

INTELLECTUAL PROPERTY

Promise and Practicalities

Legal Disclaimer:

This is not from your attorney. This isn't legal advice.

Topics:

1. IP: What is it?
2. Assertion: It's all about Intellectual Property.
3. What's it worth?
4. Should you invest?

1. What are Trade Secrets, Patents, Trademarks, and Copyrights?

What is a Trade Secret? CA civil code section 3426

(d) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

What is a Patent? 35USC101

A patent for an invention is the grant of a property right to the inventor, issued by the United States Patent and Trademark Office. "the **right to exclude** others from making, using, offering for sale, or selling" the invention in the United States or "importing" the invention into the United States.

What is granted is **not** the right to make, use, offer for sale, sell or import, but the right to exclude others from making, using, offering for sale, selling or importing the invention.

What is a Trademark? 15USC1051 and CA bus. and professions code 14200

A trademark is a word, name, symbol, or device that is used in trade with goods to indicate **the source** of the goods and to distinguish them from the goods of others. Trademark rights may be used to prevent others from using a confusingly similar mark, but not to prevent others from making the same goods.

What is a Copyright? 17USC101

Copyright is a form of protection provided to the authors of "original works of authorship" including literary, dramatic, musical, artistic, and certain other intellectual works, both published and unpublished. The Act generally gives the owner of copyright the exclusive right to reproduce the copyrighted work, to prepare derivative works, to distribute copies, to perform the work publicly, or to display the work publicly.

2. What do they Cost

Cost is both time and money.

Patents – high, perhaps \$10K and 3 years.

Trademarks – medium or low < \$1K and about 1 year.

Copyright – registration fee < \$100.

3. Value of Intellectual Property

Methods for valuing intellectual Property:

Cost – What would it cost to develop around the protected IP?

Market – What are the values of similar deals?

Profit – What is the (extra) profit that is enabled by the IP? (this one's the best)

SCALE ALL BY THE LIKELIHOOD OF SUCCESS!

4. Assertion - It's all about Intellectual Property.

Name a single business that is not based upon what you know?

5. Should you invest in IP?

Same as any other investment decision:

- ◆ Don't count sunk costs – Don't cry over spilt milk.
- ◆ Scale value by risk.
- ◆ Have a plan. What are you going to do with it?
- ◆ Calculate Return on Investment.
- ◆ Compare alternatives.
- ◆ Not just legal costs, but these should be evaluated the same way.

References:

1. See: <http://www.uspto.gov/>
2. Any business finance book on investment.
3. Your business plan.
4. NOLO Publications: Patent It Yourself and Patent, Copyright and Trademark, an Intellectual Property desk reference