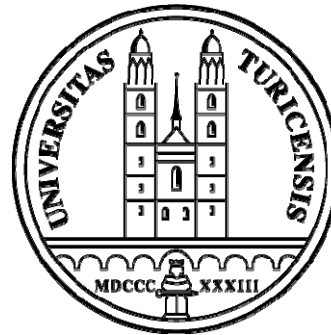


A primer in Entrepreneurship



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Fall Semester 2009

Chapter 12: The Importance of Intellectual Property

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I. The Importance of Intellectual Property

A. Introduction

- Intellectual Property
 - Is any product of human intellect that is intangible but has value in the marketplace.
 - It is called “intellectual” property because it is the product of human imagination, creativity, and inventiveness.
- Importance
 - Traditionally, businesses have thought of their physical assets, such as land, buildings, and equipment as the most important.
 - Increasingly, however, a company’s intellectual assets are the most important.



I. The Importance of Intellectual Property

B. Determining What Intellectual Property to Legally Protect

- There are two primary rules of thumb for determining whether intellectual property protection should be pursued for a particular intellectual asset.
 - First, a firm should determine whether the intellectual property in question is directly related to its competitive advantage.
 - Second, a firm should determine whether the intellectual property has value in the marketplace.



I. The Importance of Intellectual Property

B. Determining What Intellectual Property to Legally Protect

Common Mistakes Firms Make in Regard to Protecting Their Intellectual Property

Not properly identifying
all of their
intellectual property

Not fully recognizing
the value of their
intellectual property

Not legally protecting
the intellectual property
that needs protecting

Not using their
intellectual property as
part of their overall
plan for success



I. The Importance of Intellectual Property

C. The Four Key Forms of Intellectual Property

Patents

Trademarks

Copyrights

Trade Secrets



I. The Importance of Intellectual Property

http://ep.espacenet.com/quickSearch?locale=en_EP



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I. The Importance of Intellectual Property

C. The Four Key Forms of Intellectual Property

- Patents, trademarks, copyrights, and trade secrets are the four key forms of intellectual property.
- Intellectual property laws exist to encourage creativity and innovation by granting to individuals who risk their time and money in creative endeavors exclusive rights to the fruits of their labors for a period of time.



II. Patents

A. Definition

- A patent is a grant from the federal government conferring the rights to exclude others from making, selling, or using an invention for the term of the patent. (See the next slide for a full explanation)
- Increasing Interest in Patents
 - Since Patent #1 was granted in 1790, the U.S. Patent and Trademark Office has granted over six million patents.
 - The patent office is strained. It now takes an average of 29.1 months from the date of first filing to receive a U.S. patent.



II. Patents

A patent does not give its owner the right to make, use, or sell an invention: rather, the right granted is only to exclude others from doing so.

As a result, if an inventor obtains a patent for a new kind of computer chip, and the chip would infringe on a prior patent owned by Intel, the inventor has no right to make, use, or sell the chip.

To do so, the inventor would need to obtain permission from Intel. Intel may refuse permission, or ask that a licensing fee be paid for the rights to infringe on its patent.

While this system may seem odd, it is really the only way the system could work. Many inventions are improvements on existing inventions, and the system allows the improvements to be (patented) and sold, but only with the permission of the original inventors, who usually benefit by obtaining licensing income in exchange for their consent.



