

IRWIN IP

INTELLECTUAL PROPERTY LITIGATION

Unlock Your Innovation: An Introduction to Intellectual Property

Spring Entrepreneurs Workshop

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Jeffrey Banyas, Reid Huefner, Joseph Marinelli, and Nicholas Wheeler

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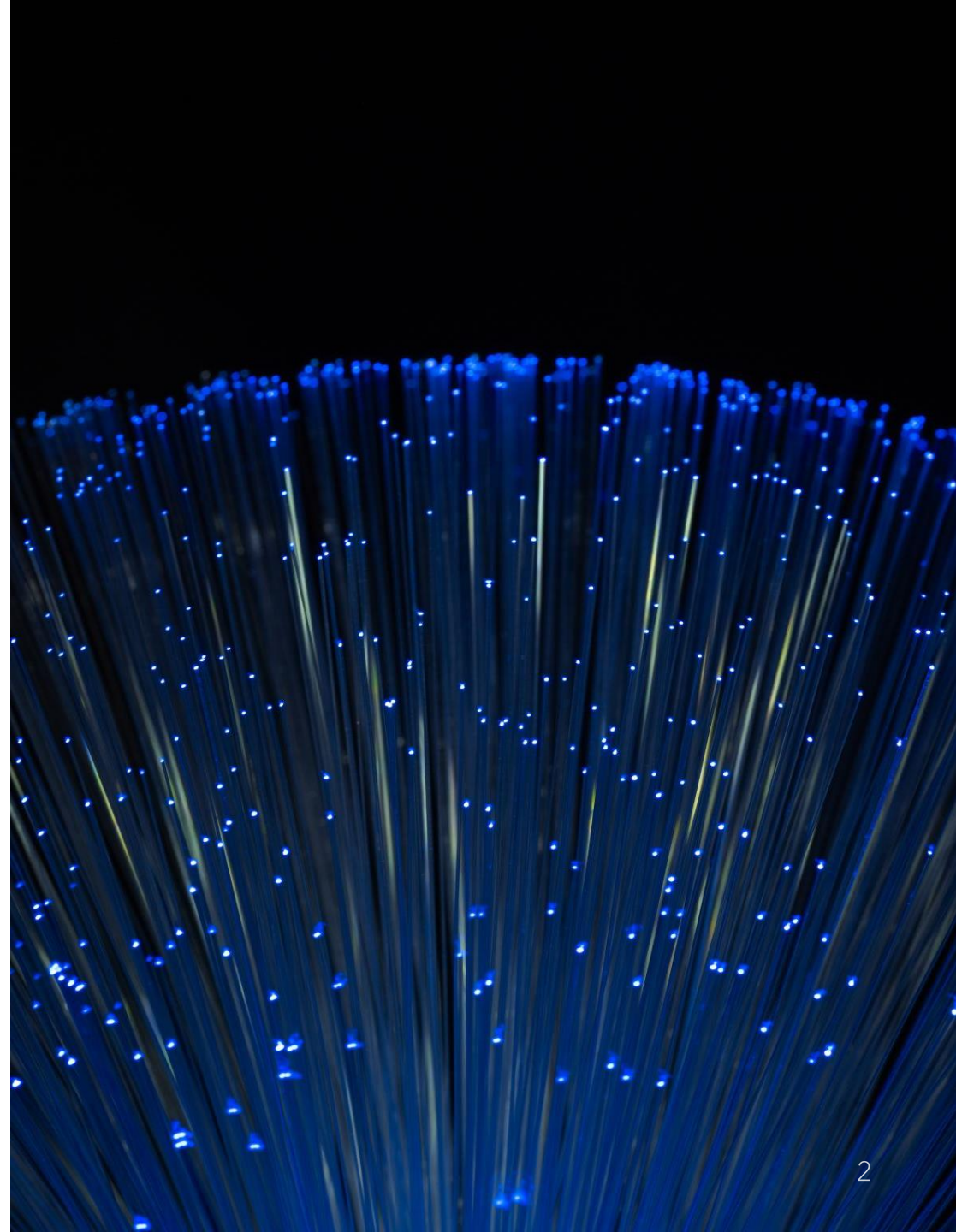
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01

Who We Are

INNOVATION.
INTEGRITY.
IMPACT.

IRWIN IP

INTELLECTUAL PROPERTY LITIGATION

For more info:
<https://irwinip.com>

**Check us out on LinkedIn,
Facebook, and Instagram**

A boutique law firm specializing in intellectual property (patent, trademark, copyright, and trade secret) and technology litigation



Meet The Attorneys



Jeffrey Banyas

- Shareholder at Sisson & Banyas, Attorneys at Law, LLC with 14 years of experience advising clients on patent and trademark filing, prosecution, monetization, and enforcement.
- Broad range of clients with a specific focus on the automotive aftermarket, material science, construction, and consumer products industries.



Joseph Marinelli

- 26 years of experience helping clients with patent, trademark, copyright, and trade secret issues
- Represented clients in telecommunications, semiconductors, computer hardware, automotive systems, medical devices and exercise equipment



Reid Huefner

- 18 years of experience litigating IP disputes throughout the country in a variety of venues
- Broad range of clients: automobile, pharma, tech, consumer product, and medical device companies; photographers, musicians, authors, toy and game inventors, and other creatives



Nicholas Wheeler

- 6 years of experience litigating IP disputes across different courts and federal agencies
- Clients include authors, photographers, musicians, filmmakers, automobile companies, home security companies, and other creatives.

Disclaimer

This presentation and its materials aim to provide general public information and entertainment pertaining to American intellectual property law. They reflect the authors' personal views and do not serve as specific legal advice, as legal solutions can vary by case. The content has been simplified for clarity, so it may not be applicable to all situations. Neither authors nor Irwin IP LLP assumes responsibility for the opinions expressed or for any inaccuracies. Additionally, the materials do not establish an attorney-client relationship.



