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US Patent Filing Options – Overview and Strategic Considerations

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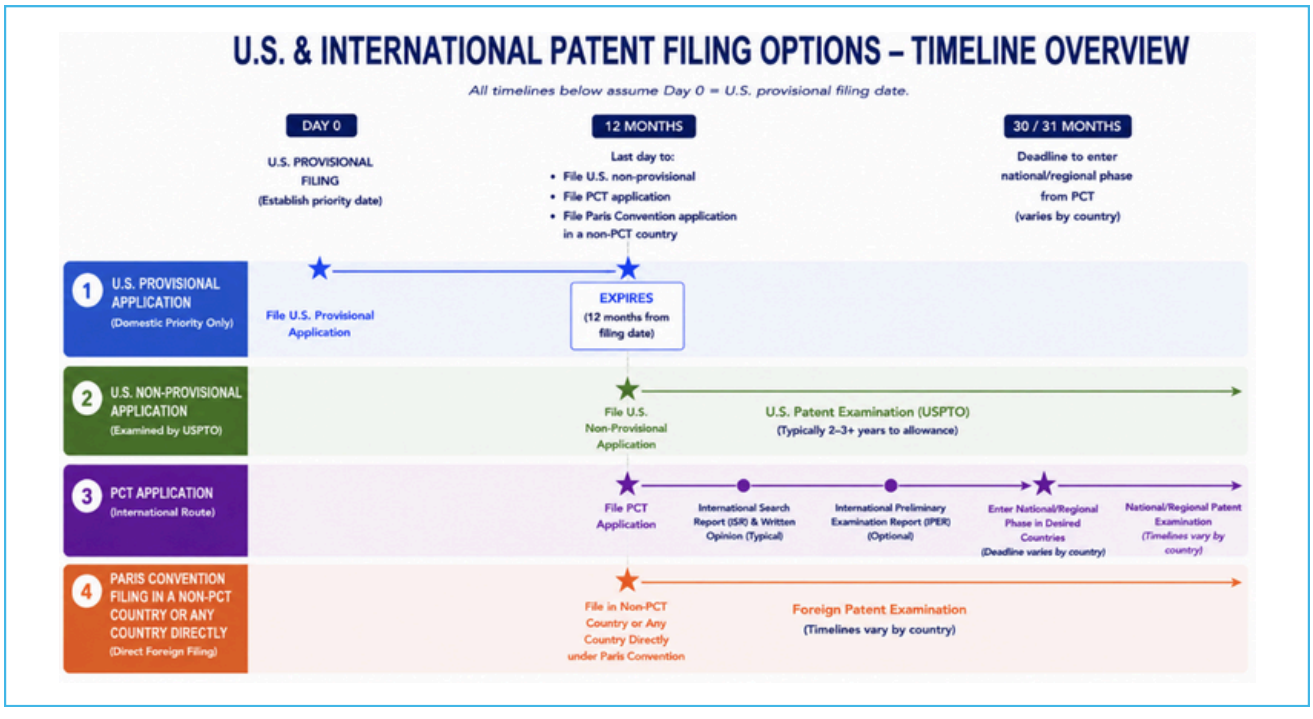
Developing an effective patent filing strategy is one of the most important decisions an innovator or business can make when protecting intellectual property. As patent rights are territorial and very time-sensitive, the correct filing strategy for your business goals, budget, technology lifecycle, and target markets is of utmost importance.

This article outlines the primary patent filing pathways available to applicants seeking protection in the United States and abroad, including:

- U.S. provisional patent applications
- U.S. non-provisional patent applications
- Patent Cooperation Treaty (PCT) applications
- Paris Convention foreign filings (foreign filings not utilizing the PCT system)

A common filing scenario is to first file a US provisional application. As shown in the graph below, filing a US provisional application provides an applicant the opportunity to file additional patent applications within 12 months thereafter.

