
Protecting Your Idea

This guide is designed to help small business owners make informed decisions regarding their trademarks, service marks, copy right & patents.

Trademark & Service Mark

A trademark (also known as a brand name) is used to distinguish physical products while a service mark identifies a service such as a financial service, advertising, etc.

Trademark or service mark rights can be established by:

- Simply starting to use the mark, but the rights are limited to that state;
- Applying for a federal registration for use nationwide.

The designation "TM" for trademark and "SM" for service mark is used with the name when the mark is not federally registered. ® or "Reg. U.S. Pat. & Tm.Off." means the mark is federally registered.

Where a mark is not likely to be used in interstate or foreign commerce, one should consider a state registered mark, it is quick and inexpensive to register. Federal registration provides nationwide priority rights and offers federal court protection against infringement. In international trade, the mark must be registered on a country by country basis. To register a trademark or service mark in New York State, contact:

NY State Dept. of State-Division of Corporation and State Records, Albany
(518) 474-4770.

To register a mark federally, Please contact:

U.S. Patent & Trademark Office/U.S. Department of Commerce
Washington, D. C. 20231
(800) 786-9199
Website: <http://www.uspto.gov/>

Copyright

A copyright, designated by a ©, protects literary, artistic, and musical works including sculptures, movies, computer programs, etc." Registration is granted by the federal government and is inexpensive. Although it is not necessary to register to use the symbol, registration is needed to bring suit for copyright infringement.

To register a copyright, Please contact:

U.S. Copyright Office
Library of Congress

Washington, D. C. 20559
For information: (202) 707-3000
For forms: (202) 707-9100
Website: <http://www.copyright.gov/>

Patent

A *patent* is a grant from the government to an inventor that protects his or her claimed invention in the USA for up to twenty years from the date of application. Owning a patent gives you the legal right to stop someone else from making, using, sell or offering for sale your invention without your permission. However, proving that someone is infringing on your patent requires a legal trial which may take three years or more to be heard in court and could cost millions of dollars depending on the complexity. Unfortunately, only slightly more than 60% of patent holders win their lawsuits.

There are three types of patents:

- A **design patent** protects the appearance or ornamental design of your invention. It is relatively easy to register and is the least expensive patent to file. The design patent's term is 14 years, and no maintenance fees are required to keep it in force. Its disadvantage is that someone could make the changes to the design to get around your patent. Thus the protection is more limited than a utility patent.
- A **utility patent** typically protects a device. This patent is more complicated than a design patent because it requires you to explain and claim how your invention is used. It is also much more expensive to file. Its term is 20 years from the date you file your application and to keep it in force requires the payment about every four years of maintenance fees ranging from \$300 to \$3000 (depending on the size of your company and the duration of issuance).
- A **plant patent** protects the invention or discovery of a new or distinct plant variety. The term of the patent is for 20 years; maintenance fees are the same as the utility patent.

To save time and money, you may consider a patent search to see what ideas similar to yours have already been patented. Then you can decide if you want to proceed with patenting your idea. The U.S. Patent and Trademark Office has a free handbook "Basic Facts About Patents," which is available by calling (800) 786-9199. It is interesting to note the fewer than 10% of patented ideas ever reach the market.

Distinguishing between design patents and copyrights.

Both cover aesthetic features of articles. A copyright is generally used for non-utilitarian articles that exist for their looks not for their usefulness. Some examples include paintings, sculptures, songs, and books. Design patents are utilized to protect the novel ornamental features of a utilitarian object.

Filing a patent application with the U.S. Patent Office gives you the right to claim "patent pending" status on your product. However, generally speaking, your product can be copied legally until the date you are awarded a patent. After that date any product falling within the patented claim is considered an infringing product. Under certain circumstances, damages may be obtained on the claims in a printed publication of a patent application.

Finding the right patent attorney.

Get referrals from other businesses and from local or state bar associations. You may also contact the U.S. Patent and Trademark Office website for their listing of Patent Attorneys and Agents Register to Practice before the PTO. Then ask the following questions:

- How long have you been practicing? (Look for three-plus years)
- Who are some of your clients?
- Do you have technical expertise in the general area of my invention?
- How many applications have you prepared in the past 3 years? (Look for 30 plus applications or about a dozen a year)
- What has been your cost range for the last 10 applications you filed?