BANNER & WITCOFF, LTD.

Intellectual Property

A BASIC OVERVIEW

ABOUT THE AUTHORING LAW FIRM

Banner & Witcoff, Ltd. is a U.S. law firm devoted to the specialized practice of intellectual property law. The firm actively engages in the procurement, enforcement and litigation of intellectual property rights throughout the world, including all federal and state agencies, and the distribution of such rights through licensing and franchising. The client base of the firm is broad, in terms of number of clients, client size, geographical distribution of clients and technologies represented. Banner & Witcoff represents businesses in virtually all technological fields. The firm applies a pragmatic, business-like approach to each client's intellectual property matters in an effort to obtain results consistent with each client's business objectives. Banner & Witcoff has successfully represented clients in numerous landmark cases, including several renowned intellectual property decisions in the United States Supreme Court.

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ABOUT THIS GUIDE

This manual has been prepared as a guide to understanding the basic principles of United States patent, trademark, copyright, trade secret and related law. As an overview, it is not exhaustive, nor is every sentence a perfect statement of law. Individual circumstances may drastically affect the legal analysis of a particular situation. Generalities may include unstated exceptions. Further information and updates to this manual can be found on the firm's website, www.bannerwitcoff.com. Also, the United States has a very dynamic legal system, which may change after the issuance of this manual and thus affect the legal analysis of a situation. Always consider the need to consult with legal counsel about your particular situation. This guide does not constitute legal advice.

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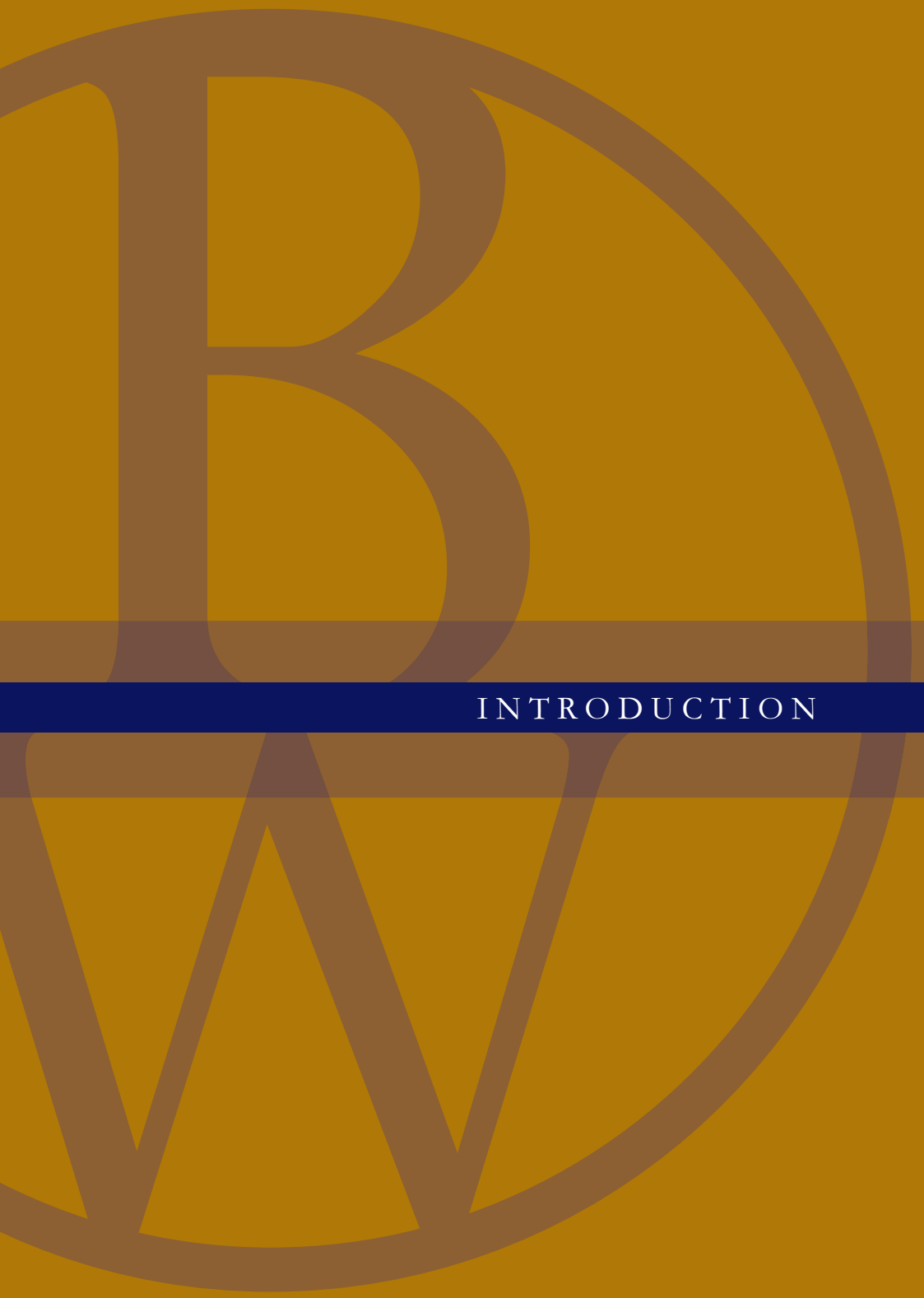