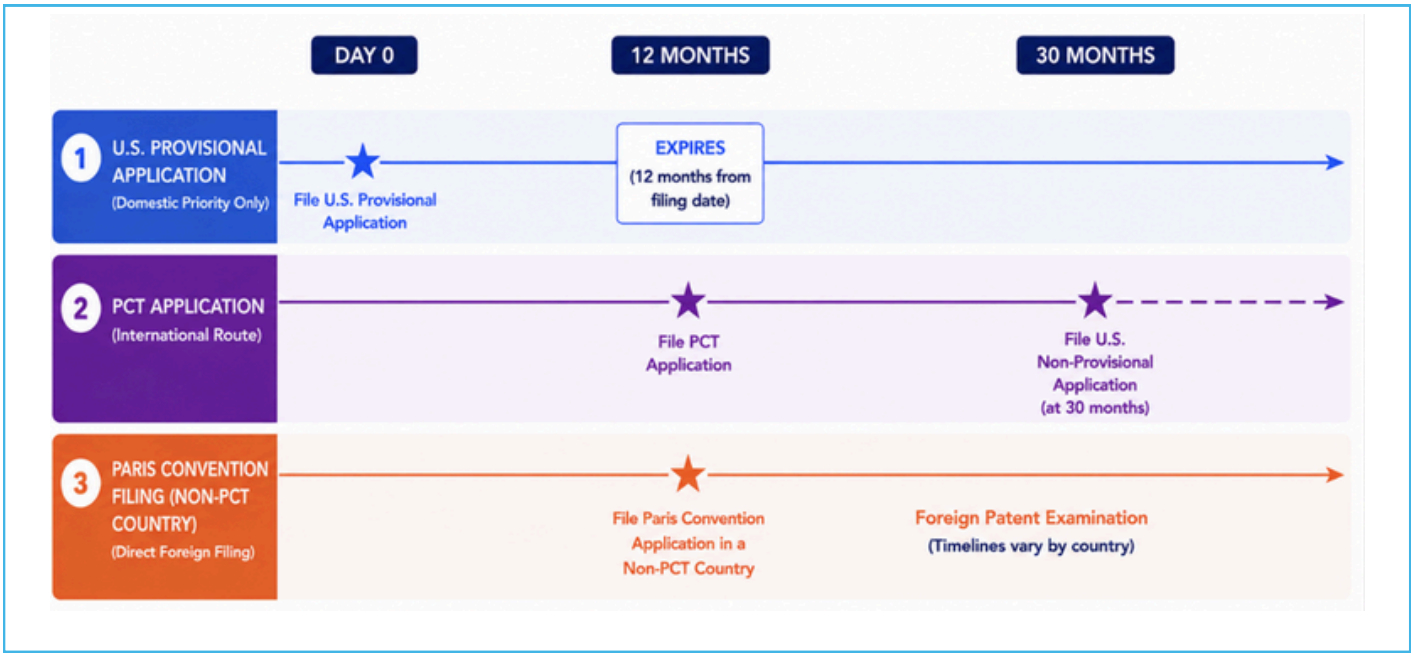


A first provisional filing provides various strategic benefits including establishing a first priority date under the US first-inventor-to-file system while allowing the applicant to defer a portion of legal and USPTO costs and formal requirements of a non-provisional patent application for up to 12 months. A provisional filing affords "patent pending" protections and permits an applicant to continue developing the invention, which could include evaluating commercial viability, seeking investments, conducting field trials, etc. A provisional patent is not examined and requires an additional filing within 12 months being either a US non-provisional or a PCT application (from which a US filing could be made further down the line as explained further below).

Provisional applications are commonly used when:

- The invention is still evolving
- Budget constraints exist
- Investors seeking early IP filings
- Public disclosure or product launch is imminent
- International filing decisions are still being evaluated

The below graphic shows a parallel path for filing a US non-provisional application along with foreign filings (PCT and/or foreign filings under the Paris Convention). However, another option exists as shown in the graph below which is to proceed directly to foreign filings at the 12-month mark, including preserving the option to later file in the US through the PCT process.



This filing pathway further delays the US non-provisional filing which can provide various benefits. Delaying US non-provisional filing and therefore examination in the US is replaced with an early assessment of patentability received through the PCT via an International Search Report and Written Opinion (ISRWO). The ISRWO provides an early insight into patentability while further delaying the timing of the decision of where to file (and significant costs associated therewith) by 30/31 months. This strategy is generally of interest to applicants who do not require the early issuance of US patents relative to foreign filings.

Instead, filing in the US through the national phase follows a more coordinated foreign and US strategy. Most often this approach is seen as valuable by applicants seeking global flexibility, slower path to US examination and issuance, deferred costs, and additional time for business and technology development.

Both graphics also show the option for filing a foreign application under the Paris Convention. This is a direct filing in any foreign country within 12 months of the earliest priority, such as the US provisional as shown. Importantly, for applicants that only want to file in a small number of countries and/or countries that are not part of the PCT system, this route can provide a more cost-effective filing strategy. Examples of countries not currently a party to the PCT system include, for example Argentina, Taiwan, Venezuela and Pakistan.

Selecting the appropriate patent filing pathway requires balancing legal protection, business objectives, timing, and cost. No single strategy fits every innovator or business. The patent attorneys and agents at MVS are available to advise on the best filing strategy. However, in all scenarios early coordination between inventors, business leadership, and experienced patent counsel is critical to developing an effective patent filing strategy as well as appreciating the significant nuance not able to be conveyed in a brief article such as this.

In These Uncertain Economic Time, It's Time For A Trademark Audit

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When economic conditions become uncertain, business budgets—including intellectual property budgets--get scrutinized for cost savings. While it may be tempting to view trademark maintenance and enforcement as discretionary expenses that can be let go, times like this are actually an ideal time to conduct a trademark audit--a systematic & through review of your company's trademark assets, registrations, applications, and brand usage to see both what you have that you do not need but also where you have gaps in your protection.

The goal is to ensure that valuable rights are protected, unnecessary costs are identified, and the trademark portfolio remains aligned with the company's business objectives and growth. This review can help direct resources toward protecting the company's most valuable brands while avoiding unnecessary maintenance costs.

Businesses evolve over time. New products and services are launched, marketing strategies change, and geographic markets may change. Yet trademark portfolios often lag behind these developments. An audit can reveal unregistered marks, outdated registrations, or geographic areas where additional protection may be warranted. Trademark audits can also help companies make informed decisions about portfolio management and help direct resources toward protecting the company's most valuable brands while avoiding unnecessary maintenance costs.

Another important consideration in a trademark audit is actual and ongoing use of your brands. In many jurisdictions, trademark rights can be

weakened or even lost if a mark is not actively used in commerce. An audit helps confirm that registered marks are being properly used on the goods/services for which they are registered. It can also identify situations where branding has evolved in a way that may no longer match the registered version of the mark, potentially creating vulnerabilities if challenged.

Finally, a trademark audit can support future growth. Even companies that are taking a cautious approach in the current environment often have long-term expansion plans. A clear understanding of existing trademark assets allows businesses to move more quickly when opportunities arise, whether through new product launches, acquisitions, licensing arrangements, or international expansion.

