

Intellectual Property 101 for Indiana District Export Council

March 2026



What is Intellectual Property?

What is Intellectual Property and Why Do We Care?

Intellectual property (IP) is a creation of the mind that manifests in some tangible way to create value, particularly economic value.

Categories of intellectual property:

- Patents.
- Trademarks.
- Copyrights.
- Trade secrets.

Protecting these types of IP encourages innovation, drives economic growth, and offers public benefits having access to that IP.

Each of these categories of IP can be an intangible asset of an organization. Indeed, an organization's IP can often be its most valuable asset.

What is Intellectual Property and Why Do We Care?

IP can also offer an advantage over competitors in the marketplace.

IP can be critical in the context of human resources because all IP is derived from a person so the IP rights first vest in that person. In order to maintain innovation, economic growth, and access, it is critical that the employer properly obtains ownership of the intellectual property.

Contracts/agreements are the most effective and, thus, critical mechanisms for companies to acquire IP.

Most IP disputes in the context of labor/employment involve a lack of good IP ownership hygiene.

Categories in Intellectual Property Rights

Patents

Definition:

Exclusive government right granted to inventors, to exclude others (i.e., negative right) from making, using, or selling, the patented invention. Types of patents include utility patents – protects new and useful processes, machines, manufactures, or compositions of matter; design patents – protects the ornamental design of an otherwise functional object; plant patents – protects new and distinct asexually reproduced varieties of plants.

Examples:

- New car engine
- auto body shape
- protein-rich chia seeds

UNITED STATES PATENT OFFICE.

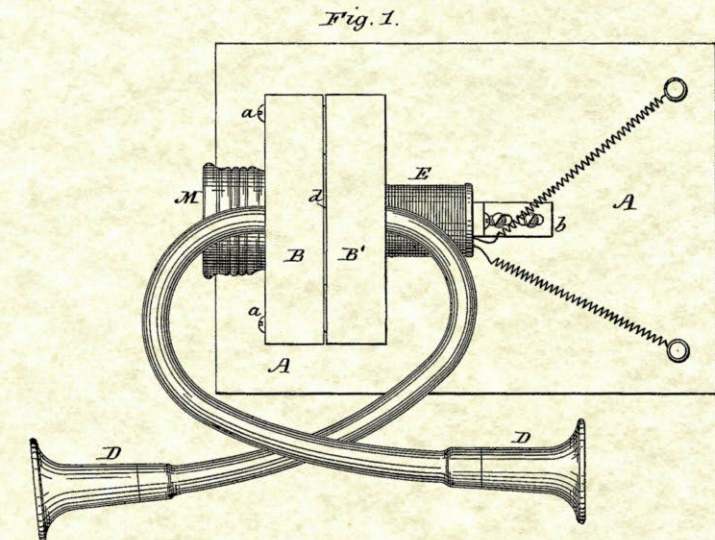
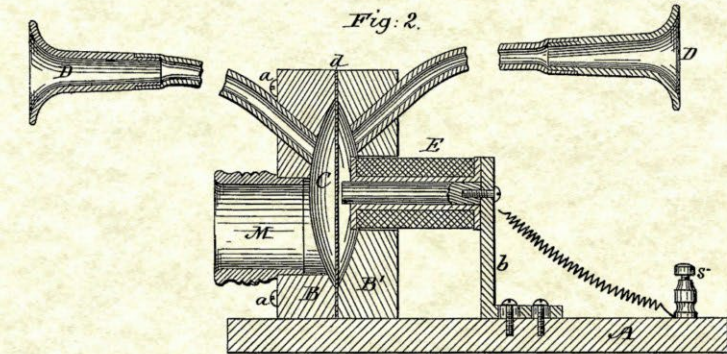
ALEXANDER G. BELL, OF WASHINGTON, DISTRICT OF COLUMBIA.

A. G. BELL.

No. 250,704.

SPEAKING TELEPHONE.

Patented Dec. 13, 1881.



Witnesses:
C. F. Hedrick
Philip Mauro

Inventor:
Alexander Graham Bell
by A. P. H. H. H.
his attorney

Patents

Patents are intended to protect processes, machines, articles of manufactures, methods of manufacture, compositions of matter, etc., not marks identifying sources of goods or works of authorship.

