

## **Patents, Trademarks, and Copyrights**

### ***1.1 Introduction***

Welcome to SBA’s online training course: Patents, Trademarks, and Copyrights.

SBA’s Office of Entrepreneurship Education provides this self-paced training exercise as an overview of how to protect intellectual property and the steps you should take to safeguard your intellectual property.

You will find this course easy to follow and the subject matter indexed for quick reference and easy access. It will take about 30 minutes to complete the course. Additional time will be needed to review the included resource materials and to complete the suggested next steps at the end of the course.

Audio is used throughout the training, so please adjust your speakers accordingly. A transcript and keyboard shortcuts are available to assist with user accessibility.

When you complete the course, you will have the option of receiving a course completion confirmation from the SBA.

### ***1.2 Course Objectives***

The course has four key objectives:

- One, explain the importance of protecting your intellectual property
- Two, determine the differences between patents, trademarks, and copyrights
- Three, list examples of times when you would file for a patent or trademark, or register for a copyright
- Four, identify parts of the process of filing for protection

### ***1.3 Course Topics***

This course will focus on three common areas of intellectual property. They are:

- Patents
- Trademarks, and
- Copyrights

For a small business owner, it is important to know what intellectual property can be protected and how to take the necessary steps to get it protected. This course will be a stepping stone to learning these necessary actions.

Let’s get started!

### ***1.4 Background***

As an entrepreneur or an aspiring small business owner, you need to protect your ideas, business name, logo, inventions, and other work products that give your business a competitive edge in the market. In today’s competitive market, it is highly possible that other businesses or individuals are copying your intellectual properties for their own benefit, thereby threatening your growth.

## **1.5 Intellectual Property**

Intellectual Property encompasses a variety of rights and items owned by small businesses. You can safeguard your intellectual property with the help of laws that grant you certain time-limited rights to control the use of your intellectual goods and services.

These laws or rights include Patent, Trademark, and Copyright. Click each button to learn more.

### **Patent**

A patent is a property right recognized by the Government of the United States of America to an inventor for a limited time —to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States in exchange for public disclosure of the invention when the patent is granted.

### **Trademark**

A trademark is a word, phrase, symbol, or design, or a combination of words, phrases, symbols, or designs, that identifies and distinguishes the source of the goods of one business from those of others.

### **Copyright**

A copyright protects works of authorship, such as writings, music, and works of art that have been tangibly expressed.

## **1.6 Types of Patents**

Let's now learn more about patents. There are three types of patents:

- **Utility patents**, which protect the ownership of an invention or discovery of a new and useful process, machine, article of manufacture, or composition of matter or any new and useful improvement of those items
- **Design patents**, which protect the ownership of a new, original, and ornamental design for an article of manufacture
- **Plant patents**, which protect the ownership of any distinct and new variety of plant that was invented or discovered and asexually reproduced

## **1.7 Patent Laws**

Patent laws help you safeguard your intellectual properties. These laws can specify the methods for obtaining a patent and the conditions of the patent. In the U.S., patent laws are governed by the United States Patent and Trademark Office (USPTO).

## **1.8 What Can Be Patented?**

Almost anything and everything that is made by man and the processes for making the products can be patented.

You can patent the following:

- A process which is defined by law as a process, act, or method and primarily includes industrial or technical processes
- A machine which has parts or certain devices or a combination of devices

- A manufacture, which refers to articles that are made and includes all manufactured articles, and
- A composition of matter which relates to chemical compositions and may include mixtures of ingredients as well as new chemical compounds

### ***1.9 Conditions for Obtaining a Patent***

You need to meet the following requirements in order to obtain a patent:

- The invention you want to patent shouldn't already be known or used by others in the U.S.
- Your intellectual property shouldn't have been described in a printed publication in any country before the application for patent, and
- Your intellectual property shouldn't have been in public use or sale in the U.S. for more than one year prior to the application for patent

### ***1.10 Who May Apply for a Patent?***

Next, let's look at who may apply for a patent.

You may apply for a patent if you are:

- An inventor or a co-inventor
- An executor of an estate, or
- A legal representative of an inventor

### ***1.11 Application for Patent***

Your patent application should include:

- A written document
- Drawings, if necessary
- An oath or a declaration, and
- Filing, search, and examination fees

Click each puzzle piece to learn more.

#### **A written document**

The specification should have the following sections in order:

1. Title of the invention
2. Cross-reference to related applications (if any). Related applications may be listed on an application data sheet, either instead of or in addition to being listed in the specification
3. Statement of federally sponsored research or development (if any)
4. The names of the parties to a joint research agreement if the claimed invention was made as a result of activities within the scope of a joint research agreement
5. Reference to a Sequence Listing, a table, or a computer program listing appendix submitted on a compact disc and an incorporation by reference of the material on the

compact disc. The total number of compact discs, including duplicates, and the files on each compact disc shall be specified

6. Background of the invention
7. Brief summary of the invention
8. Brief description of the several views of the drawing (if any)
9. Detailed description of the invention
10. A claim or claims
11. Abstract of the disclosure
12. Sequence listing (if any)

### **Drawings (if necessary)**

In most cases, drawings or images can be helpful or even required for the granters to understand the intervention.