02

Intro to IP

IP Overview and Examples

Type of IP	Definitions	Examples	Term	Cost
Trademark	Source identifiers such as words, slogan, design, sound, scent, color, or a combination thereof that is source-identifying	Company names and logos such as Apple and Starbucks	As long as the business continuously maintains and uses the trademark in connection with goods or services	\$\$
Copyright	Original expressions in a tangible form like computer programs, films, architecture, videos, graphic images, fine art, music, photos, books, etc.	Hamilton lyrics and music, A Few Good Men, Andy Warhol's Campbell Soup	Author's life plus 70 years (or, for anonymous or works made for hire, the shorter of creation plus 120 years or publication plus 95 years)	\$

IP Overview and Examples

Type of IP	Definitions	Examples	Term	Cost
Patent (Utility)	New and useful ideas and improvements thereof	Household items, semiconductors, medical devices	20 years from date of filing of patent application	\$\$\$\$
Patent (Design)	New ornamental (non-functional) designs	Shape of furniture, fabric patterns, mobile phone interface	15 years from date of grant	\$\$\$
Trade Secret	Information that derives value from being kept secret	Coca-Cola recipe, KFC's recipe, Google search algorithm, Lena Blackburne Baseball Rubbing Mud	Indefinitely, if the secret is kept confidential (e.g., reasonable steps taken) and legal requirements are met	\$



03

Understanding Trademarks

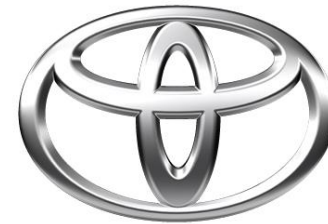
Definition of Trademarks

“Trademarks protect brands – including logos, taglines, and even company names – from imitation.” – US Chamber of Commerce

- Act as source identifiers
- Distinguish your branding from competitors
- Prevent imitation
- Need to use the trademark
- Registration is not required but strongly encouraged

Trademarks identify you as the source of the goods and/or services that you offer and can include:

- Logo on your products
- Word mark on your website
- Use of your mark on receipts and email signatures
- Use of your mark on social media content
- Website/domain name

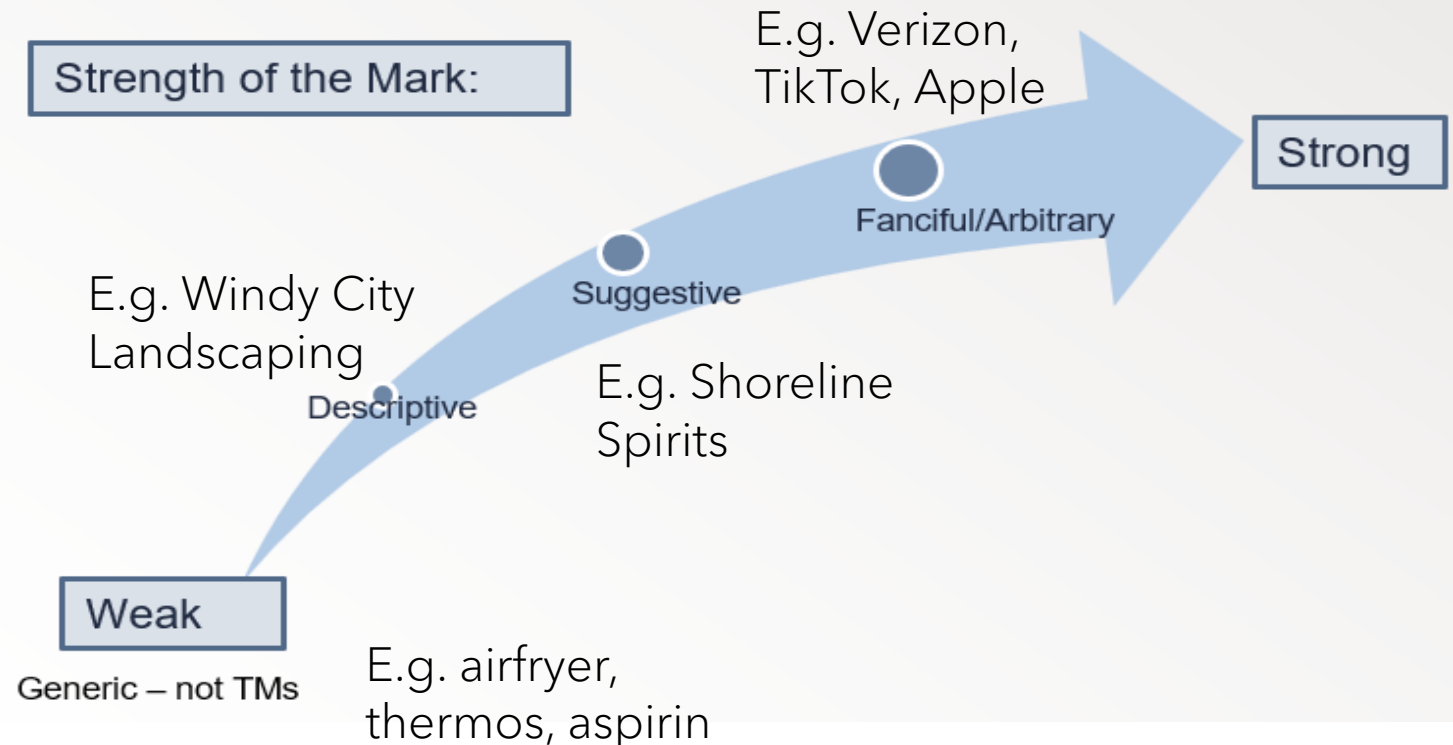


Trademarks

Notice of Trademarks

TM	➔	Unregistered trademarks
SM	➔	Unregistered service marks
®	➔	Registered marks

