

Kelcey Patrick-Ferree
Principal

Intellectual Property (United States)

<u>Type of IP</u>	<u>What It Protects</u>	<u>How to Obtain Protection</u>	<u>How to Maintain Protection</u>	<u>Benefits</u>	<u>Drawbacks</u>	<u>Example</u>
Patent	Inventions and discoveries that are: 1) Novel 2) Non-obvious 3) Useful	Federal registration only. You may represent yourself; only a registered patent agent may act on your behalf.	Regular payments are needed to the U.S. Patent and Trademark Office (PTO).	No one else can make your product for 20 years, even for personal use and even if they independently created it.	Very expensive. Limited duration (20 years). Publication necessary.	Hand dryers. Some software coding.
Trademark	Something that identifies the source of a product or service. May be a word, design, color, scent, or sound. Cannot be useful (functional) as to the product or service.	Common law use, state registration, or federal registration. (There are limitations on the usefulness of common law and state registration.)	Use consistently in connection with the identified product/service. <i>Common law:</i> that is all. <i>State registration:</i> renew per state law. <i>Federal registration:</i> Renew (with renewal fee) every 10 years. Also file a Statement of Use between 5 th and 6 th year following registration.	No one else can use your mark (or a confusingly similar mark) for the same or similar goods/services within the protected geographic area. <i>Common law:</i> Wherever in use, widely enough recognized to be a source identifier. <i>State registration:</i> Within the state of registration. <i>Federal registration:</i> Throughout the U.S.	Federal registration can be costly.	<i>Word:</i> Apple <i>Design:</i> Olympics rings <i>Color:</i> John Deere green <i>Scent:</i> scented sewing thread <i>Sound:</i> NBC chimes

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Copyright	Creative works fixed in a tangible medium of expression. Everything from books to sculptures to video games.	Exists at the moment of creation. Can be federally registered for additional protections (e.g. statutory damages).	No maintenance needed. Can enforce through a variety of mechanisms (demand letters, DMCA take-down notices, law suits).	Relatively cheap to register, free to obtain in the first place. Long duration (varies depending on who created it, but it will always be a minimum of 50 years).	Does not protect ideas. Fair use and independent creation are defenses. Must deposit a copy of the work which is then part of the public record.	This handout. Spoon Bridge with Cherry. World of Warcraft. Some software coding.
Trade Secret	Information and/or ideas that: <ol style="list-style-type: none"> 1) have actual or potential economic value if secret; 2) cannot be easily ascertained by others who are using proper means; 3) are minimally novel; and 4) are the subject of reasonable efforts to maintain them as secret. 	Keep it secret using reasonable efforts. What constitutes reasonable efforts varies depending on nature of secret and size of company. In general, protection involves legal safeguards such as nondisclosure agreements and physical safeguards such as locks.	Continue to keep it secret. Take action against anyone who threatens to reveal it (e.g., get an injunction).	Only way to protect certain types of intellectual property (ideas). Can be combined with copyright or patent protection.	Destroyed by being revealed.	Formula for Coca-Cola. Recipe for unique “nooks and crannies” in Thomas English muffins.

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