

## Intellectual Property and Business: Part 4

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(NOTE: This is the final part of a series of alerts linking intellectual property and economic strategy. [You can read part 1 here](#), [part 2 here](#) and [part 3 here](#).)

Once a business identifies that it has acquired intellectual property, business policies and conduct can make certain that ownership is retained. Executing employee contracts and policies may require that the employee assign his right to the intellectual property back to the business. In certain cases the employee would agree to keep any proprietary information confidential and could be required to disclose all creative ideas made during employment.

Some businesses fail to educate their employees about intellectual property. Even worse, some don't even have employees sign contracts to protect that intellectual property or explain its IP company policies. When ownership questions occur, employees could claim ownership of the intellectual property. Even with contracts in place, a business should establish and explain its intellectual property policies to its employees.

### *Assignment Provision*

For patents, an inventor owns all rights to an invention. However, if the inventor is an employee, an employer could claim the invention under certain circumstances. If an employee is hired to invent and the employer can demonstrate that this was clearly spelled out for the inventor, the employer will be deemed the owner of any invention within the scope of the employment. The mere existence of an employer-employee relationship does not entitle the employer to an assignment of any inventions which the employee devises during the employment. The employee may not have to assign rights over to the business, but rather control the right under self-ownership. That makes it important that any business provide employment handbooks and agreements with assignment provisions to avoid unintentional ownership issues.

### *Nondisclosure Agreements*

A nondisclosure agreement is a contract to protect the confidentiality of secret information or company know-how. It may be made between two parties during a business transaction, or between an employer and employee. These agreements can be mutual agreements, where both parties are obligated to maintain secrecy, or they can be unilateral agreements, where only the employee becomes obligated to maintain secrecy. A nondisclosure agreement can be used to protect any type of information that is not generally known, and probably one of the best ways to maintain proprietary, confidential information.

### *Non-compete Agreements*

Non-compete agreements can protect a business from losing valuable trade secrets and employees who develop intellectual property. The agreements are a written promise by an employee not to compete with the employer, or jump to a competitor. A non-compete agreement is either a separate agreement or clause in an employment contract

that applies to confidential business information.

Non-compete agreements can be difficult to enforce since they may be viewed as restraining an individual's right to employment. But a properly structured agreement that imposes reasonable time and geographic restrictions avoids the possibility of losing confidential information.

If you have any questions on anything covered in this series or other ways intellectual property and business overlap, [please contact me](#) or any of the attorneys in [Barley Snyder's Intellectual Property Practice Group](#).

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