E.g., Just Do It®



Types of Trademark Applications

Used-Based TM

- Requires evidence of use in interstate commerce at time of filing
- Pros: Cheaper and faster to register than ITU

Intent to Use TM

- Have not used TM in interstate commerce yet, but individual has a "bona fide intent to use" the TM in interstate commerce
- Pros: Have TM rights before using the TM, gives nationwide protection for the rights holder
- Cons: Takes longer to register because additional step compared to used-based TM application
 - Notice of allowance
 - Within 6 months from the mailing date of the notice of allowance, must submit statement of use which includes evidence of use of the TM in interstate commerce
 - Can file for five 6-month extensions for a total time of 3 years from the notice of allowance
 - Past the 3-year period and there is no evidence of use submitted, then the application must be refiled

Trademark Application Timeline

1. File Application: ~\$350 per class of goods/services +Attorney Fees
2. USPTO reviews application
3. USPTO approval or refusal
4. Response to office action
5. Repeat steps 3-4, as required
6. Appeal (if necessary)
7. USPTO approves trademark or TTAB processes your appeal
8. USPTO registers trademark
9. File a Section 8 declaration or a Section 8 declaration and Section 9 renewal



12-18
months

Common Trademark Mistakes

- Using the mark inconsistently or having multiple marks across products
- Not using the mark in commerce (or not documenting the uses)
- Not evaluating the strength of the mark; choosing a generic or descriptive mark (e.g. "smooth" for skincare products or "green market" for a vegetable store)
- Not doing a "clearance search" before committing time and money to developing the name/brand
- Incorrectly using or leaving off TM, SM or [®] markers
- When registering the mark, choosing the wrong trademark class(es) for the product or service
- Ignoring the deadline for mark renewal and renewal fees
- Failing to police your marks
- Not filing a new trademark application when goods/services change

When to call an attorney:

- Before you start using a mark
 - During the application process
 - After use has begun to strengthen and monitor the mark
 - When you suspect someone is infringing your mark
 - Upon receiving notice that you might be infringing another's mark
- NOTE: Cost is comparatively low for clearance searches and for applying for mark registration

Business Hypos: Trademarks

- Trademark creation
 - Strength of trademark
 - Online research
- Finding a competitor's business to have a similar name, logo, and/or product to yours on the market and used across state lines
 - Whose mark is older/was used first? – Could have local protection
 - Has either registered their mark?
 - If mark registered, gather evidence of potential trademark infringement
 - Evaluate enforcement options (e.g. cease-and-desist)
 - Need to change the name of your business?



04

Understanding Copyrights

Copyrights

Copyrights **do** protect:

- Original works of authorship including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture
- Contents of a website – writing, artwork, photographs

Copyrights **do not** protect:

- Facts, ideas, systems, or methods of operation

Registration is not required, but strongly encouraged for the benefits of statutory damages and attorney fees

Exclusive Rights From a Copyright

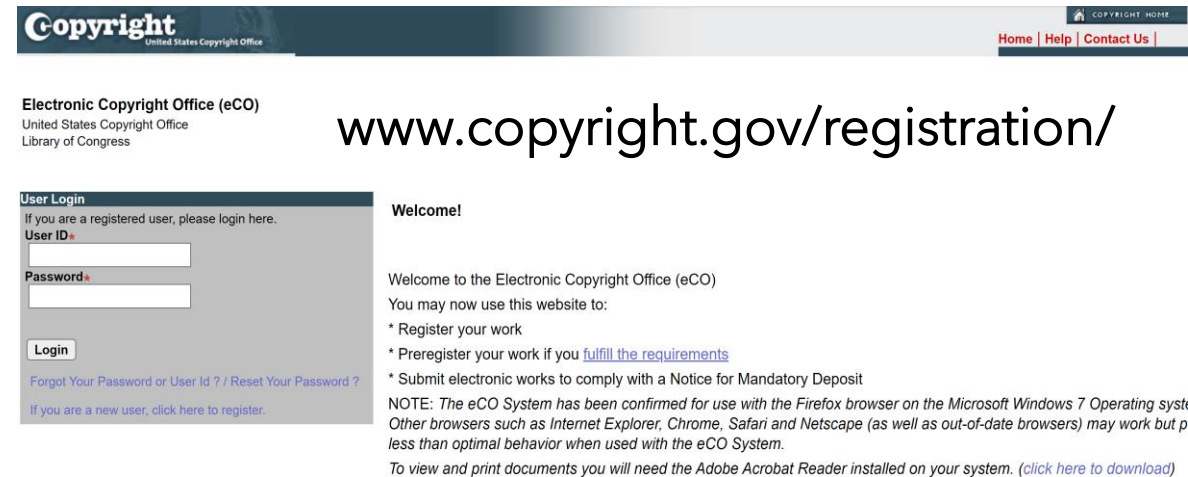
- To reproduce their work
- To prepare derivative work
- To distribute their work
- To perform/display their work publicly
- **Worldwide protection**

How to Register a Copyright

- Timeframe
 - Register before infringement
 - Register during infringement, within 3 months of publication
 - Can still file an infringement action even if you have not registered your copyright before the infringement or before 3 months of publication, but recovery options are more limited
- Benefits to Registering
 - Bringing an infringement action in federal court
 - Evidence of copyright validity
 - Presumption of ownership
 - Statutory damages
 - \$750-\$30,000 per work infringed
 - Or, if willful infringement, up to \$150,000
 - Attorney fees