Patent rights are a negative right – they do not grant any right to make, use, or sell a patented invention. The patent right instead excludes others from making, using, or selling a patented invention. Patents can be improvements on patented products owned by others.

Term of a patent is 20 years from filing. When a patent expires the claimed subject matter becomes public domain.

Patents

Types of patents

- **Utility**
 - Any new and useful process, machine, article of manufacture, or composition of matter, or improvements thereof.
- **Design**
 - Any new ornamental design for an otherwise functional article of manufacture.
- **Plant**
 - Any invented or discovered, and asexually reproduced, distinct variety of plant.

Patents

Patent Rights Transfer

Written agreement to transfer patent rights in all cases is critical.

Ownership in patent rights initially vest with the inventor, a written agreement to assign or similar instrument is required to transfer current (or future) patent rights from the inventor to an employer. Transfer of prospective patent rights is often done through an employee agreement. Perfecting transfer of patent rights from inventor to employer is accomplished through a patent assignment document.

Independent contractors have no obligation to assign their patent rights to a customer/client unless an agreement is made between the parties.

Trademarks

Definition:

- Any word, phrase, symbol, design, or a combination that identifies source of goods or services.

Examples:

- “Coke,” “Pepsi,” “Purdue University,” “Boilermaker,” “Boilermakers,” “Boilers,” and “Purdue Pete.”



Trademarks

Identifies a source of product or service by use of the word, phrase, symbol, design, or a combination is the objective of a trademark.

In addition to words, colors, fragrances, sounds, shapes, domain names, can be used as trademarks.

Trademark law is intended to benefit the consumer, not to establish a monopoly in a name or product.

Trademarks

Types of Trademarks

- **Fanciful**
 - Made up words (strongest trademark type)
- **Arbitrary**
 - Known words, but unrelated to the goods/services
- **Suggestive**
 - Indirectly related to the goods/services; descriptive – mark describes the goods/services, requires secondary meaning (weakest trademark type)
- **Generic**
 - Trademark name becomes the common name (unenforceable trademark type)

Kodak



UNDER ARMOUR
PERFORMANCE APPAREL



TRADEMARK TERM

Trademark term lasts as long as the mark is used. If the trademark is abandoned or no longer used trademark protection is lost.

Trademarks

No requirement to register the trademark, but there are advantages – presumption of ownership and validity, block registration of similar marks, constructive notice to the public, etc.

- Use ® for registered trademarks.
- Use TM for unregistered trademarks.
- Must police your trademarks or risk losing them.
- Be vigilant about any other use of your trademarks, particularly in your market.
- If there is no demonstration of policing a trademark, it can be lost.

