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## Back to Basics — IP 101

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Since we started writing this column two years ago, we've tried to enlighten and entertain you about intellectual property law topics we thought were interesting and topical. We hope we've succeeded, but we now realize that we have never provided a back-to-basics discussion on the fundamental concepts of intellectual property - patents, trademarks and copyrights. So, thinking that it's never too late, and working within the constraints of a very short article, let's briefly review the differences between patents, trademarks and copyrights.

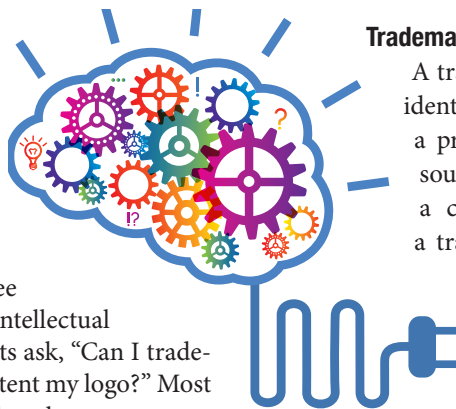
In our practices, we constantly encounter confusion between these three distinct and very different intellectual property law concepts. Clients ask, "Can I trademark this idea?" or "Can I patent my logo?" Most often, these questions simply relate to nomenclature confusion. The client understands what it wants, but uses the wrong word. In the end, it doesn't really matter if a client calls a patent a trademark or calls a trademark a patent, as long as the appropriate protection is obtained.

Patents - Trademarks - Copyrights: we like to call them concepts since in reality that's what they are. Although patent rights, trademark rights and copyright rights can be represented by officially issued government certificates, you really can't touch or feel patent rights, trademark rights or copyright rights. And, because they're concepts, this may be a reason why it is often difficult for a layperson to appreciate the distinctions between them.

### Patents—Inventions!

A patent is the big boy of the three IP concepts. Patent rights cost the most to obtain, take the most time and effort to attain, and are the most difficult to explain. Patent rights protect inventions - not ideas. An invention is something more than an idea. Since 1793, when Jefferson wrote the first U.S. patent law, patents have been granted to protect only four types of inventions: (1) processes, (2) machines, (3) things that are manufactured and (4) compositions of matter. These four categories are the only inventions eligible for patent protection. Of course, our federal courts have had to define (and sometimes have allegedly expanded) these four categories to deal with inventions in technologies that did not exist at the time the law was written. What patent rights include is quite complex, but in short a patent gives the owner the right to exclude others from certain activities, namely, making, selling, using, offering for sale, exporting components to be assembled into an infringing device outside the

United States, and importing a product made by a process covered by a U.S. patent. Even calculating the term of a patent is complex, but for simplicity's sake the basic term of a patent is 20 years from the earliest claimed filing date for a patent issuing from a patent application filed after June 8, 1995. To put it in another way ... you cannot patent a tagline. It is not one of the four statutory categories of patentable subject matter.



### Trademarks—Source!

A trademark is, in short, a source identifier. It tells the buyer that a product comes from a certain source and that the product is of a certain quality. Theoretically, a trademark can be almost anything, but generally it is a word, phrase, or some image (i.e., a logo) that identifies to the buying public the source of the goods or services. The primary

concern when choosing a trademark is whether there will be a likelihood of confusion with any pre-existing trademark. Likelihood of confusion is viewed from the buying public's perspective rather than from the trademark owner's perspective. Trademark rights began as common law rights, and Congress later established a federal registration system. While a federal registration is generally not that difficult to obtain and takes less than a year to attain, it is still difficult to explain. Remember, you can't trademark an idea!

### Copyrights—Copies!

A copyright gives the owner the right to stop others from making copies of the owner's work. This may be why it's called a copyright. Obtaining a copyright is the least expensive form of intellectual property protection since it is automatic. You take a photo, write a software program, chisel a statue or compose a song and you've got copyright rights. The copyright rights come into existence as soon as the work is "fixed in a tangible medium of expression" (statutory language). Paper or a computer screen are each a "tangible medium of expression." Registration of a copyright gives the owner access to certain legal benefits, but it is not necessary to obtain a copyright registration in order to own copyright rights. In brief, copyright protection can be very limited, but it is free. You get what you pay for.

To help you remember the distinctions between these three IP concepts, just remember: "This is the PITS!" (Patent Inventions Trademarks Source). Oh, and don't forget about copyrights.