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Trade Secrets

Intellectual property rights and Patents

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Abstract

A patent is the public disclosure of the invention and the best way of practicing the invention, in exchange for the rights to that information for a set period of time - twenty years. A patent permits its owner to exclude members of the public from making, using, or selling the claimed invention. This type of arrangement is a necessity for any type of scientific work. It allows other people to share in the ideas that have been thought and utilized by a company and/or individuals so that research is not unnecessarily performed twice.

Keywords:copyrights;laws;enforcement;ownership;objective;effects;scams; criticism

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Introduction

Intellectual property (IP) is a legal term that refers to creations of the mind. Examples of intellectual property include music, literature, and other artistic works; discoveries and inventions; and words, phrases, symbols, and designs. Under intellectual property laws, owners of intellectual property are granted certain exclusive rights. Some common types of intellectual property rights (IPR) are copyright, patents, and industrial design rights; and the rights that protect trademarks, trade dress, and in some jurisdictions trade secrets. Intellectual property rights are themselves a form of property, called intangible property. Patents and copyrights are the legal implementation of the base of all property rights: a man's right to the product of his mind. Every type of productive work involves a combination of mental and of physical effort: of thought and of physical action to translate that thought into a material form. The proportion of these two elements varies in different types of work. At the lowest end of the scale, the mental effort required to perform unskilled manual labor is minimal. At the other end, what the patent and copyright laws acknowledge is the paramount role of mental effort in the production of material values; these laws protect the mind's contribution in its purest form the origination of an idea. The subject of patents and copyrights is intellectual property. Thus the law establishes the property right of a mind to that which it has brought in existence. Although many of the legal principles governing IP and IPR have evolved over centuries, it was not until the 19th century that the term intellectual property began to be used, and not until the late 20th

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century that it became commonplace in the majority of the world. The Statute of Monopolies (1624) and the British Statute of Anne (1710) are now seen as the origins of patent law and copyright respectively, firmly establishing the concept of intellectual property.

HISTORY

Patents were systematically granted in Venice as of 1450, where they issued a decree by which new and inventive devices had to be communicated to the Republic in order to obtain legal protection against potential infringers. The period of protection was 10 years. These were mostly in the field of glass making. As Venetians emigrated, they sought similar patent protection in their new homes. This led to the diffusion of patent systems to other countries. The English patent system evolved from its early medieval origins into the first modern patent system that recognized intellectual property in order to stimulate invention; this was the crucial legal foundation upon which the Industrial Revolution could emerge and flourish. By the 16th century, the English Crown would habitually abuse the granting of letters patent for monopolies. After public outcry, James I of England was forced to revoke all existing monopolies and declare that they were only to be used for "projects of new invention". This was incorporated into the Statute of Monopolies (1624) in which Parliament restricted the Crown's power explicitly so that the King could only issue letters patent to the inventors or introducers of original inventions for a fixed number of years. The Statute became the foundation for later developments in patent law in England and elsewhere. Important developments in patent law emerged during the 18th century through a slow process of judicial interpretation of the law. In 1796 patent taken out by James Watt for his steam engine, established the principles that patents could be issued for improvements of an already existing machine and that ideas or principles without specific practical application could also legally be patented . The modern French patent system was created during the Revolution in 1791. Patents were granted without examination since inventor's right was considered as a natural one. Patent costs were very high. Importation patents protected new devices coming from foreign countries. The patent law was revised in 1844 - patent cost was lowered and importation patents were abolished. The first Patent Act of the U.S. Congress was passed on April 10, 1790, titled "An Act to promote the progress of useful Arts". The first patent was granted on July 31, 1790 to Samuel Hopkins for a method of producing potash (potassium carbonate).

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OBJECTIVE

The stated objective of most intellectual property law (with the exception of trademarks) is to "Promote progress."By exchanging limited exclusive rights for disclosure of inventions and creative works, society and the patentee/copyright owner mutually benefit, and an incentive is created for inventors and authors to create and disclose their work. Some commentators have noted that the objective of intellectual property legislators and those who support its implementation appears to be "absolute protection". "If some intellectual property is desirable because it encourages innovation, they reason, more is better. The thinking is that creators will not have sufficient incentive to invent unless they are legally entitled to capture the full social value of their inventions". This absolute protection or full value view treats intellectual property as another type of "real" property, typically adopting its law and rhetoric. Other recent developments in intellectual property law, such as the America Invents Act, stress international harmonization. One is to give statutory expression to the moral and economic rights of creators in their creations and the rights of the public in access to those creations. The second is to promote, as a deliberate act of Government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development.

INTELLECTUAL PROPERTY RIGHTS:

Intellectual property rights include patents, copyright, industrial design rights, trademarks, trade dress, and in some jurisdictions trade secrets.

- **Patents**

A patent is a form of right granted by the government to an inventor, giving the owner the right to exclude others from making, using, selling, offering to sell, and importing an invention for a limited period of time, in exchange for the public disclosure of the invention. An invention is a solution to a specific technological problem, which may be a product or a process.

- **Copyright**

A copyright gives the creator of an original work exclusive rights to it, usually for a limited time. Copyright may apply to a wide range of creative, intellectual, or artistic forms, or "works". Copyright does not cover ideas and information themselves, only the form or manner in which they are expressed.

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- **Industrial design rights**

An industrial design right protects the visual design of objects that are not purely utilitarian. An industrial design consists of the creation of a shape, configuration or composition of pattern or color, or combination of pattern and color in three-dimensional form containing aesthetic value. An industrial design can be a two- or three-dimensional pattern used to produce a product, industrial commodity or handicraft.

