

Title:

Patents, Trademarks, Copyrights--What's the Difference?

Word Count:

729

Summary:

A discussion of the differences between patents, trademarks and copyrights. How long they last. What they protect

Keywords:

patent, patents, trademark, trademarks, copyright, copyrights, attorney, patent search, patent attorney, intellectual property

Article Body:

Patents

A patent protects inventions through federal law. Inventions are your creative ideas for new products (articles of manufacture), machines, processes, methods, compositions of matter, ornamentation on products, or new plants. An improvement on an existing product may also be patented.

Utility patents protect the majority of these. To be patentable, your invention must be useful, novel and non-obvious. **Design** patents protect the ornamentation on devices. **Plant** patents protect new plant varieties.

Utility patents give you a monopoly (no one else can make, use, sell, offer for sale, or import your invention) for twenty years from the date of filing.

Design patents give you a monopoly for fourteen years from the date of issue, and prevent others from making the patented device with your ornamentation on them. (By way of example, a table is a useful device. If you could obtain a utility patent on a table with a flat surface and four legs, you could stop anyone from making such a table. If your table had an unusual ornamental shape or surface pattern, you would be able to prevent others from making tables with that shape or surface pattern.)

Plant patents last for twenty years from the filing date of the patent application.

Infringement of your patent allows you to potentially obtain treble damages plus

attorney fees.

Trademarks

Trademarks (or service marks for services) protect names, logos, slogans, and the like through both federal and state laws. Your name, logo or slogan identifies you to your prospective customers as the source of the goods and services that you are offering, and thus constitutes a trademark.

There are both federal trademarks and state trademarks. There are also common law trademarks that are not registered at either the federal or state level. Federal trademark applications can be filed even before you are using the trademark name, logo or slogan to reserve your trademark.

Other than common law trademarks, federal and state trademarks must periodically be renewed. Federal trademarks must be renewed every ten years. If you no longer use the trademark, you lose your rights. Otherwise, so long as you continuously use and/or renew the mark, you will continue to have rights forever.

Infringement of your trademark allows you to potentially obtain treble damages and attorney fees.

Copyrights

Copyright protects your creative artistic expression, but only once it is set into a tangible form. For instance, you create and sing a song. There is no copyright unless the song is recorded or written, because there is no tangible representation of your artistic expression. However, once you write, record, photograph, draw, or otherwise create a tangible record of your artistic expression, you automatically have copyright. That is, you are the only one who has the right to make or sell copies.

Ideas cannot be copyrighted. They may only be patented. Examples of copyrightable materials are written words, such as in books, magazines, poems, songs; written music; performances of music; paintings and drawings; photographs, videos, architectural plans, website content and layouts, and computer software.

Copyright lasts for 70 years plus the life of the creator (or last to die for multiple authors) for new works under current law. If the work is made for hire, then the term is the shorter of 95 years from publication or 120 years from creation.

Federal laws provide you with the right to enforce your copyright, but only once it is registered. There is the possibility of obtaining statutory damages of up to \$150,000.00, plus the possibility of being awarded attorney fees. Thus, it is very important to register your copyright as soon as practicable.

Other

Finally, trade secret protection is another means of providing protection to ideas. However, the key word here is secret. Let someone who has no need to know in on the secret and it is no longer protected. Trade secrets are most suitable to keep secret formulas or processes protected.

For more information, please visit <http://www.trwiplaw.com>.

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