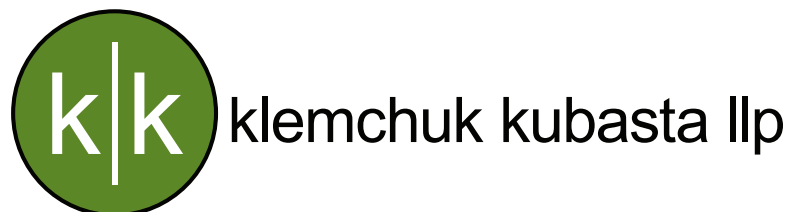


Intellectual Property Quick Reference Guide



intellectual property

What is Intellectual Property?

Intellectual property (IP) is intangible property resulting from creativity. IP describes a wide variety of property created by musicians, authors, artists, and inventors and may be protected through the use of patent, trademark, copyright, and trade secret laws.

Quick Tips:

- Each branch of IP has its own set of minimal standards, which need to be met before protection may be granted.
- Each country has its own rules and regulations governing IP.
- IP, when properly managed, may aid businesses in securing their future and opening new sources of value and revenue.



klemchuk kubasta llp

patents

What is a Patent?

A patent gives the inventor exclusive rights in the invention for a period of time, so that he or she can profit from the invention before the right to exploit it is available to the general public. Patents can be granted for plants and other life forms, designs of manufactured products, machines, processes, and combinations of matter.

Quick Tips:

- A patent prevents others from making, using, or selling claimed invention.
- An inventor only has one year from the date of public disclosure, offer for sale, or publication to file an application for patent in the U.S. (note, however that many other countries require absolute novelty and do not allow the one year grace period).
- The subject matter of patent claims must be new, useful, and non-obvious.
- A patent may issue, if at all, around 3-4 years after filing.
- The term of protection is up to 20 years from the date of filing (except in the case of design patents, where the period is up to 14 years).
- Patentees must pay maintenance fees for a utility patent to remain in force.



trademarks

What is a Trademark?

A trademark, service mark, or logo prevents others in the marketplace from using a confusingly similar name, symbol, or device to indicate the source of its goods or services.

Quick Tips:

- They are not required to be registered with the U.S. Patent and Trademark Office, but registration provides significant benefits.
- Use of the symbols “TM” or “SM” (for common law trademarks and service marks, respectively) may be governed by local, state, or foreign laws.
- Use of the symbol ® may be used once the mark is registered in the U.S. Patent and Trademark Office.
- Registration provides national protection for the mark.
- Trademarks are generally protectable for as long as they are used in commerce to indicate the source of the good or service.

copyright

What is a Copyright?

A copyright prevents others from copying, making derivative works of, performing, distributing, or selling copies or counterfeits of original works of authorship, such as music, lyrics, books, plays, poems, paintings, sculptures, photographs, architectural designs, and software. The creator of the work is generally considered to be the author of the work and is the owner of the copyright.

Quick Tips:

- A work need not be registered with the U.S. Copyright Office to be protectable under copyright law.
- Registration, however, is a prerequisite to a copyright infringement lawsuit.
- The symbol © is an identifier placed on copies of the work to inform the world of copyright ownership – registration is not required to use the symbol.
- The copyright notice should include the name of the copyright owner and the year of first publication (e.g., © 2006 John Doe).
- When a work qualifies as a work made for hire, the employer, or commissioning party, is considered to be the author and thus the copyright holder.



klemchuk kubasta llp

trade secret

What is a Trade Secret?

Trade secrets protect competitively valuable information such as, for example, formulas, patterns, devices, and compilations of information. A trade secret remains enforceable as long as reasonable efforts have been taken to keep it “secret.” It is, however, generally impossible to prevent all trade secret theft by employees, but an employer has some tools at its disposal.

