Leveraging Intellectual Property for Success

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April 16th, 2018
The USPTO in FY17

12,588 Employees
- 8,147 Patent Examiners
- 549 Trademark Examining Attorneys
- 388 Patent Trial and Appeal Board Judges
- 71 Trademark Trial and Appeal Board Judges

Patents
- 647,338 Patent Applications Filed
- 347,243 Patents Issued

Trademarks
- 594,107 Trademark Applications
- 242,709 Certificates of Registration

USPTO Headquarters in Alexandria, VA
# IP and the Economy

<table>
<thead>
<tr>
<th>27.9M</th>
<th>38.2%</th>
<th>$6.6 trillion</th>
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<table>
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<tr>
<th>$1,312/week</th>
<th>$115.2 billion</th>
<th>28 Industries</th>
</tr>
</thead>
<tbody>
<tr>
<td>(46% higher)</td>
<td>Revenue specific to the licensing of IP rights totaled (2012)</td>
<td>Deriving revenues from licensing</td>
</tr>
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</table>

Avg. weekly wages for workers in IP-intensive industries
Five years from 1\textsuperscript{st} patent

- 36\% employment increase
- 51\% increase in sales growth

First patent grant advantages

• Increases likelihood of additional patents
• Increases quality of patents
  – Number of citations to patents increases 26%
• Facilitates access to capital
• Rewards investors
Facilitate Access to Funding

- 53% increase in probability of VC funding
- Small increase in likelihood of seed round
- 47% increase in probability of 2nd round of funding
Reward Investors

- 153% increase in probability of IPO
- 84% increase in probability of IPO or acquisition
IP Strategy is a Business Strategy

• Attractive to investors and buyers
• Deters infringement lawsuits
• Can increase leveraging power
  – Mergers and acquisitions
  – Canary in the coal mine
• Property right that can add value to a company
Developing an IP Strategy

• Assess your company’s IP assets and prioritize
• Know your competition
• What’s the pace of innovation and opportunities for growth?
• Determine the best way to protect your IP
• Develop a plan, set goals and implement
• Get help!
Risks of Early Public Disclosure

– US is a First Inventor to File system
  • Grace period
– Loss of rights internationally
– Crowdfunding campaigns
  • Disclosure vs. On Sale Bar issues?
Determine the type of IP protection that you need

- Patents
- Trademarks and servicemarks
- Copyrights
- Trade secrets
Types of Intellectual Property
# Intellectual Property Overview

<table>
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<tr>
<th>What is protected</th>
<th>Utility Patent</th>
<th>Design Patent</th>
<th>Trade Secrets</th>
<th>Copyrights</th>
<th>Trademarks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Inventions - Process, machine, manufacture, or composition of matter</td>
<td>Ornamental characteristics embodied in, or applied to, an article of manufacture</td>
<td>Business related information (formulas, techniques, information)</td>
<td>Art, in an all encompassing sense</td>
<td>Marks that indicates the source or origin of goods or services</td>
</tr>
<tr>
<td>Requirements</td>
<td>Utility, novelty, and non-obviousness</td>
<td>Novelty and non-obviousness</td>
<td>Commercial value, generally not known, and reasonable efforts of secrecy</td>
<td>Original, authorship, and fixation in a tangible medium</td>
<td>Use in commerce and either distinctiveness or secondary meaning</td>
</tr>
<tr>
<td>Protects Against ...</td>
<td>Making, selling, offering for sale, and importing</td>
<td>Making, selling, offering for sale, and importing</td>
<td>Stealing</td>
<td>Copies, performances, displays, and derivative works</td>
<td>Use of a mark that causes the likelihood of confusion</td>
</tr>
<tr>
<td>Endures until ...</td>
<td>20 years from filing date</td>
<td>15 years from issuance</td>
<td>Public Disclosure</td>
<td>The life of the author +70 years</td>
<td>Abandoned</td>
</tr>
<tr>
<td>Rights of Independent Creators</td>
<td>None</td>
<td>None</td>
<td>Full</td>
<td>Full</td>
<td>None</td>
</tr>
</tbody>
</table>
Examples of IP in a Mobile Phone

**Trademarks:**
- Made by “Apple"
- Product “iPhone"
- Software “iOS"

**Utility Patents:**
- Data-processing methods
- Semiconductor circuits
- Chemical compounds
- Battery/Power Control
- Capacitive Touch Screen
- Camera

**Design Patents:**
- Form of overall phone
- Icon layout
- Bezel Design

**Copyrights:**
- Software code
- Instruction manual
- Ringtone

**Trade secrets:**
- ???

© Apple
Copyrights

**Definition:** A form of protection provided to the authors of “original works of authorship”

**Protects:** Literary, dramatic, musical, artistic, and certain other intellectual works

**Duration:** In general, author’s life + 70 years

[Link to copyright.gov](https://www.copyright.gov)
Copyrights and the Economy

• $1.2 trillion to the U.S. GDP
• Employed nearly 5.5 million workers with an average compensation 38% higher than the average
• Music, television, video, motion pictures, software, newspapers, books and periodicals in foreign markets amounted to $177 billion
• Between 2012 and 2015, the these industries grew at < 127% of the rest of the economy

