

From PLI's Course Handbook

What Every Litigator Must know About Intellectual Property

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**INTELLECTUAL PROPERTY
ABSTRACT**

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INTELLECTUAL PROPERTY PROTECTION IN THE UNITED STATES

	Ideas	Copyright	Trademark Service Mark	Patent	Trade Secret
Legal basis	Common law	17 USC §101 et. seq. 18 USC § §2318-19A State law	15 USC §1051 et. seq. State law Common law	35 USC §100 et. seq.	18 USC § 1831 et. seq. state law common law
Subject Matter	An idea which is novel and in concrete form presented with the expectation of payment	Original works of authorship fixed in a tangible medium (fed.) Unfixed (state)	Trademarks, service marks, collective marks (fed), certification marks (fed) and trade dress	Inventions which are novel, non-obvious and useful.	Any information which gives you a competitive advantage, i.e. method or process., formula.
Method of Establishment	Contract (express, implied or quasi), breach of confidentiality, conversion	File application with US Copyright Office	File application with US Patent and Trademark Office and/or use in commerce § 8, 9 & 15 filings to maintain	File application with US Patent and Trademark Office	Give notice of status as trade secret
Duration of Protection	Pursuit to duration of contract – potentially unlimited	(after1976) Individual – life + 70 yrs. Corporation – or anonymous – 95 years from publication or 120 from creation	Can be forever	Design – 14 years from grant Utility & Plant – 20 years from application filing	Can be forever as long as it is kept secret
Symbol		©	® TM SM	US Patent no. or Patent pending	Proprietary legend
Forum for Enforcement	State court	Federal Courts or State court (if not fixed)	Federal or State court	Federal Court	Federal or State court

	Ideas	Copyright	Trademark Service Mark	Patent	Trade Secret
Infringed by	Misappropriation without compensation Breach of Confidentiality	Unauthorized copying or use	Use of the mark or something similar which would cause confusion or dilution of the mark	Make, use or sell without permission	Breach of confidentiality, commercial morality, improper reverse engineering, obtained by improper means
Defenses	Wasn't plaintiff's idea, not novel	Public Domain, Fair Use, not copyrightable material, innocent infringer, laches, acquiescence, no access, unclean hands.	Laches, equitable estoppel, abandonment, genericide, lack of distinctiveness, fraud in registration, Unclean hands, TM misuse, violation of anti-trust laws, No likelihood of confusion or dilution, functionality, lack of notice, fair use.	Fraud in application, prior art, lack of novelty (single source), not nonobvious (multiple sources, 12 month clock bar, file wrapper estoppel, fees not paid.	Wasn't a secret, reverse engineering