A proactive review today can help reduce risk, control costs, and position a business for success when market conditions improve.

Consider the following three questions:

Do our trademark registrations accurately reflect the brands (word marks, logos, taglines, etc.) that we are using today?
If your registrations no longer match how your marks are actually used (both in terms of the appearance of the mark and the goods and services identified in the registration), there may be gaps in protection.

Correspondingly, if there are any new trademarks that you have adopted and begun using, that may suggest the need for additional registration.

Have we launched any new products, services, or initiatives without seeking trademark registration in the U.S. or anywhere we sell or manufacture?
It is important to remember that while the U.S. is a first to use country where certain trademark rights develop as soon as the mark is attached to goods/services and those goods/services are sold, many countries around the world are first-to-file countries where rights are given to whomever files for registration first. So, if you are looking at expanding into new geographic markets (for sales or manufacture), you might want to preemptively file for registration to avoid a situation where a potential infringer beats you to registration.

If there are products or services that you began selling after the marks were registered, that may suggest the need for additional protection

Are we maintaining registrations for marks that no longer support our business strategy?
A review of the goods/services identified in your registrations is important to identify if your registrations cover products/services you no longer sell. If that is the case, you may identify registrations that may no longer justify ongoing maintenance costs, allowing resources to be focused on higher-value assets.

If you answered "no" or "I'm not sure" to any of these questions, it may be time to conduct a trademark audit. A periodic review can help ensure that your trademark portfolio remains aligned with your business objectives and continues to protect one of your company's most valuable assets—its brand.

New Procedures, Upswing in Discretionary Denials May Make IPR Proceedings a Less Attractive Option to Challenge Patent

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Recent changes in the way the United States Patent and Trademark Office (USPTO) determines whether to institute inter partes review (IPR) proceedings[1] make it more difficult and costly to get an IPR instituted in some cases. Overall, these changes favor patent owners and disadvantage parties seeking to invalidate patents.

IPRs

An IPR is a procedure for challenging the validity of a patent through the USPTO rather than in federal court. It was created by the America Invents Act starting in 2012 as a quicker and cheaper alternative to traditional litigation.

IPRs are conducted by panels of administrative judges at the Patent Trial and Appeal Board (PTAB). A third party may seek to invoke an IPR by filing a petition with the PTAB that identifies prior art that the petitioner alleges makes claims of a patent invalid as being obvious (35 U.S.C. § 103) or not new (35 U.S.C. § 102)). The PTAB may institute an IPR when "there is a reasonable likelihood that the petitioner would prevail with respect to at least one claim challenged in the petition." 35 USC § 314(a).

Discretionary Denials

However, the USPTO has for several years taken the position that even if the petitioner shows that it has a reasonable likelihood of prevailing on the merits, the PTAB may still deny a request to invoke an IPR, especially when parallel litigation is proceeding in the courts. Such a denial based on discretionary considerations rather than the merits is known as a discretionary denial.

Under former USTO Director Katherine Vidal, the Director of the Patent and Trademark (April 2022-December 2024), the agency took a relatively hands-off approach to discretionary denials. It would not exercise discretionary denial even in view of parallel litigation if the initial petition presented "compelling evidence of unpatentability" or if the petitioner stipulated that it would not pursue grounds it could reasonably have included in the petition in parallel litigation. Furthermore, the USPTO under Vidal did not treat parallel proceedings at the U.S. International Trade Commission as grounds for discretionary denial. See Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation, June 21, 2022 (rescinded Feb. 28, 2025).

Under the new administration, including Acting Director Coke Stewart and now Director John Squires, the USPTO has announced an intention to more vigorously use discretionary denials in order to "maintain PTAB capacity to conduct AIA proceedings" due to "the current workload needs of the PTAB." Interim Processes for PTAB Workload Management, Mar. 26, 2025. In this regard, it should be noted that the Federal return to in-person work and hiring freeze policies appear to have significantly reduced the number of PTAB judges available to decide IPRs.

[1] These changes also apply equally to post grant review (PGR) proceedings. Unlike IPRs PGRs are not limited to invalidity issues related to prior art, but can raise any issue that might affect the validity of the patent. However, PGRs must be filed within nine months of the issuance of the patent. PGRs are much less common than IPRs and so this article addresses primarily IPRs; however same new discretionary review procedures also apply to PGRs.

