

# MANAGING CHALLENGES

Webinar #4: May 30, 2018

World Trade Month  
**Go Global**  
Webinar Series



# Go Global Webinar Series

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We are here to help you **Go Global**.

Get answers to your top questions on **Getting Started, Getting Paid, Preparing to Ship, and Managing Challenges**.

*Brought to you by your federal trade partners: the U.S. Small Business Administration, the U.S. Export-Import Bank, and the U.S. Department of Commerce (U.S. Census Bureau, International Trade Administration, U.S. Commercial Service, and the Bureau of Industry and Security).*

Access more international trade resources on [www.export.gov](http://www.export.gov).



# Episode 4: Manage Challenges

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How do I protect my intellectual property abroad?

What in-country assistance do I have access to?

What hurdles or trade barriers do I need to look out for and what can I do if I experience one?

# Today's Speakers

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Host:

Wendy Peebles  
U.S. Census Bureau



Presenters:

Benjamin Hardman  
Office of Intellectual Property Rights  
International Trade Administration (ITA)



Laurie Farris, Executive Director  
Office of Digital Initiatives  
ITA/U.S. Commercial Service



# Protecting Intellectual Property Abroad

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- What is Intellectual Property?
  - Patents
  - Trademarks
  - Copyright
  - Designs
  - Trade Secrets

# Protecting Intellectual Property Abroad

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- Let's Talk About Patents
  - Property Right
    - Granted for any new, useful, and non-obvious process, machine, article of manufacture, or composition of matter.
    - Right to exclude others
    - Claims define “fence” around the property
    - Limited term; 20 years from date of filing
  - Public/Private Exchange – Innovator discloses the invention to the public in exchange for the opportunity to be granted a patent.

# Protecting Intellectual Property Abroad

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- TRIPS Patentable Subject Matter
  - Requires that patents be available for any invention, whether products or processes, in all areas of technology provided that they are new, involve an inventive step, and are capable of industrial application.

# Protecting Intellectual Property Abroad

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- The Patent Cooperation Treaty (PCT)
  - The Patent Cooperation Treaty allows inventors/applicants to file an international patent application but...
  - There is no “international patent”
  - The Patent Cooperation Treaty functions as a patent application filing system.
  - The applicant must still prosecute the international application in each national or regional office where patent protection is desired.

# Protecting Intellectual Property Abroad

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- Advantages of the PCT
  - To file in up to 152 countries with a single international application
  - To delay the expenses associated with
    - translations
    - foreign filing fees
    - local associates
  - To provide an early indication of pertinent prior art and a written opinion as to the novelty, inventive step and industrial applicability of the claimed invention
  - To give extra time for assessment of commercial viability in designated States

# Protecting Intellectual Property Abroad

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- Let's Talk About Trademarks

- A trademark is a:

- word,

- Ford

- IBM

- phrase,

- “JUST DO IT.”

- “WHERE’S THE BEEF?”

- symbol,



# Protecting Intellectual Property Abroad

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- Design,



that identifies and distinguishes the source of the goods of one party from those of others.

# Protecting Intellectual Property Abroad

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- The Madrid Protocol
  - provides a mechanism for trademark owners to file one application with The United States Patent and Trademark Office (USPTO) and designate other countries where they wish to register their mark.
  - simplifies trademark portfolio management by providing centralized application and maintenance processing

# Protecting Intellectual Property Abroad

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- Let's Talk About Industrial Designs
  - What is an industrial design?
    - An industrial design constitutes the ornamental or aesthetic aspect of an article.
    - An industrial design may consist of three dimensional features, such as the shape of an article, or two dimensional features, such as patterns, lines or color.
    - Design is where function meets form.

# Protecting Intellectual Property Abroad

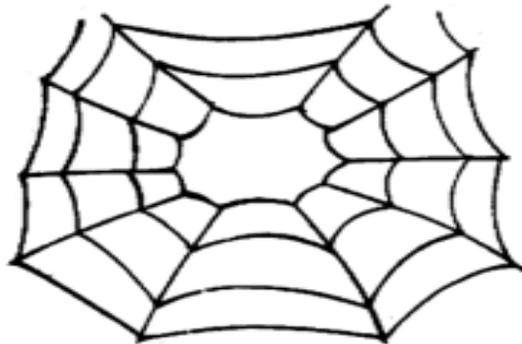
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- Design vs. Utility Patent
  - Design patents protect the way an article looks.
  - Utility patents protect the way an article is used and works.

