

# Building Lasting IP Protection

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Most companies think about patents, trademarks, and trade secrets separately. Patents protect a product. Trade secrets protect how a product is made. Trademarks protect the product's name. But the most effective intellectual property (IP) strategy treats these forms of IP as complementary layers of a coordinated portfolio. Patents can keep competitors from copying a novel product or process, but they will expire. Trademarks are of little use initially, but they gain value over time as they become better known and can last forever if properly maintained. Add trade secret protection for manufacturing knowhow that may never be patented, and a company can build a durable, multi-layered fortress around its innovations (Figure 1).

*Patents provide immediate protection, but expire.* If you are the inventor of an innovative new product, without patent protection, others could sell the same product at the same price — or less. Unless your product is sold under a well-known brand, consumers would have no incentive to choose it over the competition. Patents solve this problem by providing a limited monopoly that prevents others from lawfully practicing a claimed invention, giving you time to recoup your investment in developing the product and to build brand recognition while it is the only product of its kind on the market. But patents expire 20 years after the filing date of the patent application — 15 years from the issuance date of a design patent. The term cannot be renewed and, with limited exceptions, cannot be extended. That means something else needs to protect your competitive advantage after your patent inevitably expires.

*Trademarks provide lasting protection, but need time to develop.* Imagine being presented with five identical products sold under five brand names you have never heard of — you would have no reason to choose one over the others and would likely make your decision based on price alone. A trademark is meaningless unless it carries name recognition that communicates quality to consumers. That recognition is most readily developed when a brand's signature products are protected by another form of IP — such as patents or trade secrets — that keeps them as the only product of their kind on the market. During that initial period of exclusiv-

ity, consumers have no choice but to purchase the protected product and begin to associate the brand name with it. So, when that other protection eventually expires, consumers may still seek out the brand-name product over the competition. Take LEGO® as an example. Its patents on interlocking building blocks expired in the 1970s, yet LEGO remains by far the dominant brand in the category. That is the long-term payoff of an integrated IP strategy.

*Trade secrets can extend a competitive advantage indefinitely.* Some products lend themselves to trade secret protection as the primary form of IP — Coca-Cola's secret formula being the most famous example. More often, however, trade secrets take the form of manufacturing knowhow that gives one company an edge over its competition. Consider slot die coating, a manufacturing process in which a liquid is pumped through a narrow die opening onto a moving film and then dried. The challenge is achieving a highly uniform coating thickness across the full width of the die — something that is far more difficult in practice than it sounds. A company that discovers an improvement to coating uniformity can patent it or keep it as a trade secret. Patenting the improvement has benefits, but also discloses the improvement to the public, putting competitors on notice and allowing them to exploit it in countries where no patent protection has been obtained. And because the coating process takes place inside a factory, there is often no practical way to determine whether a competitor is even infringing the patent in the first place. Maintaining the improvement as a trade secret, however, avoids all of these drawbacks. Factories do not tend to have windows for good reason — competitors cannot see inside, and processes that stay behind closed doors can remain secret indefinitely. The competitive advantage from a trade secret improvement in coating uniformity can thus last far longer than any patent, at essentially no cost beyond the investment in reasonable protective measures.

*The integrated approach.* No single form of IP is best for every situation. The most effective strategy identifies the right tool — or combination of tools — for each aspect of a company's technology and brand. Use patents to establish an early monopoly and give your trademark time to build consumer loyalty. Protect processes and knowhow as trade secrets where secrecy is feasible and reverse engineering is not. And do not neglect the trademark — because long after the patents expire, a strong brand may be your most durable competitive asset.

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► **Figure 1.** Patents, trademarks, and trade secrets go hand-in-hand to provide long-term protection to intellectual property.



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