

## DETERMINING THE APPROPRIATE IP PROTECTION

### When to use:

- When evaluating the protection options for intellectual property.

Intellectual Property (IP) generally refers to creations of the mind. These include inventions, written and artistic works, designs, and names or images used in commerce.

### There are four basic instruments for protecting IP:

1. Patent
2. Trade Secret
3. Copyright
4. Trademark

**Patents** protect inventions, new technology or ideas. Patents can be methods, devices, new ways, new uses, or new applications. It is important to note that the patent is not a right to make or use the patented idea, but rather it is a right to prevent others from making, using, or selling the patented idea. Design patents protect the way products look with respect to their non-functional features. They are similar to trademarks on the shape of a product, but usually much easier to obtain.

**Trade Secrets** protect ideas that are intended to be kept strictly confidential inside of a company. Generally when deciding between patent and trade secret protection, the key factor is whether the idea is detectable in an end product. It is possible to have a patent application and a trade secret in tandem for a period of time. Once a trade secret is made public, all “protection” is lost, so non-published patent applications can be a fall-back position.

**Copyrights** protect works against direct copying. This includes written and artistic works, including software. Note that a copyright protects the expression of an idea from copying but not the underlying idea itself (as a patent or trade secret can).

**Trademarks** protect words, names, symbols, sounds, or colors that distinguish goods and services. It can also protect the shape of products. A great trademark has the potential to make a company highly valuable and increase profits.

Are these ideas mutually exclusive? No. For a given idea, product, or process, certain aspects may be patented, secured as a trade secret, copyrighted and trademarked. Consult with your legal counsel to determine the appropriate protection strategy.