- **Trademarks**

A trademark is a recognizable sign, design or expression which distinguishes products or services of a particular trader from the similar products or services of other traders.

- **Trade dress**

Trade dress is a legal term of art that generally refers to characteristics of the visual appearance of a product or its packaging (or even the design of a building) that signify the source of the product to consumers.

- **Trade secrets**

A trade secret is a formula, practice, process, design, instrument, pattern, or compilation of information which is not generally known or reasonably ascertainable, by which a business can obtain an economic advantage over competitors or customers. Secret law is primarily handled at the state level under the Uniform Trade Secrets Act, which most states have adopted, and a federal law which makes the theft or misappropriation of a trade secret a federal crime. This law contains two provisions criminalizing two sorts of activity. The first, criminalizes the theft of trade secrets to benefit foreign powers. The second, 1 criminalizes their theft for commercial or economic purposes. Trade secret law varies from country to country.

LAW:

- **Effects**

A patent does not give a right to make or use or sell an invention. Rather, a patent provides, from a legal standpoint, the right to exclude others from making, using, selling, offering for sale, or importing the patented invention for

the term of the patent, which is usually 20 years from the filing date subject to the payment of maintenance fees. From an economical and practical standpoint however,

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a patent is better and perhaps more precisely regarded as conferring upon its proprietor "a right to try to exclude by asserting the patent in court", for many granted patents turn out to be invalid once their proprietors attempt to assert them in court. A patent is a limited property right the government gives inventors in exchange for their agreement to share details of their inventions with the public. Like any other property right, it may be sold, licensed, mortgaged, assigned or transferred, given away, or simply abandoned.

- **Enforcement**

Patents can generally only be enforced through civil lawsuits. Typically, the patent owner seeks monetary compensation for past infringement, and seeks an injunction that prohibits the defendant from engaging in future acts of infringement. To prove infringement, the patent owner must establish that the accused infringer practices all the requirements of at least one of the claims of the patent. Patent licensing agreements are contracts in which the patent owner agrees to grant the licensee the right to make, use, sell, and/or import the claimed invention, usually in return for a royalty or other compensation. It is common for companies engaged in complex technical fields to enter into multiple license agreements associated with the production of a single product. Moreover, it is equally common for competitors in such fields to license patents to each other under cross-licensing agreements in order to share the benefits of using each other's patented inventions.

- **Ownership**

In most countries, both natural persons and corporate entities may apply for a patent. The inventors, their successors or their assignees become the proprietors of the patent when and if it is granted. If a patent is granted to more than one proprietor, the laws of the country in question and any agreement between the proprietors may affect the extent to which each proprietor can exploit the patent. For example, in some countries, each proprietor may freely license or assign their rights in the patent to another person while the law in other countries prohibits such actions without the permission of the other proprietor(s). The ability to assign ownership rights increases the liquidity of a patent as property. Inventors can obtain patents and then sell them to third parties. The third parties then own the patents and have the same rights to prevent others from exploiting

the claimed inventions, as if they had originally made the inventions themselves.

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SCAMS in intellectual property:

Scams in intellectual property or invention scams are a type of scam in which either inventors are lured to pay money for development of their idea but the development does not occur, or investors pay money for a non existing product or for an invention never to be developed. Intellectual property (IP) is a very complex area and covers a vast range of diverse subjects. As a result, there are opportunities for unscrupulous individuals and organizations to take advantage of those wishing to secure protection for their IP. Many applicants for and owners of patents, trademarks and industrial design rights receive letters from such registration services and different IP offices and organizations around the world regularly issue warnings in connection with the offered services. The registration services target applicants directly because patent, trademark and design applications are published a set time after filing or upon grant along with freely available information about a name and address for the applicant. Registration services use this information to send requests for payment to applicants shortly after publication. The documents are confusing as they appear to be from official governmental agencies and to be legitimate invoices

CRITICISM

Legal scholars, economists, scientists, engineers, activists, policymakers, industries, and trade organizations have held differing views on patents and engaged in contentious debates on the subject. Recent criticisms primarily from the scientific community focus on the core tenant of the intended utility of patents, as now some argue they are retarding innovation. Critical perspectives emerged in the nineteenth century, and recent debates have discussed the merits and faults of software patents, nanotechnology patents and biological patents. These debates are part of a larger discourse on intellectual property protection which also reflects differing perspectives on copyright.

HOW IS A PATENT OBTAINED?

You must file a patent application that describes your invention with sufficient detail so one skilled in the art can practice your invention. The mere filing of the patent application however, will not guarantee that you will receive a patent for your invention. In this regard, Trademark Office will assign a patent examiner to review your application and to make a determination whether your invention is novel, is non obvious and has utility. Once the patent granting authority determines that your idea has utility, is novel and non obvious a patent may be granted. Ideas alone are not protectable What is protectable is an idea that has utility, that is novel, non-obvious and that when described in a written document, called a patent application, can be practiced. In short then, to protect your idea a patent application must be prepared and

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filed with a patent granting authority, such as the Trademark Office, and determined by that authority to be patentable.

Conclusion

Intellectual property rights are one of the most important aspects of the creative world and need to be honored by those who are part of that world, as well as those who aren't. Don't disrespect your fellow creative's by stealing their work and using it for your own benefit. Give credit where credit is due, pay for things that require payment, and set an example for others, whether they're creative professionals or simply consumers.

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