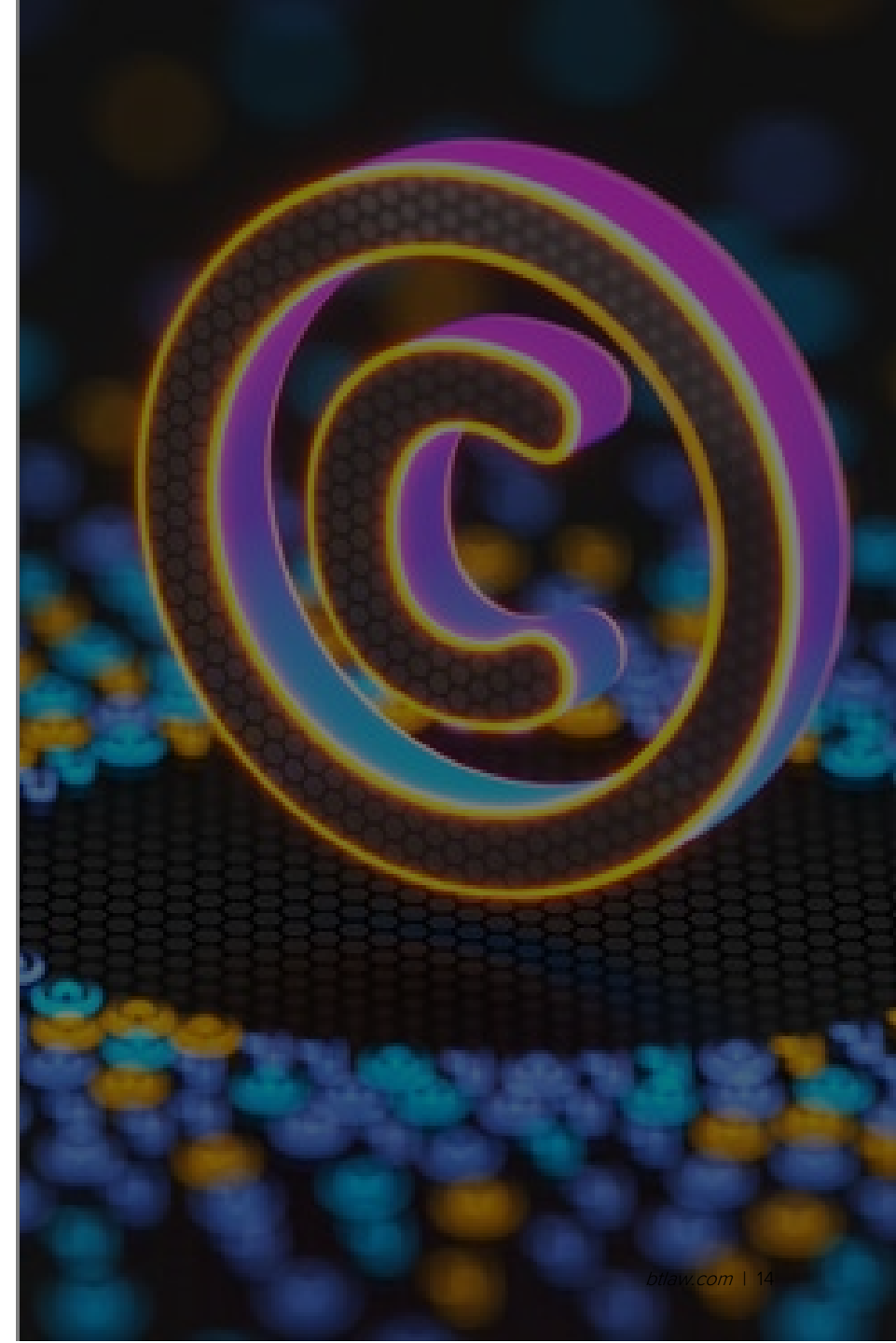
Copyrights

Definition:

- Any original work of authorship fixed in a tangible means of expression

Example:

- Audio recordings, movies, TV programs, books, magazines, scholarly works, and research-related content.



Copyrights

Copyrights in original works of authorship allow the owner to reproduce, distribute, publicly display, and prepare derivatives of those works.

Copyrights are limited to original works of authorship that are fixed, in a tangible means of expression, in some way. Mere thoughts, ideas, or concepts are not copyrightable.

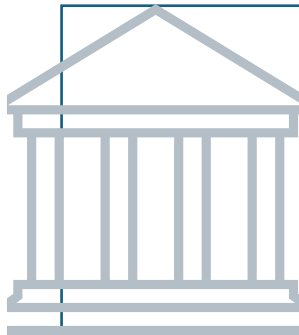
Term of a copyright generally extends for the life of the author plus 70 years. Copyrights that are works made for hire last for 95 years from publication or 120 years from creation—whichever term is shorter.

No requirement to register a copyright to own a copyright.

Copyrights



A copyright registration is necessary, however, to enforce the copyright. **Failure to register the copyright may affect damages.**



Copying someone's copyrighted material is an example of infringement.

Trade Secrets

Definition:

- Confidential business information that is not generally known to the public and reasonable efforts are being made to keep the information confidential.

Examples:

- Formulas, customer lists, manufacturing processes, programs, compilations, pricing schedules, failed experiments, etc.

Trade Secrets

Information can be a trade secret if:

- has some type of economic value because the information is generally unknown;
- that value is perceived by others who cannot obtain that information; and
- reasonable efforts are taken to maintain secrecy of the information.

Information can remain a trade secret only as long as it remains secret.

Improper acquisition of trade secret information includes misappropriation, misrepresentation, breach of contract, and espionage.

Trade Secrets

Proper acquisition of a trade secret includes independent discovery, reverse engineering, assignment, or license.

