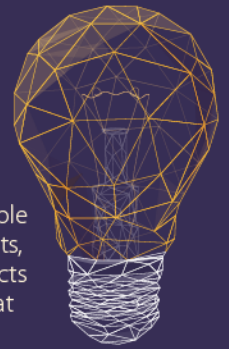


Intellectual Property

Forms of Federal IP Protection



Intellectual property (IP) law comprises a set of rights to exclude others from making, copying, or using certain intangible creations of the human mind. At the U.S. federal level, IP includes four main forms of legal protection: patents, copyrights, trademarks, and trade secrets. These legal protections are each distinct, although often confused. Each form of IP protects a different type of intellectual creation, has a different procedure for obtaining rights, and grants the IP owner rights that vary in scope and duration. This Infographic compares these different forms of federal IP protection.

	 Patent	 Copyright	TM	 Trade Secret
Constitutional Basis	IP Clause	IP Clause	Commerce Clause	Commerce Clause
Statutory Basis	Patent Act 1952	Copyright Act 1976	Lanham Act 1946	Defend Trade Secrets Act 2016 Economic Espionage Act 1996
Initial Rightsholder	Inventor	Author	Business or person using mark to identify goods or services	Owner of commercially valuable, confidential information
Subject Matter	Any "new and useful process, machine, manufacture, or composition of matter"	"[O]riginal works of authorship"	Any "word, name, symbol, or device" used to identify goods or services	Financial, business, scientific, technical, economic, or engineering information
Subject-Matter Examples	Pharmaceuticals, industrial machinery, biotechnology, manufacturing processes	Books, musical works, movies, fine art, architecture, software	Brand names, logos, distinctive trade dress	Formulas, source code, prototypes, customer lists, financial information
Requirements for Protection	Novelty; nonobviousness; utility; first to file	Originality; fixation	Intent to use, or actual use in commerce; first to register	Information derives economic value from not being generally known
Excluded from Protection	Laws of nature, natural phenomena, and abstract ideas	Any "idea, procedure, process, system, method of operation, concept, principle, or discovery"	Generic terms; descriptive terms that lack "secondary meaning"	Information generally known, independently discovered, reverse engineered, or lawfully acquired
Process to Secure Rights	The Patent and Trademark Office (PTO) patent prosecution process	Create and fix the work; optional registration	PTO trademark registration process	Take reasonable measures to keep information secret
Exclusive Rights Granted	To make, use, offer to sell, sell, and import the patented invention	To reproduce, distribute, or publicly perform/display the work, and/or make derivative works	Prevent uses of confusingly similar marks with respect to a particular good or service	Prevent others from misappropriating trade secret
Duration	20 years from filing date	Life of author plus 70 years	Potentially indefinite	Potentially indefinite
Infringement Test	Practice the claimed invention	Substantially similar to original	Likely to confuse consumers	Misappropriation
Main Defenses to Infringement	Invalidity; noninfringement; inequitable conduct	Fair use; statutory limitations	Fair use; nominative use	Information not a trade secret or was not misappropriated
Selected Legislative Amendments	Leahy-Smith America Invents Act 2011 Hatch-Waxman Act 1984 Bayh-Dole Act 1980	Digital Millennium Copyright Act 1998 Copyright Term Extension Act 1998 Berne Convention Implementation Act 1988	Trademark Dilution Revision Act 2006 Anti-Cybersquatting Consumer Protection Act 1999	Foreign and Economic Espionage Penalty Enhancement Act 2012

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