

INTELLECTUAL PROPERTY SUMMARY

This summary is for general information only. It is not a substitute for independent legal advice. It should not be used to make decisions about your particular needs and situation. Always consult your own counsel to be certain applicable time periods are met and appropriate procedures are followed to protect your interests.



Mode of Protection	Subject Matter Protected	Conditions or Requirements	Method of Obtaining Protection	Length of Protection	Scope of Protection	Availability of Protection Outside the United States*
UTILITY PATENT	Process, machine, article of manufacture, composition of matter, or an improvement of any of the above. Can include software and sexually reproduced plants.	New, useful, non-obvious. Invention must not be publicly used or on sale in the United States or described in a printed publication anywhere one year prior to the filing date of the U.S. application.	Full disclosure, including best mode of practicing invention, on application to the United States Patent and Trademark Office (USPTO). May claim priority from a provisional application or certain foreign applications filed within 12 months before the application filing date.	From issuance by USPTO until 20 years after the filing date. However, for applications filed before June 8, 1995, term is 17 years from the date of issuance by USPTO, if longer. Terms may be extended under certain circumstances.	Right to exclude others from making, using, offering to sell, or selling the patented invention in the United States. Patent infringement occurs when subject matter comes within the scope of a patent claim.	By application for patent to the individual foreign country, directly or through PCT (Patent Cooperation Treaty) or European patent applications. Note: conditions and requirements may differ.
DESIGN PATENT	The ornamental appearance of a manufactured article.	New, original, and ornamental. Otherwise the same as for utility patents.	By application to the USPTO.	14 years from the date of issuance by the USPTO.	Right to exclude others from making, using, offering to sell, or selling the patented invention in the United States. Patent infringement occurs when an article is confusingly similar in appearance.	By application for patent to the individual foreign country or for European Community design. Note: Conditions and requirements may differ.
PLANT PATENT	Plants.	New, distinct. Must be asexually reproduced and not tuber propagated.	By application to the USPTO. May claim priority from a provisional application filed within 12 months before filing date.	Same as for utility patents.	Right to exclude others from asexually reproducing the plant or selling or using the plant so reproduced in the United States. Patent infringement occurs when a plant comes within the scope of a patent claim.	By application for patent to the individual foreign country. Note: Conditions and requirements may differ.
TRADE SECRET	Typically very broad; valuable and secret information used in business that gives a competitive advantage.	Not generally known in the respective trade.	Establishing a security protocol to ensure that secrecy and confidentiality are maintained.	As long as secrecy is maintained.	Protectable by Economic Espionage Act of 1996 and by state law against those who obtain the information by improper means or by breach of confidence.	Generally and without formalities. In industrialized nations, it would be best to use confidentiality nondisclosure agreements drafted in conformity with local laws. May have limited duration in some countries.
COPYRIGHT	Works of authorship. Examples include art, sculptural works, literature, compositions, dramatic works, pictorial, graphic, computer programs, and audiovisual works, sound recordings, architectural works, and derivative works.	Originated by author and expressed and fixed in a tangible medium. Does not protect underlying idea, process, principle, or discovery.	Protection exists at the moment of fixation in tangible medium. Copyright notice no longer required for works published on or after March 1, 1989. Registration is required to initiate legal action in U.S. for infringement. Registration within three months of first publication is highly recommended.	For individual authors: author's lifetime plus 70 years. For works made for hire: 95 years from publication or 120 years from fixation, whichever is shorter.	Exclusive right to reproduce, perform, display, or distribute the copyrighted work, or create derivative works from it. Copyright infringement occurs when ownership of a valid copyright can be proven and infringement of one of the above rights occurs, subject to fair use and other defenses.	Available if the country is a co-member with the United States in an international convention, i.e., Berne Convention, Universal Copyright Convention.
TRADEMARK, SERVICE MARK, TRADE DRESS	An identifying symbol, word, slogan, design, picture, or shape. Can include sound, color, or scent.	Must identify and distinguish goods or services from the goods or services of others and indicate source of the goods or services.	Common law protection by use in the marketplace as a mark. State and federal registration are available. Protection of an Internet domain name used as a mark may also be obtained.	As long as properly used as a mark. Federal registration: term of 10 years and renewable thereafter for 10-year periods (registrations issued or renewed prior to November 16, 1989, are for 20-year periods).	Right to exclude others from using the mark. Test of infringement involves likelihood of confusion; includes comparison of the marks and of the respective products or services. Other factors: prior use of the mark, geographic marketplace.	By application to the individual foreign country, for international registration pursuant to the Madrid Protocol, for European Community trademark registration, and/or by that country's trade regulation law. However, in most foreign countries ownership is obtained by registration.