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Chapter 14

Intellectual Property and the Energy Lawyer – Patents, Trade Secrets, Confidential Business Information, Copyrights and Trademarks

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§ 14.01. Introduction.

Intellectual property is intangible property—it cannot be touched. It is the musings of engineers, artists, consumers, mechanics and marketing professionals. It includes ideas, information, writings and other recordings, and goodwill, and is protected under patent, copyright, trade secret, fiduciary duty and unfair competition laws.

Generally, the expression of ideas is protected by copyrights, the ideas themselves are protected by patent and trade secret laws, confidential business information is protected by contracts, fiduciary duty and trade secret laws, and trademarks, logos, and other marks used to identify the goods or services of a business are protected by state and federal trademark and unfair competition laws.

The purpose of this chapter is to give the energy lawyer a basic knowledge of the various types of intellectual property, including how to ensure that the company client owns the intellectual property developed by its employees or independent contractors, how and when to register or otherwise protect the intangible, what the protection means, and dealing with typical transfer and infringement issues.

§ 14.02. Patents.

Patent grants are issued by the United States Patent and Trademark Office (hereinafter referred to as the USPTO), and constitute a monopoly for a term of years for new and useful inventions and discoveries. The monopoly is granted as a quid pro quo for the inventor's *full* disclosure of an idea to enable a person "skilled in the art" to practice the invention. As stated by Justice Stevens in *Pfaff v. Wells Electronics, Inc.*,[1] "the patent system represents a carefully crafted bargain that encourages both the creation and the public disclosure of new and useful advances in technology, in return for an exclusive monopoly for a limited period of time." Without a patent system, technologies would either not be developed (as there would be little purpose in investing substantial time and money in developing a product that could be easily duplicated by competitors) or would be maintained by the owner as trade secrets, which would inhibit further development of the technology by others.

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1 Pfaff v. Wells Electronics, Inc., 525 U.S. 55, 63 (1998).