II. Patents

B. Growth in Patent Applications in the United States

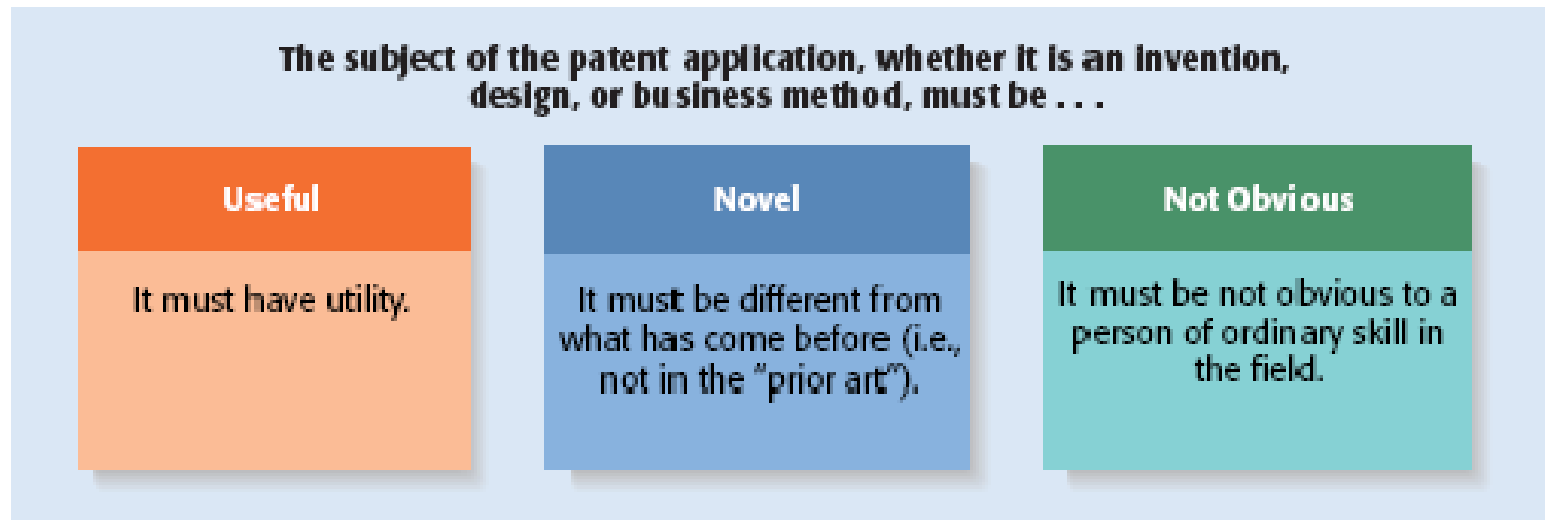
	2003	2004	2005
Applications received	355,394	378,984	409,532
Patents issued	189,597	187,170	165,485
Total patents pending	674,691	756,604	885,002
Average time for approval	26.7 months	27.6 months	29.1 months

Source: United States Patent & Trademark Office, Performance and Accountability Report for Fiscal Year 2005.



II. Patents

C. The Three Types of Patents



II. Patents

C. The Three Types of Patents

Type of Patent	Types of Inventions Covered	Duration
Utility	New or useful process, machine, manufacture, or composition of material or any new and useful improvement thereof	20 years from the date of the original application
Design	Invention of new, original, and ornamental designs for manufactured products	14 years from the date of the original application
Plant	Any new varieties of plants that can be reproduced asexually	20 years from the date of the original application



II. Patents

Business Method Patent:

A business method patent is a patent that protects an invention that is or facilitates a method of doing business.

The most notable business method patents that have been awarded:

- Amazon.com's one-click ordering system.
- Priceline.com's "name-your-price" business model.
- Netflix's method for allowing customers to set up a rental list of movies to be mailed to them.



