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IP and Legal Protection for Startups: Patents, NDAs, and Equity

How to protect your intellectual property without spending $100,000 on lawyers

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CHAPTER 1

Startup IP: What to Protect and Why

A startup's intellectual property (IP) is often its main asset. Investors check IP as part of due diligence. Acquirers pay a premium for companies with strong IP protection. Understanding the basics of IP lets you protect yourself without $50,000 in legal bills.

The four types of IP. Patents protect inventions. They give 20 years of protection. They require public disclosure. They are expensive ($10,000–$30,000+ for a US patent). Trademarks protect the brand (name, logo). They last indefinitely as long as you use them regularly. They are relatively affordable ($300–$400 USPTO filing fee). Copyright arises automatically on creation. It covers software, content, and design. It does not require registration (though registration gives you more rights). Trade secrets are confidential information that gives a competitive advantage. They are protected through NDAs and internal policies. Protection has no time limit for as long as the secret stays secret.

What counts as startup IP: source code. Algorithms. The database (structure plus data). Product design. The brand (name, logo, tagline). Business processes, if they are unique. Customer data (in terms of its structure and organization). The first rule: IP should belong to the company, not the founders. Employee and founder agreements are critical.

IP ownership mistakes that kill fundraising: a co-founder did work before incorporation → the IP belongs to them personally, not to the company. A freelancer wrote code without an IP assignment clause → the IP belongs to the freelancer. Open source code under a GPL license was used → all of your code must become open source. A founder left a previous employer with a non-compete or IP assignment → the employer may claim the startup's IP. These problems regularly block fundraising rounds.

The first legal documents. Incorporation: immediately after you decide to form the company. Founder agreements with IP assignment. A vesting schedule. Employee agreements: every employee signs an IP assignment plus an NDA. Freelancer agreements: an IP assignment clause is mandatory. Cost: Clerky, Stripe Atlas, and Doola run from $500 to $2,000 for a basic package.

CHAPTER 2

Patents: When You Need One and When They Are Overrated

“We need a patent” is a common reaction among founders. But patents are overrated for most startups. Understanding when you really need one will save time and money.

When a patent makes sense: hardware or a physical product with a unique mechanical invention. Deep tech (biotech, medtech, materials science), where IP is the core asset. B2B software with a unique algorithm that is hard to reproduce any other way. When your competitive moat depends specifically on patent protection. When investors in your niche expect an IP portfolio (biotech VCs).

When a patent does NOT make sense: a consumer app or pure software (most software patents are not enforced, and they are complex and expensive). When speed-to-market is your moat (by the time the patent issues, a competitor is already on the market). When your competitive advantage is brand, network, data, or team. When the budget is needed more for product and growth.

The reality of patent protection: a US patent costs $10,000–$30,000 (with a lawyer). Examination takes 2–3 years. Patent pending status begins right after filing. Enforcement: if a competitor infringes your patent, you need a court. Litigation costs $1M+. A small startup cannot enforce a patent against a large company. So for a startup, a patent is more of a signaling asset (for investors) than real protection.

Provisional Patent Application: quick ($320 USPTO fee plus $1,000–$2,000 for a lawyer). It gives you “Patent Pending” status for 12 months. It does not turn into a patent automatically; you must file a full application within 12 months. A good strategy: file a provisional early. Then decide whether you need a full patent.

Trade secrets as an alternative to a patent: if the algorithm is hard to reverse-engineer, a trade secret may be better. There is no

public disclosure (unlike a patent). Protection has no time limit. It requires strict access control. NDAs with everyone who has access. Clear documentation of what counts as a trade secret.

CHAPTER 3

NDAs, Co-Founder Agreements, and Equity

Most legal problems at startups come from badly written (or missing) agreements with people. These are the most important documents at the early stage.

NDA (Non-Disclosure Agreement). When you need one: before disclosing confidential information to partners, developers, and contractors. What a good NDA should include: a Definition of Confidential Information (what exactly is secret). Obligations of the Receiving Party (what they must do). Duration (usually 2–5 years). Exclusions (information that is already public or was obtained lawfully). Remedies. When you do NOT need an NDA: with investors (they usually do not sign NDAs, and that is normal). With potential customers on discovery calls.

Mutual vs. one-way NDA. One-way (unilateral): only one party discloses. Use it when you show a product and the other side discloses nothing in return. Mutual: both parties share confidential information. For partnerships and JVs.

