

# Klarquist

INTELLECTUAL PROPERTY LAW

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## Protecting Your IP ... From the Departing Employee

An employee may join or become a competitor. In addition to standard steps to protect your inventions, secrets, and works of authorship, below are some *possible* steps to protect your IP from a departing employee.

Employee IP Agreement	➤ Upon employment (and promotion), require each employee to sign a confidentiality, non-competition and present-assignment-of-future-inventions agreement, meeting applicable state law requirements, and citing company's separate IP policy statement. At least annually, send agreement to the employee with copy of current IP policy statement. At exit interview, ask employee to take a copy of agreement and sign a confirmation of its continuing obligations.
Limit Access	➤ Limit who can access your most important trade secrets.
Fingerprints	➤ Put fingerprints in confidential materials (e.g., meaningless closed loops in code, extraneous information in drawings) to prove copying.
Trade Secret Catalog	➤ Maintain confidential catalog identifying <u>without revealing</u> some of the company's most valuable trade secrets (noting that it is incomplete). E.g.: (1) our suppliers of [component X], or (2) our CRM customer intelligence notes. Quarterly, send it to all pertinent employees. At exit interview, review it. Why? To help a departing employee protect your trade secrets, and to show that the employee knew the information is your trade secret.
Virtual Patent Marking	➤ List your patents (and associated products) on a page of your website and mark your products with the word "patent" or "pat." together with the page's URL. Quarterly, send your technical employees that URL to review that list for accuracy. Why? To later show that the departing employee had knowledge of your patents, and to ensure the list's accuracy and avoid false patent marking.
Copyright Application	➤ Before departure, if company source code, blueprints, forms, training manuals, or other "Work of authorship" is at risk of being taken by the employee, quickly file a copyright registration application on the Work (using provisions for protecting source code and other trade secrets). Why? Sometimes statutory damages and attorney fees for copyright infringement are available only if the Work was registered before the infringement began.
Provisional Patent Application	➤ Before departure, if employee had access to inventions on which you plan to file a patent application, file a provisional patent application quickly, so that it is filed before the competitor files on the same or similar invention. This is particularly important under our new "first-inventor-to-file" patent regime.
Computer Access And Data	➤ Before departure, disable the employee's passwords and access rights, archive employee's e-mail account, and create and preserve mirror images of employee's hard drives and network files.