mentioned. Utility patents protect functional inventions. When Thomas Edison invented the light bulb, he received a utility patent on a device that generates light from electricity. Design patents (or "industrial designs" as they are known in other parts of the world) protect the ornamental features of a product of manufacture.
- Copyrights protect works of authorship and artistic expression. That expression can be a book, painting, sculpture, music, or computer code. Copyright gives the author or artist a bundle of rights that allow them to extract value by giving them lots of options for licensing their work. For example, a musician may grant a license to the distribution of a song to their music company but retain the performance rights.
- Trade secrets protect commercially valuable information that is not known by other people. For example, trade secrets may include processes, devices, data, customer lists, pricing strategies, computer code, chemical formulas, manufacturing steps, and the like.

Each of the forms of IP has strengths and weaknesses. One goal for this series is to provide basic objective information on the subject. Law is referred to as a "practice" because small changes in the facts of the situation may drastically change the best course of action. Some of the things mentioned in these articles may be controversial to other practitioners depending on their level of experience and the types of situations (and the ultimate outcomes) that they have encountered. In other words, these articles are not intended to replace working with an attorney.

It's my hope that over the course of reading these articles you will gain an appreciation for when different tools are used to protect your work and when they can be used in combination to maximize the protection of your hard work and investment. In the next article, we will start working through the relatively complicated process of patenting an invention.

Dave S. Christensen is a Partner and Co-Chair of the Mechanical Engineering Department at Cantor Colburn LLP
e: dchristensen@cantorcolburn.com