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Intellectual Property in the United States

This summary of Intellectual Property Law in the United States was prepared by Keith Blankenship, who heads General Counsel, P.C.'s Intellectual Property Practice. If you have any questions, please do not hesitate to contact Mr. Blankenship.

Intellectual Property Generally

Intellectual property law protects works that, although intangible, merit the attributes of personal property. As with personal property, intellectual property may be sold, leased, or simply maintained in order to exclude others from the use thereof.

Patent Rights

A utility patent protects any new, useful, and non-obvious invention. Patentable subject matter may include compositions of matter, machines, articles, or processes – even software, business methods, and modified organisms. A patent prevents any entity from making, using, selling, or even offering to sell the patented invention within the United States for a period of twenty years from the date that the patent application was filed. Prior to issuance, patent applications undergo a rigorous examination. A patent is the sole means of protecting the functional characteristics of a new product or process.

Trademark Rights

A trademark is a word, phrase, or symbol that is distinctive of goods or services and is used in a manner that identifies and distinguishes a user's goods or services from those of others. Trademark protection extends to words, phrases, pictures, sounds, and colors. Trademark rights derive from use of a mark in interstate commerce, and operate to protect a mark from confusingly similar marks in the geographic area in which consumers recognize the mark. Trademark rights almost always exist prior to government registration, which extends the geographic scope of the mark throughout the entire United States and its territories. A foreign trademark owner with a trademark registered outside of the United States may in certain circumstances rely on that foreign registration to extend its trademark rights in the United States.

Copyright Rights

Copyright protects original works of authorship fixed in any tangible medium of expression. Works of authorship are the outcomes of endeavors that require at least slight amounts of creativity; and the affixation requirement generally protects all expression other than un-recorded live performances. Copyright registration is not a prerequisite to obtaining copyright rights; instead, the copyright exists the moment that expression is affixed into a tangible medium. Foreign copyrights may be enforced in the United States according to international treaties that often obviate the necessity of registering a copyright in more than one country. Copyright protection extends beyond mere copying; a copyright owner may enforce its right against all who attempt to reproduce, make derivative works of, distribute, perform, display, and digitally transmit the copyrighted work without the owner's permission. A copyright only protects the expressive aspects of work, and never the functional components. Lastly, to be a copyright infringer, one must actually have perceived the copyright owner's original work.

Trade Secret Rights

A trade secret is secret information that can be used in a business enterprise to bestow a competitive advantage. Trade secret laws exist to punish competitors that attempt to acquire a trade secret by taking active, wrongful measures to acquire it. Although a secret may potentially last as long as the information remains secret, trade secret laws do not prevent others from acquiring the information of the trade secret through legitimate means, such as reverse engineering.