II. Patents

D. Who Can Apply For a Patent?

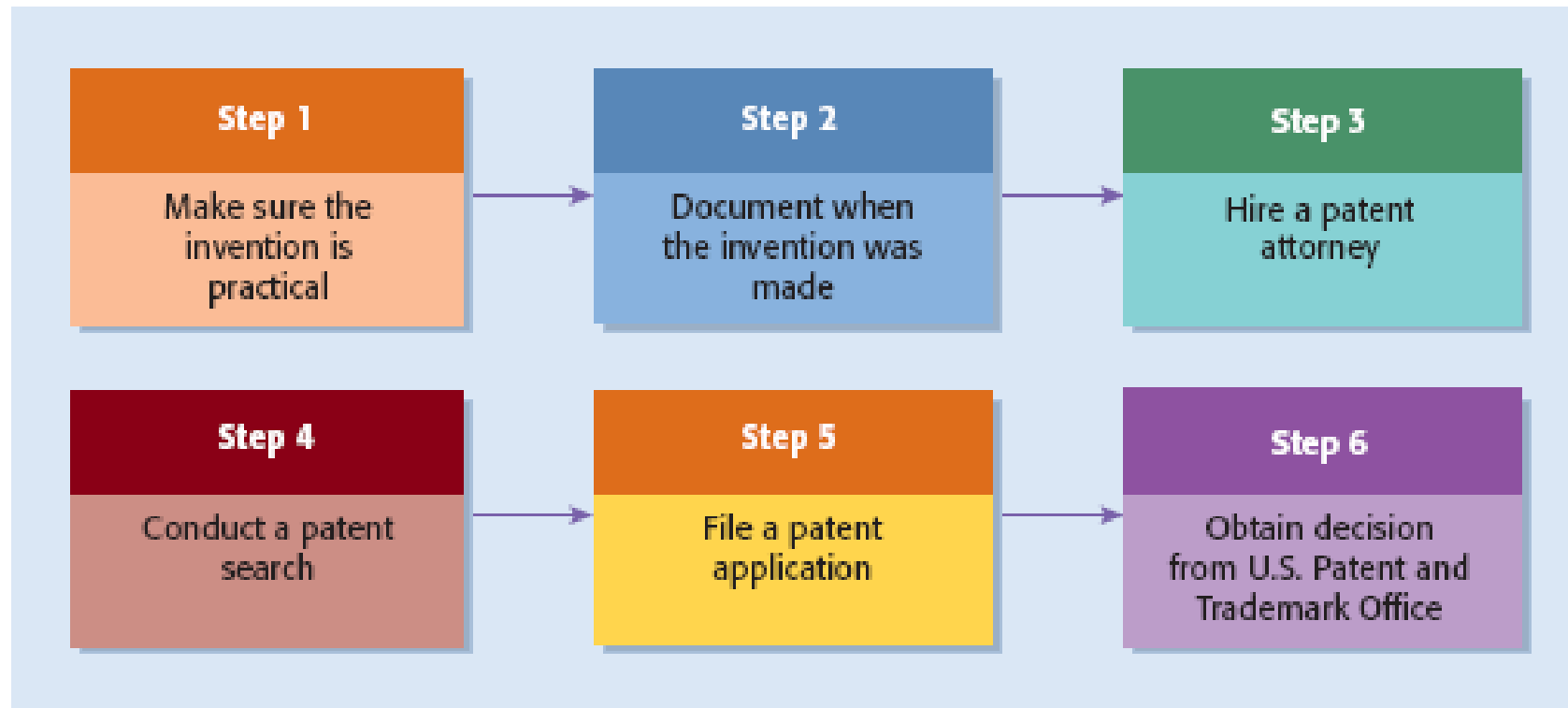
- Only the inventor of a product can apply for a patent. If two or more people make an invention jointly, they must apply for the patent together.
- There are notable exceptions to this rule. First, if an invention is made during the course of the inventor's employment, the employer typically is assigned the right to apply for the patent through an assignment of agreement. The second exception is the right to apply for an invention can be sold.

<http://www.youtube.com/watch?v=es5xRYWPjWI>



II. Patents

E. The Process of Obtaining a Patent



II. Patents

E. The Process of Obtaining a Patent

- Patent Infringement
 - Takes place when one party engages in the unauthorized use of another party's patent.
 - The tough part (particularly from a small entrepreneurial firm's point of view) is that patent infringement cases are costly to litigate.
 - A typical patent infringement case costs each side at least \$500,000 to litigate.



III. Trademarks

- A trademark is any word, name, symbol, or device used to identify the source or origin of products or services, and to distinguish those products or services from others.
- As is the case with patents, trademarks have a rich history. Archaeologists have found evidence that as far back as 3,500 years ago, potters made distinctive marks on their articles of pottery to distinguish their work from others.



III. Trademarks

A. The Four Types of Trademarks

- **Trademarks** include any word, name, symbol, or device used to identify and distinguish one company's products from another's. Trademarks are used in the advertising and promotion of tangible products, such as Quicken for software and Electronic Arts for electronic games.
- **Service marks** are similar to ordinary trademarks, but they are used to identify the services or intangible activities of a business rather than a business's physical product. Service marks include Princeton Review for test prep services and eBay for online auctions.



III. Trademarks

A. The Four Types of Trademarks

- **Collective marks** are trademarks or service marks used by the members of a cooperative, association, or other collective group. The American Bar Association and The International Franchise Association are examples of collective marks.
- **Certification marks** are marks, words, names, symbols, or devices used by a person other than its owner to certify a particular quality about a product or service. An example is the Good Housekeeping Seal of Approval.



