



Inventors & Innovators

Without inventors and innovators, we would be without telephones, automobiles, and the Internet. Not to mention Frisbees, White-Out, and Post-It Notes.

And yet as vital as inventors and innovators are, they face many challenges – including how to maximize and protect their intellectual property assets.

For more than half a century, Olive & Olive has made life easier for forward-thinkers in business and industry. In a sense, we “invented” the concept of an intellectual property law firm in this part of the country. When we opened doors in 1957, we were the first IP practice in the Research Triangle of North Carolina.

We know IP issues.

The world of intellectual property law is remarkably complex. Every client’s situation is unique. Every solution is different.

Here’s a quick synopsis of IP that applies to different situations.

Do you have a new product? A new chemical or medicinal compound? A new method—for example, a new way to use a product or treat an illness? An improvement to any of these?

If so, what you need are IP tools to protect your ideas and safeguard their basic implementation. The two most frequently used tools for doing this are patents and trade secrets.

Patents

Patents protect the most fundamental aspects of how things work and the methods for making them work. A patent prevents others from doing the same thing in the same way. But there is a trade-off: you must disclose your inventive know-how in order to apply for a patent.

Patents won't protect everything. Your invention must be new, non-obvious, and useful. (Design patents must be ornamental, instead of useful; plant patents must meet other specific requirements.)

A patent search can help determine if your invention meets the standard. But be forewarned: companies data-mine search queries that are made through search engines. If you decide to do some preliminary checking on your own, be careful to avoid publicly disclosing your invention through the words you use when searching.

You should also act promptly to protect your invention. Patents are, in general, issued to the first person who files an application. And if an invention has been publicly disclosed or offered for sale, it may not be protectable at all – or protectable only in some countries – and even then only if an application is filed within a year of the disclosure or offer. Don't delay. If you publicly disclose your invention before filing a patent application, you will have a very limited safety net.

Once filed, your patent application will be examined to ensure it meets the requirements for protection. If it does, you ultimately will get a patent that will protect your invention for a certain number of years, depending on the kind of patent. This protection prevents even others who come up with the same idea from using it. As long as you were the first to apply for protection, you will have exclusive rights to use the patented invention (or allow others to do so). Once the patent expires, the information disclosed in it becomes available for everyone to use.

Learn more about patents, including details about the various types of patents and the process for getting them, here. Find additional in-depth articles – and discover common patent scams – in our IP Learning Center.

Trade Secrets

If you can't stand the thought of telling others how to use your invention, or if you have some other reason to keep it secret, you can still get protection under trade secret laws.

No registration is required, so it's extra-cheap. And as long as it stays secret, the protection continues. The downside is that if you forget to take precautions and the idea gets out – or if somebody else independently does the same thing – you're no longer protected, and there is virtually no way to regain protection.

If trade secrecy is the protection method you choose for your intellectual property, you should investigate how to use contracts and general business safeguards for maximum protection. Read more [here](#) and [here](#).

Do you have a new way of conducting business? A computerized method of working that you think is the greatest thing since sliced bread?

If so, protecting your invention may pose a greater challenge. Many inventors and companies try a combination of intellectual property tools to protect their methods.

Patents. Courts have struggled to define when business methods and equivalent concepts are patentable. Originally, it was thought that computerized methods of carrying on business and other activities, as well as business methods themselves, were unpatentable “abstract ideas” rather than implementations of ideas. Then in 1998 the Supreme Court said methods were protected as long as they produce a “useful, tangible, and concrete result.” More recently, there's been backtracking. For example, in 2014 the Supreme Court said that “[m]erely requiring generic computer implementation fails to transform [an] abstract idea into a patent-eligible invention.”

If the method itself is a type that might qualify for protection, it will still have to meet the general criteria for patent protection. For more on this, visit our pages on patents and our IP Learning Center.

What does all this mean for you? It means when it comes to patents, there isn't a "one size fits all" answer you can find on the Internet. Each situation requires a case-by-case analysis. Some business methods and computer-implemented inventions will pass muster. Others won't.

Trade secrets and **copyrights**. **Trade secrecy** remains a very viable option for any methods that can be kept secret. **Copyrights** also can be useful to protect specific computer code, as well as manuals that explain how to carry out the methods of operation. A combination of trade secrecy and copyright protection might be just the ticket for you.

For example, if a business method is one you plan to franchise or license to others, then you can develop operating manuals that disclose the methods (with the text protected by copyright). When you give these manuals to others, you can require them to sign confidentiality contracts. As a result, contracts can be used to protect trade secret options and limit what can be done by people who are given access to the information.

What about your brand identity?

Brand identity is typically protected by **trademark** and **unfair competition laws**. These laws protect all forms of brand identity from infringement by others, whether it's a word, symbol, color, smell, or overall "look and feel." Of course, in order to be protected, the "brand identity" must actually function as such, distinguishing a product or service from those of actual or potential competitors, so consumers can know who they are dealing with and what quality they can expect.

Brand identities should be reviewed before adoption to avoid infringement of pre-existing trademarks and trade dress of others. Ideally, once cleared, they will be protected by trademark registration to help prevent third-party infringements later on. It is best to conduct a trademark search early, before choosing a name, so

that you don't have to change it later after discovering that you are infringing someone else's rights.

Read more about trademarks here, and check out some of the articles in our IP Learning Center.

Is your innovation focused on writings, drawings, art, audiovisual or sound works, or other tangible products?

Works of authorship (including tangible renderings of the fruits of creative or aesthetic labor, encompassing everything from sculptures to musical compositions to computer code) are ordinarily protected by **copyright**. Copyright attaches automatically at the moment the work is given tangible form.

Registration is not necessary for a copyright to exist. But you get enhanced rights if you register. Ordinarily, you can't sue an infringer without registration, and your available damages are usually lower as well.

Registration is inexpensive and advisable.

Check out our copyright page for more information and, again, look at the articles in our IP Learning Center.

Olive & Olive's intellectual property attorneys are there for you from the minute you decide to pursue an invention or new innovation. We'll provide the guidance you need to prevent others from selling, manufacturing or copying your innovation without your permission. And we'll guide you every step of the way with strategic business counsel as your invention becomes the next Frisbee or White-Out.