

**Intellectual Property Protection  
At a Glance**



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	Patents	Trademarks	Copyrights	Trade Secrets
<b>Property Protected</b>	Process, machine, manufacture, composition of matter, or improvement thereof.	Any distinct word, name, symbol, or device used to identify a source of goods or services.	Original work of authorship fixed in a tangible medium of expression.	Commercially valuable information not generally known or readily ascertainable, if reasonable efforts are used to keep it secret.
	Must be useful, novel and non-obvious. Recently passed America Invents Act of 2011 amended statutory provisions of novelty. New provisions rendering the US a first-inventor-to-file system take effect March 16, 2013.	Inherently distinctive if arbitrary, fanciful, or suggestive.	Fixed if it is sufficiently permanent (written down, recorded, painted, saved electronically, etc.)	Disclosure to one person without confidence may destroy a trade secret.
		Also distinctive if descriptive with acquired secondary meaning.	Originality requires some amount of creativity by the author.	More efforts required for more valuable secrets.
<b>Action Required</b>	U.S. Patent and Trademark Office. Application required.	U.S. Patent and Trademark Office for federal protection. Secretary of State's office for state protection. Registration advised but not required.	U.S. Copyright Office within the Library of Congress. Registration advised but not required.	NONE.
<b>Rights</b>	Right to exclude others from making, using, selling, or offering for sale in U.S. or importing to U.S.	Right to stop others from using confusingly similar marks in commerce.	Exclusive right to reproduce, prepare derivative works, distribute, perform publicly, and display publicly.	Right to sue others from improperly acquiring the trade secret or breaching confidence regarding the trade secret. Does not prevent reverse engineering.
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	Pat. No. #####.	® if registered with USPTO.	© 2007 Joe Smith.	
<b>Duration</b>	Generally, 20 years from the earliest US filing date for which priority is claimed. Provisional applications are excluded in this calculation.	Non-registered: No limit as long as you continually use it.	Life of the author plus 70 years.	No limit as long as it still qualifies as a trade secret.
		Registered: No limit as long as you continually use it and file appropriate renewal papers.	Work for hire: the earlier of 95 years from publication or 120 years from creation.	
<b>Infringement</b>	Every claim limitation in the patent is found, literally or equivalently, in the accused device or method.	Infringer's mark causes a likelihood of confusion with your mark.	Infringer has copied your work without permission.	Another has knowingly misappropriated your trade secret for his or her own gain or to harm you.
		If your mark is famous, then you can also sue if another dilutes or tarnishes your mark.	Infringer's work is substantially similar to yours.	

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**Business Entity Selection  
At a Glance**



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	<b>Sole Proprietorship</b>	<b>General Partnership</b>	<b>S Corporation</b>	<b>C Corporation</b>	<b>Limited Liability Company</b>	<b>Single Member Limited Liability Company</b>
<b>Liability (Limited v. Personal)</b>	An individual carrying on a business for profit. Unlimited personal liability for the owner.	Association of two or more co-owners carrying on a business for profit. Partners have unlimited personal liability for partnership debts.	Limited liability for shareholders even if they participate in management.	Limited liability for shareholders even if they participate in management.	Combines limited liability provided by a corporation with pass through partnership tax treatment.	Limited liability for owners makes it a better choice than sole proprietorship unless cost of formation or maintenance is a controlling factor.
<b>Tax Implications</b>	Single level of income tax. All income and expenses reported on Schedule C of the owner's 1040.	Pass through tax treatment (partnership files form 1065 but all income and expenses pass through to individual partners on Schedule K-1).	Pass through tax treatment under most circumstances but not as complete as for the LLC.	Tax at both corporate and shareholder level - this double tax can be avoided to some extent by payment of reasonable salaries to shareholders in exchange for services actually rendered.	LLC files a partnership tax return (form 1065) with all income and expenses being passed through to individual owners of the LLC on a K-1.	Disregarded entity from an income tax perspective - all income and expenses are reported on the sole member's tax return and no income tax return need be filed by the LLC.
<b>Complexity of Formation and Management</b>	Relatively simple to start.	Relatively easy to start - partnership agreement is typically entered into but is not legally required.	Formation steps include filing Articles of Incorporation with the Secretary of State, filing Sub S election with the IRS, adoption of Bylaws and, usually, adoption of a Shareholder (buy-sell) Agreement.	Formation similar to S corp except Sub S election not filed with IRS.	Formation steps include filing articles of organization with the Secretary of State, contributing an appropriate amount of capital, and adopting an operating agreement.	Formation process similar to multiple-member LLC except that the operating agreement will likely be less complex.
	If business conducted other than under the name of the sole proprietor, assumed name publication needed.	Managed by the partners or as described in the partnership agreement.		Typically required for publicly traded corporations, businesses that require venture capital, or if a broad based stock option program is utilized.	Can be managed by the members or, more often, by managers selected by the members. Can also elect officers.	In addition to circumstances where a sole proprietorship would be considered, a single-member LLC is often used by a corporation or LLC as a subsidiary to insulate the liability associated with a particular line of business.
	Managed by the sole proprietor.	Problem: Any partner can bind the partnership.		Self-employment tax treatment may be less favorable than for S corp.		
<b>Capital - Effect on Ability to Raise Capital through Angel Investment, VC or IPO</b>	Any transfer of the business would be of the underlying assets as opposed to a transfer of shares in the business.	Ability to raise capital is limited since most investors would prefer to invest in an entity offering limited liability.	Limit of 100 shareholders, only one class of stock is allowed, difference in voting rights is allowed, partnerships and corporations cannot be shareholders, only U.S. citizens and residents may be shareholders.	No limits on type or number of shareholders, different classes of stock allowed (common and preferred) thus enabling different priority for return of capital.	No limitation on the number of members, no limitation on who may invest, treatment of gain on distribution of appreciated property more favorable, different classes of ownership are allowed so there is the flexibility to provide for a priority return of capital to investors.	Outside investment allowed only if converted to a multi-member LLC.
	Capital needs - addressed through loan to sole proprietor.	LLC is almost always the better choice if partnership tax treatment is the goal.	Is easier to convert S corp to C corp than it is LLC to C corp in event venture capital is sought.	If venture capital is being sought, incorporation should be in the state of Delaware.	Often used to own commercial real estate.	

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