New Discretionary Review Process

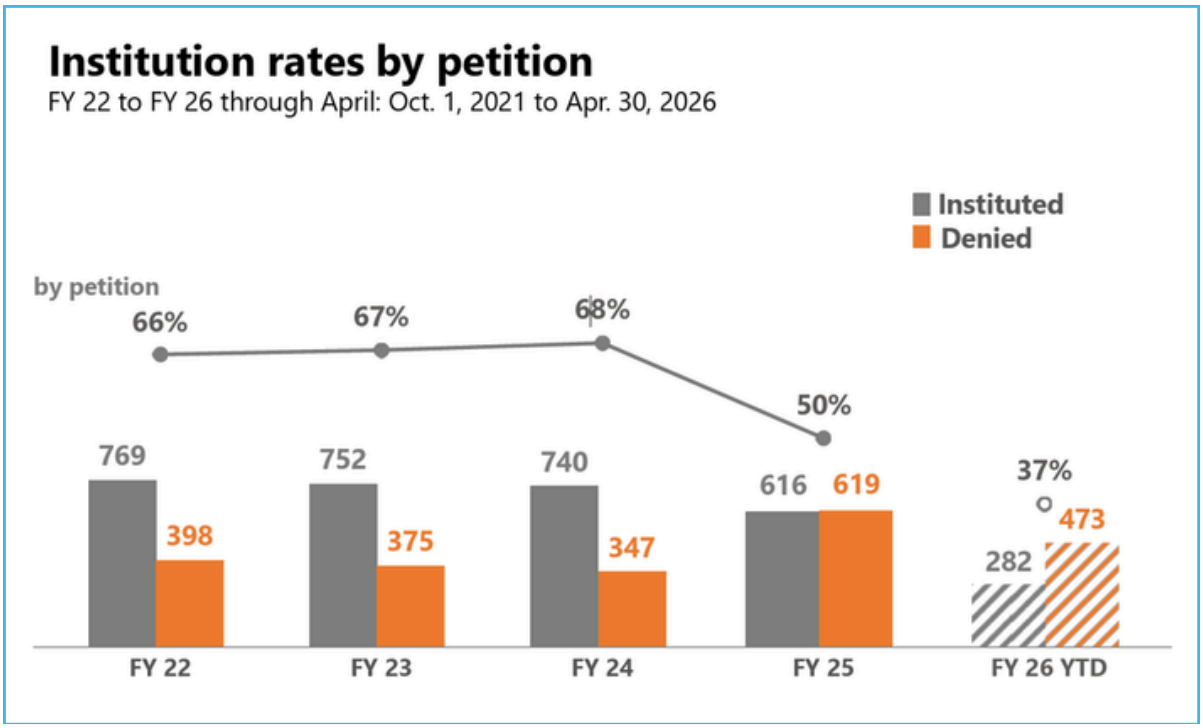
In furtherance of the more vigorous use of discretionary denials the USPTO has implemented a new discretionary process. According to the discretionary process, the decision for whether to implement an IPR is bifurcated between discretionary considerations and merits considerations. Most importantly, the USPTO has announced a briefing process related to discretionary review.

The patent owner has always had the option of filing a Patent Owner Preliminary Response within three (3) months after the request for IPR is filed presenting arguments for why the PTAB should deny the request to institute an IPR. Now, the patent owner may also file a brief within two (2) months after the IPR is filed setting forth reasons why the USPTO should issue a discretionary denial. The petitioner can then file a responsive brief, and the patent owner is permitted a reply brief. The petitioner and patent owner are cautioned not to raise discretionary considerations in the petition or the Patent Owner Preliminary Statement. It does not appear that the filing of a discretionary brief tolls the time for the Patent Owner Preliminary Response.

Within one month after the issue is fully briefed, the Director (who has delegated authority to the Deputy Director) will issue a decision on discretionary considerations. If the decision is to refuse discretionary denial, the case is forwarded to the PTAB for review on the merits of whether to implement anIPR—e.g., whether there is a reasonable likelihood that the petitioner would prevail in showing that at least one claim is invalid.

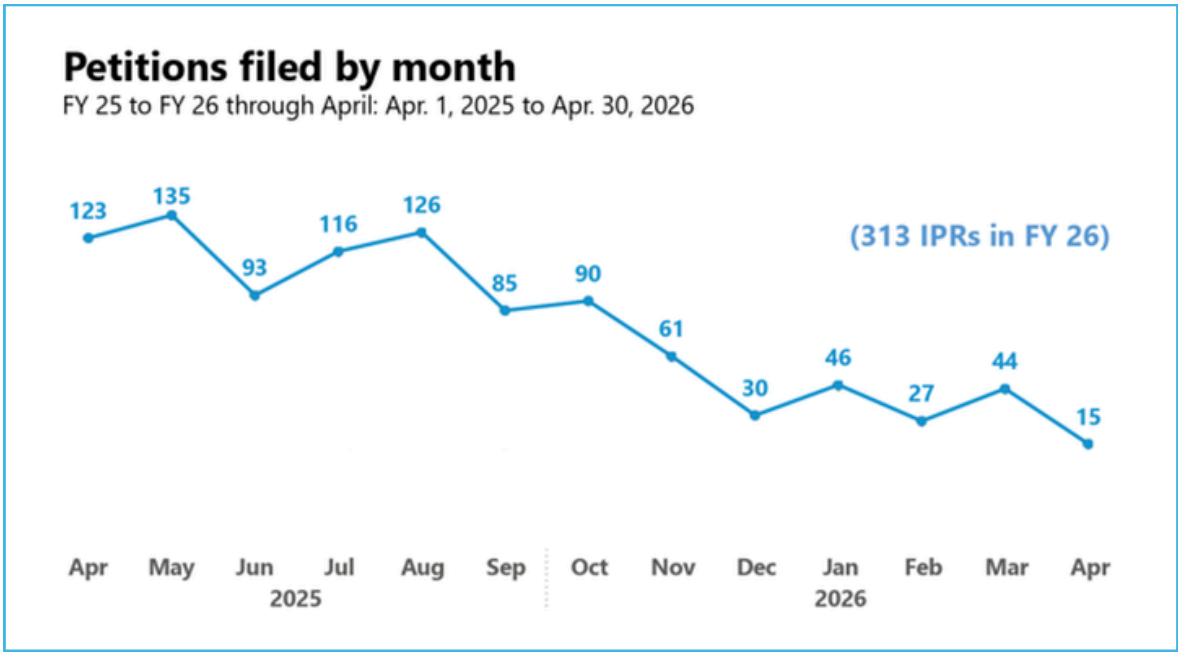
Fewer IPRs Being Instituted

The USPTO has been much more aggressive in issuing discretionary denials. As seen below, for fiscal years 2022-2024 (Oct.-Sept.), the institution rate for IPRs hovered around 67%. For fiscal year 2025 it dropped to 50% (and was even lower for Jan.-Sept. under the new administration). Since October of 2025, the institution rate has been only 37%. For FY 2026 (as of April 30), nearly two-thirds (62%) of petitions reviewed for discretionary issues have been denied. The petitions that have survived discretionary review have been instituted 76% of the time. So, the primary driver in reduced institution rates has been the discretionary review process.



