Patent and Trademark Basics
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U.S. Patent and Trademark Office

- Examines patent applications and grants patents
- Examines trademark applications and registers trademarks
- Disseminates information about patents and trademarks
• formerly Patent and Trademark Library Depository Program

• The name change signifies a major shift in focus from the “paper depository” concept to an expansion of access to electronic information and specialized training to meet the information needs of 21\textsuperscript{st} Century patent and trademark customers.

• A network of more than 80 public, academic, state and special libraries assists a variety of customers including inventors, intellectual property attorneys/agents, business people, researchers, entrepreneurs, students and historians.
What is Intellectual Property?

• A product of the intellect that may have commercial value

• A creation of the mind, such as inventions, literary and artistic works, symbols, names, images, and designs used in commerce
From the U.S. Constitution.
Article 1. Section 8
Powers of Congress

• To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries
Ways to Protect Intellectual Property

• Copyrights
• Trade Secrets
• Patents
• Trademarks
Copyright

• Protects "original works of authorship" fixed in a tangible form of expression

• The Library of Congress in Washington, D.C.

• www.copyright.gov
Copyrightable Works

- Literary works
- Musical works
- Dramatic works
- Choreographed works
Trade Secrets
examples: recipes
Benefits of Trade Secrets

• No fees
• No registration
• No time limits

• Gives the business an advantage over competitors
National Trademark Expo Begins Tomorrow

Join a host of costumed characters, outdoor exhibits, and exhibitions at the 2012 National Trademark Expo at USPTO headquarters in Alexandria, Va. Learn about trademarks and attend seminars on protecting intellectual property.

Now Hiring
Electrical, chemical, and mechanical disciplines

USPTO Track One
Prioritized patent examination

Patent Trial and Appeal Board
Formerly, the BPAI

IP Awareness

POPULAR LINKS
Patent Search
Patents: File Online (EFS-Web)
Patents: Check Application Status (PAIR)
Patents: Online Services
Patents: Reexamination
Trademark Search (TSS)
Trademark: File Online (TEAS)

PATENTS | TRADEMARKS | IP LAW & POLICY | PRODUCTS & SERVICES | INVENTORS | NEWS & NOTICES | FAQ | ABOUT US
What Can Be Patented? (Utility Patent example)

- Machine, Article of Manufacture, Process, Composition of Matter, Business Methods (since mid-90’s court decision)
- Any new, useful improvement of the above
- Term: 20 years from filing date.
Design Patents

• Granted for a new, original and ornamental design for an article of manufacture.

• Only the appearance is protected.

• Term: 14 years from the date the patent is granted
Plant Patent (also 20 years)
Ways to Search for Patents

- Search by patent number
- Search by inventor(s) name
- Search by Assignee’s name
- Place – Title – Keywords, etc.

**Ultimate goal for an inventor: Search for patents by Class and Subclass**
Researching Prior Art
(To make sure someone has already Invented Your idea)

• **U.S. Patents and published patent applications**
• Foreign Patents and published patent applications
• Journal and magazine articles
• Books, manuals, and catalogs
• Websites
• Conference proceedings
• Scientific papers
A preliminary U.S. patent search is ideally a *classification search* of granted U.S. patents and published U.S. patent applications conducted to determine patentability of an invention.
Trademarks

What is a Trademark?

Any Word, Name, Symbol, Device (or any combination thereof) used to identify and distinguish goods or services and to indicate their source.
TRADEMARKS (umbrella term)

tm
Trademarks (tangibles)
products/goods

sm
Service marks (intangibles)
services

Logos: Coca-Cola Zero, Charmin, Bank of America, Higher Standards, Delta, H&R Block
Only trademarks that have received federal registration with the U.S. Patent and Trademark Office may use this symbol with their mark:

®
Types of Trademark Protection

Common Law
- Protection derived from use

State Registration
- Registered with one or more U.S. states

Federal Registration
- Registered in the U.S. Patent and Trademark Office
Common Law Marks

The USPTO does not review common law (unregistered) trademarks in making decisions on allowing registration of federal trademarks.

Common law marks may be found in:

- Telephone, business and manufacturing directories;
- Print and on-line catalogs;
- Trade journals and magazines;
- Web search engines and portals;
- Newspapers, press releases and new product announcements.

8/22/2012
State Trademarks

The USPTO does not review state trademarks in making decisions on allowing registration of federal trademarks.

Registration typically with each Secretary of State’s office. There isn’t a single free Internet state trademark database for all 50 states. Fee-based databases collect state trademark information.
The USPTO maintains a page of links to state trademark agencies:
http://www.uspto.gov/trademarks/process/State_Trademark_Links.jsp

## State Trademark Information Links

To acquire trademark and/or service mark registration at the state level, applicants must file an application with the trademark office of the specific state in which protection is sought. For information about state registration requirements, applicants must contact the individual state trademark office.

<table>
<thead>
<tr>
<th>National Index of Trademark</th>
<th><a href="http://www.sos.state.md.us/registrations/trademarks/NtIndexTM.aspx">http://www.sos.state.md.us/registrations/trademarks/NtIndexTM.aspx</a></th>
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Trademarks are organized by types of goods and services.

• You can’t use the same or similarly sounding or spelled name for a product in the same category of goods and services

• But the same name can be used for something in another area of goods or services
Examples of the same name, but in different goods or services – which is OK
Courts have objected to the following marks when used with identical or similar products:

- **Seycos <> Seiko®** (for watches)
- **Cleo Cola<>Coca Cola®** (beverages)
- **S.O.<>Esso®** (petroleum products)
- **Toro Rojo<>Red Bull®** (beverages)
- **Oral-Angle<>Oral-B®** (toothbrushes)

**Why?** Due to “Likelihood of Confusion”
Example:

CANDIE CONES for “candy”

versus

KANDI KONZ for “gum”

» likely that consumers would be confused by similar trademarks for the same or related goods
Sometimes likelihood of confusion is obvious – as with this hamburger restaurant named McDowell’s
Likelihood of confusion with these two fish sauces?
Maker’s Mark won a trademark infringement case against Jose Cuervo concerning the use of red wax
Here’s Johnny!

Johnny Carson TV Show

Portapotties
Likelihood of Confusion Analysis

Is there a conflict with a registered mark or potential conflict with prior-filed application?

“Would customers be likely to believe in error that the goods (or services) come from the same company?”

If “yes” the TM examining attorney will refuse the application.

Examining attorneys compare the trademarks as to Sound, Appearance and Meaning.

Also compare the goods/services as to Relatedness, Use and Marketing.
Trademark Fees

• Filing by Paper ($375 per International Class of goods/services)

• Electronic Filing via Trademark Electronic Filing System (TEAS) at www.uspto.gov ($325 per International Class or $275 per class for TEASPLUS per International Class)
Trademark Information
NetworkVideos

www.uspto.gov/trademarks/process/TMIN.jsp