
Intellectual Property Myths Dispelled

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A technology company's most important asset is its intellectual property—the ideas that fuel the innovations that make the business fly. Failure to protect intellectual property, or IP as it's often known, can create unnecessary headaches and even destroy the company.

“There are a lot of myths about IP, and the misunderstandings that result are a huge contributor to IP difficulties,” said Michael Keyes, intellectual property attorney with Preston Gates & Ellis, one of the nation's largest legal firms.

Keyes and colleagues Christopher Lynch and Timothy Nielander dispelled several IP myths at a seminar presented last month for Mid-Columbia tech companies by Preston Gates and hosted by Pacific Northwest National Laboratory. The discussion focused on four areas: patents, copyright, trademarks and trade secrets.

Patents

Myth: A patent is forever.

A patent is a property right granted by the federal government to inventors to protect their work from misappropriation by others. Almost anything can be patented: processes, including software; machines; articles of manufacture; and compositions of matter, such as chemical compounds and biotech products. To ensure that science and technology become widely available, the term on patents granted today generally is 20 years.

Although patents cost about \$10,000 to obtain and are time consuming and expensive to enforce, Lynch called them “miracle documents.” Patents can be a critical asset in the building of a company because they confirm ownership of the invention and ensure a limited-time monopoly, he said.

Myth: Patents protect trade secrets.

Patents are public documents that describe exactly how to construct or do something. Trade secrets are just that—secret. For that reason, businesses sometimes choose not to patent an invention.

Copyright

Myth: You must register to get a copyright.

Nielander explained that a copyright exists from the moment a work is “fixed in a tangible medium of expression,” such as a document, song, computer code or a web site.

While copyright registration is not required, it is highly recommended. “It’s cheap (\$30), easy and usually is essential to enforcement,” Nielander said.

Myth: When you pay someone to create a work for you, you own it.

“This is the biggest of all IP misconceptions, especially in the technology arena,” Nielander said. “The creator owns his or her creation—unless you have a prior agreement in which the creator assigns the work to you.” He urged tech entrepreneurs to have appropriate agreements in place for everyone involved in the creative process, including staff and external contractors.

Trademarks

Myth: If you register a trademark, it’s yours.

Trademarks are a form of consumer protection designed to distinguish one product or service from another. They range from words, names, symbols, art and designs to colors, sounds and smells. “You acquire the right to a trademark by being the first to use it in commerce,” Lynch said.

Registration is not mandatory. However, there are advantages, such as proof of ownership and use of the mark over a larger geographic area, Lynch said. Different businesses can use the same trademark, so long as it doesn’t confuse the customer. For example, Delta Airlines and Delta faucets.

Myth: A trade name is the same as a trademark.

“A trade name is a different animal,” Lynch said. In Washington, registering the name of a company with the secretary of state is a requirement for doing business and does not exclude others from using the same trade name.

Trade secrets

Myth: What you don’t know can’t hurt you.

A trade secret is information that is valuable because it is not widely known or readily discovered. The owner must make a reasonable effort to maintain its secrecy. Examples include a manufacturing process, technical information, customer lists and other marketing data. The most famous trade secret is the formula for Coca-Cola. “You can be in trouble for trade secret violation even if you didn’t purposely go out and get the secret,” Keyes warned. Whether cooks, software engineers or top executives, employees can’t bring trade secrets from job to job.

Keyes urged employers to thoroughly interview prospective employees to ensure they are not going to divulge trade secrets. They also should have agreements in place for staff who leave. “For your own protection, get professional advice immediately if you suspect that something may be wrong,” he said.

Myth: It’s OK to reveal a trade secret if you haven’t signed an agreement.

As long as the company has protected its information, such as limiting access or marking documents “business sensitive,” the information cannot be shared without permission, Keyes said. “It’s a tough balancing act,” he said. “A mobile workforce fuels our economy, but we need to protect firms from having the rug pulled out from under them.”