Fewer IPR Petitions Being Filed

People wishing to challenge the validity of a patent have taken notice and changed strategy. For the first several months of 2025, the average number of IPRs filed was about 115 per month. For the last five months for which we have statistics (December 2025- April 2026) there has been an average of only 32 petitions per month-- a roughly seventy percent reduction in filings. April saw only 15 IPR petitions.



This reduction in IPR petitions has been somewhat mirrored by large upswing in requests for *ex parte* reexamination. For the first three quarters of FY 2025 an average of about 35 petitions for *ex parte* reexamination were filed per month. The first quarter of FY 2026 saw an average of 74 such petitions per month. Since January, about 100 *ex parte* petitions have been filed per month (https://portal.unifiedpatents.com/exparte/analytics/by-date)--nearly triple the 2024 rate.

How to Proceed Going Forward

These policies and procedures have a significant effect on the analysis of whether to seek an IPR. While typically costing less than federal litigation, the cost of seeking an IPR is significant. The non-refundable fee charged by the USPTO for requesting an IPR is $23,750 plus an institution fee of $28,125 that is refunded if the request is denied. The attorney fees for preparing the initial request can vary significantly depending on the technology, number of claims at issue, and complexity of the analysis, but $30,00-$100,000 would not be unusual. The new briefing related to discretionary review will only add to the expected attorney costs.

So, a party considering challenging the validity of a patent may want to consider whether there are significant issues that might make discretionary denial more likely, including whether federal litigation is already pending, how long the patent has been in force (the Patent Office now considers the length of time a patent has been issued as a factor to consider in exercising discretionary denial), if significant expert testimony is required (which may also be a factor weighing in favor or discretionary denial). If litigation is pending, the patent challenger may still issue a so-called “Sotera stipulation” stipulating that it will not raise issues that it could raise in the IPR in the parallel litigation, but such a stipulation must be filed early so that the patent owner can address it in any discretionary review briefing.

All of these issues may make other avenues such as an *ex parte* reexamination or traditional federal court litigation a more attractive option for challenging the validity of a patent. They would also favor filing any IPRs early before litigation is instituted and before the patent is later in its lifespan.

Of course, anything that is bad for a party challenging a patent is good for a patent owner. These new hurdles for instituting an IPR should increase the value of issued patents by making them more difficult to challenge. In instances where a request for an IPR is filed, the patent owner will want to strongly consider filing a brief requesting discretionary review to take advantage of the 62% discretionary denial rate.

Your MVS attorneys can provide guidance on whether an IPR is the best option for challenging a patent and for how to respond if someone challenges your patent with an IPR request.

Trademark Consent Agreements: A Cost-Conscious Alternative to Conflict

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One of the most common and costly issues in attempting to acquire a federal trademark registration is the citation of a purportedly conflicting trademark against your own. Because the examination process is dictated by the filing date, rather than when a mark was first used, business owners frequently find that registration for their marks is blocked by a third-party who started using their own marks months, years, or even decades later.

It may also be the case that the nature of the products or services associated with the respective trademarks is such that the customers could readily distinguish one provider from another. However, because the examination process looks at how the marks could be used rather than how they are actually being used, conflicts arise where common-sense suggests they would not. These roadblocks not only increase the costs of securing your registration but may prevent registration entirely.

Options for overcoming the conflict typically include arguing against the conflict, which can be costly with success being largely dependent on the particular examiner, or attempting to cancel the trademark causing the conflict to a considerable expense. Costs that are typically not budgeted for at the time the decision to register was made.

Fortunately, a third option exists in the form of a Trademark Consent Agreement with the owner of the conflicting registration. A Trademark Consent Agreement can be one of the most effective tools for resolving an examiner's refusal due to a perceived conflict with another mark. In fact, the Trademark Office must give such agreement "great weight" in resolving the conflict because "the [Trademark Office] should not substitute its judgment . . . for the judgement of the real parties in interest without good reason." TMEP § 1207.01(d)(viii).

With that said, in order to ensure that the conflict is resolved, the agreement should do more than state that one party consents to another party's registration. It should explain why confusion is unlikely and identify concrete steps the parties will take to keep their marks distinct in the marketplace.

Why "Naked" Consent Is Usually Not Enough

A bare consent that merely says the registration owner does not object to registration, generally carries less weight than a detailed agreement. The problem is evidentiary: a mere statement does not show why customers are unlikely to be confused. A successful agreement will instead address real marketplace facts, including the parties' goods or services, customer bases, channels of trade, geographic or field-of-use limitations, branding practices, and procedures for addressing any actual confusion that may arise.