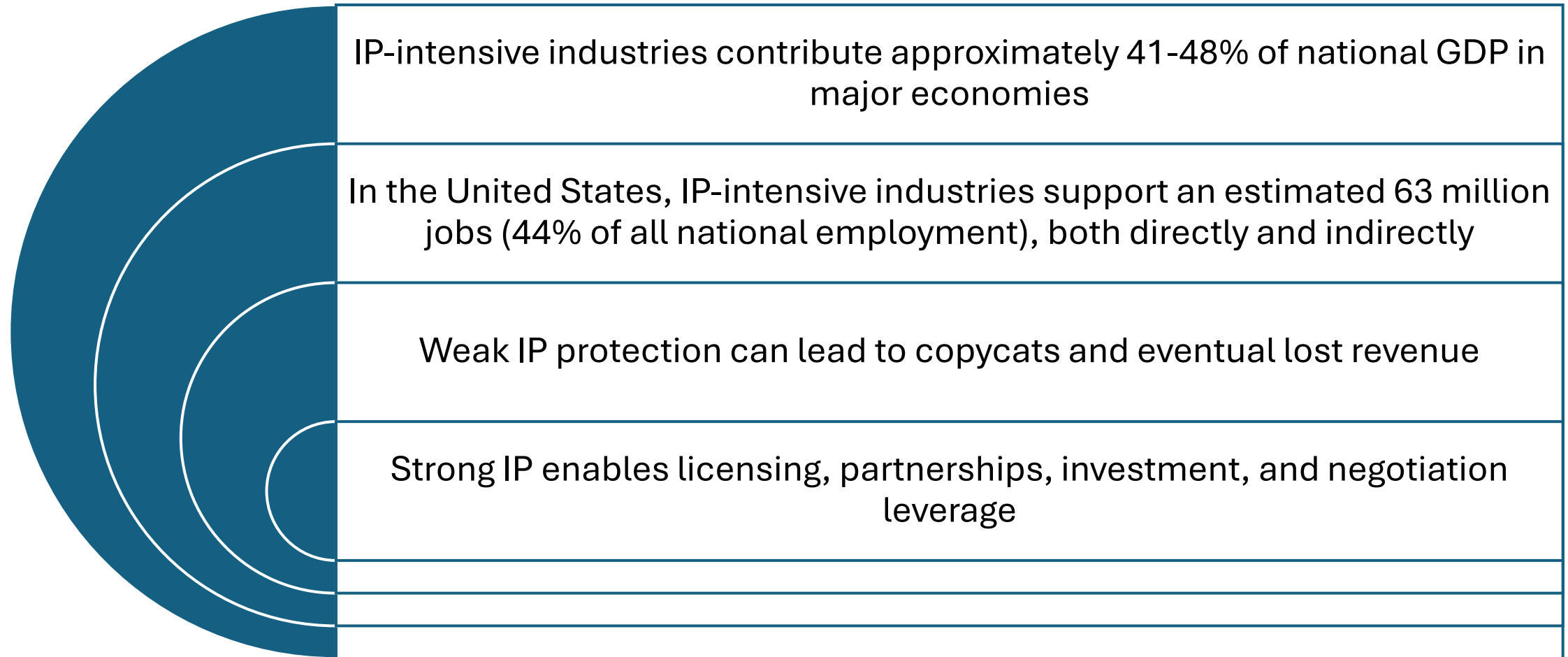
Reasonable steps to maintain secrecy of information includes limiting access of information, nondisclosure agreement, and training.

Nondisclosure agreements – obligates parties to maintain secrecy of information received; often extends to a limited time; obviates the public disclosure bar in the patent rules.

Distinguish between confidential information and trade secret information in nondisclosure agreements – confidential information may remain confidential for only a limited time whereas trade secret information is typically intended to maintain secrecy indefinitely. Be sure any time limits in a nondisclosure agreement that is directed to confidential information is also not inadvertently applied to trade secret information

Relationship Between Types of IP and Exports

Why IP Matters for Exporters – The Economic Case



Source: U.S. Chamber of Commerce Global Innovation Policy Center, *International IP Index* (2025)

