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From the Selected Works of Laura Quilter

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Intellectual Property Cheat Sheet

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Available at: https://works.bepress.com/laura_quilter/39/

	Patent	Trade Secret	Copyright	Trademark	Statutory Sui Generis	Personality Rights
Easy examples	A better mousetrap	Coca-Cola formula	<i>The Da Vinci Code</i> ... "Gangnam Style"	NBC peacock logo & tune	chip masks, boat hulls, design patents	Celebrity endorsements of a product
Hard examples	Software algorithms, biotech	Useful medicine?		Washington Redskins		
Policy & economic rationale	Encourage inventors to disclose rather than keep secrets, so that invention will move into the economy & eventually be able to be improved	Allow people to make arrangements (contracts) & trust each other that they will be enforced	Encourage creation of literary, artistic, musical, etc., works	Allow consumers to identify & trust in the source of goods & services	Various industry supports	Allow people to use & protect their own fame & reputations, as a type of trademark
Source of law	US Constitution, Art. 1, s.8, cl.8	State & federal statutes (Commerce Clause); common law	US Constitution, Art. 1, s.8, cl.8	State & federal statutes (Commerce Clause); common law		
What it covers	Inventions, "reduced to practice" ... that are useful, nonobvious, within appropriate subject matter	Any secret information - - formulas, compilations of information (such as customer lists), processes, etc.	"original expression" "works of authorship" within appropriate subject matter	Anything that can serve as a source indicator for a service or good -- logo, slogan; scent, color, tune	chip masks; boat hulls; other things in other countries (databases; folklore; etc); geographical indicators; design patents ("industrial designs")	right of publicity; moral rights; etc.
What it does NOT cover	Ideas for great inventions (perpetual motion machines) ... Products of nature	Things which you voluntarily disclose; information harmful to public policy	Ideas; formulas, methods; facts	Will not cover what patent or copyright already covers		
How long it lasts	20 years	until secret is lost	until 70 years after author is dead	as long as it is used in commerce & serves as a brand identifier		

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How do you lose it?	Expiration of statutory term ... Patent misuse ... License it away, give it away, employment agreements	Secret is lost; against public policy to enforce it	Expiration of term ... License it away, give it away, employment agreements (works made for hire)	No longer using it in commerce; No longer used by consumers as source identifier; Genericide; Immoral for registration, but can still be used		
Rights	Stop others from using, reproducing, distributing, or even making their own	Stop others from acquiring; in practice, from using or sharing	Reproduction, distribution, derivative works	Stop competitors from using		
Defenses	Patent misuse, personal invention, noninfringing, patent wasn't valid to begin with... patent exhaustion (first sale)	Separate invention, no violation of agreements or other misappropriation	fair use ... first sale (exhaustion) ... statutory limitations & exceptions ... no substantial similarity; original creation; public domain	Not a valid trademark ... no consumer confusion		
How do you get it	FIRST TO FILE a detailed public disclosure ... File application w/ PTO	Maintain with secrecy & agreements	"fix" original expression in a tangible medium ... but register with Copyright Office to be able to sue	use it in commerce ... but register it with PTO or state trademark offices to gain certain advantages		
Can two people have it?	No! first to file gets it	If two people separately create it, or if a second person comes across it without wrongdoing	If two people separately create it	If they are in different fields so there is no consumer confusion		
Problems & issues & hot topics & reforms proposed	software patents ... products of nature (mathematical algorithms, biotech) ... patent trolls ... patent inspectors ... Federal Circuit ... first to invent or first to file?	How broadly to protect?	Length of term; "paracopyright" (anticircumvention); statutory damages; fair use	Trademark "dilution" ... "trademark fair use"... appropriating language ... border of (copyright) and (trademark)		