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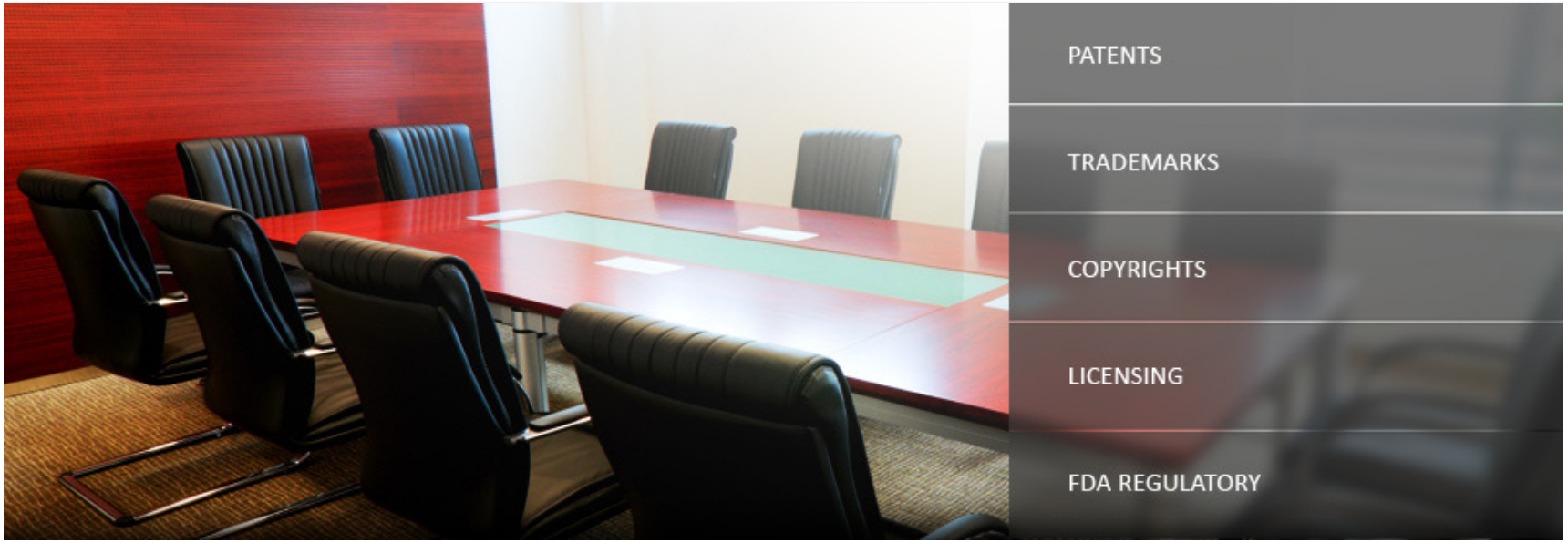

WHAT SETS US APART?

Patents

What is a patent?

A patent is a grant of rights from a government to the inventor in exchange for the inventor's full disclosure of an innovation. Until the patent expires, these rights allow the patent owner to "exclude" others from making, using, selling, offering for sale, or importing the invention into the country that granted the patent, much like a monopoly. Because the rights granted are "exclusionary" in nature, the patent does not grant the owner the right to practice its own patented invention. That right depends upon what other patents have been issued which relate to the invention.

Where is each patent protected?

Notably, patent protection is territorial in nature. That is, a patent protects the invention only in the country granting the patent. For example, a U.S. patent protects the invention in the United Sates but

anyone would be free to use the invention in France without accounting to the inventor.

What types of patents are there?

A patent may be one of three types: a utility patent, design patent or plant patent. Each type of patent has its own term of protection.

- **Utility patents** are granted on processes, compositions (e.g., a surfactant or transgenic plant), machines, and articles of manufacture (e.g., shoes). Protecting the utilitarian aspect of the invention, these patents are valid for 20 years from the filing date of a patent application.

- **Design patents** are granted on new ornamental designs. They are valid for 14 years from the date of issue if filed before December 18, 2013, or 15 years from the date of issue if filed on or after December 18, 2013.

- **Plant patents** are issued for a new and distinct variety of plant that is identified or discovered and asexually reproduced, unless the plant is found in an uncultivated state or the part used for asexual reproduction is a tuber food part or other edible tuber-reproduced plant. Plant patents expire 20 years from the filing date of the patent application.

How does the protection accorded by a patent compare to that of a trade secret?

Patents generally are more protective in that they bar others from reverse engineering or independently and innocently developing a patented innovation. On the other hand, other entities may lawfully design around the patent to get around it.

The recently enacted America Invents Act adds some interesting nuances to the scope of protection accorded to patents versus trade secrets.

What is involved in the patent process?

The patenting process begins with the patent attorney obtaining information from the inventor about the invention. The attorney then uses the information to conduct a patentability search. Though not required by law, the search indicates whether the invention has been previously patented and uncovers patents on subject matter related to the invention.

If the search results are favorable and the client is interested in pursuing patent protection, the attorney will next write and file a suitable patent application with the United States Patent and Trademark Office. There, a patent examiner, who is typically a scientist or engineer in the particular field of the invention, scrutinizes the claimed invention to determine if it meets all requirements for patentability. For a utility patent, the claimed invention must meet three rigorous requirements: it must have utility and must be novel and not obvious from a legal perspective. If the invention meets these requirements, a utlity patent will issue.

The timeframe from the filing of a patent application through the grant of a patent may range from about two years to four years or longer, depending upon how many patent applications are in queue before it for examination. The Patent Office provides several avenues for expediting examination.

If foreign protection is needed, an international patent application appropriate to the clients' needs may be filed.

Dziezak Law Firm, P.C. represents clients in the U.S. as well as foreign entities in matters involving Intellectual Property law including Patents, Trademarks, Copyrights, Trade Secrets and Unfair Competition, and in FDA Regulatory matters relating to food, dietary supplements, cosmetics, medical devices and drugs.