

Assignments & Signature Documents

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Assignment & Signature Documents

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- Recording Copyright Assignments & Documents Affecting Title
- Perfecting a Security Interest
- IP Ownership considerations



Handling Assignments



Handling Assignments

- Rule # 1
 - Your clients do not know who they are.
 - Check name and spelling with relevant Sec. of State's Office

Handling Assignments

- Rule # 2
 - Your clients do not know what they own or fail to tell you when they assign their IP.
 - Check the PTO assignment records before filing/ preparing any document claiming your client owns a registered trademark or application or a patent.
 - Do not trust the TARR record as to ownership



Powers of Attorney



Powers of Attorney

- **Avoiding conflicts:**

- If you represent the assignee (including employers), do not have the assignors-inventors (including employee inventors) sign a power of attorney for you or your firm.

Powers of Attorney

- Recommended Procedure:
 - Have assignee sign power of attorney which will also require execution by an authorized representative of assignee of a Statement Under Rule 3.73(b) which establishes that the assignee has the right to take action in the matter by providing proof of ownership.

Powers of Attorney

- **Documentation of authorization for individual to grant powers of attorney on behalf of assignee:**
 - Some foreign countries require individual signing power of attorney on behalf of the applicant to identify the document granting the authority to act on behalf of applicant.
 - If no such document exists, have corporate counsel prepare a corporate resolution authorizing selected employees to grant powers of attorney for pursuing patents and trademark and copyright registrations. See sample.



Electronic Signatures



Electronic Signatures

- **Form of electronic signature for USPTO Filings:**
 - 37 CFR 1.4(d)(2) (patents)
 - 37 C.F.R. §2.193(c)(1)(Trademarks)
 - An electronic signature (S-signature for patent filings) is a signature inserted between forward slash marks, but not a handwritten signature, i.e. / Kent R. Erickson/
 - Can be used for electronic, fax or paper filings

Electronic Signatures

- **5 Requirements for an S-Signature for patent matters per 37 CFR1.4(d)(2)**
 1. **Consists of only letters or Arabic numbers or both with spaces, commas, periods, apostrophes, or hyphens for punctuation;**
 2. **Placed between forward slashes**
 3. **Signatory must insert his or her own signature**
 4. **Name of signatory printed or typed immediately below or adjacent the S-signature**
 5. **Reg. Practitioner must include Reg. No. as part of Signature or immediately below or adjacent (Can use # as part of S-Signature**

Electronic Signatures

- **Examples – Which one is improper?**
 - /Kent R. Erickson, Reg. # 36793/
Kent R. Erickson
 - /Kent R. Erickson/
Kent R. Erickson
Reg. No. 36793
 - /Kent R. Erickson/
Kent R. Erickson, Reg. # 36793
- **A digitally saved image of a signature pasted into a document but not between forward slash marks is not a proper signature.**

Electronic Signatures

- **S-signature may be used on all correspondence submitted to PTO including**
 - **Oaths or declarations under Rule 1.63**
 - **Affidavits or declarations under Rule 1.132;**
 - **Amendments and Responses to Office Actions;**
 - **Powers of Attorney – Probably**
 - **Assignment cover sheets – Yes**
 - **Assignments – No – unless authorized by relevant state law.**

Electronic Signatures – Copyright

- **Form of electronic signatures for copyright registration application:**
 - **37 CFR 202.3(c)(2)(ii) “if an electronically submitted application, a name provided within the certification screen of the electronic application”**

Electronic Signatures – Local Courts

- **WD MO General Order regarding electronic filing signatures. ¶ 3b.**
 - Use of login/password to file = signature
 - Prefers use of a signature in the following form on pleadings

“s/John Doe”

- **D. KS – Local Rule 5.4.8**
 - Use of login/password to file = signature
 - Party filing must include typed name preceded by “s/” i.e.