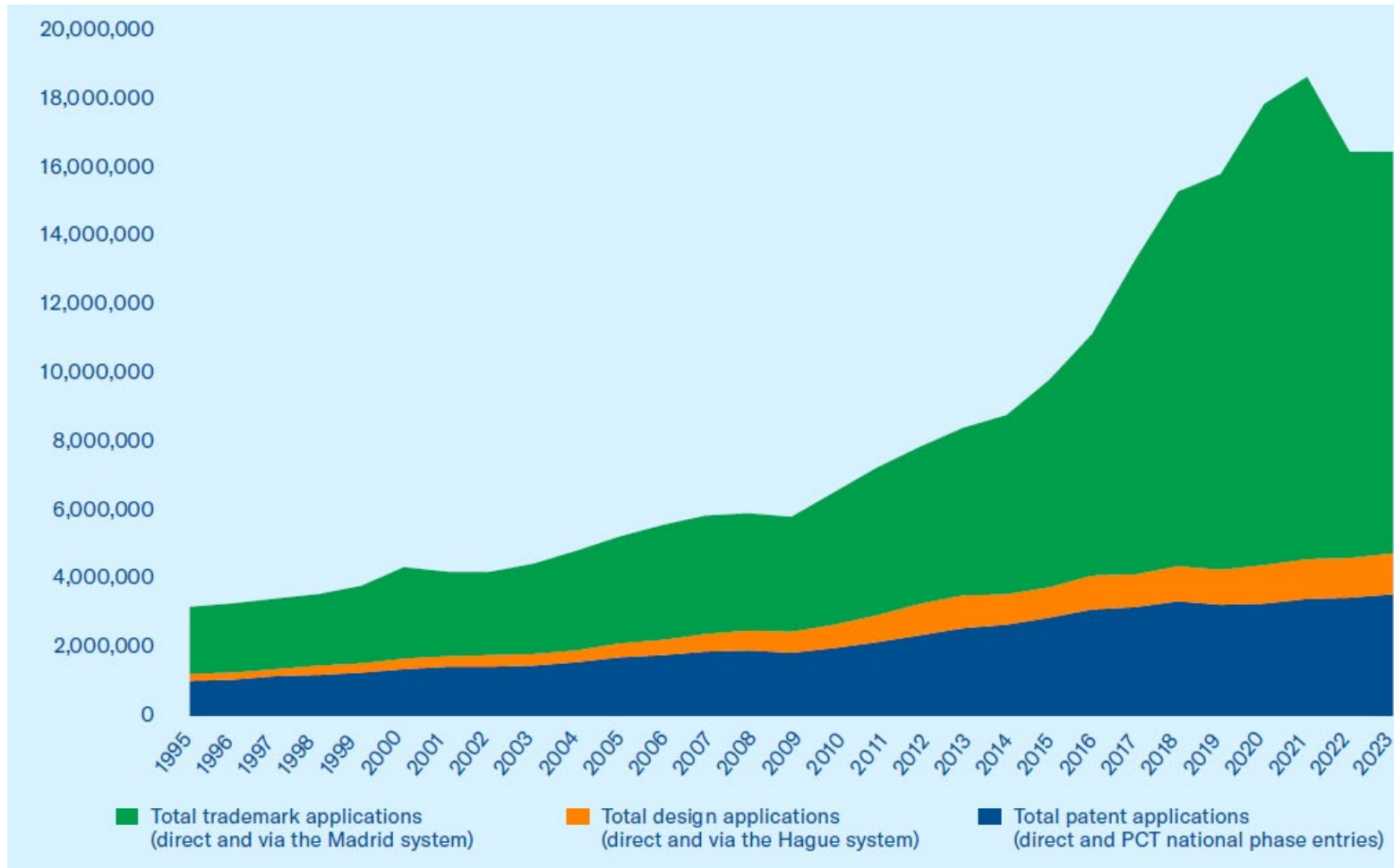
The International IP Boom

Regional Comparison of IP Growth (1990s vs. 2023)

Region	Trademark Applications	Patent Applications	Design Applications
Asia	589,080 → 1,946,954	570,500 → 2,438,700	89,893 → 994,046
Africa	34,944 → 166,781	10,500 → 21,500	6,270 → 5,982
Latin America & Caribbean	275,601 → 936,673	42,100 → 55,200	5,090 → 15,718
Europe	573,249 → 1,001,696	264,000 → 365,200	66,733 → 92,669
North America	188,785 → 610,690	249,100 → 633,700	18,500 → 62,769

Source: U.S. Chamber of Commerce Global Innovation Policy Center, *International IP Index* (2025)

The International IP Boom - Summary



Source: U.S. Chamber of Commerce Global Innovation Policy Center, *International IP Index* (2025)

World Trade Organization (WTO)

WTO: primary international body overseeing trade rules; framework for negotiation and dispute resolution.