Steps

- Step 1: Application: Depends on type of work
 - ✓ Is this a work made for hire?
 - ✓ Is this work unpublished or published?
 - ✓ What kind of application is needed?
 - ✓ How much does it cost?
- Step 2: Non-refundable filing fee
- Step 3: Submit copy of your work



The screenshot shows the 'Electronic Copyright Office (eCO)' website. The header includes the 'Copyright' logo and navigation links like 'Home | Help | Contact Us'. The main content area is titled 'Welcome!' and provides instructions for users. On the left, there is a 'User Login' section with fields for 'User ID' and 'Password', a 'Login' button, and links for 'Forgot Your Password or User Id ? / Reset Your Password ?' and 'If you are a new user, click here to register.' The right side contains a list of instructions: 'Welcome to the Electronic Copyright Office (eCO)', 'You may now use this website to:', '* Register your work', '* Preregister your work if you [fulfill the requirements](#)', and '* Submit electronic works to comply with a Notice for Mandatory Deposit'. A note at the bottom states: 'NOTE: The eCO System has been confirmed for use with the Firefox browser on the Microsoft Windows 7 Operating system. Other browsers such as Internet Explorer, Chrome, Safari and Netscape (as well as out-of-date browsers) may work but present less than optimal behavior when used with the eCO System. To view and print documents you will need the Adobe Acrobat Reader installed on your system. ([click here to download](#))'.

Common Copyrights Mistakes

- What is considered copyrightable – e.g. short phrases
- Not registering the copyright early or at all
- Not considering what you can and cannot use from other sources
- Falling for common fair use myths – E.g., copying is okay if...
 - Use of less than 30%
 - Use of fewer than 200 words
 - I change at least 25%
 - I say where I got it from
 - I found it online
 - Everyone else doing it
- Copying an original expression from a copyrighted work without the owner's permission is likely copyright infringement

When to call an attorney

- When the work has been created
- Upon infringement, takedown, or official notice that you may be infringing
- NOTE: Registration is CHEAP:
<https://www.copyright.gov/about/fees.html>

Registration

Registration of a claim in an original work of authorship

Electronic filing:

Single author, same claimant, one work, not for hire	\$45
Standard Application	\$65
Paper Filing (Forms PA, SR, TX, VA, SE)	\$125

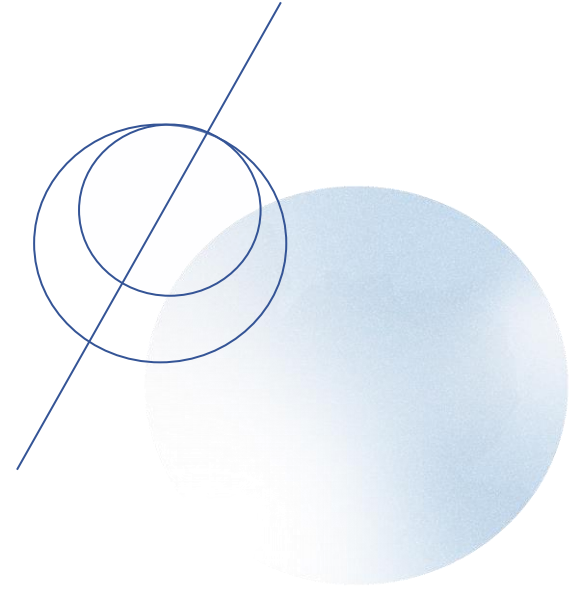
Fair Use - An Expensive Defense



Factor	Description	Leans Towards Fair Use	Leans Against Fair Use
Purpose and character of your use of the work	<p>Transformative use - adds something new with a further purpose or different character and does not substitute for the original use of the work</p> <p>Non-profit or commercial?</p>	Noncommercial, educational, scholarly, newsworthy, or transformative	Commercial and/or entertainment
Nature of the copyrighted work used	Is the work that was used factual or creative?	Factual, based on public documents	Creative
Amount and substantiality of the portion used in relation to the copyrighted work as a whole	<p>How much was used?</p> <p>"Heart of the work" - looking for the most extraordinary or creative elements of the work</p>	Small portion/% of your work	"Heart of the work" and/or entire work
Economic effect of use upon the potential market for or value of the copyrighted work	<p>Will the use harm the copyright owner's ability to profit from the work?</p> <p>What's the purpose and how does it link to the market?</p>	None or little devaluation/money lost	Substantial actual or probable money lost because of use

Business Hypos: Copyrights

- Recipes
 - Copyrights or trade secrets?
 - Mere list of ingredients is not enough for a copyright
- Music
 - Composition recording (rights) v. sound recording (masters)
 - Coffee shops/business establishments – obtain music licenses, play public domain, original, and/or royalty free songs
- Film
 - Need to consider music licenses, distribution agreement, royalties owed
- Social media and images
 - Each platform has their own terms of service
 - Avoid using others' copyrighted images on website and promotional materials unless you have written permission to do so





