



Intellectual Property Basics for Multinational Companies

Most companies do an excellent job of protecting their tangible assets. Locks and alarm systems protect a company's facilities, and bankers, accountants and financial planners protect a company's monetary assets. However, many companies do not adequately protect their intellectual assets. The most common reason why intellectual assets are left unprotected is because people do not recognize that certain knowledge, documents, devices or methods that they encounter in their daily routine are valuable and worthy of protection. The field of intellectual property law, also called industrial property law, deals with protecting intellectual assets. There are four main types of intellectual property protection: trade secrets, copyrights, trademarks and patents.

Trade Secrets

Trade secrets are the most frequently overlooked intellectual asset. Every company, no matter how large or small, has trade secrets that need to be protected. A basic definition for a trade secret is any information that is valuable business information. Valuable business information can take many forms, such as:

- Drawings [i.e., engineering drawings, layouts of factories or buildings, organization charts],
- Engineering information [i.e. new product or service plans, project timelines, schematics, meeting minutes],
- Manufacturing methods and processes [i.e., how to create and assemble parts, safety procedures],
- Marketing and advertising information [i.e., product plans, design layouts, advertising strategies, market research, meeting minutes],
- Financial information [i.e., profit margins, production cost or sales data, banking relationship information, financial plans and objectives, information concerning corporate capital structure],
- Customer information [i.e., customer identities, their past purchases, their payment methods, what they are charged, customer product information and plans],
- Distributor information [i.e., identities of distributors, information detailing the performance of different distributors, plans concerning the possible expansion of distributors, discount structures with distributors],
- Contracts [i.e., licensing agreements, non-disclosure agreements, sales agreements],
- Employee names, home addresses and telephone numbers, and
- Competitive assessment information [i.e., documents or charts detailing or comparing competitors' products, methods, performance, etc.].

Although there are a number of examples listed above of types of trade secret information, it can be hard to determine whether any particular piece of information is a trade

secret. Here's a rule-of-thumb test to use to determine whether something is a trade secret: Ask "Would our competitors want to see this?" If the answer to this question is yes, then protect the information because it is a trade secret.

Once trade secrets have been identified, processes need to be put in place to keep the information secret. There are five processes that a company can use to protect its trade secrets. All five processes should be performed to ensure adequate protection of trade secrets:

(1) Before sharing a trade secret with someone outside of your company, have each party sign a non-disclosure agreement, also known as confidentiality agreement. Non-disclosure agreements are promises by each party to treat the other party's information in a secret, confidential manner.

(2) When giving trade secret information to anyone outside the company, mark all documents, including drawings, e-mails, specifications, etc., with a confidentiality statement. Here's an example of a confidentiality statement:

"CONFIDENTIAL—ABC COMPANY PROPRIETARY INFORMATION: This document is transmitted by ABC Company and accepted by you upon the understanding and agreement that: (1) all rights regarding the information contained therein are reserved by ABC Company, (2) the document will not be copied, duplicated, sold or disclosed to others by you without the express written permission of ABC Company, and (3) the devices embodying said information will not be manufactured, used, sold or disclosed to others by you without such permission. This document is the property of ABC Company and shall be returned upon request."

(3) When working with co-workers, mark all documents having trade secret information as being "Privileged & Confidential."

(4) Restrict access to documents containing trade secrets only to those employees who have a reasonable need to view or use the documents. An efficient way to restrict access is to password-protect project directories and files.

(5) Dispose of documents containing trade secrets in a paper shredder.


Copyrights


The second main type of intellectual property is a copyright. Copyrights protect works of authorship including literature, music, and works of art. Surprisingly, copyright also protects blueprints, schematics, software programs, and webpages. Copyright owners have the exclusive right to reproduce the copyrighted work, to prepare future works based off of the copyrighted work, to distribute copies of the copyrighted work, to perform the copyrighted work publicly, or to display the copyrighted work publicly. Keep in mind that a copyright protects only the form of expression, not the device or idea embodied in the work. For example, a description of a machine could be copyrighted, but this would only prevent others from copying the description; it would not prevent others from writing a description of their own or from making and using the machine.