“s/John Doe”

Electronic Signatures

- Signatory must enter signature – not assistant
 - The Rules and TMEP appear to make clear that the signatory and not an assistant must enter their own signature.
 - “and the person signing the correspondence must insert his or her own S-signature ...” 37 CFR 1.4(d)(2)(i).
 - “All documents must be personally signed. Another person (e.g., paralegal, legal assistant, secretary) may not sign the name of an attorney or other authorized signatory.” See *In re Dermahose Inc.*, 82 USPQ2d 1793 (TTAB 2007). TMEP 601.11(b)

Electronic Signatures – Trademark

- **Who can sign as an authorized representative of an applicant for Trademark filings:**
 - A person who is properly authorized to verify facts on behalf of an owner is:
 - (i) A person with legal authority to bind the owner (e.g., a corporate officer or general partner of a partnership);
 - (ii) A person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the owner; or
 - (iii) An attorney as defined in § 11.1 of this chapter who has an actual written or verbal power of attorney or an implied power of attorney from the owner.



Notarization of Documents



Notarization of Documents

- Notaries perform 3 primary functions:
 - 1) Take acknowledgements;
 - 2) Administer oaths or affirmations;
 - 3) Certify that a copy of a document is a true copy of another document.

Notarization of Documents

- General Rules Governing Notarizations.
 - All notary acts require the person signing the document to appear before the notary.
 - A notary may notarize anywhere within the state, but not beyond the borders of the state.



Certificates of Acknowledgement



Certificates of Acknowledgement

- A certification as to the execution of a document and verification of the identity of the party signing. Used to make documents self authenticating or prima facie evidence of authenticity. See 15 USC § 1060 and 35 USC § 261.
- Required Language specified by state statute. For MO see RSMo 486.330:

Certificates of Acknowledgement

- Missouri sample language for an individual :

“On this ___ day of _____ in the year ____ before me personally appeared (NAME), known to me to be the person who executed the within (DOCUMENT TYPE), and acknowledged to me that he/she executed the same for the purposes therein stated.

- Consular Office form language:

CONSULATE GENERAL OF THE)
UNITED STATES OF AMERICA) ss.
OF HONG KONG)

I certify that on this date, _____, 2009, before me appeared **Authorized Representative Name** and acknowledged to me that this instrument was executed freely and voluntarily on behalf of **Assignor Company Name**.

Consul of the United States of America at
Hong Kong, holding an indefinite commission

Certificates of Acknowledgement

- Acknowledgement, but not actual signing, must be in presence of notary.



Oaths or Affirmations



Oaths or Affirmations

- A certification that the signor appeared before the notary, was identified and swore on the bible or under penalty of perjury as to the truth of the matters contained in the document.
- Used primarily for Affidavits.

Oaths or Affirmations

- Form of Oath/Affirmation:
 - Missouri language – RSMo 486.335:
 - “Subscribed and affirmed before me on this ____ day of _____, 20__.”

Oaths or Affirmations

- Language of Oath or Affirmation to be administered:
 - MO: “You do solemnly affirm, under penalty of perjury, that the testimony you shall give to the matter in issue, pending between and Shall be the truth, the whole truth, and nothing but the truth.”
 - KS: “You do solemnly, sincerely, and truly declare and affirm And this you do under the pains and penalties of perjury.”

Oaths or Affirmations

- Signature must be made in presence of notary.



Declarations in Lieu of Oaths



Declarations in Lieu of Oaths

- **28 USC § 1746** permits the use of an unsworn declaration in lieu of an oath for federal matters.

Declarations in Lieu of Oaths

- Form of declaration if executed in the US:

“I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date)

(Signature)”

Declarations in Lieu of Oaths

- Form of declaration if executed outside of the US:

“I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date)
(Signature)”

Declarations in Lieu of Oaths

- 37 CFR 1.68 Declaration in lieu of oath for patent matters per 35 USC 25
- 37 CFR 2.20 Declaration in lieu of oath for trademark matters
- U.S. Patent and Trademark Office personnel are authorized to accept a statutory declaration under 28 U.S.C. 1746 filed in the U.S. Patent and Trademark Office in lieu of an "oath" or declaration under 35 U.S.C. 25 and 37 CFR 1.68, provided that the statutory declaration otherwise complies with the requirements of law.

Apostille



Apostille

- **Apostille:** Documents which have been notarized by a notary public, and then certified with a conformant apostille are accepted for legal use in all the nations that have signed the Hague Convention.
- Apostille = confirmation that the notary or official certifying a document had authority to do so. Completed by Sec. of State for state in which notary is appointed or for certifications of state filed documents or by US Sec. of State for certifications of federally filed documents.