Co-Founder Agreement: the most important document. It should include: Equity split and basis (who gets how much and why). Vesting schedule: the standard is 4 years with a 1-year cliff. If a co-founder leaves after 6 months, before the cliff, they lose everything. IP assignment: everything created for the company belongs to the company. Roles and responsibilities: who is CEO, who is CTO, who makes which decisions. Decision-making: what requires unanimity and what the CEO can decide. Buyout provisions: what happens if one founder wants to leave or buy out the other. Non-compete: how long a departing founder may not compete with the company.

Employee Stock Options (ESOP): the standard for attracting talent when you have no cash for market salaries. Option pool:

usually 10–15% of the company is set aside before fundraising. Exercise price: the strike price set at the 409A valuation. Vesting: the same as for co-founders (4 years, 1-year cliff). ISO vs. NSO: ISOs (Incentive Stock Options) are for US employees and carry tax advantages. NSOs (Non-Qualified) are for contractors, advisors, and non-residents of the USA. SAFE Note vs. Priced Round: a SAFE (Simple Agreement for Future Equity) is a simple instrument for pre-seed. It is not shares right away; it converts at a priced round. Cost: $500–$1,000 vs. $20,000–$50,000 for priced round documents.

CHAPTER 4

Trademarks: Protecting the Brand

A trademark protects your brand identifiers: name, logo, tagline. It is one of the most underrated and important types of IP for startups.

Why a trademark matters: without a registered trademark, anyone can use a similar name. A large company can register your name and force you to rename. Domain squatters use similar names. In M&A, the acquirer checks trademark status.

How to check name availability: USPTO TESS (Trademark Electronic Search System) for the US. EUIPO for Europe. CIPO for Canada. Check for identical names. Similar names in similar classes. Also check domain availability, social media handles, and Google results.

The USPTO registration process: choose trademark classes (Nice Classification): there are 45 classes. For SaaS it is usually Class 42 (Software as a Service). Prepare a specimen of use (a screenshot of your logo on the website). File a TEAS Plus application: $250 per class (online). TEAS Standard: $350 per class. After filing: USPTO review (3–6 months). Publication (30 days for opposition). Registration certificate. Total: $500–$1,000 for one class in the US if you file yourself.

Madrid Protocol: an international system for registering a trademark in multiple countries through one application. File in the USA → add countries through the Madrid Protocol. This is significantly cheaper than separate applications in each country. Popular for startups with global ambitions.

Trademark maintenance: in the US, a Declaration of Use (5–6 years after registration). Renewal (at 10 years, then every 10 years). Defend actively: if someone infringes, send a cease & desist letter. No enforcement means loss of trademark rights.

Color, sound, and shape: you can register more than just a name and a logo. UPS brown. The Intel “ta-da” sound. The Coca-Cola bottle shape. For startups, these are niche opportunities for differentiation through distinctive marks.

CHAPTER 5

Pre-Funding Legal Checklist

Before your first funding round (even pre-seed), spend $2,000–$5,000 on getting your legal house in order. It pays off: a clean cap table speeds up due diligence. No surprise issues means no loss of investor trust.

Corporate structure: incorporated in the right jurisdiction. US startups: a Delaware C-Corp (the standard for VC funding). Canada: a federal corporation or an Ontario/BC corporation. EU: depends on the country; an Estonian OÜ for the EU. Cap Table: clean and current. Excel, or specialized tools such as Carta and Pulley. All issued shares documented. All agreements with co-founders signed and reflected in the cap table.

IP audit: all IP assignment agreements signed (founders, employees, contractors). No open source under GPL/AGPL in proprietary code (check with FOSSA or Black Duck). The domain name belongs to the company (not a personal account). Social media accounts belong to the company. Trademarks: applications filed at least for the main market.

Employment and contractor documents: every employee has an offer letter plus an employment agreement plus an IP assignment plus an NDA. Every contractor has a services agreement plus an IP assignment. Stock option grants are approved by the board. 409A valuation: obtained from a certified appraiser (required for setting the exercise price of options).

Secrets and compliance: no publicly disclosed trade secret information. A Privacy Policy and Terms of Service on the website. GDPR compliance if you have European users (privacy policy plus data processing). If healthcare: HIPAA compliance. If finance: the relevant licenses.

Banking and finance: a business bank account separate from your personal one. Bookkeeping kept (at least the basics). Tax

filings current. No outstanding legal disputes.

The cost of a full legal cleanup before seed: $3,000–$8,000 with a competent startup lawyer. Clerky, Stripe Atlas, and Doola provide standardized documents for $500–$2,000. Cooley, Wilson Sonsini, and Gunderson are top-tier startup law firms (more expensive, typically for Series A+). YC Standard Documents are free and widely recognized.

What next

Thank you for reading “IP and Legal Protection for Startups: Patents, NDAs, and Equity”.

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