05

Understanding Patents

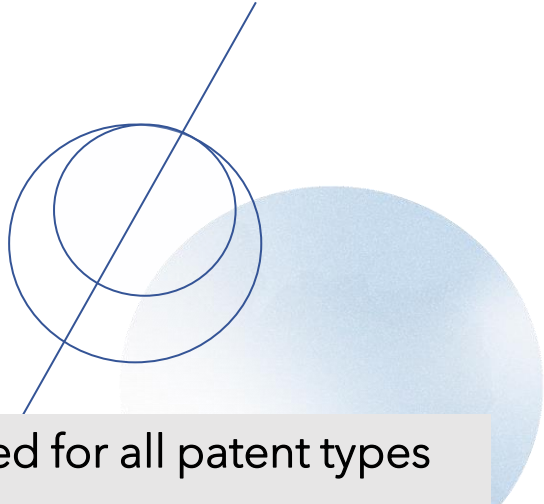
Patents

Utility Patents

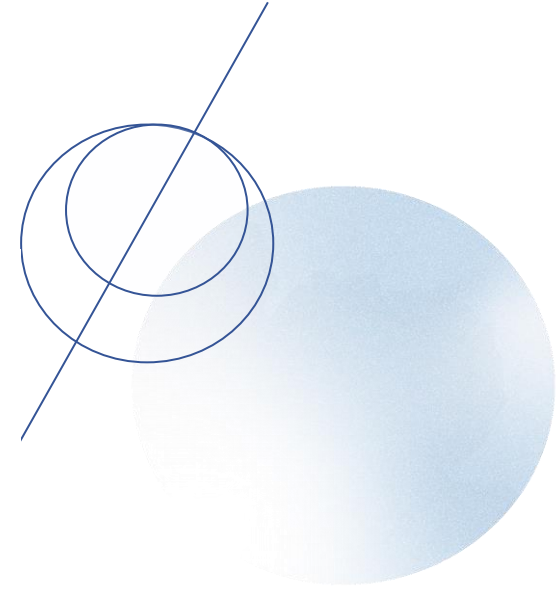
- Protect processes, methods, and inventions that fit the patent criteria
- Grant exclusive rights to make, use, and sell the invention
- Protection lasts 20 years from filing date of the non-provisional patent application

Design Patents

- Protect the ornamental appearance of a product
- Protection lasts for 15 years from the date of grant

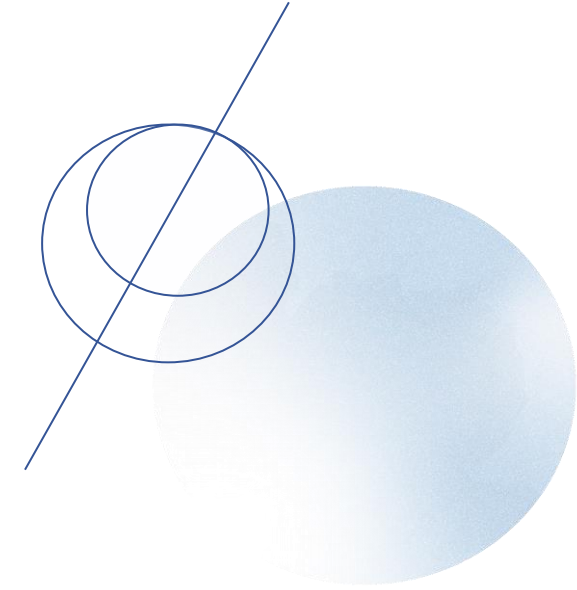
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- Application is required for all patent types
 - Need to evaluate for patentable subject matter
 - New vs. Non-obvious
 - Obtaining a provisional application is important for priority (only for utility patents)

What Makes an Idea Patentable?



- **Must be New –**
 - Also known as “Novel”
 - Has the idea previously been disclosed in a single reference (“prior art”)?
- **Must be Non-Obvious –**
 - Would the modification of a single reference or the combination of multiple references have rendered the invention obvious to a person of ordinary skill in the art at the time of the invention?
- **Must be Useful –**
 - Also known as “Utility”
 - Can the idea do anything at all? (a very low standard)

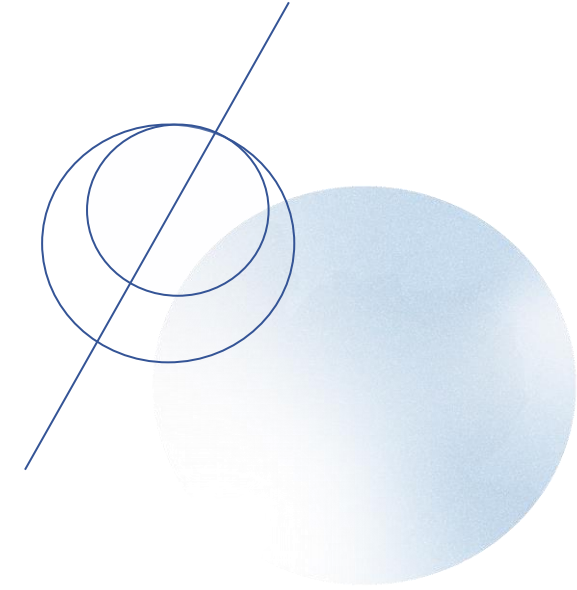
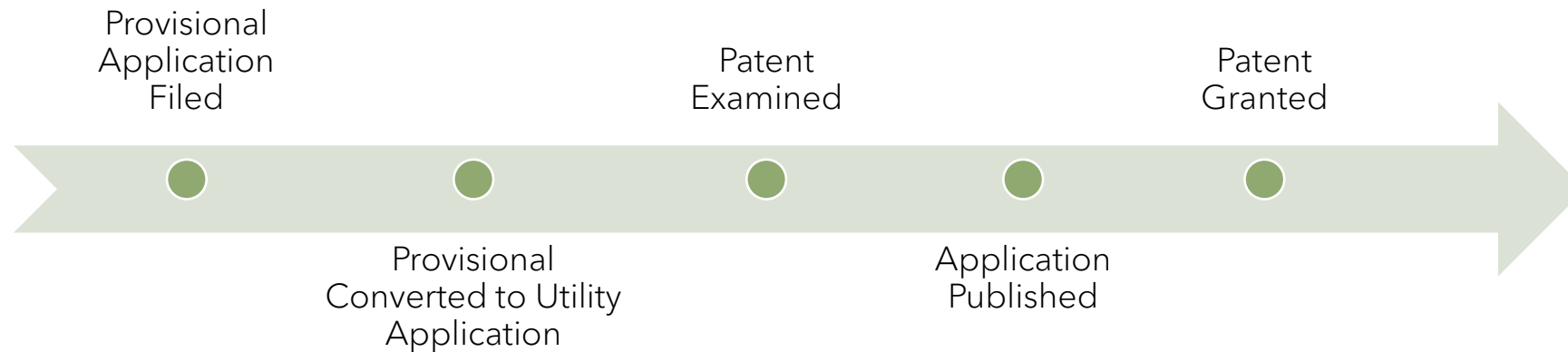
What Makes an Idea Patentable?