Recording Assignments and Other Documents Affecting Title



Recording Assignments and Other Documents Affecting Title

- What can be recorded with USPTO for applications, patents and registrations: 37 CFR 3.11
 - Assignments and other documents affecting title
 - Certificates of Name Change or Merger - MPEP 314/TMEP 503.02
 - Notice of bankruptcy (showing acquisition by Trustee)
 - Court orders affecting title
 - Other documents at the discretion of the Director – MPEP 313/TMEP 503.02
 - Licenses
 - Documents conveying a security interest

Documentation required

- **Patents and applications: 37 CFR 3.24**
 - A copy of the document may be submitted for recording, and
 - USPTO does not return documents submitted for recordation so do not submit originals
 - A completed cover sheet. 37 CFR 3.28 and 3.31

Documentation required

- **Trademark registrations and applications:**
37 CFR 3.25
 - A copy of the document may be submitted for recording, and
 - USPTO does not return documents submitted for recordation so do not submit originals
 - A completed cover sheet. 37 CFR 3.28 and 3.31
 - Only a cover sheet is required for recording a name change for TM registrants per 37 CFR 3.25(b)

Documentation required

- **Identifying Information Required for Recording Patents and Patent Applications: 37 CFR 3.21**
 - An assignment relating to a patent or a patent application must identify:
 - The patent or patent application number, if executed after filing; or
 - The name(s) of the inventors, and the title of the invention if executed prior to filing.

Documentation required

- Practice Pointer:
 - Write an assignment to allow entry of the identifying number after execution of the assignment.

Documentation required

- Wording suggested by PTO. MPEP 302.03.

"I hereby authorize and request my attorney, (Insert name), of (Insert address), to insert here in parentheses (Application number , filed) the filing date and application number of said application when known."

Documentation required

- Suggestion to avoid conflict issues:
 - I hereby authorize and request that the attorney(s) for assignee, insert in this assignment document the application number and filing date of said application when known.

Documentation required

- **Identifying Information for Trademark Registrations and Applications**
 - No rule found for requiring inclusion of application or registration number or mark in an assignment for purposes of recording.
 - Blanket assignments are recordable.
 - 37 CFR 3.31(a)4. requires inclusion of application or registration number in cover sheet or if application number not known a copy of the application or reproduction of mark and estimate of date application received by USPTO.

Conflicting Assignments / Security Interests in Patents - Priority



Conflicting Assignments / Security Interests in Patents - Priority

- **Patent Assignments:**

- Record w/in 3 months to beat a subsequent BFP
- An **assignment**, grant or conveyance shall be void as against any **subsequent purchaser** or mortgagee **without notice**, unless it is recorded in the **USPTO** within **three months** from its date or prior to the date of such subsequent purchase or mortgage. 35 U.S.C. §261.
- *Board of Trustees of the Leland Stanford Junior University v. Roche Molecular Systems, Inc.* 583 F.3d 832 (Fed. Cir. 2009).

Conflicting Assignments / Security Interests in Patents - Priority

- **Security interests in patents:** record with the governmental office required by the U.C.C. to perfect the security interest in intangibles. Dual filings with the U.C.C. designated office and the USPTO should be considered.
- Note that in §261 the initial reference to assignment, grant or conveyance does not refer to a mortgage as later reference in the statute. See e.g. *Shuffle Master, Inc. v. Smart Shoes, Inc.* 2009 WL 3336115 (D. Nev 2009).



Conflicting Assignments / Security Interests in Trademarks - Priority



Conflicting Assignments / Security Interests in Trademarks - Priority

- Trademark Assignments:
 - Record w/in 3 months to beat a subsequent BFP
 - An assignment is void against a subsequent purchaser without notice, unless the assignment is recorded in the USPTO within **3 months** after the date of the assignment or prior to the subsequent purchase. 15 U.S.C. §1060(4).

Conflicting Assignments / Security Interests in Trademarks - Priority

- For registered marks:
 - **Assignments** should be recorded with the USPTO.
 - **Security Interests** should be recorded in accordance with UCC although dual recordation is recommended.

Conflicting Assignments / Security Interests in Trademarks - Priority

- For unregistered marks or marks registered with a State:
 - **Assignments and Security Interests** recorded in accordance with the UCC.



