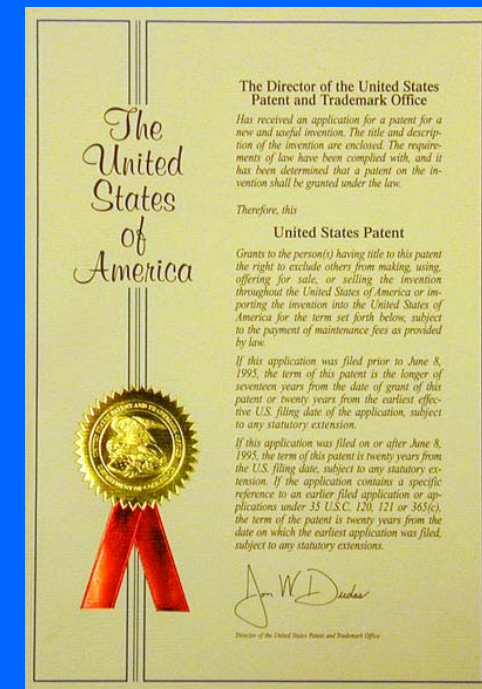




Patents, Copyrights, Trademarks and Trade Secrets

The Office of Technology Commercialization at Rensselaer supports researchers in protecting intellectual property and bringing discoveries into the commercial marketplace. We are dedicated to building relationships with commercial partners to benefit Rensselaer, researchers, and the broader community.



Intellectual Property, Technology Transfer and New Ventures

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Basic Guide to Types of Intellectual Property

Utility Patents

What is patentable?	New, non-obvious, and useful process, machine, manufacture, composition of matter, or improvement sufficiently described and enabled.
Rights afforded?	Ability to prevent others from making, using, importing, offering for sale, or selling patented invention.
Rights not afforded?	No right to make, use, offer for sale, or sell. Why? There may be dominating/blocking patent(s), e.g., a patent with a broader claim that encompasses the claim in your patent or a patent with a claim that covers a component of the claim in your patent.
Proper Marking: Notice to Public	"Patent Pending"...when patent application has been filed and is still pending; discretionary but recommended "U.S. Patent No. _____" "...when patent issues and still in force; generally necessary for recovery of damages for infringement in absence of actual notice to infringers.
When are patent rights established?	Upon issuance of the patent NOTE: If patent application publishes and claims are substantially identical to claims in patent, can collect damages from infringers from time of publication of patent application, subject to infringer having notice: to preserve right, request re-publication when claims are substantially amended during prosecution; consider requesting early publication if aware of potential infringer.
Who has rights?	Inventor(s), unless assign rights or exclusively license rights to someone else. Employment agreements can impose obligations on inventors to assign rights to employer. Each owner (patentee or assignee) has all rights and no duties to other owner(s), unless agreement to the contrary.
Duration of rights?	20 years from effective filing date. If application claims benefit of filing date of earlier, non-provisional application(s), then 20 years from earliest application. Pendency of provisional application does not count towards term of patent. GATT provisions may impact term of patent. Payment of maintenance fees required or patent lapses.
When to apply?	Within one year of first public disclosure, offer for sale, or sale NOTE: file before first public disclosure, offer for sale, or sale if intend to pursue patent protection abroad; while there are exceptions, many countries require absolute novelty, i.e., no disclosure, offer for sale, or sale before application filed.
How long between filing of application and issuance of patent?	Depends on art and patentability. Generally, 18 months to 3 years, unless petition to make special.

Copyrights

Subject Matter	Original works of authorship.
Exemplary Subject Matter	Goods and writings (e.g. correspondence, advertising copy), movies, music, choreography, sculpture, computer software, photographs, architectural works.
Establishing Rights	Rights established upon creation. No requirement to register (except as prerequisite for infringement suit) or to use copyright notice, but advantageous.
Nature of Rights	Exclusive rights to copy, modify, distribute, perform and display the work or works which are "substantially" similar.
When to Apply	Any time; advantageous to register within 5 years of 1st publication, ideally within 3 months.
Approximate Cost/Timing of Issuance	\$50 filing fee for registration; typically about 3 months to issuance.
Duration of Rights	Author's life plus 70 years, or 95 years for anonymous works or "works made for hire."
Proper Marking: Notice to Public	© [year of first publication] [name of author or copyright owner]" e.g., "© 2011 Rensselaer". Optional, but advantageous.
Foreign Protection	Initial creation of the work protected throughout most of the world by international treaty.
Ownership Of Rights	Author; employer is generally considered "author" under "work made for hire" doctrine. Ownership of tangible article or payment for creation of work does not vest copyright.
Rights of Joint Owners	Each author has all rights under copyright with duty to account to co-authors or owners.
Assignability & Licensing	Freely assignable, May be freely licensed

Trademarks

Subject Matter	Source identifiers (Brands)
Exemplary Subject Matter	Logos (e.g. Nike swoosh), works (e.g. IBM), words (e.g. KODAK), packaging (e.g. Coca-Cola bottle), sounds (e.g., NBC chime), color (e.g. Owens Corning pink fiberglass).
Establishing Rights	Rights established through use in commerce and limited to goods/services with which mark is used. No requirement to register, but advantageous.
Nature of Rights	Right to prevent others from using the same or a similar mark in a manner which is likely to cause confusion, especially confusion about the source of other's goods or services.
When to Apply	Any time
Approximate Cost/Timing of Issuance	\$2500 (est.) for registration; periodic maintenance and renewal; minimum 12 months to issuance of registration.
Duration of Rights	As long as the mark is used. Federal trademark registrations have a term of 10 years and can be renewed indefinitely if mark is in use.

Trademarks

Notice	"TM" to signal claim of (unregistered) trademark rights. "SM" to signal claim of (unregistered) service mark rights. ® to indicate mark is federally registered. Notice customarily goes at upper right "shoulder" of mark. Discretionary.
Foreign Protection	Country by country; regional protection available for most of Europe, but no global protection currently available.
Ownership of Rights	Person or business that uses the mark on goods or services in commerce. Trademark belongs to first to use mark.
Rights of Joint Owners	No allowance for joint owners.
Assignability	Only assignable with the goodwill represented by the mark.
Licensing	Licensor must control quality of goods/services sold under licensed mark.

Trade Secrets

What is a trade secret?	Anything, including information, pattern, compilation, device, method, technique, or process that derives economic value from not being generally known or deductive, and is kept secret. Trade secrets may also include negative information, such as the findings of research that show what will not work. Unlike patents, there are no requirements for trade secrets concerning subject matter, tangibility, or novelty.
Rights afforded?	Ownership of the subject matter of the secret.
Rights not afforded?	No right to prevent others from practicing the secret should they obtain the knowledge independently. No right to prevent others, who obtained the secret independently, from patenting the subject matter of the secret.
Notice to public?	No notice of trade secret is required; however, confidential documents/disclosures must be marked and identified as "confidential".
When are rights established?	When the secret is developed, provided that a formal program is established to implement security procedures and to monitor compliance with the procedures.
Who has rights?	The company or individual that controls access to the secret.
Duration of rights?	Unlimited, as long as the secret is maintained.
When to apply?	No application to any government agency is required to establish and maintain a trade secret.