ENT 2112 Homework 12

Gus Lipkin

> All uncited quotes are from the textbook

1. What distinguishes intellectual property from other types of property, such as land, buildings, and inventory?
    - "**Intellectual property** is any product of human intellect that is intangible but has value in the marketplace. It is called “intellectual” property because it is the product of human imagination, creativity, and inventiveness.2 Traditionally, businesses have thought of their physical assets such as land, buildings, and equipment as their most important assets. Increasingly, however, a company’s intellectual assets have become the most valuable."
2. What are the two primary rules for determining whether intellectual property protection should be pursued for a particular intellectual asset?
    - "There are two primary rules of thumb for deciding if intellectual property protection should be pursued for a particular intellectual asset. First, a firm should determine if the intellectual property in question is directly related to its competitive advantage. For example, Amazon.com has a business method patent on its “one-click” ordering system, which is a nice feature of its website and is arguably directly related to its competitive advantage. Similarly, when PatientsLikeMe launched a social networking platform for people with serious diseases, it would have been foolish for the company not to trademark the PatientsLikeMe name. In contrast, if a business develops a product or business method or produces printed material that isn’t directly related to its competitive advantage, intellectual property protection may not be warranted.

      The second primary criterion for deciding if intellectual property protection should be pursued is to determine whether an item has value in the market- place. A patent, for example, is not intrinsically valuable—it is only valuable if the underlying invention has value. A common mistake that young companies make is to invent a product, spend a considerable amount of money to patent it, and find that the market for the product does not exist or that the existing market is too small to be worthy of pursuit. As discussed in Chapter 3, busi- ness ideas should be properly tested before a considerable amount of money is spent developing and legally protecting them. Owning the exclusive right to something no one wants is of little value. Similarly, if a company develops a logo for a special event, it is probably a waste of money to register it with the USPTO if there is a good chance the logo will not be used again."
3. What are the four key forms of intellectual property? What are the common mistakes that firms make with regard to intellectual property?
    1. "A **patent** is a grant from the federal government conferring the rights to exclude others

from making, selling, or using an invention for the term of the patent."
    2. "A **trademark** is any word, name, symbol, or device used to identify the source or origin of products or services and to distinguish those products or services from others."
    3. "A **copyright** is a form of intellectual property protection that grants to the owner of a work of authorship the legal right to determine how the work is used and to obtain the economic benefits from the work."
    4. "A **trade secret** is any formula, pattern, physical device, idea, process, or other information that provides the owner of the information with a competitive advantage in the marketplace."?
    - Companies will sometimes choose the wrong kind of protection and then lose their IP.
4. What are the major differences between utility patents and design patents? Provide an example of each.
    - "**Utility patents** are the most common type of patent and cover what we generally think of as new inventions. [...] The term of a utility patent is 20 years from the date of the initial application. After 20 years, the patent expires, and the invention falls into the public domain, which means that anyone can produce and sell the invention without paying the prior patent holder. [...] Consider the pharmaceutical industry. Assume a drug produced by a large firm such as Pfizer Inc. is prescribed for you and that when seeking to fill the prescription, your pharmacist tells you there is no generic equivalent available. The lack of a generic equivalent typically means that a patent owned by Pfizer protects the drug and that the 20-year term of the patent has not expired. If the pharmacist tells you there is a generic version of the drug available, that typically means the 20-year patent has expired and other companies are now making a drug chemically identical to Pfizer's. The price of the generic version of the drug is generally lower because the manufacturer of the generic version of the drug is not trying to recover the costs Pfizer (in this case) incurred to develop the product (the drug) in question."
    - "**Design patents** are the second most common type of patent and cover the invention of new, original, and ornamental designs for manufactured products. [...] A design patent is good for 14 years from the grant date. Whereas a utility patent protects the way an invention is used and works, a design patent protects the way it looks. As a result, if an entrepreneur invented a new version of the computer mouse, it would be prudent to apply for a utility patent to cover the way the mouse works and for a design pat- ent to protect the way the mouse looks. Although all computer mice perform essentially the same function, they can be ornamentally designed in an infinite number of ways. As long as each new design is considered by the USPTO to be novel and nonobvious, it is eligible for design patent protection. This is not a trivial issue in that product design is increasingly becoming an important source of competitive advantage for many firms producing many different types of products."
5. What is a business method patent? Provide an example of a business method patent. How can having such a patent provide a firm a competitive advantage in the marketplace?
    - "A **business method pat- ent** is a patent that protects an invention that is, or facilitates, a method of doing business. Patents for these purposes were not allowed until 1998, when a federal circuit court issued an opinion allowing a patent for a busi- ness method, holding

that business methods, mathematical algorithms, and software are patentable as long as they produce useful, tangible, and con- crete results. This ruling opened a “Pandora’s box” and has caused many firms to scramble to try to patent their business methods. Since 1998, the most notable business method patents awarded have been Amazon.com’s one-click ordering system, Priceline.com’s “name-your-price” business model, and Netflix’s method for allowing customers to set up a rental list of movies they want mailed to them (a delivery method that Netflix customers use infre- quently today) or that they wish to download for streaming purposes. Activi- ties associated with a business method patent can be an important source of competitive advantage for a firm."

