Not creating valuable IP is inexcusable because often only minor steps are required. The best foundation for inexpensively creating valuable IP is: (1) **identify** your existing and desired IP; (2) **learn the rules** applicable to it; and (3) **pretend you are on the witness stand** using the Rules to prove you own it. This simple drill opens your eyes to an important universe and teaches you how to win.
TRADEMARKS

RULE #1: BE SURE YOU HAVE TRADEMARK PRIORITY.
Trademark Registration. A federal trademark registration gives an exclusive right to use the mark throughout the U.S. against later users of the same or confusingly similar mark for similar goods or services.
Foreign Countries. Every country has its own trademark system. It is common for pirates to register your marks in foreign countries and keep you out. The only way to prevent this is to register in important countries before anyone else.
Trademark. A word, symbol, color, sound, smell, slogan . . . anything that identifies a business’ goods or services and distinguishes them from competitive goods and services.
**Descriptive Terms** describe the good or service. They are only protectable if the public uses the term to distinguish your goods and services from those of your competitors rather than merely describe your goods or services. Protectability depends on each jury’s decision. VISION CENTER optical clinic and BEER NUTS salted nuts were held unprotectable. STEAK AND BREW restaurant and HONEY ROAST nuts roasted in honey were held protectable.
Suggestive Terms suggest a quality or characteristic. They are protectable and can make your marketing more effective. Examples: DIE HARD batteries, SURE deodorant, MUSTANG automobile.
**Arbitrary or Fanciful Terms** have no relationship to the good or service. They are very protectable. Examples: CAMEL cigarettes, APPLE computers, EXXON gasoline. If you have the resources to create a favorable public impression through marketing and favorable public contacts, these terms give the most security and freedom to create public perceptions.
Domain Names. A federal trademark registration is critical for protecting a domain name.
What gets sales is **uniqueness**.
Proper Trademark Use
RULE #3: IF IT’S LIKELY TO CONFUSE, IT’S TOO CLOSE.
Copyrightable Works
Copyright’s Limits
Duration
RULE #5: COPYRIGHT PROTECTION IS EASY AND INEXPENSIVE.
RULE #6: COPYRIGHTS ASSIGNMENTS MUST BE IN WRITING.
Three Kinds of Copyright Owners:
Author
Work for Hire
Written Assignment
Everyone connected with the creation of copyrightable works – and every business has lots of them – should sign a copyright assignment.
Patentable. An invention only needs to be (1) **useful**, (2) **novel**, and (3) **non-obvious** to be patentable. It does **not** need to come in a “flash of genius.” An incremental improvement or new contribution of off-the-shelf components arrived at by trial and error or methodical research may be patentable.
Types of Patents. Utility patents protect processes, machines, articles, compositions, etc., for 20 years. Design patents protect an article’s ornamental characteristics for 14 years.
Patentability Analysis. You must compare your invention to the relevant prior art to determine if it warrants a patent application. You can do free preliminary searches at www.uspto.gov.
Assume your invention is a cup (A) with a handle (B), a removable metal disc that can be dropped inside to heat its contents (C), and a magnet to hold the disc (D).
RULE #8: WAITING TO FILE – THE GRIM REAPER.
1. Priority and the One-Year Bar.
2. **Foreign Patents.** Each country’s patents are only effective in that country; a U.S. patent is good only in the U.S.
3. **Provisional Application.** A provisional application ("provisional") is an informal placeholder filing that preserves an invention’s priority date for one year.
4. **Cost.** It typically costs about $5,000 to $15,000, to file a utility patent application, plus an additional $2,000 to $5,000 through issuance. It typically costs about $1,000 to obtain a design patent. While about 65% of all applications issue as patents, about 2,000 a week, many are not valuable because they do not prevent competition.
U.S. PATENT APPLICATION PROCESS
5. “Patent Pending”. Patent applications typically pend one to three years from filing to issuance.
RULE #9: DO NOT WRITE YOUR OWN APPLICATION.
Smart Inventors. (1) Keep good records, including witnessed lab notebooks, dated photos, receipts, etc.; (2) build prototypes; (3) do not talk about the invention except to persons who have signed a confidentiality agreement; (4) search www.uspto.gov and the internet to determine what is possibly patentable; (5) continually work on “who is going to pay me?”; (6) find a good patent attorney and keep asking “What can I do to help keep my costs down?”; (7) keep filing improved robust provisional applications.
Patent assignments must be timely recorded.
A Wall Street Journal headline is instructive: “PATENT NONSENSE, NAÏVE INVENTORS FALL FOR OPTIMISTIC PITCHES SOME MARKETERS MAKE, FIRMS OFTEN PRAISE THE IDEAS, GET PAID, THEN DO LITTLE TO GET IT MANUFACTURED.”
RULE #10: IT IS NOT A SECRET UNLESS IT IS SECRET.
Identify your Trade Secrets
Security Program
KEEP ATTORNEYS FROM OWNING YOUR BUSINESS
RULE #12: IF YOU WANT PEACE, PREPARE FOR WAR.
Insurance
**Trademarks:** Make sure your proposed new mark is protectable and not owned by anyone else. Protect valuable marks with a federal trademark registration.
Copyrights: Get the author’s written agreement that you own the copyright. Put a copyright notice on everything that might be copyrightable. Register if it might be important.
**Patents**: Get the everyone’s written agreement that you own all patent rights. Quickly file inexpensive provisional applications.
**Trade Secrets:** Get everyone’s written agreement that you own everything, they will keep your information confidential etc. Start an inexpensive security program.