

Strengthening Protection for Your Ideas Through Overlapping IP



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Most business owners are generally aware of intellectual property and the legal protections it affords to different aspects of their business. However, in my encounters with the business community I am often surprised that most businesses, especially small and startups, are unaware of the power of overlapping IP to strengthen and enhance protection for their products and provide added value to their business.

Briefly, the term Intellectual Property is an umbrella of rights that include Patents (utility and design), Trademarks (Trade name, Logo or Trade Dress), and Copyrights.

Patents afford protection for ideas that are useful, novel and non-obvious. There are typically three types of patents that concern most businesses; utility patents, which protect the use, function and structure of products; design patents protect the aesthetic or ornamental features and aspects of products; and business method patents that concern ways of doing business. Design patents are the often overlooked and unattended-to cousin of their much better known utility patents. Only 5% of the roughly 0.5 million patent applications filed in the U.S. each year are of the design type. However, as the recent Apple vs. Samsung case demonstrates, design patents can be an extremely useful tool in a business's intellectual property arsenal. The protection period of utility and business method patents is 20 years from their filing date, while that of a design patent is 14 years from its issue date.

Trademark is a generic term that refers to any feature or characteristic (usually a name or logo but can also be other features such as color, sound, smell, visual appeal or a combination of these) that identify a business's goods or services to the consumer and help distinguish such goods and services from those offered by its competitors. In addition, the shape of a product itself or that of its outer packaging, can sometimes be protected by a trade dress, which is a form of trademark.



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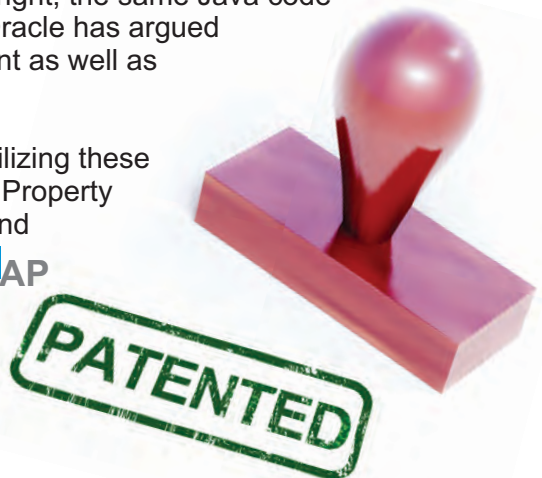
In general, trade dress, "involves the total image of a product and may include features such as size, shape, color or color combinations, texture, graphics, or even particular sales techniques." As an example, Apple claims trade dress rights in the packaging and boxes of its iPhone. Unlike patent or copyright protection, trademark protection does not expire as long as the mark is used in commerce.

Copyright protection covers original works of authorship (typically literary or artistic in nature) that are recorded in a reproducible medium. Examples include sound, film, photography, sculpture, dramatic works, music and software. Copyright protection is very long, typically 70 years plus the author's life.

There are often great benefits to combining the protection afforded by these various intellectual property categories to maximize their protective effects. For example, the protection of a design patent, which, as I stated above, is only fourteen years from the issue date of the patent, can sometimes be extended indefinitely, by a trade dress since trade dress protection does not expire as long as it is used in commerce. A good example of a successful application of this combination is the classic Coca Cola bottle. Coca Cola obtained a patent for this design in 1915. Then in 1960, after the patent had expired, Coca Cola applied for and obtained a trade dress for this design, which continued the protection up to today.

Another example of a successful application of intellectual property is often found in the case of software which is protectable both under patent and copyright laws. For example, Oracle and Google are still fighting over whether Google improperly used Java OS code, owned by Oracle, to develop its Android operating system. A jury recently decided that Google had indeed copied and used the Java code. In addition to being protected by copyright, the same Java code is also protected by patents. Thus, Oracle has argued that Google's actions constituted patent as well as copyright infringement.

A business can greatly benefit from utilizing these and other combinations of Intellectual Property to extend the protection of its goods and services and thus enhance its value. **IAP**



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