III. Trademarks

A. The Four Types of Trademarks

Type of Trademark	Types of Marks Covered	Duration
Trademark	<p>Any word, name, symbol, or device used to identify and distinguish one company's goods from another.</p> <p>Examples: <i>Dell, Nokia, Oracle, Palapa Azul, Flavorx</i></p>	<p>Renewable every 10 years, as long as the mark remains in use</p>
Service mark	<p>Similar to trademarks; are used to identify the services or intangible activities of a business, rather than a business's physical products.</p> <p>Examples: <i>Amazon.com, Orbitz, eBay, Overstock.com, Pandora</i></p>	<p>Renewable every 10 years, as long as the mark remains in use</p>



III. Trademarks

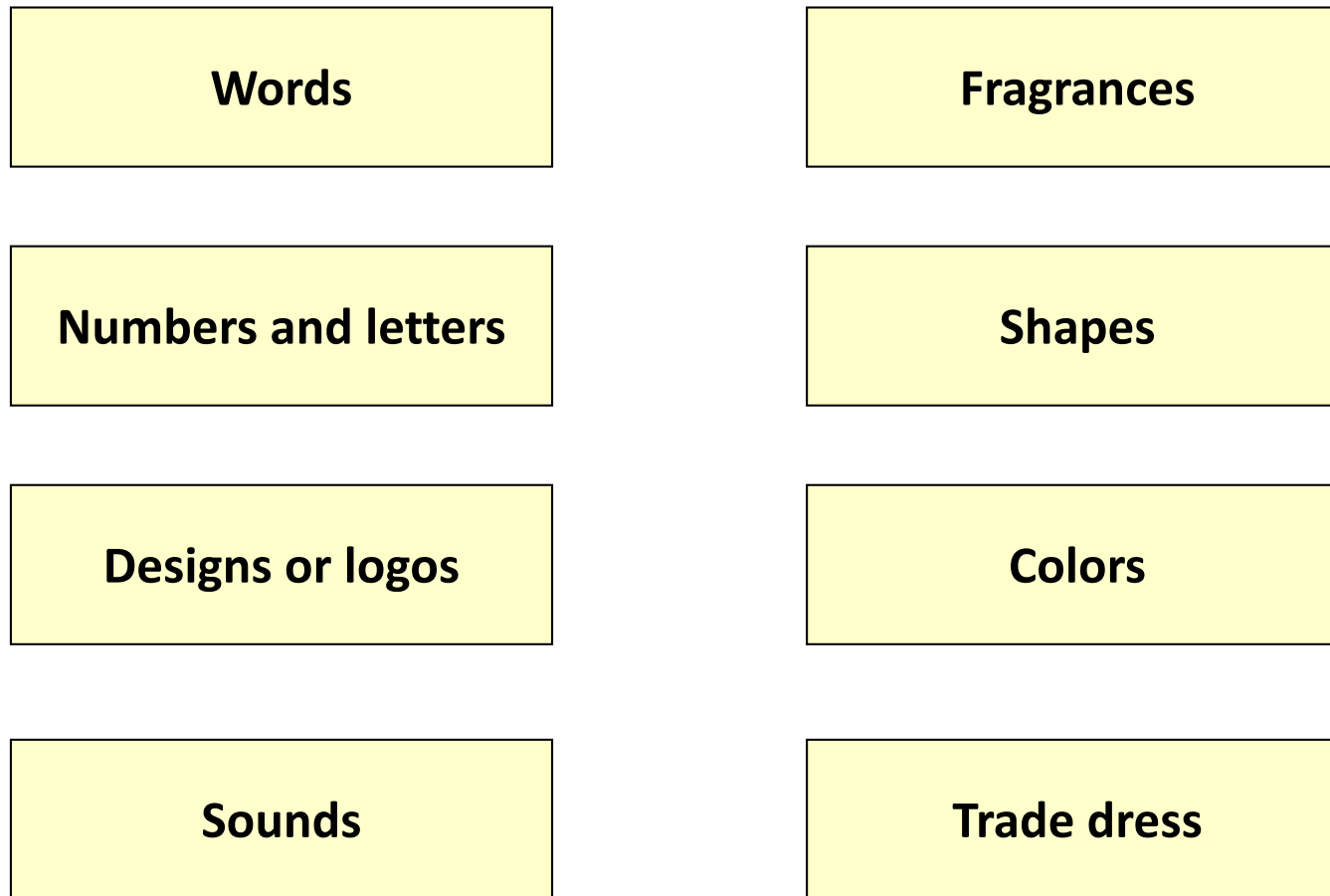
A. The Four Types of Trademarks

Type of Trademark	Types of Marks Covered	Duration
Collective mark	<p>Trademarks or service marks used by the members of a cooperative, association, or other collective group.</p> <p>Examples: <i>Rotary International, International Franchise Association</i></p>	<p>Renewable every 10 years, as long as the mark remains in use</p>
Certification mark	<p>Marks, words, names, symbols, or devices used by a person other than its owner to certify a particular quality about a good or service.</p> <p>Examples: <i>Florida Oranges, ISO 9000, Underwriters Laboratories</i></p>	<p>Renewable every 10 years, as long as the mark remains in use</p>



