

EMPOWER SERIES: Protecting Your Intellectual Property



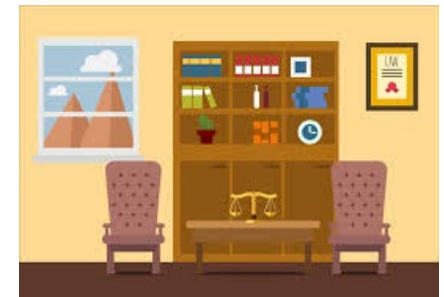
*ATTORNEY KANDACE WALTER, WALTER LEGAL PLLC

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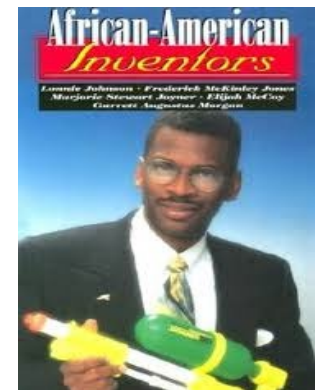
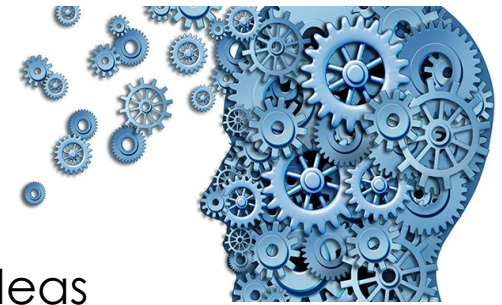


- Intellectual Property: Property (as an idea, invention, or process) that derives from the work of the mind or intellect. *Merriam-Webster Dictionary*

- IP provides legal rights for things that people create that are not tangible (e.g., ideas)

- IP provides a reward for invention

- IP promotes the sharing of inventions and ideas



What is Intellectual Property?

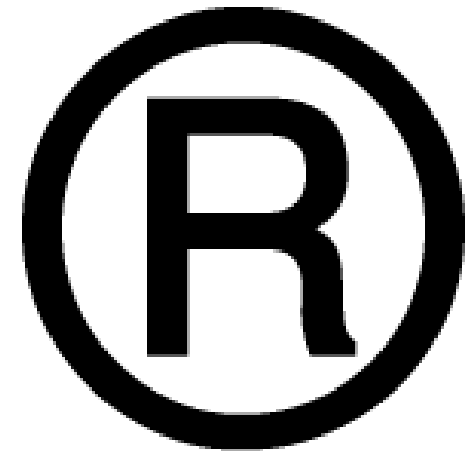
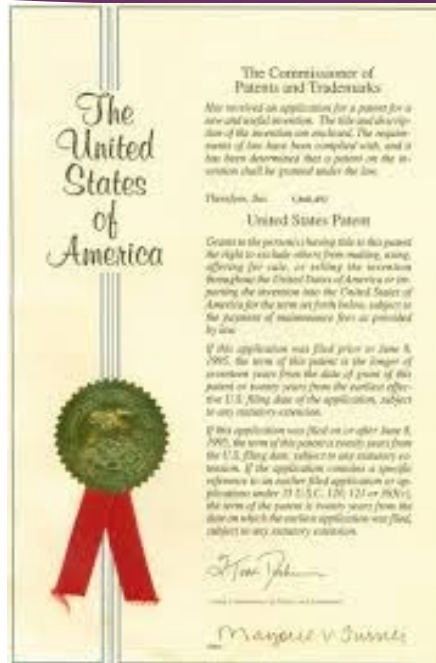
- ▶ Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.
- ▶ IP is protected in law by, for example, **PATENTS, TRADEMARKS, COPYRIGHTS**, which enable people to earn recognition or financial benefit from what they invent or create.
- ▶ By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish.

Types of Intellectual Property...