Membership covers virtually all major trading nations.

Administers
TRIPS
Agreement
governing trade-related IP rights.

The Global IP Framework - TRIPS

The WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement entered into force in 1994, establishing minimum global IP standards

TRIPS has been fundamental in building today's international IP architecture and enabling the creation and registration of IP assets across the world

Post-TRIPS trade agreements (FTAs) have further raised standards; the EU and U.S. have traditionally been leading advocates for stronger IP standards through bilateral and plurilateral agreements

Modern FTAs now include dedicated IP chapters addressing sector-specific protections beyond TRIPS minimums

USPTO's IP Attache Program

IP Attaché Program: advocates internationally to improve IP systems and assists U.S. stakeholders.

Attachés are located in posts around the world.

Services: entering new foreign markets, resolving foreign IP rights issues, addressing enforcement challenges.



WIPO

WIPO administers the Madrid, Hague, and PCT Systems for the international registration of marks, designs, and patents

- Madrid and Hague: international trademark application is valid in the designated countries unless rejected within a specified time
- PCT: international patent application subject to international phase (international search, patentability report, and a preliminary examination report, if required) followed by national phase. The designated countries decide on patentability.

Berne Convention (Copyright)

Three guiding principles of the Berne Convention:

- National Treatment
- Automatic Protection
- Independent Protection

General duration: 50 years after the author's death

- Exceptions to the rule, such as that anonymous works lose protection 50 years after being made public

Patents

Patents are Territorial – Patent protection in one country does not confer rights in others

However, there are a few key routes to international patent protection:

- Patent Cooperation Treaty (PCT)
- National Applications
- Regional Applications (i.e., EPO)

Key Distinctions Among International Markets

First-to-file vs. First-to-invent

Patent types can vary by jurisdiction: for example, China grants three types of patents.

Trademarks

International Trademark Systems Can Facilitate Protection

- Madrid System: Allows filing a single application for protection in multiple countries via the Madrid Protocol
- EU Trade Mark (EUTM): Single registration provides protection across all 27 EU Member States

Key Distinctions Among International Markets

- First-to-file vs. First-to-use: Unlike the U.S. where trademark protection is based on "first use," the EU and China follow "first-to-file" systems
 - A party can obtain ownership of a trademark in first-to-file jurisdictions merely by filing an application—no evidence of use is required

Copyright

Berne Convention

- Copyright protection arises on the date the original work is created.
- However, registration confers significant benefits to enforcement around the world.

Key Distinctions Among International Markets

- Scope of protection, and enforcement, will vary across jurisdictions despite somewhat uniform standard for grant of rights.

Trade Secrets

TRIPS Criteria for Trade Secret Protection

- Article 39 of the TRIPS Agreement provides a minimum protection level of “undisclosed information,” which WTO Members generally need to guarantee in their own legal system or practice.

Foreign Criteria Generally Aligns with Domestic Expectations

- Secrecy
- Commercial Value due to secrecy
- Reasonable steps taken to keep the information secret

Key Distinctions Among International Markets

- Enforcement can be weak, slow, or impracticable

Protections, Pitfalls, and Other Issues Associated with IP in Markets Abroad

IP Laws and Procedures are Not Identical

Trademarks

- Use vs. Registration

Patents

- First-to-file vs. First-to-invent

Software

- Copyright vs. Patents

Databases

- Copyright vs. sui generis

Designs or works of applied art

- Copyright vs. ID

Trademarks: First-to-File vs. First-to-Use

Jurisdictional Differences

Unlike the United States, which grants priority to trademark owners based on their use of a trademark, other jurisdictions, such as China, are "first-to-file" jurisdictions

Bad Faith Trademark Filings

Third parties filing first in bad faith to prevent legitimate brand owners from registering their marks is a significant problem, particularly in China

Recommended Actions

Monitor trademark filings via government databases

Consider timing of filing applications before market entry

Consider filing defensive applications

Counterfeiting

Global trade in counterfeit and pirated goods reached \$464 billion in 2019, accounting for 2.5% of global trade