Quick Tips:

- Require employees at the time of hire to sign non-competition agreements which prohibit the employee from using confidential business information or product innovations to compete with the employer in a new job.
- Create and implement a compliance system protecting and limiting access to the trade secret and related confidential information.
- Train and regularly educate employees on the compliance system.
- Conduct audits and assessments of current policies and modify, if necessary.
- Use exit interviews to remind departing employees of their duty to keep trade secrets confidential.

ip audit

What is an IP Audit?

An IP audit primarily identifies intellectual property currently owned by a company and typically provides a business with an opportunity to exploit, commercialize, and profit from its intellectual property.

Quick Tips:

- IP audits can identify previously unrecognized IP and status of existing IP.
- Use IP audits to assess current IP portfolio – both strengths and weaknesses.
- Evaluate current portfolio and identify potential licensing revenue.
- Review audit results and take measures to protect/develop newly identified IP.
- Regularly update IP auditing procedures as business needs change.

Summary

	Trademark	Copyright	Patent	Trade Secret
<i>Registration Required?</i>	No	Preferred	Yes	N/A
<i>Statutory Damages?</i>	No*	Yes	No	No
<i>Enhanced Damages?</i>	Up to 3x damages	Willful infringement	Up to 3x damages	Exemplary
<i>Attorney's Fees?</i>	Yes♦	Yes	Yes♦	No
<i>Statute of Limitations?</i>	2 years under Texas Law	3 years	6 years	3 years
<i>Length of Rights?</i>	Perpetual	Life + 70 years	20 years	Perpetual

* In the case of counterfeiting or cybersquatting, statutory damages are available.

♦ In exceptional cases.

patent

What does it protect?

The exclusive right to make, use and sell inventions, including new and useful processes, machines, certain designs, and certain varieties of plants, for a period of 20 years (excluding design patents).

Average Cost*?

Non-provisional: \$5,000—\$10,000 plus about a \$500 filing fee for up to 20 claims and professional draftsman fees. Provisional: \$4,000-\$6,000 plus a \$110 filing fee

Average time to issue?

1 to 4 years

Duration of patent?

20 years from filing date, 14 years if design patent

trademark

What does it protect?

Prevents others in the marketplace from using a confusingly similar name, symbol, or device that is being used to indicate the source of goods or services.

Average cost*?

\$1000 legal fee (inclusive of in-house trademark search) plus \$325 filing fee per class of goods or services

Average time to issue?

6 months to 1 year

Duration of registration?

Perpetual, if maintained

copyright

What does it protect?

Prevents others from copying, making derivative works of, performing, distributing, or selling copies or counterfeits of original works of authorship, such as music, lyrics, books, plays, poems, paintings, sculptures, photographs, architectural designs, and software.

Average cost*?

\$400 legal fee plus \$50 filing fee

Average time to issue?

3-6 months

Duration of registration?

Life of author + 70 years

trade secret

What does it protect?

Trade secrets protect competitively valuable information, such as formulas, patterns, manufacturing processes, client information, and compilations of information.

Steps to protect trade secrets?

Every business that has at least one current or ex-employee is at risk for trade secret misappropriation. Businesses should employ non-competition, non-solicitation, and non-disclosure agreements to help thwart trade secret misappropriation. Audits and compliance analysis should be conducted. Exit interviews for departing employees should be employed to reduce risk of theft.

Duration of trade secret?

Perpetual, if maintained

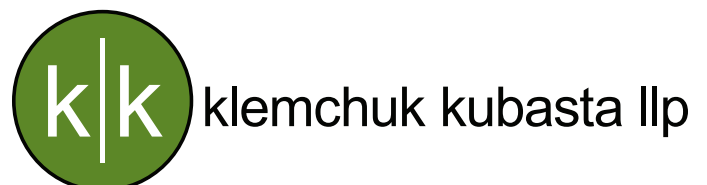
ip Services

At K&K, we do most patent, trademark, and copyright applications on a fixed-fee basis. Consistent with our overall approach to the practice of law, we understand that many small business owners, entrepreneurs, and start-up companies do not have unlimited budgets to spend on legal fees. Therefore, we offer fixed-fee and Invested Billing arrangements that provide clients the comfort of knowing what they will pay in advance and allow them to effectively budget their business accordingly.