Source: The Copyright Alliance, www.copyrightalliance.org
Trademarks

**Definition:** Any word, name, symbol, or device, or any combination, used, or intended to be used, in commerce to identify and distinguish the goods or services

**Protects:** All of the above & logo, banner, sound, smell, etc.

**Duration:** 10-year terms with 10-year renewal terms

Trademark Registration #: **GE**: 3386370, **Kellogg’s**: 3445274, **LG**: 3250589, **FedEx**: 3413407, **Starbucks**: 3428128, **IBM**: 3002164
Federal Trademark Registration

Benefits

• Filing date “constructive” date of first use
• Evident of the registrant’s ownership of the mark and exclusive right to use the mark in commerce for goods or services specified in registration
• Right to sue in federal courts and recover profits, possibly treble damages and attorney’s fees
• Customs Service aid
Trade Secrets

**Definition:** Any information that provides economic value that is not in the public domain and that has been reasonably kept secret

**Protects:** Formulas, patterns, compilations, programs, devices, methods, techniques or processes

**Duration:** As long as they remain secret

Trademark Registration #: **Coca Cola:** 3252896, **KFC:** 2800403
Defend Trade Secrets Act (2016)

Creates federal jurisdiction for theft of trade secrets including:

• A Federal civil cause of action for misappropriation of trade secrets
• An *ex parte* seizure provision that can be invoked in extraordinary circumstances
• Statutory damages provisions

[Source](https://www.patentdocs.org/2016/05/president-Obama-signs-defend-trade-secrets-act.html)
May 11, 2016
Applying for a Patent
Getting a patent

• Who can apply?
• What can and cannot be patented?
• Is my invention patentable?
• How long does protection last?
• How much does it cost?
What kind of patent?

- **Utility**: a process, machine, article of manufacture, or composition, or an improvement thereof
- **Design**: an ornamental design for an article of manufacture
- **Plant**: an asexually reproduced variety of plant
Considerations

• Cost
• Time
• International protection
• Provisional or nonprovisional
• Hire a patent attorney or agent
Prepare and submit your application

• Required parts
• File online
Work with your examiner

• Pre-exam
• Examination
  – Interviews
• Appeal
• Allowance
Maintain your patent

• Maintenance fees
• Change of ownership
• Corrections
• Post-grant review
Resources
Startup Resources

Many startup businesses face unique IP-related challenges, such as IP portfolio prerequisites to secure funding, and the possibility of costly patent infringement demand letters and lawsuits. We have tailored this area of our website to suit the specific needs of startup businesses, a segment of our stakeholders that continues to be recognized as an outsized engine of job creation, economic growth, and unparalleled innovation in the United States.

This portal is part of our Startup Partnership Initiative—putting key resources and critical information for startups in a single place so it’s easier to find what you may need when you need it.

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<th>Patents for Startups</th>
<th>Trademarks for Startups</th>
<th>Startup Assistance</th>
<th>Current Events</th>
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</table>
| The patent process can be challenging if you are not familiar with it. Here is basic information on the patent process.  
- Patent Process Overview  
- Inventors Assistance Center  
- Patent FAQs  
- Patent Homepage  
- Search for Patents  
- Official Gazette for Patents | The trademark process can be confusing for a beginner, so here is basic information on registering a trademark.  
- Trademark Basics  
- Search for Trademarks  
- Filing online  
- Trademark Homepage | The Inventors Assistance Center and Trademark Assistance Center provide information and services to the public. Center staff can answer questions on patent and trademark processes, but cannot provide specific legal advice.  
- Inventors Assistance Center  
- Trademark Assistance Center  
- Patents Ombudsman Program  
- BusinessUSA (link is external) | Information about conferences, conventions and other opportunities to engage.  
- Upcoming Events  
- Inventors Eye |
• Special status for a final disposition within ~12 months
• Utility and plant applications
• $4,000 (normal)/$2,000 (small)/$1,000 (micro)
Small Entity

- Must be an individual or
- A small business (less than 500 employees) or
- A non-profit organization

Independent Micro-entity

- Qualify as a small entity
- Filed no more than 4 previous applications
- Income not greater than 3x median income
  - January 2018: $177,117
- Not assigned to other than a micro-entity
- Inventions assigned to employer don’t count against you
- A 75% reduction in fees
Pro Bono Assistance Program

In general, there are three basic eligibility requirements:

1. Household income below a certain threshold,
2. Knowledge of the patent system and
3. You must have an invention—not just an idea!

uspto.gov/probonopatents
Any questions? Email: probono@uspto.gov
Pro Se Assistance Program

- Three percent of all applications
- Pro Se Art Unit expanding
- Resources for client education
Additional Resources

• IP Awareness Assessment
  IPassessment.uspto.gov

• Law School Clinic Program

• Patent and Trademark Resource Center
  UNL College of Law – Schmid Law Library
  University of Nebraska, Lincoln
  1875 N 42\textsuperscript{nd} Street
  Lincoln, NE 68503
Thank You

rockymountain@uspto.gov