INTRODUCTION

EXECUTIVE SUMMARY

PATENTS

In the United States, a person who invents or discovers something new, useful, and not obvious may apply to the United States Patent and Trademark Office for a patent. In return for disclosure on how to make and use the invention, the Patent Office will grant the inventor a patent, which allows the inventor to exclude others from actions including making, using, selling, offering to sell, or importing the invention in the United States. Consequently, a patent owner may sue, in federal court, anyone who makes, uses, sells, offers to sell, or imports the patented invention without permission, i.e., infringes the patent. The inventor may, of course, license the invention to others for a royalty.

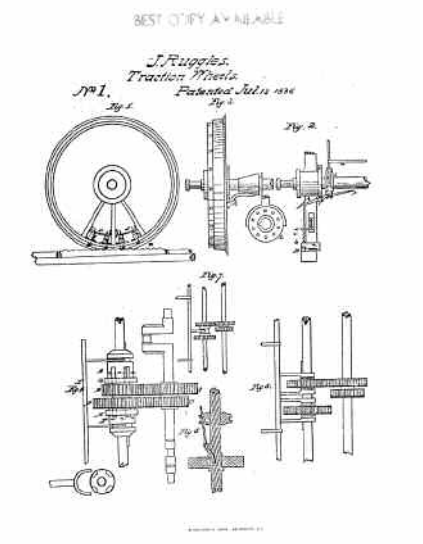
The patent owner's exclusive rights commence on the day the patent is issued and generally continue until 20 years after the effective date of the filing of the application. Additionally, the patent owner may also have, in specific instances, certain provisional rights to damages that commence on the date of publication of the patent application.

A patent does not necessarily guarantee the right to make, use, sell, offer to sell, or import the patented invention because making, using, offering to sell, or importing the invention may nonetheless infringe an earlier, unexpired patent. For example, a patent granted for an improvement to a method or device already patented by another person, does not give rights to the previously patented method or device.

Patents are divided into two main parts. The "specification" describes the invention and precedes the "claims," which define the scope of asserted rights to the invention. Drawings usually accompany the specification as descriptive aids.

After filing a patent application in the Patent Office, an Examiner will read the application and analyze the claims to determine whether the invention qualifies for patent protection.

Among others, two important requirements for patentability are novelty and non-obviousness. Novelty requires the inventor to be the first person to make the invention without abandoning, suppressing, or concealing it. In addition, the invention is novel



only if it has not been publicly used, published, sold, offered for sale, or imported, prior to one year before the filing of the application. Also, inventions cannot be patented that would have been obvious to one of ordinary skill in the trade or profession of the invention when the invention was made.

Persons seeking a patent have a "duty of candor and good faith." As such, they must advise the Patent Office of all previous public inventions known to them that are material to a determination of patentability. Previous public inventions are called "prior art."

An infringer is generally liable for monetary damages no less than a reasonable royalty and may be enjoined from further infringing activity. In exceptional cases, commonly involving willful infringement, damages may be multiplied up to three times.

TRADE SECRETS

Confidential and/or proprietary business information that is not patented may still be protected under state trade secret law. The Uniform Trade Secrets Act, enacted by most states, protects information that derives independent economic value from being generally unknown information. Trade secrets may include formulas, compilations, devices, and methods but do not include information that competitors may obtain through proper means, such as reverse engineering a commercially available product. Trade secrets are protected until they are no longer confidential.

Employees generally possess responsibility to their employers not to disclose trade secrets. The employer, however, must also continuously engage in conduct to preserve trade secrets. Thus, a trade secret generally should be disclosed only to employees requiring the trade secret to perform their jobs. Trade secrets visible to visitors during plant tours may lose trade secret protection. Persons improperly acquiring trade secrets may be barred from utilizing the information. In addition, damages for lost profits or the value of the purloined trade secret may be awarded.