# Protecting Intellectual Property Abroad

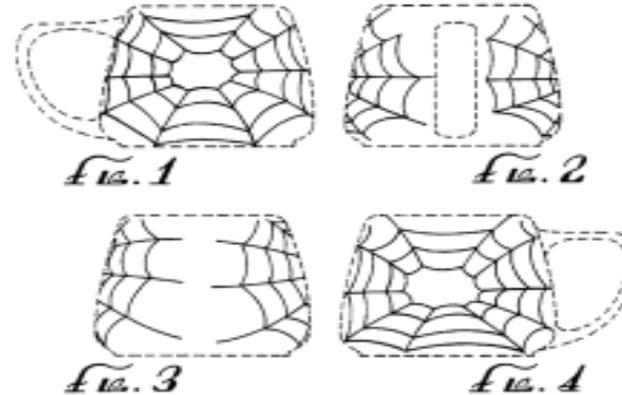
## Design “for an article”

### Disembodied Design



Not Acceptable

### Embodied Design



nd

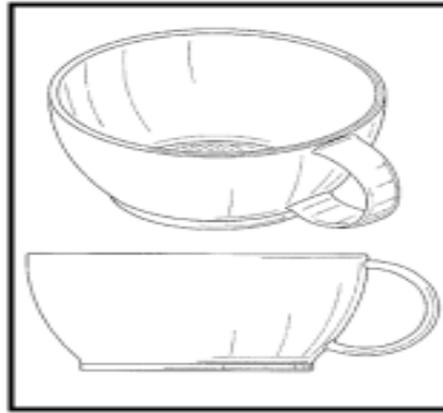


# Protecting Intellectual Property Abroad

## Scope of Protection



Surface ornamentation  
applied to an article



Configuration embodied in  
an article



Configuration and  
Surface ornamentation  
for an article

uspto

# Protecting Intellectual Property Abroad

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- The Hague System
  - The Hague System for the International Registration of Industrial Designs provides a practical business solution for registering up to 100 designs in over 66 territories through filing one single international application.
  - The Hague Agreement allows users to save time and money by enabling them to easily and swiftly acquire design protection in multiple markets

# Protecting Intellectual Property Abroad

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- Let's Talk About Trade Secrets
  - Information that...
    - has commercial value,
    - not generally known, and;
    - reasonable steps are taken to preserve confidentiality.

# Protecting Intellectual Property Abroad

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- Common Trade Secret Uses
  - Formulae
  - Manufacturing processes
  - Business strategies
  - Business management information
  - Customer lists
  - Design concepts

# Protecting Intellectual Property Abroad

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- Trade Secret vs Patent

## **Trade Secret**

- Indefinite
- Not registered or disclosed
- Can be separately discovered
- Remedies only if the secret is illegally appropriated

## **Patent**

- 20 year term
- Patents are publicly disclosures
- Right to exclude others
- Remedies for infringement

# Protecting Intellectual Property Abroad

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- International Protection
  - TRIPS Article 39 (2) – Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices so long as such information:
  - Footnote: For the purpose of this provision, “a manner contrary to honest commercial practices” shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

# Protecting Intellectual Property Abroad

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- Let's Talk about Copyright
  - Works of authorship include the following categories:
    - Literary works;
    - Musical works, including any accompanying words;
    - Dramatic works, including any accompanying music;
    - Pantomimes and choreographic works;
    - Pictorial, graphic, and sculptural works;
    - Motion pictures and other audiovisual works;
    - Sound recordings; and
    - Architectural works.

# Protecting Intellectual Property Abroad

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- International Protection
  - Berne Convention
    - The expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression.
  - TRIPS Agreement
    - Computer Programs,
    - Compilations of data or other material...which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such.

# Protecting Intellectual Property Abroad

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- What is Not Protected?
  - TRIPS
    - Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.
  - U.S.
    - Titles, names, short phrases, and slogans;
  - Mere listings of ingredients or contents;

# Protecting Intellectual Property Abroad

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- Formality-free Protection!
  - Berne
    - The enjoyment and the exercise of these rights shall not be subject to any formality;
  - Registration, Deposit, Notice??
    - OK, as long as they are not a condition of protection.

# Protecting Intellectual Property Abroad

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- Works Made for Hire
  - U.S.
    - In the case of works made for hire, the employer and not the employee is considered to be the author.
    - Copyright law defines a "work made for hire" as:
      - a work prepared by an employee within the scope of his or her employment;
  - Most countries have some sort of works made for hire law.

