

SAEGIS is an entire suite of services provided by Thomson & Thomson that allows online worldwide trademark searching as well as searching of domain name registries and websites to locate common law uses of proposed marks

TRADEMARKCOM is an online search service offered by Micro Patent LLC, offering a variety of searchable databases, including federal marks, and common law uses of potentially conflicting marks

LEXIS and WESTLAW, the computer-assisted research system, offer access to vast trademark databases that may disclose potentially conflicting marks

Many law firms subscribe to one or more of these services so they can perform an initial screening search in-house

PTO Web Site : Perhaps the easiest and least expensive way to conduct a very preliminary search is to review the records of the PTO (<http://www.uspto.gov>) and its free public searching called **Trademark Electronic Search System (TESS)**

Step Two: The Comprehensive Search

A separate professional trademark search firm is existing for the companies when their need of searching the trademark. These companies review the records of the PTO (go through existing and pending application), review state trademark office records for state trademark registration, and they perform a “common law” search of various journals, directories, press releases, domain names and Internet references to locate unregistered names and marks.

These professional search firms can save considerable time and money and more importantly, provide a more thorough search than that which an individual can conduct on his or her own, they also check for identical and phonetically equivalent marks for similar goods and services and will also check for foreign equivalents.

They will charge for the searching of the marks The report is typically divided into three sections: results gained from reviewing PTO registrations and applications; results gained from reviewing state trademark records; and the common law results

TRADEMARK REGISTRATION PROCESSES

Preparing the application

Once a mark has been selected and evaluated for use and registrability, an application for federal registration of the /mark should be prepared and filed

- An application is provided by PTO
 - The name of the applicant
 - The citizenship of the applicant
 - The address of the applicant
 - The address of the applicant
 - An identification of the goods and or services offered under the mark
 - A drawing of the mark
 - A verification or declaration signed by the applicant or agent or attorney
- The application is based on actual use of the mark or the owner's intent to use the mark

- The process of moving an application through the PTO is called prosecution [(law) the institution and conduct of legal proceedings against a defendant for criminal behavior
- The application must be in English
- Electronically filed application are provided by the PTO
- Self application is also be prepared as the letter size (namely 8 ½ inches by 11 inches) paper, typewriter, double-spaced, with margins of at least 1 ½ inches at the left and top of the pages
- The application should be written on only one side of the paper
- The filing and prosecution of trademark application are governed by the TMEP [Trademark Manual of Examination Procedure]
- The PTO introduced on electronic filing system in 1998
- The Trademark Electronic Application System [TEAS] Permits applicants to file numerous documents electronically
- PTO considers the electronically filed document after transmission

The applicant

The mark can be made only by the owner of the mark or, in the case of intent -to-use application, by a person who has a bonafide to use the mark in commerce

Application may be natural persons or business entities such as corporation, partnership, association, unions or other organization

Government entities such as nations, states municipalities and other governmental bodies

- The applicant name must be in correct legal form
- A mark should be identified in the application by the name set forth in its articles of incorporation

- Clients often make mistakes in their corporate names or in the punctuation
- The certificate of registration will issue in the name of the application as set forth in the application
- If the application is a person or business that conducts business under a fictitious [fake] business name, the application will be rejected
- The applicant is a partnership **For example:** “Balboa Gardens Partnership”, the application should be made by the partnership itself and the state in which the partnership was organized
- A trademark or service mark application is usually filed in the name of one party
- The PTO has been reluctant [unwilling] to accept application by joint applicants

- A joint venture or a partnership cannot be joint applicants

Identification of Goods or Services

The application must identify the goods and/or services offered or to be offered under the mark that is the subject of the application Careful consideration must be given to drafting this part of the application Goods and services are categorized by the PTO into forty-five separate classes, called

International Classes because many other nations use this same classification system established by WIPO Until 1973, the PTO used a different classification scheme, called the United States Classification Scheme Each class requires a filing fee of \$335

A detailed listing of the International Classes with numerous examples is found in Chapter 1400 of

TMEP, available on the PTO's web site If a mark is used for more than one class of goods or services, the applicant may either file a combined application, listing all of the goods and services Some attorneys prefer to file separate application believing that a defect in regard to one class of goods or services in a combined application will hold up registration for the mark in all class.