Key Provisions That Make a Consent Agreement Persuasive

- Mutual consent and authority. Identify the parties, the relevant marks, the applications or registrations, and confirm that the parties have authority to enter the agreement.
- Reasoned explanation of no likely confusion. Include specific facts supporting coexistence rather than a simple conclusion.
- ·Separate trade channels or customers. Describe meaningful differences in sales channels, purchasers, marketing methods, price points, or purchasing conditions.
- Field-of-use or goods-and-services restrictions. If appropriate, define limits on products, services, geographic markets, industries, or customer segments.
- Brand presentation safeguards. Address packaging, logos, house marks, disclaimers, website presentation, or other measures that reduce the chance of mistaken source or sponsorship.
- Cooperation obligations. Require the parties to notify each other of reported confusion and cooperate in good faith to resolve it.
- History of peaceful co-existence. If the marks have coexisted without known confusion, document the period and circumstances of that coexistence.

Consent Agreement vs. Coexistence Agreement

The terms are sometimes used interchangeably, but they are not identical. A consent agreement is typically focused on permission to use or register a particular mark and is often designed for submission to the USPTO. A coexistence agreement is usually broader.

It may address future expansion, product boundaries, advertising practices, domain names, social media handles, enforcement procedures, and dispute resolution. In practice, the most effective consent agreements often borrow coexistence-style provisions because those provisions show how the parties will avoid confusion in the real world. Coexistence agreements may be necessary where the parties believe confusion could occur and are seeking to prevent it, whereas consent agreements are entered into by parties who believe no confusion would occur.

Considerations Before Using a Consent Agreement

While a consent agreement is a useful and often cost-efficient tool to secure your registration, it is important to consider whether it is right for you. A consent agreement necessarily diminishes the level of protection afforded to your mark as you are stating that the other party's mark will not

cause confusion. As such, when a third party with a similar mark comes along, they may be able to point to the consent agreement to justify their own use.

It is important to remember that a consent agreement not only diminishes your protection, but the protection afforded to the other party as well. Consent agreements are most often initiated by the party with the advantage. For instance, an applicant whose use of their mark predates the use of the registered mark has grounds to cancel the registration and leverages same into the consent agreement to avoid costs.

An owner of a registration without such pressures may be hard-pressed to agree to the consent.

Jumping the gun and seeking a consent agreement without having the cards in your favor may bring unwanted attention in the form of an action for trademark infringement.

Conclusion

Trademark consent agreements may be incredibly useful tools but are not an automatic ticket to registration. The best practice is to build a factual record showing why the parties' marks can coexist and to include practical, enforceable commitments that prevent the possibility of confusion. A well-drafted agreement should serve two audiences at once: the trademark examiner reviewing the application and the businesses that must live with the arrangement after registration issues.

Can Family Farm Names Be Protected Against Use By Others?

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We are periodically asked whether a family farm name, crest, or design can be legally protected against use by others. For a variety of reasons, this can be difficult. Below are some of the reasons why.

A. Family farm names can have both non-legal and legal significance.

Names of family farms, including graphic designs or logos, can have personal and non-legal historical significance, legal significance, or both. A family farm name can be just words. It can also be words in a specific font style, capitalization, and/or color. It can also be associated with a logo or what are called "design" elements (e.g., arrangement of words, geometrical shapes, silhouettes or images, and/or color or shade gradients). Below are a few examples.

B. Non-legal significance --if simply used as an identifier of the farm.
Non-legal significance can be simply hanging a sign at the farm entrance to denominate it and its geographical location (and sometimes its history e.g., "Since 1878"). Such use may be considered simply "informational", in the sense the sign is merely informing a passerby what the property is called. This, alone, may not give you any rights to stop others from using a similar name or design for any purpose.

NOTE: Iowa (and likely other agricultural states) do have programs to acknowledge and honor certain family farms. For example, the Iowa Department of Agriculture Century and Heritage Farms programs list and provide awards to family farms that apply and qualify. However, this honor gives no legal protection to the name, at least in the sense of determining who has exclusive rights to use the same or similar name in public. For example, there could be two "Jones Century Farms" on this list. For more information, please see www.iowaagriculture.gov/century-and-heritage-farm-program.

C. Legal significance as a business or corporate name for doing business, or for federal ag programs.
One legal significance can be use of a family farm name as a part of a corporate or business name for the farm operations for business and tax purposes. Hypothetical examples are: "Smith Family Farm, LLC", or "Jones Farms, Inc." instead of "Bob and Mary Smith" or "Henry Jones" on bank loans, equipment purchase agreements, and tax returns.

In such cases, it is registered as a business name with the corporate division of the Iowa Secretary of State for a small filing fee, and must be maintained annually. A non-farm business name example is "Nike, Inc.", which is the business name for the famous athletic goods company. That, alone, does not give any legal rights to control use of "NIKE" in the marketplace.

As discussed below, to gain the type of legal significance in a farm name or design to sue others to stop using requires at least one of the following special circumstances: (a) use as a trademark for products or services provided to others and/or (b) having some original creative graphic design protectable by trademark or copyright.

D. Legal significance as a trademark or brand for specific products or services.
A trademark requires not only (i) a word, symbol, or design but also (ii) use for one or more goods or services that are sold to consumers in association with that word, symbol or design. In other words, to claim trademark rights, the farm name must be labelled or "branded" on specific products or services that are sold or provided to consumers or customers of those products or services. This does not apply if crops or livestock are produced on the farm, but the farm name is not labelled on the crops or livestock when sold to others. And it does not apply to farming operation services carried out on the farm just for the benefit of the farm owner.

