

An Intellectual Property Primer

What is Intellectual Property?

The World Intellectual Property Organization provides this definition:

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.

While this definition seems a little weak, it is suitable for our purposes. And to be fair, this is a tougher question than it appears. At least two books have been written about intellectual property that never actually define the term. Neither does the Agreement on Trade Related Aspects of Intellectual Property (TRIPS), the IP portion of the GATT.

How is Intellectual Property Protected?

The primary tools of IP protection are Patents, Industrial Design, Copyrights, Trademarks, Geographic Indications, and Trade Secrets.

Patents: Patents provide inventors the exclusive right to use the product or process they created for a fixed period of time.

Industrial Design: An industrial design is a reproducible visual characteristic of an article. They are inseparable from the articles to which they are applied. In the US, industrial design is protected with design patents providing protection for 14 years.

Copyrights: Copyrights are rights given to literary and artistic creators of original works for a fixed period of time. The granted right usually protects how an idea is expressed or presented instead of the idea itself. Copyrights are usually used for IP with no industrial applicability. The exception is that most software is protected by copyright.

Trademarks (and Service Marks): Are the exclusive right to use a distinctive name, sign or mark to indicate that goods or services are provided by a specific enterprise. Trade and service marks need to be registered and can be renewed indefinitely.

Geographic Indication: Similar to a trademark, geographic indications are applied to goods or services that come from a specific geographic region.

Trade Secrets: Trade secrets are proprietary information held in confidence by people or organizations. Unlike the above IP protection tools, trade secrets are generally protected through contract and liability laws.

Why Is Intellectual Property So Sensitive?

At its core, the disagreement is about the relative benefits and costs of IP protection.

IP rights exist because society benefits when creators publically share their creations. For example, the advances in medicine, communications and electronics over the last 50 years have unarguably improved society. Supporters argue that these advances are shared with society because of the IP rights that protect a creator's ability to profit from their creations. Unfortunately, IP rights also make things more expensive by limiting access to the creation for a period of time. Detractors argue that the long term benefits of IP protection are not enough to justify these additional costs.

When Do Intellectual Property Issues Occur?

Whenever something useful is expensive and difficult to create but once created is simple and inexpensive to duplicate then you are going to have intellectual property issues.

Who is Most Sensitive to Intellectual Property?

Industries most sensitive to IP rights include: Pharmaceuticals, Chemicals, Software, Entertainment, and Electronics/IT. As suggested above, each of these industries have products that reflect high intellectual content relative to actual production costs.

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