THE BASICS OF INTELLECTUAL PROPERTY

An earlier lecture discussed your source of sustainable competitive advantage.

Intellectual property is key to protecting your advantage and delivering value to your customers.

If you have a way of delivering value, and would-be competitors catch wind of it, what's to stop them from taking your customers away? In some cases, you might offer good service, which anyone can try to copy. But in other cases, you can protect your special edge.

Protectable ways of operating are generally referred to as "intellectual property."

Let's look at a few common types: patents, copyrights, trademarks, and trade secrets.

PATENTS

The U.S. Patent and Trademark Office (USPTO) and other international bodies award patents. These are generally used to exclude others from practicing your invention. The invention is

typically a device or machine, but it can also be a process in some cases, or for example, something like a drug compound.

In order for you to receive a patent, your invention must meet three criteria. It must be: novel, useful, and nonobvious. The "novel" requirement is important, and also ties in with nondisclosure agreements, discussed in the last lecture. If you have already told the public about your invention, or if the public already knows about it through other sources, then you can no longer claim it is novel. The "nonobvious" test can be a tricky one, and generally it is determined through an evaluation by a person "skilled in the art" you are practicing.

In the U.S. a patent lasts 20 years, and you are required to publish the patent. In some sense this is the government's way of making a deal with you to both reward you for your invention but also to allow society at large to benefit. Go public and teach the world how to do what you've invented, it might say, and in exchange, you get to enjoy 20 years of excluding others who might practice this invention unless they pay you for the privilege.

Bear in mind that being awarded a patent does not automatically give you the right to sell your invention. Your invention might actually rely on someone else's existing patent, and you may have to go to that party and license the rights to use the technology.

As a simple example, let's say that someone long ago had patented the drinking container, and held a patent on any cylindrical vessel that could hold liquid. That seems like a broad patent to have received, but let's just pretend that this patent existed.

Now, you come along and burn your hand on a hot glass of coffee. You decide it would be a great idea to put a handle on the side of that drinking container. Lo and behold, you've invented the mug with a handle. In the hypothetical situation where no one else had thought of or done this before, you would be correct in asserting that your invention is novel. And it's certainly useful. Let's just pretend you could get past the nonobvious test and are awarded your patent for the handle that goes on the side of a drinking vessel.

You'll want to sell your mugs next. But before you can do that, you'll need to license the rights to use the technology covered under the original patent awarded to the inventor of the drinking container. What's more, the owner of the original patent is now in a position such that if he wants to provide the latest and greatest product to customers, he needs to license your technology. You and the other patent holder are in for an interesting relationship.

COPYRIGHTS

A copyright is granted for written, spoken, or performed words or music. It is not a way of protecting a specific invention, but rather

protects a specific expression of an idea. Every book is copyrighted, for example.

An example that illustrates these differences can be found in computer programming. You might receive a patent for inventing a special method of performing some calculation or function. EBay has received a patent for a set of rules used in a special type of auction. But the computer program that performs this patented process is not patented. It is protected by copyright. No one can make a copy of those computer instructions in the program, regardless of whether the software implements a patented procedure.

TRADEMARKS

Trademarks are used to protect a logo, symbol, short phrase, brand identity, or in some cases, a service description (also known as a "service mark"). Two symbols—™ and ®—are used to express that someone either wants to get, or has already received, a trademark for his logo or phrase.

Anyone can declare an intent to trademark a name like Gizmo-Contraption™ by placing the trademark symbol next to it. The symbol puts other people on notice that you want to own that phrase. You then file for a proper trademark with the USPTO, and if

approved, it registers your trademark. Then you can talk about your new Gizmo-Contraption®.

TRADE SECRETS

With patents, you have to file an application, meet various criteria, and then publish your invention to the world. There are some cases in which you might not want to do this.

One of the most famous examples was the formula for Coca-Cola. Coke could have decided to patent its formula, and then prosecute anyone caught using it. But its patent would have lasted only 20 years (actually it was 17 years back in the day when Coke was invented), after which the formula would have been out there for all to use. Instead of filing for a patent, Coke decided to simply keep the recipe a tightly guarded secret. There are some legendary stories about the degree to which Coke has gone to hide the formula even from its own bottlers and vendors. This strategy has worked well.

PUTTING IT ALL TOGETHER

To help bring these issues to life with a real-life example, let's consider the source of advantage that a Starbucks cafe offers, and the value it delivers to its customers. When you are walking down the street and see the familiar green circular logo, you know that

you are about to enter a real Starbucks. That logo is trademarked. No other cafe could hang the logo on its storefront and attempt to lure would-be Starbucks customers into its shop.

You then might sip some coffee prepared in a special machine that Starbucks has patented, so no other cafe can buy that machine. Maybe this machine produces a special taste that is something you value, and no other competitor can use that machine to produce that taste without violating Starbucks' patent. The company may have developed methods for training employees in proper customer service or arranging items on the shelves that give a Starbucks a special feel compared with competitors, and these techniques might be trade secrets. And if you enjoy special music while you're inside a Starbucks, you are listening to copyrighted material that Starbucks has licensed to play in its store.

WHICH TYPE OF IP IS RIGHT FOR YOU?

Start by understanding the value you deliver to your customers, then think about how you protect that value. Ask:

- Does IP matter for your venture, and how much?
- How will you acquire the IP within your budget?
- How will you keep the IP relevant, and defend it if needed?

Chapter 10 of *Patterns of Entrepreneurship* provides a wealth of additional insights and strategies. The following chart can also help you sort through the different types of intellectual property.

A Guide to Intellectual Property		
Type of IP	**What it Protects**	**Life of Protection**
Patents	Inventions	Life of Protection
Copyrights	Words, sounds, "physical expression of an idea," software	About 50 to 150 years
Trademarks	Names, logos	Indefinitely with active use
Trade Secrets	Knowledge of techniques and markets	Indefinitely with active protection
Noncompete agreement	Investment in people's learning, shared secrets	Varies

Know this one thing, and you'll be leagues ahead of would-be competitors: To protect what is yours, you must understand what makes it special. If you can prove that what is yours is indeed special, you can create a powerful form of sustainable competitive advantage.