The PTO requires that the identification of goods or services be as clear, accurate and concise as possible Once the application filed, no other item can be added in the process of registration, a separate application should be applied

REGISTRATION

A registration will issue about twelve weeks after publication in the official gazette

If no notice of opposition is filed to the application

For an ITU [Intent-to-Use] application registration will occur after publication in the official Gazette

The PTO will issue a certificate of registration for the mark

The term of the registration is presently ten years from the date the mark is registered [for registration issued before November 16, 1989, the term is twenty years]"TM" for Trademark & SM for service mark

UNIT-3

COPYRIGHTS

Introduction

Every year millions of Americans create original works like books, music, research and other forms of creative expression All these creation are Intellectual Property and all of them are protected by copyright

Writers, editors and publishers, understanding copyrights issues are essential Especially now that the production of counterfeit [imitating] and pirated goods, including written works, has become so prevalent

In 2005 more than \$600 billion in pirated and counterfeited goods were recognized by WCO [World Customs Organization] Now-a-days the internet has made copying and distributing protected material easier than ever before for avoiding copying the material So, in order to protect yourself from IP theft, it's important to know the basics about rights

Definition

“The legal protection given to published works forbidding anyone but the author from publishing or selling them An author can transfer the copyright to another person or corporation, such as a publishing company”

What is a Copyright?

Copyright is a form of protection provided by US Law to the authors of **“Original Works of Authorship”** fixed in any tangible medium of expression

- ❖ The manner and medium of fixation are virtually unlimited

- ❖ Creative expression may be captured in words, number, notes, sounds, pictures or any other graphic or symbolic media
- ❖ The subject matter of copyright is extremely broad, including literary, dramatic, musical, artistic, audiovisual and architectural works
- ❖ Copyright protection is available for both published and unpublished works

History

- ❖ In England prompted the first insistence upon protection for publication of books
- ❖ Bookbinders and printers demanded protection from copying of books
- ❖ Authors also began to demand protection from unauthorized copying and demanded to share in the financial rewards
- ❖ Finally, in 1710, parliament enacted the first copyright statute [Act/law], the Statute of Anne [Named after Anne, Queen of Great Britain, the Statute become the foundation for British and American Copyright Law]
- ❖ The first copyright law is enacted under the new US Constitution, Protecting books maps and charts for 14 years with privilege of renewal for another 14 years
- ❖ Copy right registration is made in the US district court where the author or proprietor resides
- ❖ The first copyright entry, “The Philadelphia Spelling Book” by John Barry, is registered in
- ❖ US District court of Pennsylvania Protection is for 14 years with a renewal period of author 14 years

Common Law Right

- The enacted the first copyright act in 1790 and the first federal copyright registration were issued
- Until January 1, 1978 [the effective date of the 1976 copyright Act] the US had a dual system of copyright protection
- Until 1978, an author has a perpetual common law right to their unpublished works
- Once the work was published, however, the common law perpetual copyright was extinguished and protection was afforded by virtue [quality] of the 1909 act, provide protection up to fifty-six years
- Publication is the distribution of copies of a work to the public for sale or other transfer of ownership, by rental lease, or lending
- The dual nature of copyright protection was complex, often led to controversy
- The 1976 act eliminated the distinction between unpublished and published works

For Example: Ernest Hemingway's *A Farewell to Arms* [Published in 1929], are governed by the act in existence on the date of their publication. Hemingway's book would thus be governed by the 1909 act

Just as trademark rights arise from use and not from registration with PTO

- A copyright registration from the copyright office provides certain advantages to author's of work, including the following

- Registration establishes a public record of the copyright claim
- Before an infringement suit may be filed in court, registration is necessary for works of
 - US origin
- If made before or within five years of publication, registration will establish Prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate and
- If registration is made within three months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fee will be available to the copyright owner in court action

Copyright protection generally lasts until seventy years from the death of the author

The 1976 copyright act is found at 17 USC §§101-1101 and it was amended for several times

In 1980, specific protection was afforded to computer programs as works entitled to copyright protection

Copyright Act © represents Another 1998 amendment to copyright law is the Digital Millennium Copyright act

The United States Copyright Office:

The copyright office is not permitted to give legal advice and will not offer guidance on matter such as disputes, suits against possible infringers or other matters related to copyright

Among the more useful publications and materials are the following:

- Forms for copyright registration
- Circular 1, “Copyright Basics”,
- Circular 2, “Publication on copyrights”,
- Circular 3, “Copyright Notice”,
- Circular 4, “Copyright Fees”
- Circular 15, “Renewal of Copyright”
- Circular 15a, “Duration of Copyright”; and
- Circular 38a, “International copyright Relations of the United States”; and
- Circular 61, “Copyright Registration for computer Programs”

To order copyright publications, write to:

Circulars and announcements are available via facsimile

If you do not know the document number of the items you want, you may request that a menu be faxed to you

All the data pertaining to copyrights are available in Internet

The copyright office provides a free electronic mailing list, “NewsNet”, that issues periodic e-mail messages on copyright issues

Copyright office process the application via electronically