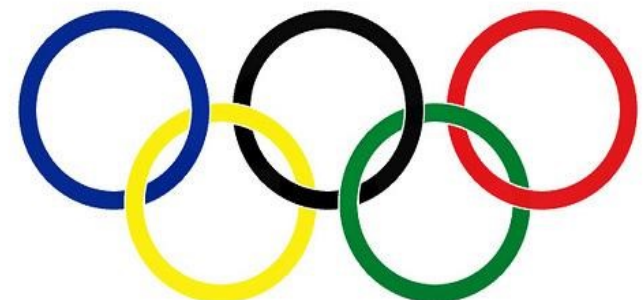
- ▶ **Patent** your inventions and technology (is it new, useful and nonobvious?)
- ▶ **Trademark** your business/product names ASAP, start creating brand loyalty. Check to see if your current or future name is in use: local, state, federal? Is someone else already using that name?
- ▶ **Copyright** your manuals, brochures, other documents you produce or create (do you care if your competitor copies it? Yes- then get a copyright!)



TYPES OF IP



TRADEMARKS



Trademarks and Servicemarks

- ▶ A **TRADEMARK** is a word, name, symbol, or device that is used in trade with goods to indicate the source of the goods and to distinguish them from the goods of others.
- ▶ A **SERVICEMARK** is the same as a trademark except that it identifies and distinguishes the source of a service rather than a product.
- ▶ The terms “trademark” and “mark” are commonly used to refer to both trademarks and servicemarks. Marks can be words, designs, or even colors or sounds as long as they identify a source
- ▶ Trade dress (distinct packaging; appearance)
- ▶ ® symbol for federal registration only
- ▶ RIGHTS: Common law < State TM < Federal TM



FEDERAL VS STATE

Have you engaged in **INTERSTATE COMMERCE**?

Yes: Federal through USPTO

\$225 filing fee per class

1A/In Use or 1B/Intent to Use

File Online

No: State TM through Texas Secretary of State

\$50 filing fee per class

Mail paper application

FEDERAL www.uspto.gov

STATE <http://www.sos.state.tx.us/corp/trademark.shtml>

What is Copyright?

- ▶ www.copyright.gov
- ▶ Copyright: the right to control copying of a work, protects creators of books, music and art by providing exclusive right to reproduce works and derive income from those works, protect authors while providing access to the public
- ▶ Common US Copyright Industries: software, films, music, television shows, video games
- ▶ No state copyright, only **FEDERAL** rights
- ▶ Regulation: provide method of registration of copyright, allow access to federal court for © infringement cases

Requirements for Copyright Protection

- ▶ Copyrightability:
 - ▶ original work
 - ▶ fixed in tangible form of expression; and
 - ▶ work of authorship
- ▶ No © for **USEFUL ARTICLES**: having an intrinsic utilitarian function, **EX**: clothing, vehicular bodies, furniture, machinery, appliances, dinnerware, lighting fixtures. Possible protection under patent law. **BUT** © available for toys, dolls, stuffed animals.
- ▶ Design of useful article can be © if incorporated pictorial, graphic, or sculptural features that can be identified separately from and are capable of existing independently of utilitarian aspects of the article. **EX**: statue on Rolls Royce

COPYRIGHT

- ▶ Protection for “original works of authorship”
 - ▶ For example: books; movies; art; music; plays; video games.
- ▶ Provides the author the exclusive right to make/sell copies of the work and perform/display it publicly



COPYRIGHT

- ▶ No need to register – protection is automatic
- ▶ Protection lasts for the life of the author plus another 70 years (or 95-120 years in certain situations)
- ▶ The © symbol is used to indicate copyrighted works - © 2020 Jane Doe



Copyright

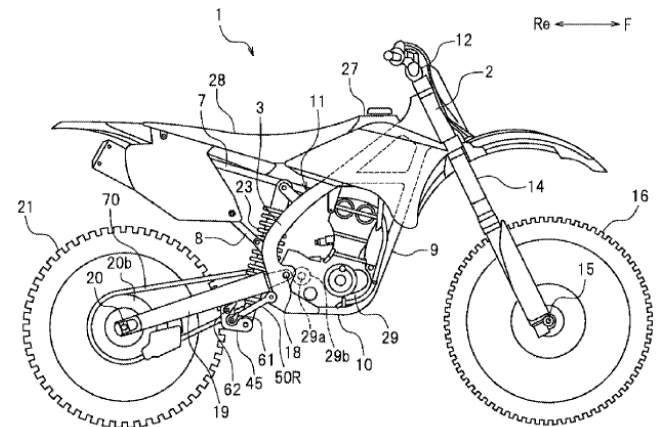
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WHAT IS A PATENT?