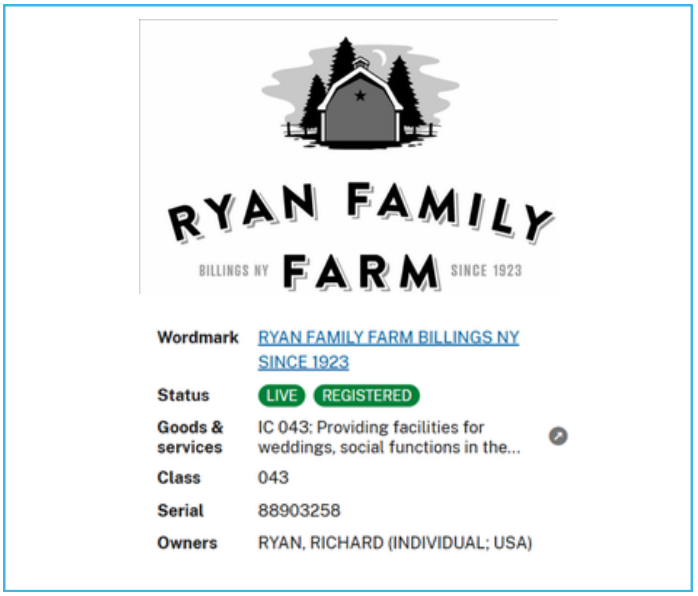
Using the "Nike, Inc." example above, "Nike, Inc." identifies the business corporation of the famous athletic goods company. This is not a trademark. But Nike, Inc. labels athletic goods or displays on advertising of services the wordmark NIKE®, the logomark , or the design mark NIKE that it sells or provides to the public. This allows Nike, Inc. to claim trademark or brand name rights in any such marked or branded goods or services provided to others; and allows Nike, Inc. to sue anyone that uses the same or similar mark for the same or related branded goods or services.

Thus, a farm name is typically not a trademark unless specific products are packaged and sold to the public with the farm name labelled on the packaging (e.g., "JONES FARM™" vegetables, eggs, bread, etc.) or services to the public are promoted with the farm name (e.g., "JONES FARM™ horse stables for rent, "JONES FARM" quilt-making classes, etc.).

If use of the farm name qualifies as trademark use, what are called “common law” trademarks usually exist automatically without applying to any government agency. These rights are recognized wherever you can establish a market penetration of sales or promotion of the mark. There are ways to elevate common law rights.
One is to apply for a trademark registration in any state in which market penetration is provable. Typical cost per application and per product or service is no more than several hundred dollars, and can be less.

The premium elevation of rights is applying for a federal (nation-wide) trademark registration with the United States Patent and Trademark Office (USPTO) in Washington, D.C. Eligibility requires sales or services provided with the mark in interstate commerce (typically market penetration in more than one state). Typical costs can be $1K-$5K depending on how many products or services are to be covered. But if granted, the federal registration has highly valuable legal enhancements over and above common law rights. In essence, it is a “bigger stick” to swing at anyone that tries to adopt and use a confusingly similar name for related products or services, reserves the whole country for possible expansion, and deters others from adopting confusingly similar marks.

Below are a few examples of federal trademark registrations granted for farm names, as well as the specific branded goods or services involved.



For example, the "Joseph Farms" registration covers "cheese". The "Ryan Family Farm" registration covers wedding venue services. One of the main limitations of trademark rights is that they tend to protect the name only against competitors selling the same or related products or services. Thus, if cheese is the only product commercially labelled "JOSEPH FARMS", the owner Joseph Salad Cheese Co., LP likely could only sue to stop others from using confusingly similar names for cheese and related dairy products. It may not be able to sue use of "JOSEPH FARMS" for sunflower seeds.

Investing in a federal trademark registration has the possibility of reserving rights for the entire USA. This can be invaluable for future plans to expand sales of goods and services regionally or country-wide. Trademark rights can also extend to graphic designs or logos (like the Nike "swoosh stripe" ) . The same rules apply. It must be marked on products or services sold to others in the marketplace.

E. Legal significance as a copyright for a specific graphic design.
To the extent a family farm "name" includes more than words and more than basic geometric shapes, copyright rights can be claimed. In the Gracemar Farms and Williams Farms examples above, those designs include potentially copyrightable graphics (i.e., over and above the farm name, the Gracemar image of a dairy cow and background and the Williams silhouettes of trees, chickens, barn, and windmill).

Copyright rights are different from trademark rights. Copyrights do not require the design be labelled on any product or service. It basically protects against copying of a graphic design that has at least substantial complexity and originality. However, their main limitations are as follows.

First, they only protect against copying. For example, if someone independently creates a similar, or even almost the same, design without first seeing yours, they are not copyright infringers. Second, they only protect against substantially similar or almost identical copying and do not protect the general idea of a graphic. For example, if copyright exists in the trees, chickens, barn, and windmill of the "WILLIAMS FARM" signage above, the trees, barn, and cows of the "JOSEPH FARMS" design would not infringe. But copyrights are a powerful legal right to prevent copying. And those rights can be elevated by applying for a federal copyright registration with the U.S. Copyright Office.

The bottom line is a family farm is real estate property. It is also a vocation; and a home. A name that identifies the people that own(ed), work(ed), or live(d) there can arise naturally over time and by recognition by members of the community. Some states like Iowa have programs to register the name to recognize and honor family farms. But this is not necessarily legal protection of the name. It is primarily informational to designate a property.