6. Give an example of a design patent. How can having a design patent provide a firm a competitive advantage in the marketplace?
    - See question 4.
7. What is a patent infringement? When does this take place? Identify a few exclusions from trademark protection.
    - "**Patent infringement** takes place when one party engages in the unauthorized use of another party’s patent. [...] Trademark infringement is the unauthorized use of a trademark or service mark in a manner that is likely to cause confusion.22 The key is whether the infringement causes confusion. Think about Billy Goat Ice Cream, the com- pany described in the “Opening Profile” of Chapter 7. No one company can trademark the words “Billy Goat” in that a Billy Goat is a male goat. So over time, a number of companies may have the words Billy Goat in their name and all trademark their respective names. A trademark dispute arises when a company that has already trademarked a name that includes the words Billy Goat thinks that another company’s trademark that includes the words Billy Goat could be confused with its company. In this instance, the party that feels its trademark is being infringed on typically sends a cease-and-desist letter to the other party asking that they quit using the mark. So, if a year from now someone tried to trademark the name Billy Goat Yogurt, Billy Goat Ice Cream could object, claiming that a consumer could easily confuse Billy Goat Ice Cream and Billy Goat Yogurt. In contrast, if someone tried to trademark the name Billy Goat Blue Jeans, Billy Goat Ice Cream probably wouldn’t object. It’s unlikely a consumer would confuse Billy Goat Ice Cream with Billy Goat Blue Jeans."
8. What are the six steps in applying for a patent?
    1. "Make sure the invention is practical"
    2. "Determine the type of application to file"
    3. "Hire a patent attorney"
    4. "Obtain decision from US Patent and Trademark Office"
    5. "File a patent application"
    6. "Conduct a patent search"
9. What is a trademark? How can trademarks help a firm establish a competitive advantage in the marketplace?
    - See question 3.
10. What are the three steps involved in selecting and registering a trademark?
    1. "Select an appropriate mark"

2. "Perform a trademark search"
3. "Create rights in the trademark"

11. What are the four types of trademarks available to an entrepreneur? What are the items that can be trademarked by firms?
    1. "**Service marks** are similar to ordinary trademarks, but they are used to identify the services or intangible activities of a business rather than a busi- ness' physical product. Service marks include *The Princeton Review* for test prep services, eBay for online auctions, and Verizon for smartphone service."
    2. "**Collective marks** are trademarks or service marks used by the members of a cooperative, association, or other collective group, including marks indicating membership in a union or a similar organization. The marks belonging to the American Bar Association, The International Franchise Association, and the Collegiate Entrepreneurs' Organization are examples of collective marks."
    3. "Finally, **certification marks** are marks, words, names, symbols, or devices used by a person other than its owner to certify a particular quality about a product or service. The most familiar certification mark is the UL mark, which certifies that a product meets the safety standards established by Underwriters Laboratories. Other examples are the Good Housekeeping Seal of Approval, Stilton Cheese (a product from the Stilton region in Eng- land), and 100 percent Napa Valley (from grapes grown in the Napa Valley of northern California)."
12. What is a copyright?
    - See question 3.
13. In the context of copyright law, what is meant by the term *derivative work*?
    - "**Derivative works**, which are works that are new renditions of something that is already copyrighted, are also copyright- able."
14. What are the categories protected under copyright laws?
    - Literary works
    - Musical compositions
    - Computer software
    - Dramatic works
    - Pantomimes and choreographic works
    - Pictorial, graphic, and sculptural works
15. What is a copyright bug? Where would one expect to find the bug, and how is it used?
    - "First, copyright protection can be enhanced for anything written by attach- ing the copyright notice, or "**copyright bug**" as it is sometimes called. The bug—a "c" inside a circle—typically appears in the following form: © [first year of publication] [author or copyright owner]. Thus, the notice at the bottom of a magazine ad for Dell Inc.'s computers in 2018 would read, "© 2018 Dell Inc." By placing this notice at the bottom of a document, an author (or company) can prevent someone from copying the work without permission and claiming that they did not know that the work was copyrighted. Substitutes for the copyright bug include the word "Copyright" and the abbreviation "Copr.""

16. What is meant by the phrase *copyright infringement*? Would you characterize copyright infringement as a minor or as a major problem in the United States and in other countries? Explain.
    - "Copyright infringement is a growing problem in the United States and in other countries, with estimates of the costs to owners at more than $25 billion per year. For example, less than a week after the film was released in the United States, bootleg video discs of the original Harry Potter movie were reported to be for sale in at least two Asian countries. Taking this a step further, we note that a recent study showed that as of 2013, Internet infringement in the enter- tainment industry "accounts for almost one-fourth of all bandwidth in North America, Europe and Asia."25 **Copyright infringement** occurs when one work derives from another, is an exact copy, or shows substantial similarity to the original work. To prove infringement, a copyright owner is required to show that the alleged infringer had prior access to the copyrighted work and that the work is substantially similar to the owner's.

