

X-pert file

Intellectual property 101

Aisha Salem, U.S. embassy intellectual property attaché for the Middle East and North Africa, talks about what you need to know about your intangible assets (a.k.a. intellectual property) when starting a business



I spoke about intellectual property (IP) basics recently at an event for tech startups and the organizer leaned in to say: “You know, our members really want to learn about patents.” I said “That’s good to know – but they also want to learn about copyright and trademark protection, too, right?” She said: “No, they’re just concerned about patents.” As an IP lawyer who has spoken to many entrepreneurs over the years, this concerned me. Startups should consider ALL forms of IP protection, and they should do it very early on in the process.

Here is the very simplified example I give when explaining the different types of IP: if I invent a time machine, I get patent protection for that innovation; if I decide to use a logo or slogan to sell my machine, such as “The Never-Ending Time Machine,” I get trademark protection for that brand name; and if I write a novel about time travel, I get copyright protection for the creative expression.

You are probably wondering why you need all of these various forms of protection – why isn’t the patent enough? The simple answer is

that obtaining a patent for your innovation can be a great first step when starting your business. But to make your business truly successful, simply obtaining a patent is usually not enough to protect the entirety of your product. Patent protection ensures that others cannot copy – or profit from – your innovation. The owner of a patent has the right to exclude others from using it or commercially exploiting it, which allows the inventor to reap the financial rewards of his or her invention.

While obtaining a patent is good first step, it is also important to identify and promote your product with branding. The best way to do this is to register a trademark for your product – that is, use any word, symbol or combination of the two to identify your product as your own and to differentiate it from your competitors’ products. The key here is that consumers should be able to identify the source of the product by looking at the trademark. You should also be careful to avoid confusing consumers into thinking your product comes from someone else (because you wouldn’t want to be accused of trademark infringement).

Finally, for any creative expression – for example, a novel about time travel – you will get copyright protection. A copyright protects the expression of your ideas (not the ideas themselves) and can include things like books, movies, music and computer software. Copyright protection actually exists from the moment you “fix” your expression in a tangible form (such as typing up your novel – a novel that exists only in your head doesn’t count). However, in the US for example, unless you register your copyright with the US Copyright Office, you are unable to sue for certain remedies in court for copyright infringement should someone use your work without your express authorization. Remember that your creative expression, whatever form it may take, must be original to you.

Although it is advisable to use a patent lawyer or a patent agent to file a patent application, you don’t necessarily need one in order to come up with an IP strategy. A specific, robust IP plan developed early on in the life of your company will allow you to maximize the value of your assets and protect your valuable IP down the road. Remember that IP is a business asset that has commercial value. It is of interest to investors, so startups looking to make their business more attractive to investors should make an effort to ensure that they have developed an attractive IP portfolio – a portfolio that takes into account all types of IP protection. ■