

# Building a Health App? Part 2: Protecting Your Intellectual Property

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This post is the second in a series of weekly blog posts covering legal issues for consideration during the early stages of development of a health app and providing best practices to help guide you through a successful launch. Consideration of intellectual property (IP) protection early in the development of a health app is important. Otherwise you could lose the opportunity to do so in the future or be forced to change the name or other details of your app after you have already invested time and money in the app.

## Trademark

Does your health app have a name? A logo? A tagline or slogan? Will it be marketed anywhere? If the answer to any of these questions is “yes,” you should think about applying for trademark protection. Words, names, slogans, sounds, symbols, and more can be protected by trademark if used to indicate a source of the goods/services (i.e., the health app) and to identify and distinguish the health app from those offered or sold by others.

Like each of the IP rights discussed herein, trademark rights exist on a country-by-country basis. So one part of the IP protection process is identifying the countries where your app may be available because you will likely want to consider applying for IP protection in those countries.

The U.S. recognizes common law in trademarks, so it is usually a good idea to start the trademark evaluation process early so you can find out whether any names, symbols, etc. you want to use are already in use before getting too far into the app’s development or marketing process. Google searches can be effective in quickly identifying roadblocks, but a more exhaustive search as advised by a trademark practitioner yields more complete results that are more reliable when making important business decisions.

U.S. trademark rights are based on use, not on registration, but it is often a good idea to apply for trademark registration to make sure you have clear trademark rights and have the ability to enforce your trademark against others. Registered trademarks can also be useful to have for products that may be licensed or sold because they can increase a licensee’s or buyer’s confidence in the uniqueness of a product.

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## Patent

While patents are typically the most expensive type of IP right to acquire, they are usually the most valuable for blocking competitors, building company value, and creating license opportunities.

Similar to trademarks, it is almost never too early to start thinking about patent protection and consulting with a patent practitioner to start the patent application process. Patent rights in the U.S. and elsewhere worldwide are based on who files first for a patent, so time is of the essence to help ensure that someone else does not file a patent application for an idea that you actually invented first. Timing is also important because once a patentable idea is publicly disclosed, including any non-confidential disclosures to potential customers, to software developers, to friends or family, at trade shows, online, or elsewhere, the ability to get patent protection for that idea is lost forever in almost every country. The U.S. has a grace period for patent filing after a public disclosure, but it is a limited grace period.

There are two types of patent protection, and one or both types may be right for your health app. The first is a utility patent, which covers new and useful products and processes. This patent type is the most common but is also the more expensive to acquire since a patent application must be carefully prepared, filed, and then prosecuted in a series of back and forth communications with the patent office before a patent issues. All considerations that go into deciding whether to file a patent application and preparing a patent application are beyond the scope of this post, but it is advisable to consult with a patent professional to fully explore your options and make the best economic and strategic decision for your business.

The second type of patent protection is a design patent. A design patent protects a “look” or ornamental design. Even if a health app does not have any inventive ideas that may be eligible for a utility patent, many health apps will have a unique design interface eligible for design patent protection. See, for example, Apple’s U.S. Design Patent No. 604,305 for a graphical user interface with a grid of sixteen colorful icons on a black screen:

*Figure 1 of U.S. Design Pat. No. 604,305*

Design patents are typically far less expensive to acquire than utility patents, and are typically issued much faster than utility patents, which makes this type of patent attractive in the fast-moving, always-developing world of health apps.

## Copyright

Copyright in the U.S. protects original works of authorship fixed in any tangible medium of expression from which they can be perceived, reproduced, or otherwise communicated. For health apps, copyright will usually come into play for the app's source code and user instructions. Copyright protection exists automatically when a protectable work is created, so simply creating the work is enough to gain copyright protection. Government registration is required, however, to enforce a copyright in court. Copyright term varies by national jurisdiction but will almost certainly cover a health app's entire lifespan because copyright protection in the U.S., for example, since 1978 lasts for the life of the author plus 70 years.

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