The drawing must:

- Show every feature
- Be in a particular format which meets the specifications on:
  - Ink
  - Color
  - Forms
  - Margins
  - Views
  - Scales
  - Shading, and
  - Symbols

### **An oath or a declaration**

An oath or a declaration of the applicant is required, and the applicant may be asked to answer questions about the invention.

It must be signed with full first and last names, and middle initial or name. You must also include the details of your citizenship.

### **Filing, search, and examination fees**

- There are basic and additional fees that are required when filing for a patent.
- Fees are subject to change every October.
- If you are a small entity, your fees may be reduced in half.

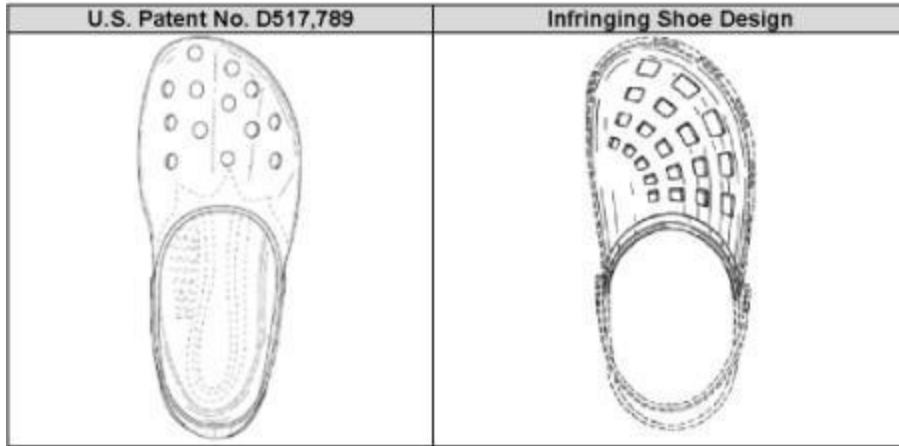
### ***1.12 Application for Patent (cont'd.)***

When you have a good product, people will want to imitate it. Therefore, it is crucial to protect your products and other business items. Here's a case study that illustrates how important it is to obtain patents for your intellectual property.

Click the Case Study button to learn about the importance of patenting your intellectual property.

## Case Study

The Accusation:



Can You Recognize the Shoe?

The company Crocs, started in 2002, paved the way for a foam shoe intended for outdoor and boating use.

Other people thought it was a good idea and started copying the design. They sold the copycat shoes at large retail stores, such as Wal-Mart and K-Mart.

What Happened?

Crocs sued. The judge found the copycat shoes to be a case of infringement because they were too similar to Crocs.

The Importance:

When you have a good product, people will want to imitate it. Be sure you have guarded your brand and product properly, as Crocs did.

### 1.13 Trademarks

Next, let's look at trademarks and how to secure your intellectual property by registering your trademark.

To start, let's look at what trademarks are and how to register them.

A trademark includes a word, name, device, or any combination of them to be used to identify and distinguish the goods and services of one seller or provider from those of others and to indicate the source of goods and services. It is essentially your brand.

### 1.14 Trademarks—Initial Considerations

Registering a trademark is not required in the U.S.; however, there are benefits to obtaining a trademark registration officially. Trademarks are territorial. Unlike the United States, most countries require registration of trademark rights.

If you decide to register officially with the U.S. Patent and Trademark Office, before starting the initial process, make sure you have thought through:

- The mark you want to register
- The goods or services in connection with which you wish to register the mark in the future, and
- Whether you will be filing the application based on actual existing use of the mark or a bona fide intention to use the mark in the future

### ***1.15 Registering Your Trademark***

Registering your trademark involves steps such as:

1. Identifying Your Mark
2. Identifying Your Goods/Services
3. Identifying the Proper Basis
4. Filing a Trademark Application
5. Remitting the Fees
6. Monitoring Your Status
7. Protecting Your Rights

Click each step to learn more.

#### **Identifying Your Trademark**

Your representation of your trademark must be extremely clear.

The three possible trademark formats available are:

- Standard character format
- Stylized/Design format
- A sound mark

For more information, visit: <http://www.uspto.gov/trademarks/basics/mark.jsp>

#### **Identifying Your Goods/Services**

Once your mark is chosen, you will need to identify very specifically the goods or services to which the mark applies.

