

Comparison of Patents, Trademarks, Copyrights, and Trade Secrets

USIPSM

Type of Protection:	Utility Patent	Design Patent	Copyright	Trademark	Trade Secret
Subject matter	Functional features of process, machine, manufactured item, or composition of matter	Ornamental designs for article of manufacture	Works fixed in tangible medium of expression; includes literary, musical, pictorial, architectural, sculptural, motion pictures, and computer software	Words, names, symbols, devices, sounds, smells, non-functional trade dress	Formulae, processes, products, software, plans, designs, pricing, devices, R&D information, business information
Criteria for protection	Useful, new and non-obvious	Ornamental, new and non-obvious	Originality; authorship; non-functional aspects	Used to identify and distinguish goods or services	Anything advantageous in business and secret
How to obtain rights	U.S. Patent Office	U.S. Patent Office	Automatic upon creation in tangible medium; notice and registration help monetary recovery; registration required for suit	Common law by use; federal or state registration based on use	Maintain secrecy
Term	20 years from effective filing date	14 years from grant	Post-1/1/78 works: Life of author plus 70 years	As long as properly used; federal registration lasts 10 years (if formalities are met); renewable for 10-year periods	Duration of secret
What infringes	Making, using, selling, offering for sale, or importing devices embodying the claimed invention or using claimed process	Designs that look alike to eye of ordinary observer and use "point of novelty"	Copying, distribution of copies, unauthorized performance or display	Likelihood of confusion, mistake or deception	Misappropriation, improper disclosure
Disclosure requirements	Best mode	Best mode	None; deposit for registration	Use of mark discloses it	Cannot disclose
Cost	High	Moderate	Low	Low to moderate	Cost of maintaining secret
Continuing duties	Maintenance fee	None	None	Proper use; policing; renewals of registration	Maintain secret
Date protection commences	Upon issuance; 2-5 years from filing (retroactive damages possible)	Upon issuance; 2-5 years from filing	When fixed in tangible medium	First use; filing of U.S. intent to use application followed by registration	Creation of valuable secret
Any rights against independent discovery or creation	Yes	Yes	No	Yes, but good faith limits monetary recovery	No
Potential civil remedies	Damages; attorney fees and enhanced damages if exceptional; injunction; prejudgment interest	Damages for injury or defendant's profits; attorney fees and enhanced damages if exceptional; injunction; prejudgment interest	Damages; statutory damages; attorney fees; seizure; injunction; Customs seizure (if recorded with Customs)	Damages; defendant's profits; attorney fees; punitive damages if also unfair competition; injunction; seizure and statutory damages if counterfeit; Customs seizure (if recorded with Customs)	Damages; punitive damages; attorney fees; injunction