- Must not be –
 - An Abstract Idea
 - A Law of Nature
 - A Natural Phenomena / Product of Nature
- If a claim includes one or more of these –
 - Applicant must show additional patentable elements
 - An “Inventive Concept”
 - E.g., integrating a Law of Nature into a practical application

Common Patent Mistakes

- Not conducting a prior art search
- Inadequate patent description
- Poorly draft claims
- Not disclosing to the U.S. Patent Office all known prior art
- Publicly disclosing the invention, method, or process to too early
- Waiting too long to file patent application before a competitor
- Not paying utility patent maintenance fees
- Not marking your products/services with patent numbers
- Not properly identifying all the inventors



Business Hypos: Patents

- Whether the invention, process, or method is patentable
- Patent application – recommended to use a patent attorney
- Work for hire situations – examine ownership of patent
- Joint ventures – ownership of resulting patents (and other IP)
- Have an existing patent – licensing and valuation
- Infringement of a patent – reach out to a patent attorney for assistance, send a cease and desist letter, and evaluate licensing options



06

Understanding Trade Secrets

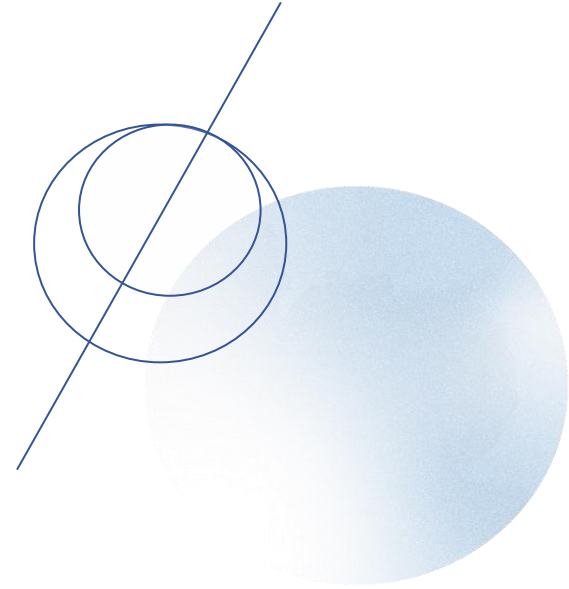
Trade Secrets

A trade secret is a “pattern, compilation, program, device, method, technique or process that obtains economic advantage over other competitors who do not know.”

– US Chamber of Commerce

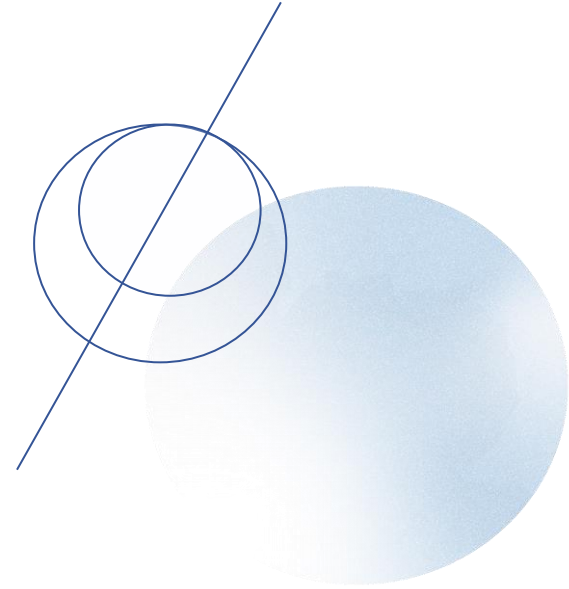
- E.g., manufacturing techniques, formulas, new marketing strategies
- For business use only; not for personal use
- Information must be secret and not generally known
- The secret must present a competitive advantage to its owner
- Reasonable steps to maintain secrecy
- Registration with government is not possible

Trade secret holder must safeguard the secret and can last indefinitely as long as information remains secret and valuable



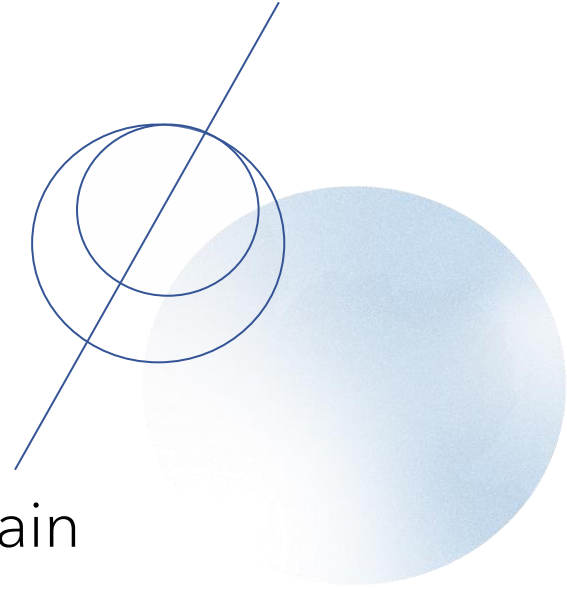
Common Trade Secret Mistakes

- Failure to define and identify trade secrets
- Inadequate employee training
- Not having non-disclosure agreements
- Not keeping confidentiality of the trade secret
- Not having security protocols and reasonable measures
- Examples of reasonable measures to maintain secrecy:
 - Monitoring the physical and digital storage of valuable info
 - Implementing physical and technological access restrictions
 - Use of computer system protections, such as passwords and firewalls
 - Labeling documents with confidentiality designations
 - Designating employees who “need to know”