#### **Identifying the Proper Basis**

Before filing, you must demonstrate that you have used your mark in commerce. You can file under either —"use in commerce" basis or "intent to use" basis.

##### **“Use in Commerce” Basis**

You may file under this basis when you have already used your mark in commerce. There is no need for filing additional forms or fees prior to registration.

##### **“Intent to Use” Basis**

You may file under this basis when you plan to use your mark in the future. It requires filing an additional form and fee prior to registration.

The main difference between these two is whether or not you use the mark on ALL the goods or services identified in your application.

### **Filing a Trademark Application**

The two ways to file your application are:

- Via online using Trademark Electronic Application System (TEAS). For more information, visit: [http://www.uspto.gov/trademarks/basics/online\\_filing.jsp](http://www.uspto.gov/trademarks/basics/online_filing.jsp)
- Using paper forms (you may contact the Trademark Assistance Center at 1-800-786-9199 (1-571-272-9250) for a paper form)

### **Remitting the Fees**

The fees for filing will be based on following factors:

- Number of marks
- Number of classes
- The version of the form being used

### **Monitoring Your Status**

You will want to check the status of your application after the initial filing, based on the following criteria.

- What?—To keep up with the timelines for filing post-registration documents, you need to follow up the status of your application.
- Why?—Failure to follow up may result in late submissions and as a result, denial of your request for reconsidering the application.
- When?—You should check the status of your application every 3 to 4 months after the initial filing of the application.
- How?—You can check the status via Trademark Search and Document Retrieval system.

### **Protecting Your Rights**

You are the only policeman for your marks. The United States Patent and Trademarks Office does not enforce your rights against others once you receive registration.

It will be up to you to bring any legal action to stop a party from using an infringing mark.

#### ***1.16 Copyrights***

Today, the distribution of copyrighted work has never been easier. However, nowadays, reserving intellectual property rights is made much easier than in the past because of technological advances online.

Small businesses should be aware of copyright and copyright ownership issues when doing business.

#### ***1.17 Examples of Copyrighted Material***

Copyrighting is a legal protection for the creators of original work. It can protect the following intellectual properties:

- Literary works
- Musical works
- Dramatic works
- Pantomimes and choreographic works
- Architectural works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings, and
- Computer programs

### ***1.18 Business Materials Protected***

All businesses have some form of materials that could be protected by copyright.

Common examples include:

- Brochures and catalogs
- Magazines
- Advertisements
- Blogs
- Logos, and
- Web sites

### ***1.19 Copyright Benefits***

Once your material is copyrighted, you have the right to do, or authorize others to perform, the following tasks with the copyrighted work:

- Copy
- Change
- Distribute publicly, and
- Perform or display the work publicly

### ***1.20 Getting a Copyright***

Copyright protection is less formal than obtaining a trademark or patent.

A creative work is considered protected by copyright as soon as it exists if it is original or is a Fixed in a Tangible Form.

Click each requirement to learn more.

#### **Original**

To be —Original, the work has to be independently created by the creator and have some minimal degree of creativity. "Independently created" simply means that the work must be the independent product of the author and not copied from someone else's work. A work can be original without being novel or unique.

#### **Fixed in a Tangible Form**



To be —fixed in a tangible form,|| the work has to be sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. It makes no difference what the form, manner, or medium of expression is.

### ***1.21 Ownership***

The creator of a work is considered the author and owner of the copyright. However, there are exceptions to this rule.

Make sure to clarify who owns the intellectual property and what types of work are covered in contracts.

For example, contract graphic artists and web-site designers own copyrights in the commissioned work in the absence of a written transfer of the copyright.

### ***1.22 How Long Will the Protection Last?***

The validity of intellectual property may vary depending on the country. But in the U.S., a copyright is protected for the life of the creator and an additional 70 years or 95 years from the creator’s publication or 120 years from creation of the work, whichever is shorter.

A patent is usually protected from 14 to 20 years, depending on the type of patent.

A trademark usually lasts as long as it is being used in commerce and defended against infringement.

### ***1.23 Protection Outside the United States***

Patents and trademarks are territorial. So if you are seeking protection outside the country in which you originally registered, you will need more than just the U.S. protection.

Click each button to learn about protection outside the U.S.

#### **Copyright Protection**

- Most countries do not require you to register in order to be protected. However, registration can offer several benefits. While the U.S. honors relationships with most countries when it comes to copyrights, you will want to double-check if you are concerned about a particular country.
- For more information, visit: <http://www.copyright.gov/circs/circ38a.pdf>

#### **Patent Protection**

- The Patent Cooperation Treaty (PCT) is an international filing mechanism that permits a single applicant to file for some or all of 146 countries.
- The creator must request examination in each country under the PCT in order to be evaluated for a patent in the specific country.

