



The Intellectual Property Landscape

Understanding the Intellectual Property Landscape as an entrepreneur is essential. Though you need not utilize every form of protection available, being aware of the available options enables you to make informed decisions about the best approach for you. This checklist outlines the forms of IP protection available to you, key differences, typical costs, as well as infringement issues. Contact us at contact@hiplegal.com or 650-397-6447 with questions or if you need help with IP issues.

Trademark

- Protects a name, logo, or slogan if it is available and not confusingly similar to an existing trademark. Common law protection, state registration, and federal registration provide different protections.
- Trademarks can last forever, if you continue using them in commerce, but registration requires periodic re-certification of continued use.
- Common law trademarks are established when you start using your name, logo, or slogan, but federal registration provides additional protection. Estimated costs for applying for a trademark for a name and/or logo: \$900 for a search, \$1000 for filing, and \$225-375/class in Trademark Office fees (average total cost for filing one trademark application is \$2200.) Filing does not guarantee that you will receive a trademark.
- To avoid infringing others' trademarks, we recommend doing a trademark clearance search before launching your product or service. The cost is approximately \$1500 for commercial search and analysis.

Utility Patent

- Protects unique and new functional features of your invention, as long as they are not obvious. Valuable for features that provide a market advantage yet are likely to be discovered by another. You must file prior to the first disclosure or sales-related activity (for international protection) or before the one year anniversary of that disclosure or sales activity (for U.S. protection).
- Utility Patents last for 20 years from the filing date, but require maintenance fees.
- Estimated costs for filing a utility patent application for an invention: \$8,000-\$16,000, depending on complexity of the invention, process, and how much of the content is prepared by the inventor. Filing does not guarantee that you will receive a patent.
- It is not possible to ensure that you do not infringe others' utility patents, since there are millions of issued patents, new patent applications issue every week, and infringement determination requires a complete analysis of the claims and prosecution history of each patent. You can do a Freedom to Operate search, which costs \$10,000 or more. It is also possible to purchase patent infringement insurance.



Design Patent

- Protects unique artistic appearance of your product or interface. You must file prior to the first disclosure or sales-related activity (for international protection) or before the one year anniversary of that disclosure or sales activity (for U.S. protection).
- Design patents last 14 years from filing.
- Estimated costs for filing a design patent application for an invention: \$2,000-\$4,000. Filing does not guarantee that you will receive a patent.
- It is not possible to ensure that you do not infringe others' design patents, since there are thousands of granted patents, and design patents are only published when they are granted. It is possible to do a Freedom to Operate search, which costs \$5,000 or more.

Trade Secret Program

- Protects those aspects of your business, system, or process that give you a competitive advantage and that you can keep confidential, across the range of client lists, pricing, circuit manufacturing, data management, even your hiring decision process. Trade secrets only protect against someone taking the trade secret from you, and disappear when they become publicly known.
- Trade Secrets can last forever, as long as you maintain them in confidence.
- Estimated costs for a trade secret program: \$3,000 (for setting up initial procedures, training for employees, marking of materials, and tracking access). On-going training may be done in-house, or arranged as needed.
- You only misappropriate someone else's trade secret if you obtain something that is a trade secret (for example data under a non-disclosure agreement) and disclose it to others.

Copyright

- Protects creative expression, ranging from books, music, and paintings, to software code and user interface design. Copyright attaches automatically when the creative expression is fixed (for example, posted on the Internet). Copyright only protects against copying, not someone's independent design of something similar.
- Copyright lasts for 70 years from the death of the author, or for 95 years from publication if it was a work for hire.
- Copyright attaches automatically when you create something new. Registering a copyright provide some additional protection. Estimated costs for a copyright registration: \$650, plus \$35-80 in Copyright Office charges. We recommend that original works be directly registered by the client, as the forms are simple and simply take some time to fill out. This reduces the cost to the Copyright Office fee.
- You only infringe someone's copyright if you actually copy their creative expression.

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