

Introduction: I.P. and You

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Learning Goals

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| > Recognize the ability and limitations of Patents. | > Understand Copyright law, and how to use it. |
| > Plan for costs associated with Intellectual Property | > Learn how to file for a Trademark. |



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Copyright: Uses and Pitfalls

● How it works:

The current version of U.S. copyright law was passed by Congress in 1976 and became effective in 1978.

From time to time, minor revisions are made as well.

One recent example was the passage of the Digital Millennium Copyright Act in 1998, which addressed some of the ownership challenges posed by easy access to digital works on the Internet.

To be eligible for protection, your design will have to be represented in some tangible object.

For example, if you come up with a new purse design and then create the purse, you'll need to copyright the purse.

By doing so, you'll also be copyrighting the design. Further, your design will have to be original.

Fair Use

- > It is important to note that there are certain uses of copyright-protected material that do not constitute infringement.
- > For the most part, these have to do with criticism, comment, news reporting, teaching, scholarship, and research.
- > Fair use also protects parody, satire, and caricature.



► Registering a Copyright

Copyright does not cover an idea in and of itself,
but instead covers the expression of it in a fixed or tangible form.

The author has the exclusive right to reproduce or sell the work, distribute copies, display the work publicly,
perform the work publicly, or prepare "derivative works".

Even though formal registration of copyright is not required by law,

it is still beneficial because it establishes a public record of the date of creation and the original owner.

This information is very important if, at a later date, it becomes necessary to take legal action against infringement.

If you register your copyright within three months of publication or before an infringement occurs,
statutory damages and legal fees are available in a copyright infringement lawsuit.

This means that if you win, you can recover money without having to meet the difficult burden
of proving your financial loss or the infringer's profits.

Any copyright can be registered for 35-55\$ at www.copyright.gov



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Trademarks: Methods and Procedures

● What is it?

A "trademark" is used by a business to distinguish its products or services from those of its competitors. Its purpose is to identify the source of a product or service and prevent confusion in the marketplace.

Lots of different things can serve as trademarks.

They are grouped into two general categories, "traditional" and "nontraditional."

Traditional may include words, letters, numbers, designs, or shapes.

Non-traditional might be a hologram, smell, sound, or animation.

► What limitations are there?

in order to be eligible for trademark protection, a design must meet USPTO standards for uniqueness.

You cannot trademark a design that is too generic.

In addition, your design cannot be confusingly similar to another design that is already trademarked or for which there is a pending trademark application.

Registration is done through the U.S. Patent and Trademark Office.

The site www.uspto.gov has detailed information about the process.

You can also register trademarks in some individual states, but that protection is only local.

Since most businesses today are involved in some form of interstate commerce

(this includes all firms that transact business on the Internet),

it makes more sense to go directly to the national registration process.

Keynotes

- > Filing a Trademark costs between 275-325\$
- > You can expect the registration process to take at least several months
- > to be eligible for trademark protection, a design must meet USPTO standards for uniqueness.





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Patents: Defending your Property

● Article of Manufacture

A protectable design consists of the visual ornamental characteristics embodied in, or applied to, an article of manufacture. For example, an ordinary steak knife against a butcher's knife. In any knife there will typically be a handle and cutting blade. A design patent would not protect the mechanical structure, but rather will protect the appearance. In legal terms, the invention must be "reduced to practice," which means that the inventor is required to prepare a physical manifestation of the idea.

There are two ways to do this: actual reduction to practice by building and testing the invention (such as constructing a working prototype), or constructive reduction to practice by preparing a detailed document that explains how to make and use the invention.

A patent gives the inventor the right to exclude other people from making, using, importing, offering, and selling the invention.

► Costs and Benefits

What if you have something that is functionally unique but also has a unique visual presentation?

Then you might be able to get both a utility patent to cover the function and a design patent to cover the unique physical characteristics

that manifest in visual ornamentation. Design patents must be considered by all inventors because of the backlog at the United States Patent and Trademark Office. It can take 3 or more years, sometimes substantially longer, to obtain a patent.

By contrast a design patent can in many instances be awarded in as few as 6 to 9 months.

The filing fee due to the USPTO for a micro-entities, aka an individual designer, is \$190.

If you are successful in obtaining a design patent, it will cost another \$140 for the patent itself.

Application, issue, maintenance, and related fees will cost thousands of dollars over the life of a patent.

This allows you to file a lawsuit against anyone that copies your physical design, but will likely cost huge amounts of money and take years to settle.

Further Reading

- > NOLO.com is a publishing company that provides a large amount of legal literature, as well as providing localized legal services for patents.
- > IPWatchDog.com provides an in-depth look into the very complicated world of IP. Complex moral, legal, and monetary issues are examined.





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References: Resources for further learning

Primary Resource

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Challenge Questions

- > When is Copyright active?
- > What limitations does the Patent process have?
- > What's the difference between Copyright and Trademark?