#### **Trademark Protection**

- Filing for trademark protection in other countries can also be a one-stop shop. This is facilitated with the help of the Madrid System, which offers the owner to have the trademark protected in many countries by filing one application directly with his/her own national or regional trademark office.

### **1.24 Summary**

This course focused on getting your intellectual property protected as a small business owner. It shed light on three categories: patents, trademarks, and copyrights. Hopefully, you now know what can be protected and how to take the necessary steps to get it protected.

Specifically, you learned how to:

- Explain the importance of protecting your intellectual property
- Determine the differences between patents, trademarks, and copyrighted material
- List examples of times when you would file for a patent or trademark, or register for a copyright
- Identify parts of the process in filing for protection

More information can be found online at [www.USPTO.gov](http://www.USPTO.gov) or in the resources of this course.

### **1.25 Next Steps**

Much material has been discussed in this course. The instructional part of the program is complete. It is now up to you to apply what you have learned. This is the most important part of the course.

Consider taking these next steps to protect your intellectual property:

- Step 1 – Figure out what protections you need to apply for. You can apply for a patent, trademark, or copyright
- Step 2 – Research existing protected work to ensure that the work or idea you are planning to protect is not already protected or to discover whether your work meets the basic requirements for obtaining protection
- Step 3 – Fill out the paperwork or register for a patent, trademark, or copyright
- Step 4 – Wait for a response for your application

### **1.26 Resources**

SBA has a broad network of skilled counselors and business development specialists. Below is a short description of our resource partners:

- **Small Business Development Centers (SBDCs)** are associated with institutions of higher education—universities, colleges, and community colleges. More than 900 SBDCs offer no-cost, extensive, one-on-one long-term professional business advising, low-cost training, and other specialized services, such as procurement, manufacturing, and technology assistance, which are critical to small business growth.
- **SCORE** offers free, confidential small business advice from successful entrepreneurs. SCORE is a nationwide program and boasts more than 12,000 volunteers to give you guidance to grow your business.
- **Women’s Business Centers (WBCs)** provide free management and technical assistance to help women and men start and grow small businesses. There are over 100 WBCs located throughout the U.S. and Puerto Rico.

- SBA’s 84 **District and Branch offices** connect entrepreneurs to resources, products, and services that can help them start, manage, and grow their business. These offices are located in all 50 states, Puerto Rico, the U.S. Virgin Islands, and Guam.
- The **SBA Learning Center** is an online portal that hosts a variety of self-paced online training courses, quick videos, web chats and more to help small business owners explore and learn about the many aspects of business ownership. Content is filtered by topic, so no matter the stage of your business, or the kind of insight you need, you can quickly get answers.

Find your local resource using our handy ZIP-code tool: [www.sba.gov/local-assistance](http://www.sba.gov/local-assistance)

### ***1.27 Have a Question?***

- Call SBA at 1-800 U ASK SBA (1-800 827-5722)
- E-mail SBA at [answerdesk@sba.gov](mailto:answerdesk@sba.gov)
- Locate a SCORE counselor, SBA district office near you, or an SBDC office near you at [www.sba.gov/local-assistance](http://www.sba.gov/local-assistance)
- To provide feedback, comments, or suggestions for other SBA online content, please use the following email: [learning@sba.gov](mailto:learning@sba.gov)

### ***1.28 Certificate***

Congratulations on completing this course. We hope it was helpful and provided a good working knowledge of what intellectual property can be protected, and how to protect it by obtaining patents, trademarks, and copyrights for intellectual property. Click the certificate to receive a course completion confirmation from the U.S. Small Business Administration.

## ***2. Recommendations***

### **A.C.T. NOW!**

The Article, Course and the Tools below are related to the course you just completed. They are provided to help you take action on your path to entrepreneurial success. You can also get in-person assistance for all of your business needs through a local resource center. And if you liked the course, please help spread the word by sharing it with your friends!

[Click here to share on Twitter](#)

[Click here to share on LinkedIn](#)

[Click here to share on Google Plus](#)

[Click here to share on Facebook](#)

### **Read an SBA Article.**

*Small Business Patents, Copyrights and Trademarks*, offers more information and resources for the small business community.

LINK: <http://1.usa.gov/1oGMcHF>

**Take Another Course.**

The *Financing Options for Small Businesses* Online course helps you to determine your financial needs such as loans, grants, venture capital, angel investors, crowd funding and other options available to small businesses.

LINK: <http://1.usa.gov/1inDVW8>

**Try a Tool.**

The U.S. Patent and Trademark Office offers a downloadable *Patent Calculator Tool* that can help estimate the expiration date of utility, plant, or design patents.

LINK: <http://1.usa.gov/1kYfdL0>

**Find local assistance!**

SBA has a broad network of skilled counselors and business development specialists.

LINK: <http://1.usa.gov/1kih dhJ>