Recording Copyright Assignments & Documents Affecting Title



Recording Copyright Assignments & Documents Affecting Title

- **What can be recorded:**
 - **Any transfer of copyright ownership or other document pertaining to a copyright may be recorded in the Copyright Office 17 U.S.C. §205(a).**
 - **Assignments**
 - **Certificates of Name Change or Merger**
 - **Notice of bankruptcy (showing acquisition by Trustee)**
 - **Court orders affecting title**
 - **Licenses**
 - **Documents conveying a security interest**

Recording Copyright Assignments & Documents Affecting Title

- **Originals or Copies Verified by Party**
 - The document filed for recordation bears the actual signature of the person who executed it, or if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document. 17 U.S.C. §205(a).

Recording Copyright Assignments & Documents Affecting Title

- A sworn certification **must be signed by one of the parties to the document.**
- Sworn certifications may be issued by a notary or other person authorized to administer oaths.
- As an alternative to a notarized certification, the following statement is acceptable: *“I declare under penalty of perjury that the accompanying document is a true and correct copy of the original document. Executed on .”*

Recording Copyright Assignments & Documents Affecting Title

- **Note:**

- A notary public's signature certifying that the photocopy is a true copy *is not acceptable*. The signatory must be one of the parties to the document or an authorized representative of that person.

Recording Copyright Assignments & Documents Affecting Title

- **An *official certification* is used with a document that requires validation by, or filing in, a public office. An official certification is a certification by the appropriate government official that the original of the document is on file in a public office and that the reproduction submitted is a true copy of the original.**
- **You must submit an *original* official certification. A photocopy of an official certification is *not* acceptable.**

Recording Copyright Assignments & Documents Affecting Title

- **Recordation as Constructive Notice: Recordation of a document in the Copyright Office gives all persons constructive notice of the facts stated in the recorded document, but only if —**
 - (1) the document specifically identifies the work to which it pertains – by title and/or registration number so can be found in a search; and
 - (2) registration has been made for the work. 17 U.S.C. §205(c)

Recording Copyright Assignments & Documents Affecting Title

- **Priority between Conflicting Transfers.**
 - Record within 1 month to beat subsequent BFP
 - As between two conflicting transfers, the one executed first prevails if it is recorded, in the manner required to give constructive notice under subsection (c), within one month after its execution in the United States or within two months after its execution outside the United States, or at any time before recordation in such manner of the later transfer. Otherwise the later transfer prevails if recorded first in such manner, and if taken in good faith, for valuable consideration or on the basis of a binding promise to pay royalties, and without notice of the earlier transfer. 17 U.S.C. §205(d).

Recording Copyright Assignments & Documents Affecting Title

- **Priority between Conflicting Transfer of Ownership and Nonexclusive License:** A nonexclusive license, whether recorded or not, prevails over a conflicting transfer of copyright ownership if the license is evidenced by a written instrument signed by the owner of the rights licensed or such owner's duly authorized agent, and if
 - (1) the license was taken before execution of the transfer; or
 - (2) the license was taken in good faith before recordation of the transfer and without notice of it. 17 U.S.C. §205(e).



Perfecting a Security Interest



Perfecting a Security Interest

- Under federal copyright law, grant of security interest in copyrighted work is defined as “transfer of copyright ownership,” because within copyright law, that term includes mortgages or other forms of hypothecation.

In re Avalon Software Inc., Bkrtcy.D.Ariz. 1997, 209 B.R. 517.

Perfecting a Security Interest

- **For registered copyrights** record security interest with the Copyright Office
- *In re World Auxiliary Power Co.*, C.A.9 (Cal.) 2002, 303 F.3d 1120, 64 U.S.P.Q.2d 1433 and *National Peregrine, Inc. v. Capital Fed. Sav. & Loan Ass'n*, 116 B.R. 194(D.D. Cal. 1990).

Perfecting a Security Interest

- **For unregistered copyrights** record security interest with the state office required under the UCC.
- Congress provided for protection of security interests only in registered copyrights, even though it must have contemplated that most copyrights would be unregistered, giving rise to inference that Congress chose to leave matter to state law, which traditionally governed security interests and which could be applied without frustrating objections of federal copyright law.

