

How to Protect Intellectual Property: Enforcement

- Patent
- Trademark
- Copyright
- Trade Secret

Protecting Patents

- Federal lawsuit
- Section 337 lawsuit at U.S. International Trade Commission
- Interferences, Reexamination, & Reissue
- European Opposition Proceeding
- Obtaining a license
- Employee transfer agreements

Protecting Trademarks

- Federal court lawsuit
- State court lawsuit
- Monitoring program
- Opposition and Cancellation Proceedings
- Licensing
- Avoid becoming generic

Protecting Copyrights

- Federal court lawsuit
- State court common law lawsuit
- Licensing
- Employee Transfer Agreements
- Contractor Agreements

Protecting Trade Secrets

- State court lawsuit
- Federal enforcement by FBI
- Confidentiality & Non-disclosure Contracts
- Employee Agreements
- “Locks & Badges” Program, Access Control

Cost To Protect Intellectual Property

- Patents:
 - \$20,000-\$50,000/mo.
- Trademarks
 - \$5,000-\$20,000/mo
- Copyrights
 - \$5,000-\$20,000/mo
- Trade Secrets & Confidentiality Agreements

Patent Infringement Issues

- Cost: \$50,000 per mo.
- Must infringe each and every limitation of one of the claims
- Equivalents only for unamended claims
- Damages: Lost Profits, triple damages and attorney fees only for willfulness
- Novelty, Fraud defenses
- Re-exam and reissue to correct patent
- Interference to determine first inventor
- ITC
- EPO Opposition

Trademark Infringement

- Use of any mark in connection with any goods or services
- Likelihood of confusion
- Consumer survey
- Channels of trade, speed and care of purchase, look and feel of mark
- Opposition Proceedings
- Cancellation Proceedings

Trade Dress Infringement

- Same as trademark, any unauthorized use of dress on any goods or services which is likely to cause
- So long as asserted trade dress
 - (1) is not functional,
 - (2) is inherently distinctive or has acquired distinctiveness through a secondary meaning, and
 - (3) is likely to cause **confusion** with the defendant's products

Copyright Infringement

- Any copying, distribution, derivation, display, perform, etc.
- Injunction, impound, damages, attorney fees, criminal
- Actual/Profit OR Statutory \$750-\$30,000 per work, \$150,000 if willful

ITC

- Patent Trials
- 1 year, full trial
- \$1 million+
- Exclusion order is remedy
- Staff attorneys
- Likelihood of material injury to domestic industry
- Trademark/Gray Market Trials
- Any material difference between import and domestic = dilution of mark
- E.g. Lladro (no, same) vs. Perugina (yes, lesser quality)



Thank You

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