To get a copyright in most countries, the owner of the work needs to apply to his country's copyright or intellectual property office. Some countries, like the U.S., have a "common law" copyright which provides a limited amount of protection without the need to apply to the U.S. Copyright Office. With both registered and common law copyrights, the copyright owner must physically mark the copyrighted work with a ©, the year in which the work was first published or created, the owner's name, and the statement "All Rights Reserved."

Trademarks

Trademarks, the third main type of intellectual property, are words, names, logos, devices or symbols that distinguish one company's products or services from those of another

company. Some examples of well-known trademarks are DaimlerChrysler[®], , or

 Trademarks are valuable because their primary purpose is to communicate to consumers the origin and quality of the goods bearing the mark, thereby increasing a trademark owner's sales of these goods. For example, an out-of-town guest thinking of ordering take-out french fries from an unknown restaurant will not know what to expect in terms of taste and quality, and therefore might be reluctant to try an unfamiliar brand. However, this same out-of-town guest will know exactly what to expect in terms of taste and quality if he ordered French fries from a restaurant displaying a McDonald's "golden arches" logo on it, and will be more likely to purchase these fries because of his familiarity with the trademark.

A company obtains rights in a trademark by registering it in a national trademark office and by placing the mark on the products it sells or on the product's packaging. The strongest trademarks, from a legal standpoint, are those that are fanciful and not descriptive of the product. For example, KODAK[®] and EXXON[®] are strong trademarks because both are made-up words and do not describe their respective products. It is often difficult to register marks that are descriptive of the products they represent. For example, it would likely be very difficult, if not impossible, to register the mark "Josef's Computer Warehouse" for a man named Josef Vogel who owns a computer parts warehouse because the mark is simply too descriptive of the goods being sold.

Though trademark registrations can be infinitely renewed, there are several ways that a company can lose trademark protection. One way to lose protection is by neglecting to put the trademark on the products being sold or on the products' packaging. Another way to lose protection is by neglecting to use the ® symbol in conjunction with the mark. A third way to lose protection is by failing to pay renewal fees for the mark. In some countries renewal fees must be paid annually, but in other countries several years may elapse before a mark must be renewed.

Patents

Patents, the final main type of intellectual property, tend to be the most well-known type of intellectual property. Patents are designed to protect novel devices or methods, and generally last for twenty years. To obtain a patent, the owner of the device or method must file a patent application with a national patent office. Once the patent office receives a patent application, the application is examined to ensure that it meets all the legal requirements a patent must have before it can be granted. Usually there are one or two rounds of correspondence between the owner and the patent office to revise the patent application so that it meets all of the legal requirements. It takes approximately three years from the date that the patent application was filed for it to be granted; however, more complex patent applications, such as those for prescription drugs, can take longer.

Most countries offer, at a minimum, two types of patents, a utility patent and a design patent. A utility patent is intended to protect things like processes, machines, devices, prescription drugs, and manufacturing methods. When people speak about patents, typically it is the utility patent to which they are referring. The term of a utility patent lasts for the twenty years from the date it was filed. Utility patents are expensive to obtain, usually costing approximately €5.000 - €8.000 [\$6,000-\$10,000 US] per country. In addition, the owner must

pay maintenance fees throughout the duration of the twenty year patent term, adding on several thousand euros in additional cost. It usually takes an attorney around two to three months to prepare a thorough and well-stated utility patent application, and during this time the attorney will be in communication with the inventor to ensure that the attorney properly describes the invention in the patent application.

There is one very important rule to remember with respect to public disclosures of a product: if a product is publicly disclosed in any way before a patent application describing the product is filed, it will not be possible to obtain a patent on the product in most countries, including Germany. In light of this very strict rule, be certain that a patent application protecting the product has been filed before the product is publicly disclosed. Examples of public disclosures that would prevent a company from being able to obtain patent protection in most countries include: showing the product or the product's detailed schematics at a trade show, showing the product or the product's detailed schematics to a supplier or any other company without having a signed confidentiality agreement in place, and having an article published in a trade journal describing in detail how the product works.

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