In re World Auxiliary Power Co., C.A.9 (Cal.) 2002, 303 F.3d 1120, 64 U.S.P.Q.2d 1433 *distinguishing*, *National Peregrine, Inc. v. Capital Fed. Sav. & Loan Ass'n*, 116 B.R. 194(D.D. Cal. 1990) and *rejecting*,

In re Avalon Software Inc., Bkrtcy.D.Ariz.1997, 209 B.R. 517.



Summary of where and when to record



Summary of where and when to record

- Assignments:
 - Patents – USPTO w/in 3 months of execution
 - Trademarks – Federally Registered - USPTO w/in 3 months of execution
 - Trademarks – Non-Federally Registered – UCC filing
 - Copyrights – Registered – Copyright Office w/in 1 month of execution
 - Copyrights – Unregistered – UCC filing

Summary of where and when to record

- Security Interests

- Patents – UCC + USPTO w/in 3 months
- Trademarks – Federally Registered – UCC + USPTO w/in 3 months
- Trademarks – Non-Federally Registered – UCC filing
- Copyrights – Registered – Copr. Office w/in 1 month of execution + UCC
- Copyrights – Unregistered – UCC filing

IP Ownership

- Who should own the IP?
- Exclusive License or Assignment?

IP Ownership

Typical parties

- Parent or Holding Company versus Subsidiary
 - Including Individual Business Owner v. Business
- Inventor/Creator versus Manufacturer/User

IP Ownership

Primary Considerations

- Control of or Preservation of IP if sale or bankruptcy
- Tax treatment of revenue
- Who has Standing to sue for infringement
- Effect on potential monetary relief for infringements
- Effect on ability to obtain injunctive relief for infringements
- Benefits of common ownership as to improvements or derivatives
- Use of IP assets as collateral or to increase value of business

IP Ownership

Control of / Preservation of IP

- If subsidiary has greater exposure to product liability claims or infringement claims or if parent/individual owner concerned about losing control of subsidiary/business, this factor favors ownership by parent or inventor/creator and license to subsidiary or manufacturer/user

IP Ownership

Control of / Preservation of IP

- Avoiding loss of IP through bankruptcy
- Absent a provision retaining a reversionary interest in the licensor of patent rights or other contractual provision permitting termination of the license, the assignee's title to the patent may be effectively transferred to the trustee of the bankruptcy estate in the event of bankruptcy of the title owner. See, e.g. *In re Cellnet Data Systems, Inc.*, 327 F.3d 242 (3rd Cir. 2003)
 - Provisions terminating license in case of bankruptcy of licensee generally deemed invalid.

Tax treatment of revenue

- Capital gains versus ordinary income
 - Licensing revenue = ordinary income
 - likely tax rate of 25% or more
 - Assignment revenue = capital gains
 - taxed at a lower rate (15%)

IP Ownership

Tax treatment of revenue

- Capital gains versus ordinary income
 - Favors assignment by inventor/creator to mfg/ user for tax savings
 - Can include right of reversion if criteria outside of assignors control not met, i.e. minimum royalties paid
 - More complicated accounting for assignee as to depreciation particularly if no set value and payment = an ongoing royalty.

IP Ownership

Tax treatment of revenue

- Locating Parent/Holding Company in low tax state or country
 - Must have an active presence
- Favors ownership by parent/holding company

IP Ownership

Standing to Sue for Infringement

- Who has standing to sue for patent infringement:
 - Owner of all substantial rights including exclusionary rights – yes
 - Fixed duration – no
 - Limited Geography – yes
 - Limited field of use – no
 - Exclusive licensee – yes
 - If granted all of the exclusionary rights (including exclusion as to patentee); regardless of time and geography limitations
 - Patent owner joins in suit.
 - Non-exclusive licensee – no
- See discussion in: *Morrow v. Microsoft Corp.* 499 F.3d 1332, 1339 (Fed. Cir. 2007)

IP Ownership

Standing – Copyright & Trademark

- Same rational believed to apply to claims of infringement of:
 - Registered Trademarks; and
 - Copyrights
- But, not to claims for trademark infringement or unfair competition under Section 43(a) which provides a cause of action for "any person who believes that he is or is likely to be damaged."
 - *Quabaug Rubber Co. v. Fabiano Shoe Co., Inc.*, 567 F.2d 154, 160 (1st Cir. 1977).