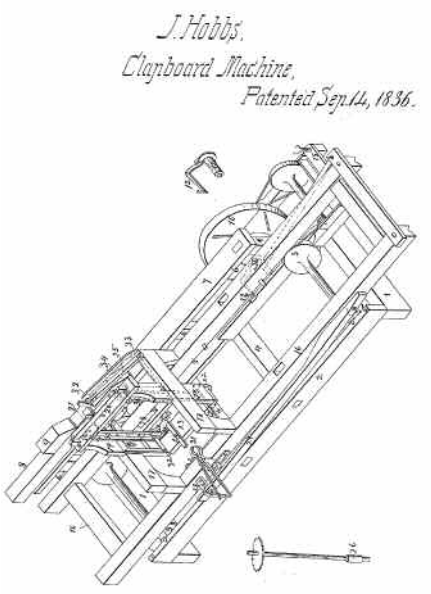
TRADEMARKS

Trademarks are brands that identify and distinguish the goods or services of the trademark owner. Trademark ownership is determined based on who was the first to use the "mark" commercially.

A trademark owner may apply for federal trademark registration if the owner has used a trademark or developed a sincere intent to use (followed by actual use within a fixed time period) a trademark in interstate commerce. Trademark rights may last indefinitely if the mark is used continuously, although federal registration renewal is required every ten years.

Federal trademark registration for a mark used in interstate commerce is generally recommended because it allows the owner to sue for infringement in federal court. In addition, the infringer may be liable for additional damages and attorney fees. Federal trademark registration also provides constructive notice of trademark ownership to other potential users.

The test for determining whether one mark may concurrently exist with another earlier used mark in the marketplace is whether a "likelihood of confusion" will result. Likelihood of confusion is increased if the marks are similar in sight, sound, and meaning, or if the marks are used for similar goods or distributed in similar market channels. If a likelihood of confusion exists, then the later mark is generally not available and should not be used.



Trademark rights may be lost as a result of improper usage. A trademark should only be used as a proper adjective, such as BAND-AID® brand adhesive bandages. Words such as "aspirin," "escalator," and "yo-yo" are no longer trademarks because the owners of the marks failed to effectively guard against improper use.

COPYRIGHTS

Copyright protects expressions of ideas, but the ideas themselves are not protected. Copyright owners have exclusive rights such as the right to use and copy the created work, prepare derivative works, distribute copies, and display the work. Copyright is established immediately upon creation of the work. Like trademarks, federal registration is generally recommended because it establishes a public record of the copyright claim. In addition, copyright registration is normally required before an infringement suit may be filed in federal court.

Books, movies, computer programs, and musical scores are examples of works protected by copyright. Other examples of protectable works include business writings, semiconductor chip layouts, and building facades.

For works created on or after January 1, 1978, the copyright term for a work is generally for the life of the author, plus 70 years. An infringer is subject to injunctions and may be required to pay damages to the copyright owner as a result of the infringement.

Several states have adopted laws supporting moral rights in a work such as a painting. Moral rights laws prohibit changing the work without permission of the author even though the author may no longer own the work. The right of publicity which allows persons to control the commercial use of their identities, is another type of property right distinct from copyright.

U.S. INTELLECTUAL PROPERTY & TRADE IDENTITY LAW*

Type of Protection	Works Protected	Requirement for Term	Test of Obtaining Right	Infringement
Patent	Articles of manufacture, processes, compositions of matter, machines, improvements thereof, and methods of making and using same.	Generally 20 years from the earliest effective filing date (17 years from grant on cases filed before June 8, 1995).	Statutory subject matter; new; useful; non-obvious to person skilled in art. Must file application within one year of publication, use, or on sale date.	• Make, use, sell, or offer to sell claimed invention. • Export major component of invention. • Import invention or product of process invention.
Design Patent	Ornamental aspects of a design.	14 years from grant.	New; non-obvious; ornamental. Must file application within one year of publication, use, or sale date.	• Make, use, sell, or offer to sell claimed invention, i.e., same design.
Trade Secret	Information that is valuable because it is not generally known.	Until the information becomes generally known.	Information maintained in confidence.	• Misappropriates and uses secret.
Trademark	Word or symbol indicating origin of goods.	Generally 10 years from issue (20 years from issue if filed before November 16, 1989), renewal every 10 years.	First use of a mark; not likely to be confused with prior marks. Registration is strongly recommended, although not required.	• Likelihood of confusion. • Dilution
Copyright	Authored work (expression of idea).	• Individuals: Life of author, plus 70 years; • Works for Hire: 95 years.	Creation of original work. Registration is strongly recommended, and is required prior to enforcement.	• Copy of original.

* as of 6/2004