- China and Hong Kong accounted for roughly 93% of counterfeit goods seized by U.S. Customs in 2024

Counterfeit good risks beyond economic harms

- Health and safety risks
- Counterfeiting affects supply chains globally

Countries are fighting back

- In 2024, French Customs launched the National Anti-Counterfeiting Plan 2024–2026 that emphasizes fighting counterfeits sold and marketed online

Online Piracy and Digital Enforcement Challenges

Online piracy is the most challenging copyright enforcement issue in many foreign markets

China is a leading source and exporter of systems that facilitate copyright piracy, including illicit streaming devices (ISDs) and piracy apps

E-commerce platforms facilitate counterfeit sales

Forced Technology Transfer and Indigenous Innovation Preferences

Government measures sometimes require or pressure technology transfer from U.S. companies as a condition for market access

These policies include:

- Requiring technology transfer as a condition for investment and regulatory approvals
- Directing state-owned enterprises to seek non-commercial terms from foreign business partners
- Providing domestically owned firms with unfair competitive advantages
- Manipulating standards development processes

Trade Secret Vulnerabilities

Effective remedies for trade secret theft are difficult to obtain in several countries

- Only 23 of 55 economies in the IP Index achieved 50% or more on trade secret protection – the lowest score across all IP type indications

Border Enforcement and Customs Recordation

Right holders should register IP with customs authorities to enable proactive enforcement

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EU Member States can enable customs authorities to destroy infringing goods

Parallel Imports and Exhaustion of IP Rights

Parallel Imports

- Goods are exported from markets to which they were intended to markets they were not. Such goods are often called “grey market” goods.
- Parallel importers ordinarily purchase products in one country at a price which is cheaper than the price they are sold in a second country and then sell the products at a price between the two.

Very generally, once a product protected by IP Rights is sold, the IP Rights are exhausted.

Country Focus – China

At a Glance

- China remains on the USTR's Priority Watch List
- China is a "first-to-file" jurisdiction for both patents and trademarks

Key Challenges

- Technology transfer, trade secrets, counterfeiting, online piracy, bad faith trademarks

Country Focus – China

Specific Risks

- 2022 Anti-Monopoly Law expands basis for action against anti-competitive behavior with broad language.
- Growing trend of global anti-suit injunctions restricting rights holders from asserting claims outside China.
- Chinese courts increasingly claim global jurisdiction over SEP licensing rates.

Country Focus – China

Enforcement

- Specialized IP courts in Beijing, Guangzhou, and Shanghai
- As of the mid-2023, there are a total of four IP courts and 27 cross-regional IP tribunals
 - These IP tribunals have first-instance jurisdiction over significant IP matters, similar to the authority of the IP courts
- Rights holders should check with qualified local counsel to determine whether a potential dispute may be heard by a cross-regional IP tribunal

Country Focus – China, Practical Tips

Patents

- Consider filing both invention and utility model patents simultaneously for the same subject matter.
 - Consider PCT applications with Chinese designation.
- Ensure that your patent application is translated into Chinese when filing in China.
 - Foreign companies sometimes do not obtain accurate translations, and submission of faulty translations can render a patent vulnerable to invalidation.

Country Focus – China, Practical Tips

Trademark

- Monitor marks and consider defensive filings since China is a “first-to-file” jurisdiction
- Maintain ownership of your registrations within your company rather than allowing a local distributor or business partner to arrange for registration and maintenance of your trademark.

Trade Secrets

- Conduct comprehensive due diligence of potential Chinese partners.
- Use nondisclosure agreements (NDAs). Chinese courts are more experienced in handling contract disputes.

Country Focus – EU

At a Glance

- EU includes 27 Member States, each with some variation in protection and enforcement
- Trademark and design titles can be obtained for the whole of the European Union at the European Union Intellectual Property Office (EUIPO)
- A bundle of patent titles can be obtained for various countries through a simplified process at the European Patent Office
- Madrid protocol allows designating the European Union for trademark protection

Country Focus – EU, Practical Tips

Trademark

- Trademark and design titles can be obtained for the whole of the EU at EUIPO
- Consider whether EU-wide or national registration is appropriate based on market scope

Patents

- PCT filings remain viable route for EU protection
- Regional applications via EPO

Trade Secrets

- Contractual agreements can be used to clearly define responsibilities
- Adequate marking of documents as “Confidential” or foreign language equivalent

