



STRATTON LAW & MEDIATION

INTELLECTUAL PROPERTY LAW & TECHNOLOGY RELATED MATTERS

INTELLECTUAL PROPERTY OVERVIEW

PROPERTY	WHAT IS PROTECTABLE?	WHAT IS NOT PROTECTABLE?	RIGHTS ACQUIRED	HOW ARE RIGHTS ACQUIRED?	STANDARD FOR OBTAINING RIGHTS	CRITICAL DEADLINES	TERM
UTILITY PATENT	A new or improved, and useful process, method, machine, article of manufacture, or composition of matter	<ul style="list-style-type: none"> Any existing or unuseful process, method, machine, or composition of matter Methods of doing business that are not tied to machine or transformation Laws of nature Mathematical algorithms 	Right to exclude others from making, using, selling, or offering to sell the claimed invention	Granted by federal government after application is filed and approved	New, useful, and unobvious to ordinary skilled artisan in view of "prior art"	Yes	20 years from date of filing
DESIGN PATENT	Non-functional, aesthetic appearance of industrial designs and other products	Appearance of design dictated by function and designs in public domain	Right to exclude others from making, using, or selling a substantially similar design	Granted by federal government after application is filed and approved	New, useful, and ornamental design	Yes	14 years from issue
PLANT PATENT	Asexually propagated plants	Plants propagated exclusively from seed	Right to exclude others from propagating, using, selling, importing claimed variety or its parts (such as fruit or flowers)	Granted by federal government after application is filed and approved	New, distinguishable from parent and from other known varieties.	Yes	20 years from date of filing
TRADEMARK/ SERVICE MARK	Word, phrase, logo, package design, product shape, aroma, scent which identifies a single source for a product	Generic words, phrases which describe products available from different sources - descriptive marks protectable only after exclusive use and extensive advertising	Right to exclude newcomers from adopting a mark that is likely to cause confusion	<ul style="list-style-type: none"> Use Registration granted by federal government after application is filed and approved, based on application claiming use in commerce, or intent to use 	Not confusingly similar to mark already used or registered	Yes	Indefinite if in use and not abandoned. Must be renewed every 10 years.
COPYRIGHT	Expression of underlying idea embodied in works of authorship, including literary works, sculpture, music, pictures, etc.	<ul style="list-style-type: none"> Ideas underlying expression in work Facts Industrial designs Functional items 	Right to exclude others from making, distributing copies and derivative works which are substantially similar to copyrighted work	<ul style="list-style-type: none"> Fix work in tangible medium - no other formal requirements Registration granted by federal government after an application is filed and approved 	Creative originality	Yes, to receive statutory remedies	<ul style="list-style-type: none"> Life of author plus 70 years 100 years from creation for works for hire
TRADE SECRET	Secret industrial processes, customer lists, know-how, technical drawings (useful for protecting ideas which are not patentable)	Knowledge which is not secret or does not provide competitive advantage	Ownership - right to collect damages for misappropriating and using secret - right to obtain injunction against unauthorized use	Rights established under state law, can be claimed so long as claimant makes reasonable efforts to keep secret	Must be valuable secret - knowledge not known to the public or within the trade	No	Indefinite - as long as secret remains secret