III. Trademarks

B. What Is Protected Under Trademark Law?



III. Trademarks

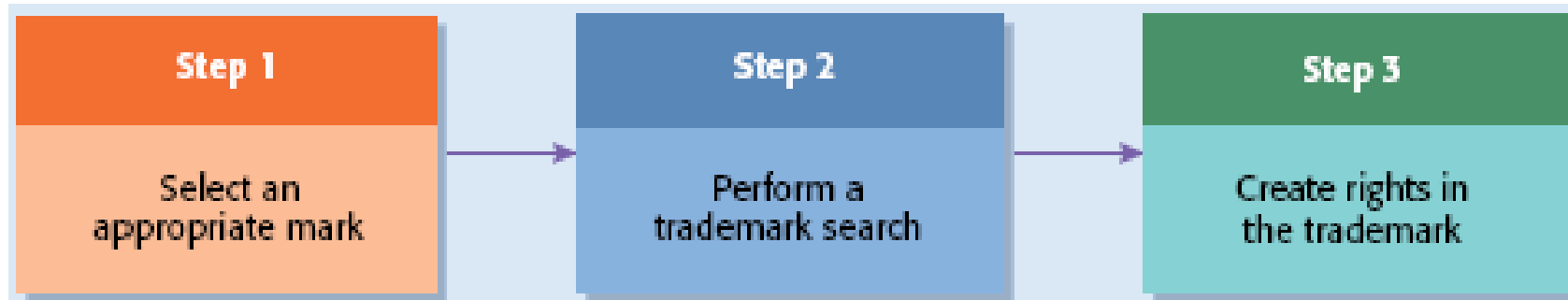
C. Exclusions from Trademark Protection

- Immoral or scandalous matter
- Deceptive matter; example: a food company couldn't register the name "Fresh Florida Oranges" if the oranges weren't from Florida.
- Descriptive mark: marks that are merely descriptive of a product or service cannot be trademarked. For example, if you develop a new type of golf ball, you can't get a trademark on the words "golf ball."
- Surnames: a trademark consisting primarily of a surname, such as Anderson or Smith, is typically not protectable.



III. Trademarks

D. The Process of Obtaining a Trademark



- Once a trademark has been used in interstate commerce, it can be registered with the U.S. Patent and Trademark Office for a renewable term of 10 years and can theoretically remain registered forever, as long as the trademark stays in use.
- There are three steps in selecting and registering a trademark:
 - Select an appropriate mark;
 - Perform a trademark search;
 - Create rights in the trademark.



III. Trademarks

D. The Process of Obtaining a Trademark

- Duration: once a trademark has been used in interstate commerce, it can be registered with the U.S. Patent and Trademark Office for a renewable term of 10 years, and can theoretically be registered forever, as long as the trademark stays in use.
- Registering Trademarks: technically, a trademark does not need to be registered to receive protection. Once it is used, it is protected; there are many advantages, however, to registering a trademark with the U.S. Patent and Trademark Office.



IV. Copyrights

A. What Is Protected by a Copyright?

- Copyright laws protect “original works of authorship” that are fixed in a tangible form of expression. The primary categories of material that can be copyrighted follows:
 - Literary works
 - Musical compositions
 - Dramatic works
 - Pantomimes and choreographic works
 - Pictorial, graphic, and sculptural works



IV. Copyrights

A. What Is Protected by a Copyright?

Literary works

Musical compositions

Computer software

Dramatic works

**Pantomimes and
choreographic works**

**Pictorial, graphic, and
sculptural works**



IV. Copyrights

A. What Is Protected by a Copyright?

- A copyright is a form of intellectual property protection that grants to the owner of a work of authorship the legal right to determine how the work is used and to obtain the economic benefits from the work.
- A work does not have to have artistic merit to be eligible for copyright protection.
- As a result, things such as operating manuals and sales brochures are eligible for copyright protection.



IV. Copyrights

B. Exclusions from Copyright Protection

The Idea-Expression Dichotomy

- The main exclusion is that copyright laws cannot protect ideas.
- For example, an entrepreneur may have the idea to open a soccer-themed restaurant. The idea itself is not eligible for copyright protection. However, if the entrepreneur writes down specifically what his or her soccer-themed restaurant will look like and how it will operate, that description is copyrightable.
- The legal principle describing this concept is called the idea-expression dichotomy. An idea is not copyrightable, but the specific expression of an idea is.