Proactive Protection Strategies

Strategic Planning

- Create a basket of IP rights (patents, trade secrets, trademarks, copyrights)—a multilayered IP portfolio can provide synergistic protection
- Develop an IP strategy with enforcement in mind
- Hire competent local IP counsel who can provide registration, monitoring, investigation, and enforcement services
- Keep good records—enforcement generally requires original documentary evidence
- Customize your strategy according to your needs; your strategy may differ depending on the nature of your business
- Work together with trade associations and organizations to support efforts to protect IP

Proactive Protection Strategies

Registration Best Practices

- Create Register IPR before exhibiting at trade fairs
- Register with customs authorities in target markets
- Maintain ownership of registrations within your company—don't allow local distributors to register on your behalf
- File early in first-to-file jurisdictions
- Consider carefully whether to permit your partner to register IP rights on your behalf—doing so may create a risk that your partner will list itself as the IP owner

Contractual Protections

- Incorporate IP protections into contracts
- Work with legal counsel familiar with local law to create solid contracts including non-compete clauses and confidentiality/non-disclosure provisions
- Be cautious about assigning or licensing IP until consequences are fully understood

Case Examples: Micron

Facts

- Micron Technology Inc. (US) alleged that Chinese state-backed Fujian Jinhua Integrated Circuit—working with Taiwan’s UMC—misappropriated DRAM chip designs.
- The theft allegedly occurred through former Micron engineers transferring proprietary files.

IP Protection Gaps

- Heavy reliance on employee knowledge + cross-border collaboration.
- Exposure of core trade secrets during expansion into Asia.
- Limited ability to control downstream use once information left the U.S.

Outcome

- Chinese courts issued an injunction blocking Micron products in China—ironically harming the victim.
 - Micron ‘forced’ to commit to 4.3 billion yuan (US\$ 606.2 million) in China.
- U.S. DOJ indicted Fujian Jinhua; the company was effectively cut off from U.S. tech supply chains.

Takeaway

- If you operate in China without airtight controls, your own IP can be turned into a competitive and legal weapon against you.

Case Examples: Google AI Trade Secret Theft (2022 – 2025)

Facts

- A Google engineer allegedly downloaded sensitive AI chip and infrastructure designs and transferred them to benefit Chinese companies.
- The IP involved cutting-edge AI training systems and hardware integration.

IP Protection Gaps

- Insider access to extremely high-value digital IP.
- Insufficient monitoring of data exfiltration.
- Global mobility of technical talent.

Outcome

- U.S. criminal charges filed (2024–2025) – 7 counts of both economic espionage theft of trade secrets.

Takeaway

- In software/AI, IP theft happens instantly and invisibly—traditional legal protections lag behind technical realities.

Case Examples: Microsoft v. EU

Facts

- Microsoft Corporation was found by the European Commission to have abused dominance in the server market.
- As a remedy, the EU required Microsoft to disclose interoperability information to competitors.

IP Protection Gaps

- Competitors took issue with Microsoft's market dominance, manifesting namely through what competitors viewed as forced licenses to its Windows suite.

Outcome

- Microsoft forced to share technical specs with competitors and to license IP on regulated terms.
- Significant fines (over \$500 million) and monitorship for compliance.

Takeaway

- Regional variations in IP protection creates region-specific obligations, which the failure to comply with can result in severe sanctions.

Case Examples: Monsanto in Argentina

Facts

- Argentina law permitted farmers to use seeds generated from their harvests freely in later plantings (unlike US counterparts).
- Argentina's position spurred years long dispute with Monsanto, who decided not to launch multiple new seed varieties in Argentina.

IP Protection Gaps

- Coordination with foreign government on export control was a major factor in the dispute.
 - Monsanto requested that Argentine Government monitor grain exports, while Argentinian government resisted, stating it would not be held hostage by a foreign company.

Outcome

- Monsanto was eventually permitted to attempt royalty enforcement on farmers. Argentinian agency entrusted to carry out monitoring of exports.
- After later being acquired by Bayer, Monsanto exited the Argentine soy seed business altogether, citing strategy changes and redirecting of investments to “profitable” projects.

Takeaway

- Regional variations in IP protection can create unique enforcement issues.

THANK YOU

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