

Five Things Every Lawyer Should Know About Intellectual Property

The ideas that constitute valuable assets or property are generally referred to as "intellectual property." The main legal protections for this are patents, trademarks and copyrights. Lawyers should have a basic understanding of intellectual property law to provide initial guidance to clients before referral to lawyers specializing in this area.

1. Patents protect inventions

A patent is issued by the U.S. Patent and Trademark Office (USPTO). It provides the patent owner with the right to prevent others from making, using, selling, offering for sale, or importing an invention. A utility patent protects a process, machine, product or composition of matter (e.g. a combination toaster and microwave) for a term of up to 20 years. A design patent protects an ornamental design for a product (e.g. the design of an Apple iPod) for a term of 14 years.

2. Important date relating to patents

In the U.S., patent rights are lost unless a patent application is filed before the end of a one-year period from the earliest date in which the invention is offered for sale, publicly disclosed or publicly used. Most foreign countries do not allow the one-year period, and instead require a patent application to be filed before that earliest date to avoid losing patent rights.

3. Preliminary searches are helpful

It is often helpful for clients to do some preliminary searching of previous patents. This can help to determine whether the idea is patentable and to identify potential infringement problems. Patent searches are also useful to assist in product development and to monitor the activity of competitors.

4. Trademarks identify goods or services in the marketplace

A trademark is a word or words, emblem, logo, symbol, slogan or other device that identifies goods or services from a single source (e.g. the Coca-Cola mark for soft drinks). Trademarks are used to develop consumer recognition and loyalty. Marks used with a service are referred to as service marks (e.g. the McDonald's mark for restaurant services). Trademark rights are based on use. Disputes often involve the similarity of the marks and the goods, and the dates of first use of the marks. It is often advantageous to obtain both state and federal registration of trademarks. Federal registration has a 10 year term, which can be renewed indefinitely as long as the mark is being used.

5. Copyrights protect works of authorship

Copyrights protect original works of authorship fixed in a tangible medium of expression (e.g. paper, clay, film, CD). Subject matter covered by copyright includes literary works, pictures, sculptures, graphic works, architectural works, dramatic and choreographic works, musical works, motion pictures, sound recordings and computer programs. Copyrights provide exclusive rights to reproduce, modify, distribute, perform

and display the work. Claims to copyright may be registered with the U.S. Copyright Office at the Library of Congress. Copyright protection lasts for a long time (e.g. the life of the author plus 70 years after his/her death).