INTELLECTUAL PROPERTY BASICS

PATENTS

Patents give an inventor the right to exclude others from making, using, selling, or offering to sell the patented invention. Patent protection extends to processes, machines, articles of manufacture, compositions of matter, or improvements on such things (utility patents), and ornamental designs (design patents), among others (i.e. plant patents). Utility patents require the invention or method patented to be new, useful, and non-obvious. Design patents require the design to be purely ornamental (that is, not affect the function of the article of manufacture), and also require the design to be new and original. While there are similar items that need to be filed with any patent application (i.e. filing fees), there are some fundamental differences in patent applications depending on the type of patent you are applying for. For instance, applying for a design patent requires a single claim, consisting of a drawing or group of drawings that provide enough information about the design. A utility patent, on the other hand, may require hundreds upon hundreds of claims, which could include words and/or images, in order to provide enough information about the invention. Patent protection requires applying with United States Patent and Trademark Office (USPTO). A good source for more information on patent protection is the USPTO website (http://www.uspto.gov/patents/process/).

TRADEMARKS

Trademarks provide businesses, merchants, and manufacturers with an exclusive right to use a mark in commerce, where such a mark acts distinguishes their goods and services. Words, symbols, logos, images, phrases, or product shapes that meet the criteria
 Trademarks require distinctiveness such that the device being used as a trademark does not merely describe the goods or services offered. A potential trademark can fall within a spectrum of distinctiveness, one end being a ‘fanciful’ mark (an invented mark; i.e. Kodak for cameras) that affords trademark protection, to a ‘generic’ mark (a typical name for a particular good or service) that is not eligible for trademark protection. ‘Fanciful’, ‘arbitrary’ (a mark that is meaningless in the context of the goods and services it is used for; i.e. Apple for computers and phones), or ‘suggestive’ (a mark that indicates a quality of a good or service, but does not describe them; i.e. Blu-Ray to indicate the level of quality of the videos being played) marks meet the distinctive requirement for trademark protection. ‘Generic’ or ‘descriptive’ (merely describing a particular good or service) marks are not eligible for trademark protection since they do not rise to a requisite level of distinctiveness. A descriptive mark may be eligible for trademark protection if it has developed a secondary meaning with consumers such that consumers relate a descriptive mark to particular goods or services. Trademark protection requires the mark being used in commerce. A business can apply for registration of a trademark through the USPTO, or can rely on Common Law trademark protection. A good source for more information on trademark protection is the USPTO website (http://www.uspto.gov/trademarks/basics/index.jsp).

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