

# *What's the difference between Patent Law, Trademark Law & Other Intellectual Property Practice Areas?*

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Intellectual property (IP) lawyers deal with inventions, creations, and other intellectual and intangible types of property. The term "intellectual property" is used in its general sense to describe: A product of the intellect that has commercial value, including copyrighted property such as literary or artistic works, and ideational property, such as patents, trademarks, business methods, and industrial processes.

Examples of intellectual property are music, books, movies, artwork, product names, logos, slogans and packaging designs that qualify for patent protection, and information that is kept secret and not commonly known.

When people think of IP lawyers, they usually think of patent attorneys, which is no surprise given that a good many lawyers are patent attorneys. **Patent attorneys**, however, are not the only types of IP attorneys. [Under the umbrella of IP attorneys also fall trademark, copyright, trade secret, and Internet/e-commerce attorneys.](#)

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## DIFFERENT TYPES OF IP LAW AND IP ATTORNEYS

Significantly, where property such as machines may have once been the primary source of a company's worth, in the economy much of a company's worth comes from the ownership of intellectual property. [In general, there are five intellectual property work that attorneys do.](#) These areas are: a) Patent, b) Trademark, c) Copyright, d) Trade Secret, and e) Licensing.

**PATENT LAW.** Patent law protects inventions. By filing and obtaining a patent from the [United States Patent and Trademark Office](#), the inventor of a product receives a monopoly on the commercial exploitation and use of a product for up to 20 years. Patents can protect the functional features of a process, machine, manufactured item, asexually reproduced plant, or chemical composition of matter, for example.

**TRADEMARK LAW.** Trademark law protects words, phrases, logos or symbols used to distinguish one product from another. In circumstances where a competitor uses a protected trademark, the holder of the trademark can go to court and seek an injunction to stop the use.

**COPYRIGHT LAW.** Copyright law protects the creators of expressive works, such as artists, photographers, writers, musicians, and gives them the exclusive right to protect how their works are used. It is important to note that, unlike patent law, copyright law does not protect names or titles. One way that copyright law can be distinguished from trademark law is in the advertising context. Trademark law would commonly protect the name of the product being advertised, while copyright law would protect the expression. For example, the statement in an advertisement: "If you drive this X car, you will undoubtedly realize it is among the best in the market for what it does," is an example of something that would have elements of both copyright and trademark within it.

**TRADE SECRET LAW.** A trade secret is "A secret formula, method, or device that gives one an advantage over others." If the owner of the trade secret takes reasonable steps to keep the trade secret "secret," courts will protect the trade secret from unauthorized disclosure by (1) industrial spies, (2) competitors who wrongfully acquire the trade secret, (3) former employees of the owner of the trade secret, and (4) anyone with any type of duty not to disclose the information.

**LICENSING LAW.** While licensing law may make use of all the areas of law above, it is a popular-enough type of law that it merits some discussion. A license is a grant of permission to do something with an otherwise protected work or right. Copyright holders, for example, can give permission to other individuals to copy their work, or a trademark owner can give a license to another to use the trademark.

## PATENT ATTORNEYS-WHY ARE THEY IN SUCH DEMAND?

[Without a doubt, the largest demand for intellectual property attorneys is for those who can do patent work.](#) Approximately 75% of the [intellectual property placements](#) we make are for patent attorneys. Reviewing the listings on our website, it is clear that there are more openings for patent attorneys than for many other practice areas combined. So the question is, why is the demand so high?

First, patent attorneys are rare. Over the past five years, the percentage of practicing patent attorneys simply has not increased as a percentage of all the attorneys practicing in the United States. The percentage of practicing patent attorneys relative to the total attorney population has consistently remained at approximately 1 1/2 percent. There are only approximately 20,000 patent attorneys in the United States, while there are approximately 1,000,000 other attorneys.

Second, to [become a patent attorney](#), it is not enough to take the bar exam of a given state. In addition, an attorney must also take the United States Patent and Trademark Office's Patent Bar Exam.

Third, to even sit for the Patent Bar, an applicant needs prior scientific or technical-level training at the bachelor's level in a science or engineering field (or significant college credits in one of these fields). While there are certainly many people who graduate each year with technical and science degrees, very few of these people may have any interest in attending law school (and accumulating high levels of debt) because the market for these individuals is extremely good even without a law degree. Over the past several years, the demand for people to do research and development has grown rapidly, and these people can easily get super jobs without ever attending law school. Virtually [every person who operates a computer-dependent business knows how difficult it is to find computer programmers, for example.](#) In the biotechnology industry, there is also a high number of positions that consistently go unfilled.

