How Intellectual Property Works
by Thomas L. Peterson

Introduction to How Intellectual Property Works

The phrase intellectual property (IP) refers to the bundle of legal rights that arise from the creative genius of the human mind. IP rights play an important role in the economic prosperity of a country and serve as a motivating force for creative individuals to share their genius with society. Like real and personal property rights protect one's ownership interest in tangible objects, such as land and automobiles, IP rights protect one's ownership interest in intangible objects, such as the idea behind an invention, the music score for a Broadway play and the name or logo used to brand a product. Without enforcement of these rights in the law, it would be difficult for society to prosper and grow. In this article, you will learn what intellectual property rights are and the differences between its various forms.

When most people think of intellectual property rights, patents, trademarks and copyrights come to mind. This core set of IP rights reward and protect the creative works of inventors, authors, owners and sellers of goods and services in the marketplace. While the legal principles that underlie each of these rights are distinct, they each share a common set of principles.

An award of patent, trademark or copyright protection requires a delicate balance between the interests of the inventor or author and the interest of society as a whole. This balance is very much like the tradeoff required by zoning laws, which attempt to protect the ownership interest and exclusive right to use that a land owner has with society's interest in the limited use of the owner's land for society's greater good. Public utility easements and right of ways are examples of this balance.

The grant of a patent on an important invention of a lifesaving drug represents a similar set of tradeoffs. Is it fair to the inventor to allow society free access to the patented drug? Is it fair to society to be denied access for its greater good? It is the role of intellectual property law to harmonize these seemingly conflicting interests.

Intellectual property rights also foster a competitive marketplace. They do so by encouraging disclosure of innovation through protecting the fruits of that innovation for a period of time. Disclosure allows others to build and improve upon prior innovation so that the state of the art continues to evolve and develop. Without the benefits provided by intellectual property protection, the market place would not operate as effectively. Imagine what the world would be like if every competitor had to continuously "reinvent the wheel" rather than being able to refine and improve upon the works of others.

Finally, intellectual property rights are regional in nature and the conditions of their grant and enforceability are governed by the laws of each jurisdiction. A U.S. patent can be only granted and enforced in accordance with the laws of the United States. A trademark can only be registered and enforced in Canada in accordance with the laws of Canada, and a copyright can only be registered and enforced in Mexico in accordance with its laws. While there is a desire to be somewhat uniform and consistent, countries have different approaches to intellectual property rights protection. Variations in the procedure for obtaining IP rights account for a large percentage of these differences, rather than the differences in the substantive rights granted in each country.

The words "patent" and "trademark" are often used interchangeably. Many times, we hear that a patent is used to protect a logo and that a trademark is used to protect an invention, and vice versa. While patents and trademarks may be associated with the same product, the two words have very different meanings and refer to very different forms of intellectual property rights. They can seldom be used interchangeably, as the underlying rights that each protects is quite different in nature.

What is a Patent?

In general, a patent is used to protect the intellectual property rights associated with the design of a product or process. U.S. patents are issued by the United States Patent and Trademark Office and are enforceable only within the U.S. and its possessions. A U.S. patent has no effect outside of the U.S.

A patent gives the patent owner the "exclusive right" to stop others from making, using, selling or offering for sale the product, or process of making the product, that is described by the patent claims. It is important to note that a patent does not give the patent owner the right to exploit the patented invention himself. The patent owner has only the "exclusive right" to stop others from doing so.

In other words, just because you obtain a patent on your product does not mean that you can actually use the product. You may be blocked by an earlier patent owner who exercises the "exclusive right" granted to him under his patent. This is an important distinction and the following example will help to explain it.

Suppose that the invention covered by your patent is a chair with four legs, a seat, a back and a pair of rockers -- a rocking chair. Under your patent, you have the exclusive right to stop others from making, using, selling or offering for sale your patented rocking chair. Let's assume, however, that the rockers on your rocking chair are unique and are covered by an earlier patent to someone else. The rocker patent owner has the exclusive right under his patent to stop others (including you) from using his patented rockers. Your use of the patented rockers on your rocking chair would constitute infringement of the rocker patent.

So while you received a patent for your rocking chair, you will not be able to actually make, use, sell or offer for sale the chair without first obtaining permission from the rocker patent owner. The rocker patent owner is not required to give you permission, however, and can keep your rocking chair off of
the market if he chooses to do so. It might make better sense, of course, for the rocker patent owner to participate in your success by giving his permission in exchange for a licensing fee.

The term for a patent is 20 years from the filing date of the patent application, which results in the granting of the patent.

What are Trademarks?
Like patents, trademark registrations in the U.S. are issued by the United States Patent and Trademark Office. While a patent protects a product from unauthorized copying through the patent owner's exclusive right to stop others from making, using, selling or offering for sale the patented product, a trademark addresses the need for product identification, or branding, among consumers of the product. Thus, a trademark has nothing to do with preventing a product from being copied. That is the role of a patent.

The United States Patent and Trademark Office defines a trademark as "any word, name, symbol, or device, or any combination, used, or intended to be used, in commerce to identify and distinguish the goods of one manufacturer or seller from goods manufactured or sold by others, and to indicate the source of the goods. In short, a trademark is a brand name."

Closely related to trademarks are service marks, collective marks and certification marks. Like a trademark identifies the source of a product, a service mark identifies the source of a service. A collective mark is a trademark or service mark that is used by a group or organization. A certification mark is a mark used by someone other than the mark's owner to certify quality, accuracy or other characteristics of the user's goods or services.

What is a Copyright?
A copyright protects the expression of an idea. Unlike a patent which protects the idea itself, the copyright protects only the expression. The idea of the chair with four legs discussed above can be protected by a patent. The expression of that idea through drawings, pictures and words can be protected by a copyright.

In order to qualify for copyright protection, a work must be original to the author. To be original, the work:

1. Must have been independently created by the author rather than being copied from other work(s) and
2. Must have at least a minimal degree of creativity

If these two conditions are not met, the work will not qualify as being original and is not entitled to copyright protection. However, a work still qualifies for copyright protection even if it includes non-original elements. For example, if an author rearranges non-original elements in an original way, the compilation will be considered to be original and qualify for copyright protection.

Depending on when the work was created, the period of copyright protection begins when the work is created and terminates 70 years after the death of the author.

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