IV. Copyrights

C. How to Obtain a Copyright

- Copyright law protects any work of authorship the moment it assumes a tangible form. Technically, it is not necessary to provide a copyright notice or register work with the U.S. Copyright Office.
- The following steps can be taken, however, to enhance copyright protection.
 - Copyright protection can be enhanced by attaching the copyright notice, or “copyright bug” © to something.
 - Further protection can be obtained by registering the work with the U.S. Copyright Office.



IV. Copyrights

D. Copyright Infringement

- Copyright infringement occurs when one work derives from another or is an exact copy or shows substantial similarity to the original work.
- To prove infringement, a copyright owner is required to show that the alleged infringer had prior access to the copyrighted work and that the work is substantially similar to his or her own.
- One of the most famous copyright infringement cases involved Napster, the company that was launched by then 18-year-old Shawn Fanning and his partner, Sean Parker



IV. Copyrights

E. Copyrights and the Internet

- Every day, vast quantities of material are posted on the Internet and can be downloaded or copied by anyone with a computer. Because this information is stored somewhere on a computer or Internet server, it is in tangible form and probably qualifies for copyright protection.
- Copyright laws, particularly as they apply to the Internet, are sometimes difficult to follow, and it is easy for people to dismiss them as contrary to common sense. Still, entrepreneurs should guard themselves against taking too lax of attitude regarding copyright laws and the Internet.



V. Trade Secrets

- A trade secret is any formula, pattern, physical device, idea, process, or other information that provides the owner of the information with a competitive advantage in the marketplace.
- Trade secrets include marketing plans, product formulas, financial forecasts, employee rosters, logs of sales calls, and similar types of proprietary information.
- The Federal Economic Espionage Act, passed in 1996, criminalizes the theft of trade secrets.



V. Trade Secrets

A. What Qualifies for Trade Secret Protection?

- Not all information qualifies for trade secret protection. In general, information that is known to the public or that competitors can discover through legal means doesn't qualify for trade secret protection.
- The general philosophy of trade secret legislation is that the law will not protect a trade secret unless its owner protects it first.
- Companies can maintain protection for their trade secrets if they take reasonable steps to keep the information confidential.



V. Trade Secrets

A. What Qualifies for Trade Secret Protection?

The strongest case for trade secret protection is information that is characterized by the following:

- Is not known outside the company.
- Is known inside the company on a “need-to-know” basis only.
- Is safeguarded by stringent efforts to keep the information secret.
- Is valuable and provides the company a competitive edge.
- Was developed at great cost, time, and effort.



V. Trade Secrets

A. What Qualifies for Trade Secret Protection?

Physical Measures For Protecting Trade Secrets:

- Restricting access to confidential material.
- Labeling documents “proprietary,” “restrictive,” or “secret.”
- Password protecting confidential computer files.
- Maintaining log books for visitors.
- Maintaining log books for access to sensitive material.
- Maintaining adequate overall security measures.



V. Trade Secrets

B. Trade Secret Disputes

- Trade secret disputes arise most frequently when an employee leaves a firm to join a competitor and is accused of taking confidential information with him or her.
- A company damaged by trade secret theft can initiate a civil action for damages in court. The action should be taken as soon after the discovery of the theft as possible.



VI. Conducting an Intellectual Property Audit

A. Why Conduct an Intellectual Property Audit?

There are two primary reasons for conducting an intellectual property audit:

- First, it is prudent for a company to periodically determine whether its intellectual property is being properly protected.
- The second reason for a company to conduct an intellectual property audit is to remain prepared to justify its value in the event of a merger or acquisition. Larger companies purchase many small, entrepreneurial firms primarily because the larger company wants the small firm's intellectual property. The small firm should be ready to justify its valuation when a larger company comes calling.



VI. Conducting an Intellectual Property Audit

B. The Process of Conducting an Intellectual Property Audit

- The first step is to develop an inventory of a firm's existing intellectual property. The inventory should include the firm's present registrations of patents, trademarks, and copyrights.
- The second step is to identify works in progress to ensure that they are being documented and protected in a systematic, orderly manner.



ME3: Innovationsökonomik / The Economics of Innovation

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<http://www.vorlesungen.uzh.ch/FS10/suche/e-50473534.details.html>



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