

# YOU'VE CREATED SOMETHING.

## Is it protectable intellectual property?



Your Creation	... may be eligible as this type of Intellectual Property	... if it meets these requirements	What is protected?	Some Limits on Protection	What steps should you take to protect it this way?
<b>Information</b> <ul style="list-style-type: none"> <li>• Formulas</li> <li>• Recipes</li> <li>• Methodologies</li> <li>• Algorithms</li> <li>• Know-Hows</li> </ul>	<b>Trade Secret</b>	<p>It has economic value and is subject to reasonable measures of secrecy.</p> <p>Note: Does <i>not</i> have to be novel (like patent) or original (like copyright).</p>	Federal and state laws provide causes of action and remedies against <i>unauthorized</i> use, disclosure or <i>improper</i> acquisition.	<p>It is only a protectable trade secret as long as it is secret.</p> <p>Note: Disassembly or reverse engineering of a publicly available product is not an improper acquisition.</p>	<p>Consider whether reasonable measures of secrecy can be maintained.</p> <p>If yes, maintain confidentiality and secrecy appropriate for the type of information e.g., through use of need-to-know access restrictions, policies, vaults, code obfuscation, use of NDAs and non-competes. Work with IP counsel to develop or review your program.</p> <p>If not, (or as an alternate) consider whether it may be patentable.</p>
<b>Ideas Embodied in Inventions</b> <ul style="list-style-type: none"> <li>• Process</li> <li>• Machines</li> <li>• Manufacture</li> <li>• Composition of Matter</li> </ul>	<b>Utility Patent</b>	It is novel, useful and non-obvious.	<p>Utility patents protect functional aspects.</p> <p>U.S. patent law grants the patent owner the right to exclude others from making, using, selling and importing the invention in the U.S.</p>	Invention must be publicly disclosed. Protection lasts for 20 years from the date of filing if patent is granted.	<p>Work with patent counsel to:</p> <ul style="list-style-type: none"> <li>• Assess patentability.</li> <li>• File initial patent applications within one year of public disclosure or offer to sell.</li> <li>• Consider filing in other jurisdictions.</li> <li>• Use appropriate patent markings.</li> </ul>
<b>Ornamental Design for an Article of Manufacture</b>	<b>Design Patent</b>	It is novel and non-obvious.	<p>Design patents protect how something looks.</p> <p>U.S. patent law grants the patent owner the right to exclude others from making, using, selling and importing the invention in the U.S.</p>	<p>Design must be publicly disclosed. Protection lasts for 15 years from the date of filing if the patent granted.</p> <p>Design patent protects only the appearance of the article, not the structural or functional features.</p>	<p>Work with patent counsel to:</p> <ul style="list-style-type: none"> <li>• Assess patentability.</li> <li>• File initial patent applications within one year of public disclosure or offer to sell.</li> <li>• Consider filing in other jurisdictions.</li> <li>• Use appropriate patent markings.</li> </ul>

Your Creation	... may be eligible as this type of Intellectual Property	... if it meets these requirements	What is protected?	Some Limits on Protection	What steps should you take to protect it this way?
<b>Expression of Ideas</b> <ul style="list-style-type: none"> <li>• Literary</li> <li>• Musical</li> <li>• Dramatic</li> <li>• Artistic</li> <li>• Choreographic</li> <li>• Architectural Works</li> <li>• Sound Recordings</li> <li>• Software</li> </ul>	<b>Copyright</b>	Originality and fixation in a tangible medium of expression.	Exclusive rights to reproduce, adapt, publicly distribute and publicly display and perform the work for life of author + 70 years (longer for works made for hire).	Only the expression of the idea (and not the idea itself) is protected. The bar for originality is relatively low.	No filing required for copyright to exist. Work with IP counsel to file copyright registration within three months after first publication (or prior to an infringement) in order to be eligible to bring infringement action in federal court for statutory damages and attorneys' fees. Use appropriate copyright notices.
<b>A Brand or Source Identifier</b> <ul style="list-style-type: none"> <li>• Words, Names</li> <li>• Logos or Symbols</li> <li>• Slogans or Phrases</li> <li>• Color, Scent</li> <li>• Shape or Configuration of Product Design or Packaging</li> </ul>	<b>Trademark and Trade Dress</b>	Priority of use, distinctiveness and nonfunctionality.	A federal U.S. trademark grants the exclusive right to use the mark throughout the U.S. in commerce for the designated goods and services.	Protection is for use of the mark with the designated goods and services and lasts as long as there is good faith use and trademark is maintained.	No filing required for common law rights. Work with IP counsel to assess eligibility and strength for a federal trademark registration; file federal trademark applications. Consider filing in other jurisdictions. Use appropriate trademark notices.

**FOR MORE INFORMATION, CONTACT:**

Note that your creation may be covered by multiple types of intellectual property protection. Your intellectual property should be identified, inventoried and protected as valuable business assets.



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