- Protection of one's invention
- Deal with U.S. Government
- Protection for approximately 17 years (20 years after filing)

(19) United States	
(12) Patent Application Publication	
(11) KATSURA et al.	
(10) Pub. No.: US 2014/0284128 A1	
(43) Pub. Date: Sep. 25, 2014	
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(54) MOTORCYCLE	Publication Classification
(71) Applicant: YAMAHA HATSUDOKI KABUSHIKI KAISHA , Shizuoka-ken (JP)	(51) Int. CL. <i>B62K 25/20</i> (2006.01) <i>B62K 11/04</i> (2006.01)
(72) Inventors: Takehisa KATSURA , Shizuoka-ken (JP); Toshiharu NAKAJIMA , Shizuoka-ken (JP)	(52) U.S. CL. CPC <i>B62K 25/20</i> (2013.01); <i>B62K 11/04</i> (2013.01) USPC 180/227; 280/284
(73) Assignee: YAMAHA HATSUDOKI KABUSHIKI KAISHA , Shizuoka-ken (JP)	(57) ABSTRACT A motorcycle is disclosed. The motorcycle includes a link member, a coupling rod, a first lever and a second lever. The link member is rotatably connected to a second end of a rear suspension via a first shaft, and is rotatably connected to a rear arm via a second shaft. A second end portion of the coupling rod is connected to a third shaft so as to rotate together with the third shaft. The first lever is connected to the third shaft so as to rotate together with the third shaft. The second lever is rotatably connected to the second shaft, and restricts the rotation of the first lever when engaged with the first lever. The second lever is provided with a torsion spring for providing a force for rotating the second lever around the second shaft.
(21) Appl. No.: 14/033,634	
(22) Filed: Sep. 23, 2013	
(30) Foreign Application Priority Data Mar. 21, 2013 (JP) 2013-058531	



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Types of Patents

Utility patents may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof;

Design patents may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture;

Utility Patents

- ▶ Protect FUNCTIONality
- ▶ Provisional Utility
 - ▶ 1 year term, patent pending
 - ▶ No prosecution before USPTO
 - ▶ \$3,000-4,000 plus filing fees
 - ▶ MUST file non-provisional within 1 year (see below)
- ▶ Non-provisional Utility
 - ▶ 20 year term once granted
 - ▶ Prosecution before USPTO (office actions, responses, appeal to PTAB)
 - ▶ \$7,500 initially, up to \$10,000 - \$30,000 for lawyer, filing fees, drawings
 - ▶ Approx. 50% chance of grant

Design Patents

- ▶ DESIGN PATENTS for new, original, ornamental design for an article of manufacture.
- ▶ Must be novel and nonobvious, ex: jewelry, furniture, trash cans, clothing.
- ▶ REQMTS: article of manufacture, new/novel, original/nonobvious, ornamental (not utilitarian or merely functional).
- ▶ Some works may be eligible for ©, trade dress, and/or design patent protection
- ▶ Cost: \$2500-3500 for lawyer fees, USPTO filing fees, drawings

TRADE SECRET

- What is a trade secret?
 - A trade secret is basically something that provides an economic benefit to you, but is unknown to your competitors (i.e., it is a “secret”). Unlike patents, protection for a trade secret can extend forever.
 - The formula for Coca-Cola is a well-known trade secret. It has been kept a secret for over 100 years. According to the company, only a few employees know the precise formula.



COMMON TRADE SECRETS

- Formulas, recipes, plans and drawings
- Customer lists, supplier lists

TRADE SECRET VS PATENT?

- Covered subject matter is broader
- Does not have a finite term
- No formalized process to acquire a trade secret
- No requirement to publicly disclose the “secret”

RESOURCES

1. Educate Yourself

- ▶ Law School Clinics
 - ▶ SMU or TAMU
- ▶ USPTO.gov
- ▶ Presentations from DAYL, DBA, other bar associations
- ▶ Small Business Administration
- ▶ Chambers of Commerce
- ▶ Small Business Development Center
- ▶ Dallas Entrepreneur Center
- ▶ Blogs and Webinars or Podcasts (like Empower Series!)

2. Consult an Expert | | Hire a Lawyer/CPA | | Listen