# Protecting Intellectual Property Abroad

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- Term of Protection
  - Generally life of the author +50 years (Berne Art 7(1) & TRIPS Art 12)
  - Generally life of the author +70 years. (U.S. §302)
  - For works made for hire, the term will be 95 years from the year of first publication or 120 years from the year of creation, whichever expires first. (U.S. §302)

# Resources: Business Guide

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- [www.stopfakes.gov](http://www.stopfakes.gov)



Intellectual Property Rights Information & Assistance

Business Guide

Consumer Guide

Ass

Intellectual Property Rights (IPR) Basics

IPR Toolkits

Country IPR Resources

Industry IPR Resources

# Resources: Online Training Module

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- [https://www.stopfakes.gov/ipr\\_training](https://www.stopfakes.gov/ipr_training)

Module 1:  
Introduction

Module 2: IP  
Protection and  
Your Business

Module 3:  
Understanding  
Different Types  
of IPRs

Module 4: How to  
Obtain and  
Protect Your IPRs  
in the United  
States

Module 5:  
Obtaining and  
Protecting Your  
IPRs Abroad

Module 6:  
Enforcing Your  
IPRs

# Resources: IPR Roadshow Events

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- <https://www.stopfakes.gov/Roadshows>

Seattle, WA July 24, 2018

Portland, OR July 26, 2018

Dallas, TX August 21, 2018

Austin, TX August 23, 2018 (to be confirmed)

Phoenix, AZ September 22, 2018

Tucson, AZ September 24, 2018

Philadelphia, PA October 30, 2018

# Manage Challenges: Prevention

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- Preparation and prevention go hand-in-hand:
  - Get Started
  - Get Paid
  - Prepare to Ship
  
- Managing Challenges:
  - Protect your intellectual property rights
  - Take advantage of our global network

# Manage Challenges: Global Network

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- The U.S. Commercial Service Global network:
  - 1400+ trade professionals; 100+ local offices; 70+ countries.



# Manage Challenges: In-Country Help

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- Direct access to:
  - In country expertise
  - In country contacts
- When/how to work with us:
  - Explore: online resources
  - Market entry: with U.S. Field
  - Transactional hold ups
  - Systemic issues

# Manage Challenges: Explore

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- Market Destination videos:
  - <https://www.export.gov/article?id=Export-Market-Videos>

## Export Market Destinations

For 20 dynamic markets, short videos present an overview of export opportunities and interviews with in-country trade experts.

Watch the [Export Market Videos](#) now.

Or, as an introduction to the series, watch the preview on this page or [download preview](#). [25 MB]



# Manage Challenges: Explore

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- Country Commercial Guides: market conditions, opportunities, regulations.
  - <https://www.export.gov/ccg>



# Manage Challenges: Market Entry

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- In-Country assistance entering markets and resolving issues.
- Connected to your local U.S. Export Assistance Centers.
- <https://www.export.gov/locations>

## WHERE WE ARE

Start with a [U.S. Commercial Service](#) trade professional in one of 106 domestic offices. We are located in U.S. embassies and consulates in 77 markets across the globe.

U.S. Offices

FIND

International Offices

FIND

# Manage Challenges: Transactional Hold Ups

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- Prevention, prevention, prevention....
- Result of mistakes:
  - By seller, buyer, government officials
  - E.g., documentation, classification, lost paperwork
- Potential resolution with In country help:
  - Referrals: legal advice; collection agencies
  - Good Offices: e.g., with customs or regulatory authorities

# Manage Challenges: Systemic Issues

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- Trade barriers:
  - Foreign-government imposed policies, practices, or procedures that unfairly or unnecessarily restrict U.S. exports or investment.
- Common types:
  - Tariffs
  - Border procedures
  - Import regulations
  - Government procurement irregularities
  - Transparency

# Manage Challenges: What To Do

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- Contact the U.S. Commercial Service Immediately.

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# Manage Challenges: Trade Barriers

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- Trade Agreements Negotiations and Compliance (TANC)
  - <https://tcc.export.gov/>

<b>Report a Trade Barrier</b>
▶ Report a Foreign Trade Barrier <b>Now!</b>
<b>Defining a Trade Barrier</b>
▶ What is a Foreign Trade Barrier?
▶ Foreign Trade Barrier Examples
<b>Removing Barriers</b>
▶ Trade Agreements Compliance Program



Overcoming China's Technical Barriers to Trade

# Manage Challenges: Foreign Procurements

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- Advocacy for U.S. exporters bidding on foreign public-sector contracts
  - Level the playing field.
  - Multilateral development banks.
- <https://2016.export.gov/advocacy/>



# Archived Webinars

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For more information for previous webinars, please go to:

<http://www.census.gov/foreign-trade/outreach/index.html>

- **Get Started:** May 9, 2018
- **Get Paid:** May 16, 2018
- **Prepare to Ship:** May 23, 2018
- **Manage Challenges:** May 30, 2018

# Questions?



# International Trade Resources

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## **WWW.CENSUS.GOV/TRADE**

- Press Releases
- Schedule B, Tariff Code Support
- References and Guides
- Hub for Data

## **Prepared Data**

- Imports and Exports of Merchandise
- Imports and Exports History
- Standard and Custom Data Products
- State and Port Data

## **Access to Detailed Data**

- International Trade Time Series (Census API)
- USA Trade Online:  
[usatrade.census.gov](http://usatrade.census.gov)

# FOR MORE INFORMATION

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