Business Hypos: Trade Secrets

- Trade secrets v. patents
- Contractor v. employee – work for hire agreement
- Using confidential company info for personal or competitor gain
- Joint ventures
- Obtaining a trade secret through espionage or hacking
- Mergers and acquisitions – business selling itself or merging
- Reverse Engineering



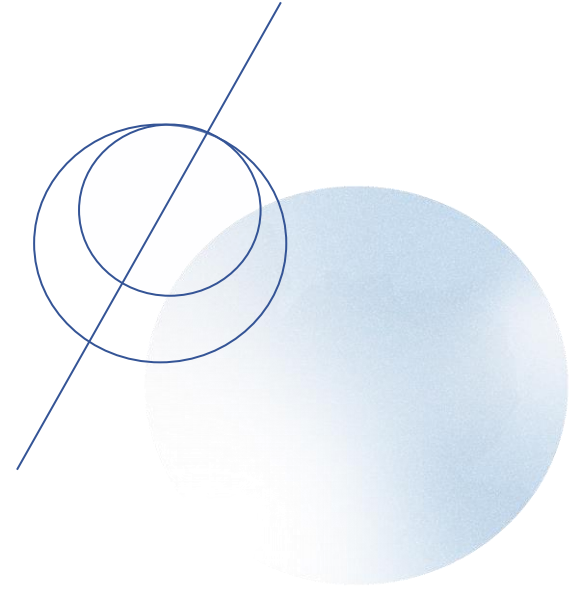


07

Artificial Intelligence

Intersection of AI and IP

- AI as an IP creator – Only humans can be IP creators for copyrights and patents
- Using AI generated images or text may put you at risk for infringement claims
- If you outsource work to a designer, photographer, videographer, etc., should include a clause in your contracts that forbids, or warrants that no AI-generated content is used
- Understanding licensing agreements when using AI tools or platforms
- When creating, consider paying for a subscription that has cleared its database of AI input to minimize risks of infringement
- If you use AI-generated images or text, this may prevent you from stopping others from copying your work



Right of Publicity Issues

Right of Publicity

- Legal right of individuals to control the commercial use of their name, image, likeness, or other identifiable aspects of their persona

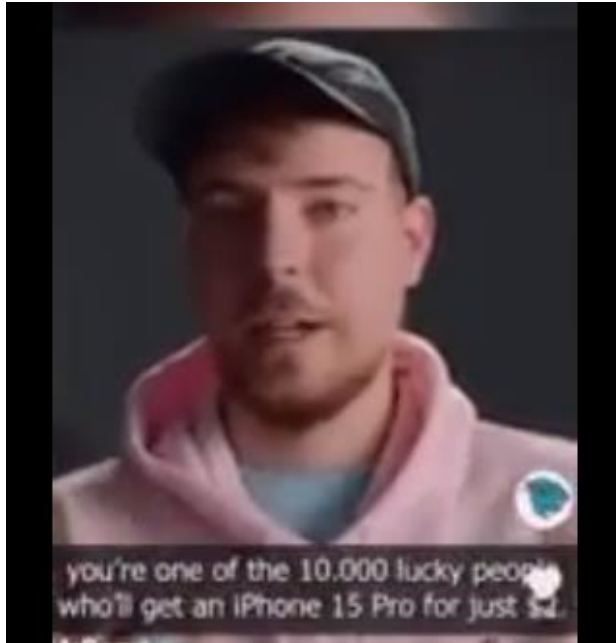
Using AI to create fake content quickly and cheaply

Examples:

- "Heart of My Sleeve," by ghostwriter477 using the voices of Drake and The Weeknd
- Robocalls (e.g., President Biden)

Deepfakes

- Elon Musk, Mr. Beast
- Lawsuits and disputes from celebrities



Open Issues for AI

- If the AI prompt is sufficiently lengthy, can you copyright the prompt?
- Can you protect against infringement of a derivative AI-generated output, if your copyrightable work was the input?
- Can you protect an AI-generated trademark word or logo for your business?

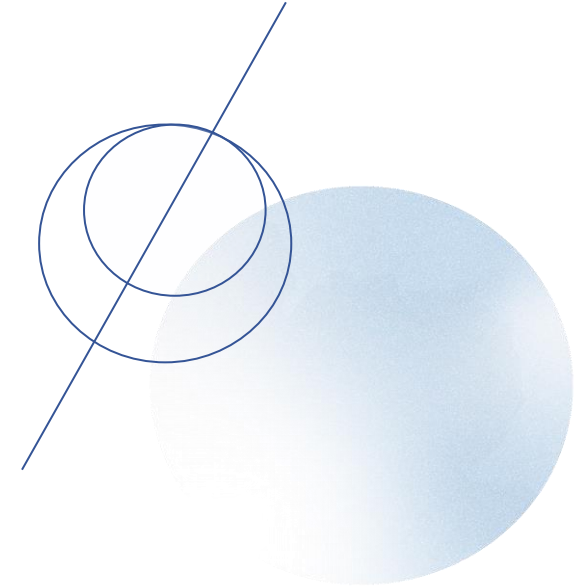


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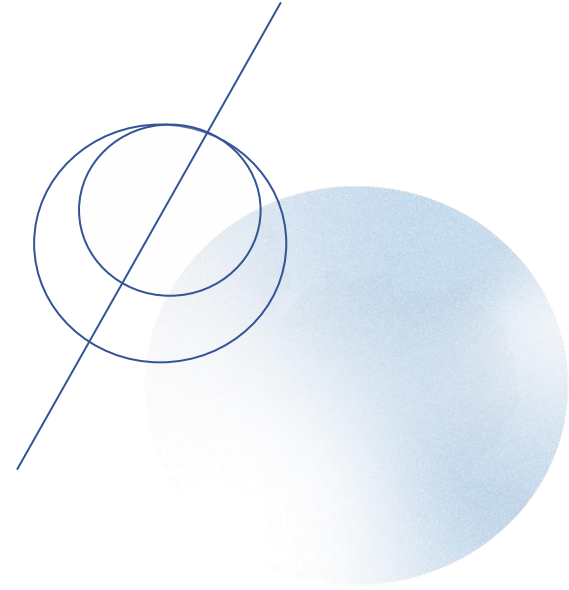
IP Monetization and Disputes