Fourth, assuming the potential patent attorney even has the requisite training to qualify to take the [Patent Bar](#), he pass it, and the pass rate for the patent bar exam is much lower than for most bar exams; it typically ranges from

Fifth, the demand for patent attorneys is compounded by the fact that the need for patents has continually increased dramatically. For example, a recent article in the Legal Times stated that the number of patents issued each year increased 30-40 percent since 1990. During the same period of time, the number of software patents increased by approximately 200 percent.

Sixth, it is also important to note that attorneys with technical expertise in certain fields are far more likely to obtain positions as patent attorneys than other types of patent attorneys. This fact, in turn, makes the pool of potential candidates for positions even smaller. While there are certainly differences that could be pointed out, for the most part the experience of patent attorneys falls into the following categories: (1) the life sciences, (2) chemistry & pharmaceutical, (3) material science, (4) electrical engineering, (5) physics, (6) mechanical engineering, (7) medical devices, and (8) computer science. In terms of demand, the greatest demand is for attorneys with backgrounds in electrical engineering or computer science (most of our clients seeking patent attorneys are looking for those with an electrical engineering or computer science background). [There is also a strong demand for attorneys with biotechnology, biochemistry, or organic chemistry backgrounds.](#) The lesser demand is for those with mechanical or chemical backgrounds.

## WHY ARE PATENT ATTORNEYS SO DIFFICULT TO RECRUIT?

[Recruiting patent attorneys is unique.](#) Patent attorneys, in general, are a bit more risk averse than most other attorneys. Patent attorneys are aware that they are very in-demand and that they are in a "buyer's market." Thus, [they can afford to be choosy about opportunities.](#) Furthermore, because patent attorneys are scientists and very used to analytical and logical thinking, they will rarely make a move unless they have thoroughly investigated and weighed all the variables of each option in what could seem to be excruciating detail.

## PATENT AGENTS-WHAT ARE THEY?

Patent agents are not attorneys, but they can perform limited functions before the USPTO without a law degree (as long as the person has the proper science/technological degree and passes the Patent Bar). [Many firms like to hire patent agents because they can perform patent prosecution at a much cheaper billing rate than a regular patent attorney, which they appreciate.](#)

## WHAT IS THE DIFFERENCE BETWEEN PATENT PROSECUTION AND PATENT LITIGATION?

Simply stated, patent prosecutors deal with filing and registering patents with the USPTO. The term "patent prosecution" typically encompasses patent counseling (e.g., writing opinions regarding whether a certain invention is patentable).

[Patent litigation is more akin to general litigation, but the parties are litigating issues relating to certain patents.](#) Unlike patent prosecutors, patent litigators do not need to have a science background. However, having the science background is helpful in terms of understanding the technology, which is often highly complex.

Typically, patent litigation is more lucrative than patent prosecution because patents are so valuable and the stakes are high. For example, if a company loses a patent, it can lose millions upon millions of dollars. Thus, the big picture in patent litigation, and clients are much more willing to spend \$1-to-10 million on legal fees if it means saving \$10-million in the long run.

## WHAT ABOUT TRADEMARK, COPYRIGHT, LICENSING, TRADE DRESS ("SOFT IP") ATTORNEYS?

The opportunities for trademark/copyright and other "soft IP" attorneys are fewer and far between. There are several reasons why.

First, the trademark, copyright, and licensing fields are not nearly as complex as the patent field, and they do not require a specialized scientific or technical background. In fact, many corporate attorneys are comfortable doing trademark and copyright work at a basic level.

Second, as the dot-com frenzy has slowed and many domain name disputes (where unscrupulous people were registering domain names the trademarks of many companies) are more under control, there has been a slowdown in trademark and domain name disputes compared to 1998 through 2000.

Third, while there are some high-profile exceptions to this rule and some firms have extremely sophisticated trademark/copyright practices, very few firms in the United States have separate trademark and copyright licensing departments. Many patent attorneys may be called upon to do both trademark and copyright work in addition to their primary field of specialization is in the patent field. In addition, some people perceive that trademark and copyright licensing is less intellectually taxing than doing patent prosecution. Many patent attorneys like doing copyright and trademark work because it is a break of sorts from doing straight patent prosecution. Accordingly, many firms and corporations like hiring patent attorneys a wider variety of work to keep them happy.

See [Top 10 Reasons Most Law Firms Have No Idea How to Hire and Evaluate Patent Attorneys](#) for more information.