Klemchuk Kubasta's intellectual property practice consists of lawyers with a wide range of legal and technical experience. We advise clients, including Fortune 500 companies, on how to acquire, protect, and license their patent, trademark, copyright, trade secret, and other technology rights. Whether you are a solo inventor, a start-up company with the next great idea, or a corporation with an established patent portfolio, K&K attorneys are available to advise you on your IP rights.

While we provide full-service IP counseling, our primary focus is IP litigation. At K&K, we handle many lawsuits on a joint venture basis with other firms - either as co-counsel or local counsel for cases pending in state and federal courts in Dallas, Texas. If you have any questions or just want to run some ideas past us, please do not hesitate to contact us. We can assist you with IP issues facing your clients.

For more information on K&K's patent, trademark, copyright, trade secret, and intellectual property trial and transactional practice, please visit www.kk-llp.com.



Kelly J. Kubasta

partner



phone

214.367.6000

fax

214.367.6001

office

8150 North Central Expy
Suite 1150
Dallas, Texas 75206

Kelly's practice encompasses a wide array of intellectual property, with particular emphasis on patent, trademark, and trade dress litigation and licensing. His litigation experience, advising both plaintiffs and defendants, has included infringement issues involving trademarks/service marks, product trade dress, patents, and copyrights, as well as breach of contract, unfair competition, trade secret, and antitrust issues.

Representing clients whose products and services cover a broad range of industries— including apparel, consumer electronics products, energy exploration devices, medical devices, automotive components, architectural designs, and others – Kelly has substantial experience in Federal Court, both at trial and through appeal, as well as in Texas state court. He has further represented clients in mediations to resolve disputes both before and during litigation.

Also skilled in strategic portfolio management, Kelly advises clients as to the most effective methods of protecting and leveraging their intellectual property assets. In doing so, he has drafted dealer/franchisee agreements, negotiated software development and licensing agreements, constructed Internet e-commerce policies, and resolved domain name disputes through ICANN. He is a registered patent attorney and has prepared and prosecuted both utility and design patents in various fields, including mechanical and electronic devices, industrial equipment, telecommunications, optics, software, and business methods.



klemchuk kubasta llp

Darin M. Klemchuk

partner



phone

214.367.6000

fax

214.367.6001

office

8150 North Central Expy
Suite 1150
Dallas, Texas 75206

My practice includes all aspects of intellectual property with emphasis on patent, trademark, copyright, and trade secret litigation. I have handled over 200 intellectual property disputes, including approximately 20 patent infringement cases, many of the cases as local counsel. My practice also includes assisting companies to increase their market share and protect their competitive advantage by identifying and protecting valuable branding, technological innovation, software, and other property and by procuring patent, trademark, and copyright registrations and through employment agreements and non-compete agreements. I also advise clients on licensing, acquisitions, due diligence, and eCommerce, including the emerging field of branding in cyberspace and trademark issues related to the Internet. We also assist clients in recovering domain names taken by cybersquatters.

While I have represented a number of Fortune 500 corporations, I focus on growing companies, who benefit from broad intellectual property counseling. I also represent a number of solo inventors and start up companies from inception of their business plan through their first couple rounds of funding. I also offer to serve as Virtual General Counsel and Virtual IP Counsel for companies that require in-house counsel but have not grown to that level.

In addition to intellectual property, I have significant experience litigating commercial and business disputes, including non-compete, partnership, fiduciary duty, and breach of contract disputes, 7 of which I have tried to a verdict, judgment, or arbitration award. I have represented a number of clients in obtaining and resisting requests for injunctive relief in cases involving non-competes, trade secrets, trademarks, and patents.



klemchuk kubasta llp