The checklist below summarizes major considerations regarding the foregoing:

1. Is your family farm name merely informational to identify the location of the farm or is it a part of a corporate name? If so, consult your business lawyer as to the mechanism for listing that corporate name with the Secretary of State. If eligible, consider also registering it with the agricultural agency as a century (100 year) or similar farm. Neither of these controls use in the marketplace.
2. Are any products or services branded with your family farm name sold or provided to the public? If so, consult a trademark lawyer as to what level of trademark protection might be pursued. If eligible, taking the steps to protect the name by trademark may allow the ability to stop others from using a confusingly similar name for at least certain products or services.
3. Is there a substantially complex, artistic design associated with the words used to identify your farm? If so, consult a copyright attorney as to what level of copyright protection might be pursued. If eligible, taking steps to protect copyright may allow the ability to stop anyone else from copying that specific design for any purpose. Make sure you have a written agreement of complete ownership of copyright if you engaged a graphic artist or anyone else to create the design, even if they collaborated with you regarding the design.

Why Intellectual Property Belongs in the Budget During Economic Uncertainty

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When markets become unsettled, companies often begin with the same instinct: conserve cash, delay discretionary spending and defer decisions that can wait. It is tempting to sweep intellectual property (IP) investments into that initiative. Patent filings are postponed. Formal trademark protection is foregone. The impulse is understandable, particularly as IP assets are generally intangible. But ultimately, that approach is shortsighted for companies seeking to build long-term value. Rather than treating IP investment as a cost tied only to new research and development or marketing initiatives, companies should use periods of economic uncertainty to identify and capture intellectual property assets already in their possession and which are underutilized or underleveraged. Those assets can become alternative sources of revenue or value, safeguards against copycats looking for shortcuts in tighter markets, and meaningful points of differentiation for investors and consumers alike.

1. Capitalizing on Existing Intellectual Property Assets Can Generate Additional Revenue and Growth

Leveraging an intellectual property asset doesn't necessarily require additional spending in terms of research and development or marketing. When trying to identify ways existing intellectual property assets can add new value, you should start by taking an inventory of what intellectual property assets are already owned or controlled by your company. This could include existing patent filings, existing trademark registrations, or even other less traditional forms of IP assets such as databases, customer lists, trade secrets, and trademarks in use without formal registration.

The next step involves an assessment of potential unrealized value in these assets. Patents and trademarks can be enforced against competitors, leading to damages or licensing royalties. Even without an enforcement action, patents and trademarks can be licensed, sold or cross-licensed as an alternative source of income. Additionally, a clear articulation of IP assets is useful for securing investors or strategic partners. All of this can be done with the help of IP counsel and without substantial new investment in research and development.

Times of economic uncertainty often also create opportunities for growth. Companies that understand the scope of their IP portfolio and have identified areas for market share growth can use times of economic upheaval to acquire IP assets from competitors at favorable terms, expand their freedom to operate or enter adjacent markets more efficiently than through internal development alone.

2. Intellectual Property Assets are a Business Strategy for the Decade to Come

Even during turbulent market conditions, the long horizon matters. Intellectual property assets are by their nature long term assets. A U.S. utility patent can provide up to 20 years of exclusivity. Trademarks, if maintained and used properly, can last indefinitely. Copyrights endure for generations. In other words, decisions made during a difficult quarter, or year, may shape competitive advantage for decades. Shortchanging intellectual property spend in the present deprives your company of protection of important assets five, ten, twenty, or more years in the future.

Rather than cutting intellectual property investment entirely, it is better to be more selective and strategic about where to invest in intellectual property. IP spend should always be aligned with existing and planned commercial products, dominating competitor products, planned market expansion, and any areas where there is a high risk of enforcement actions. More defensively, IP can be used to ensure freedom to operate and right to continue using your own brand. "Right sizing" your IP portfolio with the help of experienced IP counsel can help keep

costs to a minimum while ensuring sufficient coverage for years to come.

3. Customers and Investors Become More Discerning

Periods of economic uncertainty also tend to sharpen the value of differentiation. Customers become more selective. Procurement teams scrutinize alternatives. Investors look harder for defensible advantages. In that environment, a protected technology or a trusted brand can do more than protect market share: it can signal reliability, endurability and future growth.

This is particularly important when competitors are making similar claims about quality, efficiency, or innovation. A strong IP position gives those claims substance and sets you apart from competitors. Patent protection can demonstrate that a company's technology is not merely incremental, but meaningfully distinct. Trademark protection can reinforce customer trust and brand recognition at a time when purchasing decisions may be more cautious.

For investors and strategic partners, intellectual property can serve as evidence that a company has something substantial to protect and something scalable to commercialize. In tighter markets, where capital is deployed more carefully, that matters. An intentionally structured IP portfolio can help distinguish a company not only by what it sells today, but by the competitive position it is building for the future.

The Bottom Line

Economic uncertainty calls for discipline, not elimination from the budget. That means working with experienced IP counsel to take a closer look at what you already own, identify assets that have not yet been fully protected or commercialized, and make deliberate decisions about where IP investment will support the business over the long term. Intellectual property is a long-term, strategic investment—and long-term strategy is where real advantage is built. The companies that continue to protect their innovations and brands while others hesitate will be the best positioned when conditions improve.

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Jill N. Link, Pharm.D., JD, Partner and Patent Attorney in the Biotechnology/Technology Practice Group and Licensing Practice Group.

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August 13, 2026 - Monterey, CA

Heidi Sease Nebel, Partner, Patent Attorney and Chair, MVS Biotechnology and Chemical Practice Group

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39*N Plant Science Family Reunion
August 20, 2026 - St. Louis, MO

Charles P. Romano, Ph.D., Senior Patent Agent in the MVS Biotechnology and Chemical Practice Group

Monica B. Nagpal, Patent Agent in the MVS Biotechnology and Chemical Practice Group

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