      There are many ways to prevent infringement. For example, a technique frequently used to guard against the illegal copying of software code is to embed and hide in the code useless information, such as the birth dates and addresses of the authors. It's hard for infringers to spot useless information if they are simply cutting and pasting large amounts of code from one program to another. If software code is illegally copied and an infringement suit is filed, it is difficult for the accused party to explain why the (supposedly original) code included the birth dates and addresses of its accusers. Similarly, some publishers of maps, guides, and other reference works will deliberately include bits of phony infor- mation in their products, such as fake streets, nonexistent railroad crossings, and so on, to try to catch copiers. Again, it would be pretty hard for someone who copied someone else's copyrighted street guide to explain why the name of a fake street was included.
      Current law permits limited infringement of copyrighted material. This limited infringement is considered to be **fair use**, which is the limited use of copyrighted material for purposes such as criticism, comment, news report- ing, teaching, or scholarship. This provision is what allows textbook authors to repeat quotes from magazine articles (as long as the original source is cited), movie critics to show clips from movies, and teachers to distribute portions of newspaper articles or blog entries. The reasoning behind the law is that the benefit to the public from such uses outweighs any harm to the copyright owner. Other situations in which copyrighted material may be used to a limited degree without fear of infringement include parody, reproduction by libraries, and making a single backup copy of a computer program or a digital music file for personal use. Case 12.1, titled "GoldieBlox vs. Beastie Boys: The Type of Fight That No Start-up Wants to Be a Part Of," focuses on a copyright infringe- ment case in which the courts ruled that fair use was not being employed appropriately. Along with providing clarity on the appropriate application of fair use, Case 12.1 vividly portrays the types of legal entanglements that start- ups can get into if they don't understand copyright law or intellectual property laws more broadly."
17. What is a trade secret? Provide an example of a trade secret. How might the trade secret you identified help a firm establish a competitive advantage in the marketplace?

- "A **trade secret** is any formula, pattern, physical device, idea, process, or other information that provides the owner of the information with a competitive advantage in the marketplace. Trade secrets include marketing plans, product formulas, financial forecasts, employee rosters, logs of sales calls, and labora- tory notebooks. The medium in which information is stored typically has no impact on whether it can be protected as a trade secret. As a result, written documents, computer files, audiotapes, videotapes, financial statements, and even an employee's memory of various items can be protected from unauthor- ized disclosure.

  Unlike patents, trademarks, and copyrights, there is no single government agency that regulates trade secret laws. Instead, trade secrets are governed by a patchwork of various state laws. The federal **Economic Espionage Act**, passed in 1996, does criminalize the theft of trade secrets (known as misap- propriation) by third parties. The **Uniform Trade Secrets Act**, which a special commission drafted in 1979, attempted to set nationwide standards for trade secret legislation. Although the majority of states have adopted the act, most revised it, resulting in a wide disparity among states in regard to trade secret legislation and enforcement."

18. When do trade secret disputes normally take place in an organization?
    - "Trade secret disputes arise most frequently when an employee leaves a firm to join a competitor and is accused of taking confidential information along. For example, a marketing executive for one firm may take a job with a competitor and create a marketing plan for the new employer that is nearly identical to the plan being implemented at the previous job. The original employer could argue that the marketing plan on which the departed employee was working was a company trade secret and that the employee essentially stole the plan and took it to the new job. The key factor in winning a trade secret dispute is that some type of theft or misappropriation must have taken place. Trade secrets can be lawfully discovered. For example, it is not illegal for one company to buy another company's products and take them apart to see how they are assembled. In fact, this is a relatively common practice, which is another reason companies continuously attempt to innovate as a means of trying to stay at least one step ahead of competitors."
19. What types of physical measures do firms take to protect their trade secrets?
    - "Restricting access"
    - "Labeling documents"
    - "Password protecting confidential computer files"
    - "Maintaining logbooks for visitors"
    - "Maintain logbooks for access to sensitive material"
    - "Maintaining adequate overall security measures"
20. What are the two primary purposes of conducting an intellectual property audit? What risks does a company run if it doesn't periodically conduct an intellectual property audit?
    - "There are two primary reasons for conducting an intellectual property audit. First, it is prudent for a company to periodically determine if its intellectual property is being properly protected. As suggested by the contents of Table 12.6, intellectual property resides in every department in a firm, and it is common for firms to simply overlook intellectual property

that is eligible for protection.

The second reason for a company to conduct an intellectual property audit is to remain prepared to justify its value in the event of a merger or acquisi- tion. Larger companies purchase many small, entrepreneurial firms primarily because the larger company wants the small firm’s intellectual property. When a larger company approaches, the smaller firm should be ready and able to justify its valuation."