Licensing Your IP

- License agreements allow another party to use, make, distribute, or sell your intellectual property in exchange for a royalty
- Effective way for IP holders to monetize their IP without direct investments in manufacturing, marketing, and distribution
- Allows for IP holders to exploit their IP in new markets
- Taking a license can be a less expensive option than developing your own IP



Potential Drawbacks to Licensing



- A licensee could damage your trademark's brand or the quality reputation of your product
- Chance that a licensee could use the licensed technology to create their own competing product
- IP infringement could occur if licensee acts outside the bounds of the license agreement
- Can lead to dependence on licensing revenue instead of actively exploiting your own IP
- License drafting errors

Common Licensing Terms

- Duration/term of the license
- Geographical limitations
- Limits on certain markets or industries
- Exclusivity: sole, exclusive, and non-exclusive agreements
- Royalty type: a one-time royalty or a royalty per use
- Rights in future IP advancements
- Assignments and sublicensing
- Termination clauses
- Enforcement procedures



Best Practices for Enforcing IP Rights

- Double check that your IP is registered
- Mark products with patent numbers, copyright notices, and trademark symbols
- Renew trademark registrations and pay maintenance fees on patents
- Regularly monitor the market for infringers
- Do not wait once you have knowledge that someone is violating your IP rights
- Use cease and desist letters to put infringers on notice of their infringement
- Consult with an IP attorney regarding licensing and litigation options





09

IIP Resources

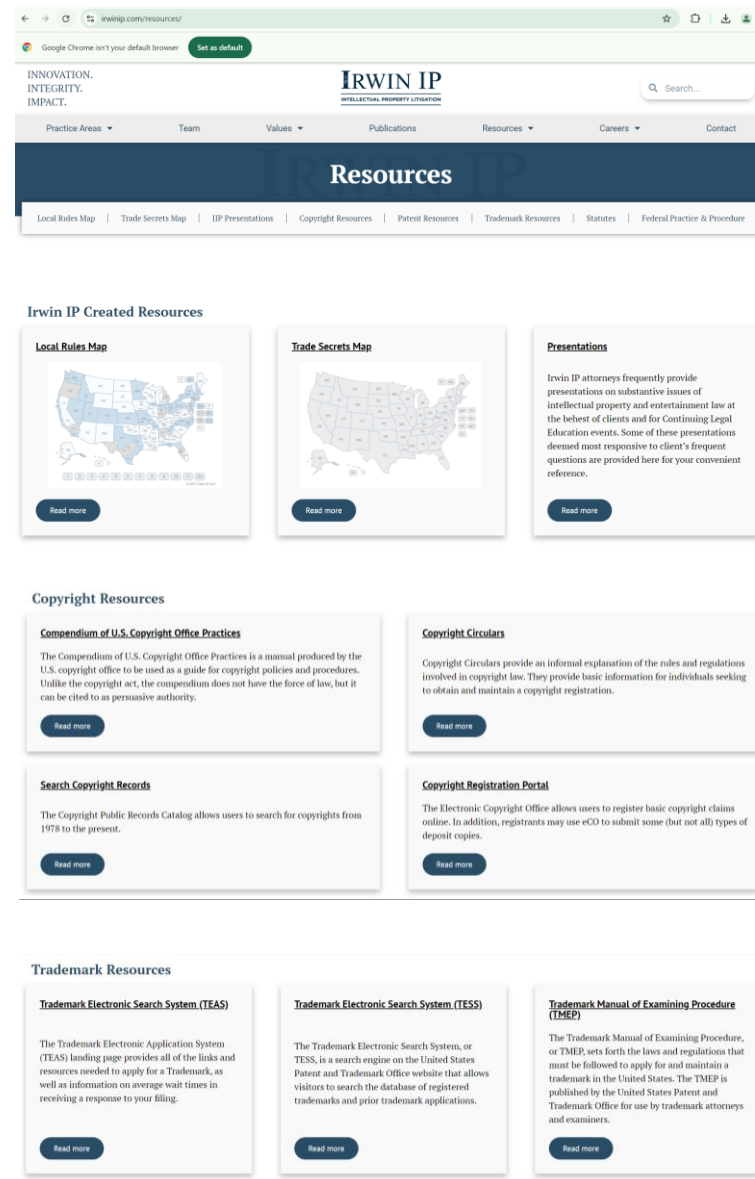
IIP Resources

We have a myriad of presentations and resources for patents, copyrights, trademarks, and trade secrets and associated statutes, federal practices and procedures.

Check out:

<https://irwinip.com/resources/>

- Trade Secrets Map
- Local Rules Map
- Presentations



Contact Us

150 N Wacker Drive

Suite 700

Chicago, IL 60606

(312) 667-6080

Reid Huefner

rhuefner@irwinip.com

(312) 667-6083

Joseph Marinelli

jmarinelli@irwinip.com

(312) 248-1584

Nicholas Wheeler

nwheeler@irwinip.com

(312) 667-6285



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