IP Ownership

Effect on Recovery From Infringers

- **Utility Patents**

- Recovery limited to actual damages or reasonable royalty
- A patent owner has to prove their own damages, cannot try to recover damages incurred by its licensee(s).
 - *See, Medtronic Sofamor Danek USA, Inc. v. Globus Medical, Inc.* 637 F.Supp.2d 290 (ED PA 2009).
- Same rationale should apply to recovery of damages for copyright and trademark infringement
- Generally favors ownership by manufacturer/user;

IP Ownership

Effect on Recovery From Infringers

- **Copyrights, Trademarks and Design patents**
 - Recovery can include infringer's profits in addition to actual damages
 - Reduces benefit of ownership by manufacturer/user

IP Ownership

Effect on Ability to Obtain Injunctive Relief

- *eBay* Standard: To obtain a permanent injunction a plaintiff must show:
 - (1) that it has suffered an irreparable injury;
 - (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury;
 - (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and
 - (4) that the public interest would not be disserved by a permanent injunction.
- *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, 126 S.Ct. 1837 (2006).

IP Ownership

Effect on Ability to Obtain Injunctive Relief

- IP Owner must show irreparable injury
 - Patents – For a permanent injunction for patent infringement, a party must show that it suffered irreparable injury. A patent owner cannot rely on evidence of injury to its licensee(s) to support a request for injunctive relief. *Voda v. Cordis Corp.*, 536 F.3d 1311, (Fed. Cir. 2008).
 - Copyrights – similar rationale should apply
 - Trademarks – should be distinguishable due to impact of infringement on goodwill

IP Ownership

Common Ownership of Improvements or Derivative Works

- Typical fact pattern for patent issues:
 - Inventor 1 invents original invention and submits to Inventor 2 for consideration
 - Inventor 2 conceives of improvement to original invention.

IP Ownership

Common Ownership of Improvements or Derivative Works

- Common ownership of patent rights to an original invention invented by Inventor 1 and improvements thereto by Inventor 2 is required at time improvements are conceived to prevent the original invention from becoming prior art to the improvements under 102(e),(f) or (g) per 35 USC 103(c).
 - See MPEP 706.02(I)(2)

IP Ownership

Common Ownership of Improvements or Derivative Works

- **Example 1**

- Parent Company owns 100% of Subsidiaries A and B
- Inventions of A and B are commonly owned by the Parent Company.

IP Ownership

Common Ownership of Improvements or Derivative Works

- **Example 2**
 - **Parent Company owns 100% of Subsidiary A and 90% of Subsidiary B**
 - **Inventions of A and B are not commonly owned by the Parent Company.**

IP Ownership

Common Ownership of Improvements or Derivative Works

- **Added value to common ownership**
 - **Favors assignment of rights in original invention and any subsequent improvements to one of the parties with a license back to the other**

IP Ownership

Ownership Strategy

- **Strategy for Ownership between Holding Company and Wholly owned subsidiary/ manufacturer:**
 - Assign patent rights to Holding Company;
 - Grant subsidiary exclusive right to make, use and sell with right to exclude others including licensor with an agreement to join in any claim for infringement; and
 - Include provision allowing licensor to terminate license in case exclusive licensee goes bankrupt, i.e. right to terminate at anytime or with short window for notice.

IP Ownership

Issues specific to Patents Trademarks and Copyrights

- **Patents:**
 - **Limitations on assignments of patents – KS Statute K.S.A. 44-130**
 - **Limits what can be assigned to inventions relating to business of employer or developed with equipment of company or on company time.**

IP Ownership

Issues specific to Patents Trademarks and Copyrights

- **Trademark:**
 - Goodwill has to be assigned with the mark;
 - Quality control for licenses

IP Ownership

Issues specific to Patents Trademarks and Copyrights

- **Copyrights**

- **Assignments Revocable:**
- **Excluding works made for hire, an author may terminate any copyright assignment or license granted and reclaim the copyrights between the 35th and 40th year after the original grant or publication of the work pursuant to such a grant by following the procedure set forth in 17 U.S.C. §203**