

INTELLECTUAL PROPERTY CONCEPTS

	PATENTS	COPYRIGHTS	TRADEMARKS
SUBJECT MATTER	Useful, new and non-obvious process, machine, article of manufacture or composition of matter.	Original works of authorship.	Source identifiers (Brands).
EXEMPLARY SUBJECT MATTER	Business methods (e.g. Merrill Lynch's CMA account), devices (e.g. Buckminster Fuller's geodesic dome), compositions (e.g. aspirin), processes for detecting and treating disease (e.g. method for detecting Legionnaire's Disease).	Books and writings (e.g. correspondence, advertising copy), movies, music, choreography, sculpture, computer software, photographs, architectural works.	Logos (e.g. Nike swoosh), words (e.g. KODAK), packaging (e.g. Coca-Cola bottle), sounds (e.g. NBC chime), color (e.g. Owens Corning pink fiberglass).
ESTABLISHING RIGHTS	Issuance of patent from U.S. Patent and Trademark Office.	Rights established upon creation. No requirement to register (except as prerequisite for infringement suit) or to use copyright notice, but advantageous.	Rights established through use in commerce and limited to goods/services with which mark is used. No requirement to register, but advantageous.
NATURE OF RIGHTS	Right to prevent others from making, using, and offering to sell or selling patented invention. Does not guarantee patent owner itself the right to make patented invention.	Exclusive right to copy, modify, distribute, perform and display the work or works which are "substantially similar."	Right to prevent others from using the same or a similar mark in a manner which is likely to cause confusion, especially confusion about the source of others' goods or services.
WHEN TO APPLY	Within one year of first disclosure, sale or offer for sale; preferably before any disclosure, sale or offer, especially if foreign protection is desired.	Anytime; advantageous to register within five years of first publication, ideally within three months.	Anytime.
APPROXIMATE COST/TIMING OF ISSUANCE	\$5,000 - \$25,000 (EST.); payment of periodic maintenance fees over life of patent (totaling about \$7,000); minimum 18 months to issuance of patent	\$30 filing fee for registration; typically about 3 months to issuance.	\$2,500 (est.) for registration; periodic maintenance and renewal; minimum 12 months to issuance of registration.
DURATION OF RIGHTS	Generally, 20 years from filing date of application.	Author's life plus 70 years, or 95 years for anonymous works or "works made for hire."	As long as mark is used. Federal trademark registrations have a term of 10 years and can be renewed indefinitely if mark is in use.

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NOTICE	<p>"Patent Pending": discretionary once application is filed and is still pending.</p> <p>"U.S. Patent No. _____": upon issuance and during term of patent; generally mandatory for recovery of damages for infringement.</p>	<p>©[year of first publication] [name of author or copyright owner]" e.g. "©2000 Gardner, Carton & Douglas." Discretionary but advantageous.</p>	<p>"TM" to signal claim of (unregistered) trademark rights.</p> <p>"SM" to signal claim of (unregistered) service mark rights.</p> <p>® to indicate mark is federally registered.</p> <p>Notice customarily goes at upper right "shoulder" of mark.</p> <p>Discretionary.</p>
FOREIGN PROTECTION	Country by country; international conventions reduce cost and provide procedural advantages, but no global or regional patent protection available.	Protected from initial creation of the work throughout most of the world by international treaty.	Country by country; regional protection available for most of Europe, but no global protection currently available.
OWNERSHIP OF RIGHTS	Individual inventor (not company or employer) who conceived invention, but may be required to assign to employer in accordance with employment agreement.	Author; employer is generally considered "author" under "work made for hire" doctrine. Ownership of tangible article or payment for creation of work does not vest	Person or business that uses the mark on goods or services in commerce. Trademark belongs to first to use mark.
RIGHTS OF JOINT OWNERS	In absence of contrary agreement, each owner has all rights with no duties to other owners.	Each author has all rights under copyright with duty to account to co-authors or owners.	No allowance for joint owners.
ASSIGNABILITY	Freely assignable.	Freely assignable.	Only assignable with the goodwill represented by the mark.
LICENSING	May be freely licensed.	May be freely licensed.	Licensors must control quality of goods/services sold under licensed mark.

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For more information, contact Priscilla A. (Pam) Walter at Gardner, Carton & Douglas (312-245-8442 or pwalter@gcd.com)

The information contained in this chart is greatly simplified and is intended only to provide a very basic overview.

This guide is not intended as legal advice, which may often turn on specific facts. Readers should seek legal advice before acting with regard to the subjects mentioned here.