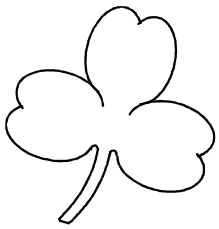
Mesmer & Deleault, PLLC
41 Brook Street, Manchester, NH 03104
Seacoast Office: One New Hampshire Ave., Suite 125
Portsmouth, NH 03801

Happy St. Patrick's Day



"Tip of the Month"

Patent or Copyright: What's the Difference?

One can understandably be confused between the terms patent and copyright. Both are forms of intellectual property that find their roots in the U.S. Constitution, which gives the U.S. Congress the authority to grant certain rights for limited times. There are major differences, however, between a patent and a copyright. These include the subject matter covered, the length of protection, the requirements for obtaining a registration, the protection provided, and other concerns.

Subject Matter: A patent protects an idea that is reduced to practice and may be (1) a product, (2) an apparatus, (3) a method of making, (4) a method of using, (5) an ornamental design for an article of manufacture, or (6) any invented or discovered and asexually reproduced distinct and new variety of plant. A copyright protects the expression of an idea and may be (1) a literary work, (2) a musical work, (3) a dramatic work, (4) pantomime and choreographic works, (5) pictorial, graphic and sculptural works, (6) motion pictures and other audiovisual works, (7) sound recordings, and (8) architectural works.

Length of Protection: A patent may last for 20 years from the patent application filing date for most patents. The total life of the patent is conditioned on the owner paying periodic maintenance fees during the patent's life. A patent that protects the ornamental design for an article of manufacture lasts for 14 years from date of issue/registration. Copyright for works made after January 1, 1978 last for the life of the author plus 70 years. Copyright for works made for hire last for 95 years from first publication or 120 years from creation, whichever expires first. Once the patent or copyright expires, the subject matter of the patent or copyright enters the public domain for anyone to use.

Requirements: The subject matter for patent must be useful, novel and non-obvious. Failure to meet each of these three requirements means that an inventor will not get a patent. This includes publication or public disclosure of the invention by the inventor more than 1 year before the inventor files a patent application. The subject matter of copyright is any creative expression that is fixed in a medium. A creator cannot get copyright protection if he or she fails to fix the creative expression in a medium. Once fixed in a medium, however, copyright in the work exists immediately without doing anything more.

Protection: A patent provides an inventor with the right to exclude others from making, using, selling, or offering for sale the invention in the U.S. and its possessions. This right is even enforceable against someone who independently develops an infringing invention. A copyright provides a creator the exclusive right to reproduce, adapt, publicize, perform, and display the creative work. This right, however, is not enforceable against someone who independently creates the same or similar work or has a fair use defense.

If you need help in determining the type of protection that is best for you, the attorneys at Mesmer & Deleault are ready to help. Please give us a call at (603) 668-1917 or contact us by e-mail at *mailbox @ biz-patlaw.com* to schedule an appointment.

Frank B. Mesmer, Jr., Esq.
Robert R. Deleault, Esq.
Phillip E. Decker, Esq.
0310

(603) 668-1971
Fax (603) 622-1445
email: mailbox@biz-patlaw.com
Visit our web site at: biz-patlaw.com