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## Intellectual Property: What is it?



Intellectual Property (IP) includes four basic types of property: patents, trademarks, copyrights, and trade secrets. Unlike real property assets, which are tangible, IP assets are considered intangible.

While it may be difficult to put a definitive price tag on IP, these assets may nonetheless offer significant value to a company, as well as a potential revenue source. Therefore, understanding and pursuing IP may be an offensive strategy designed to add value to an organization. In addition, in doing business, the IP rights of others may present a hurdle such that understanding IP may be a defensive strategy for avoiding costly conflict. A first step in understanding IP is to understand the difference between the four basic types.

A U.S. patent is an exclusionary property right granted by the United States Patent and Trademark Office (USPTO) to an inventor, meaning it provides the inventor (or the inventor's assignee) the right to exclude others from making, using, offering for sale, or selling the invention throughout the U.S., or from importing the invention into the U.S. for a period of 20 years from the filing date of the application for patent. This limited monopoly is granted in exchange for public disclosure of the invention. Inventions that are entitled to patent protection include those that are new, nonobvious, and useful. For example, a new alloy composition, a new machine for treating an alloy, a new alloy product, or a new method for processing an alloy may be the subject of a utility patent. The claims of a patent define the scope of what is excluded; i.e., the metes and bounds. For example, a recently issued patent contains the following claim:

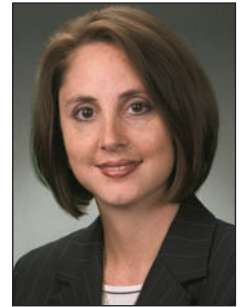
1. A high damage tolerant Al-Cu 2xxx-series alloy rolled product having a high toughness and an improved fatigue crack growth resistance, comprising the following composition (in weight percent): Cu: 4.1-4.4, Mg: 1.0-1.6, Zr: 0.06-0.18, Mn: 0.2-0.45, Cr <0.15, Fe: ≤0.15, Si: ≤0.15, the balance essentially aluminum and incidental elements and impurities, wherein the alloy product comprises Mn-containing dispersoids and Zr-containing dis-

persoids, and wherein the alloy product is in a T351 temper and has a microstructure wherein the grains have an average length to width aspect ratio of smaller than about 3 to 1.

This claim defines the alloy in terms of composition, temper, and microstructure. It is important to appreciate that the patent does not provide the patentee with the right to make, use, sell or import the claimed invention, only to exclude others from doing so. Patent protection is governed by federal law, not state law, and patent protection is also available in other countries.

A Federal Trademark Registration, represented by the symbol ®, is issued by the USPTO to an owner for a mark used to identify the owner's goods or services and to distinguish them from the goods and services of others. For example, HASTELLOY® is a federally registered trademark for a particular family of alloys provided by Haynes International Inc. Goods are physical commodities that are sold or otherwise transported or distributed via interstate commerce. Services are intangible activities that are performed by one person for the benefit of another person or persons, either for pay or otherwise. Marks can take several forms, including for example, a word (e.g., PEPSI®), a slogan (e.g., WHAT CAN BROWN DO FOR YOU?), a design (e.g., ☺), a sound (e.g., the NBC chimes), or a color (e.g., pink for insulation). State registrations are also available, which may be useful particularly where the use of the mark is within a single state, as opposed to within interstate commerce. Common law protection is the weakest form of protection, where the owner does not have a federal or state registration, but merely indicates the intent that a mark be associated with the goods or services of that owner by the use of the symbol TM. The TM symbol is commonly used for a mark while the application for federal registration is pending to provide interim protection. Again, trademark protection is also available in other countries.

Copyrights are automatically secured at the moment the work is created in fixed form. A Copyright may be federally registered by the United States Copyright Office, and there are definite advantages to doing so, including the ability to assert the property right against another who is unlawfully copying the work. Copyrights protect original works of author-



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ship, including literary, dramatic, musical, artistic, and certain other intellectual works, whether published or unpublished. The symbol © is used to denote a claim of copyright protection. Specific examples of protectable works include literary manuscripts, motion pictures, lyrics, musical compositions, paintings, sculptures, photographs, architecture, technical manuals, and computer programs. Copyright protection is governed by federal law.

*Trade secrets* are just that: secrets. While patents require filing an application with full disclosure of the invention to the public in exchange for granting patent protection, trade secrets require reasonable efforts to maintain the secrecy of the information or invention from the public, and there is no registration procedure. Thus, trade secrets are kept internal and are not disseminated to persons outside the company or even to persons within the company who have no need to know the secret information. For example, the formulas for Coca-Cola® or Kentucky Fried Chicken® are maintained as a secret asset. Additional

examples of types of information other than formulas that may be maintained as trade secrets include customer lists, computer source code, methods of manufacturing, techniques, etc. Essentially, anything that derives value from not being generally known or readily ascertainable and that can be kept secret may be eligible for trade secret protection. If reverse engineering is feasible within a reasonable time period, then trade secret protection is not the best form of IP protection. Trade secrets are generally governed under state law.

The forms of IP protection discussed above may be used in certain combinations to best protect and capitalize on the asset. For example, Coca-Cola® has numerous trademarks for their names, slogans, and distinctive bottle configurations, and maintains their cola formula as a trade secret. For a composition that could be reverse engineered during the useful life of the saleable product, patent protection for the composition is a better choice, in combination with a trademark for the product line. **HTP**

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