



MaRS | ENTREPRENEUR
WORKBOOKS
Intellectual property strategy series

Building Block 1
**Identifying your intellectual
property**

INTELLECTUAL PROPERTY STRATEGY SERIES

Introduction: What to expect

In his book *Outliers*, Canadian author Malcolm Gladwell looks at the relationship between statistical probabilities and the chance of success in your chosen field of work or sports. His essential claim is that you need around 10,000 hours of practice to become really good in a particular field.

This workbook guide will not take 10,000 hours to complete, so you should not expect that you will become an expert in intellectual property protection by going through the activities outlined within. Rather, the purpose of the workbook guide is to help you understand and focus on the key issues in the field of intellectual property protection, and to introduce you to frameworks within which to think and discuss essential areas of your business. The process offered will provide sufficient grounding in the topic so that you will know what questions to ask advisors and consultants, and, in the case of consultants, how to evaluate their work.

Additionally, this workbook guide provides a launch point for a number of vital business decisions you will have to make to develop your start-up. As a best practice, it is critical to return to these workbook guides and revisit facts and assumptions on a continuous basis. This will ensure not only that you build on your learning experience but that you adjust your assumptions to maintain the right course for your business.

The purpose of this workbook guide is to help you think strategically about your company's intellectual property (IP) by learning how to identify it.

This workbook guide will help you recognize and list the potential sources of your IP, such as the brands, products and services that your company owns and offers now, or may develop in the future. After listing these sources, you will be guided on how to break them down into smaller components and categorize what type of IP each of those components might be.

These exercises will lead to the next stages of formulating an IP strategy: identifying who owns the IP, what you should do to protect the IP that you own, how you can let others access your IP, and whether you need to take action before using IP owned by someone else.

Completing these exercises will build your knowledge in the area of IP law and will give you the basic ability to recognize your IP so you can make informed decisions about when to engage expert advice.

Building Block 1: Identifying your intellectual property

This is the initial workbook guide on IP strategy. It is designed specifically for entrepreneurs starting technology and biotechnology companies.

This workbook guide focuses on helping your team identify the IP that your company potentially owns. With a clear understanding of your IP inventory, you will be able to leverage the maximum value from your IP assets.

The task of properly identifying and classifying your IP is not an easy one. However, this workbook guide has been designed to walk you through the process. When you finish the workbook guide, you will have a complete list of the IP that is important to your business.

Business planning: The IP strategy workbook guide will help you create a list of your IP and how you are planning to protect it as part of your business plan. It will also allow you to identify and address issues about any IP that you do not own but use to operate your business.

How to use these workbook guides

1. Make it a team exercise and think it through!

Developing an overall IP strategy can be a daunting task. We recommend that you work in a team to develop your company's IP strategy. Work with your advisors and do further research as necessary. IP can raise complicated legal issues and it is in your company's best interest to seek expert advice when required.

2. Record your answers

As you go through the exercises in this workbook guide, record your answers in the accompanying workbook template so you can validate and use the information later. The lists you compile will be helpful when you are deciding what IP you need to protect and what IP you require permission to use.

3. Use the icons for help

The workbook guides are structured under the assumption that this is the first time you have undertaken an IP strategy exercise. To help provide context for some of the ideas in these workbook guides, we have clarified the ideas by defining key terms and offering real-world examples. In addition, we have provided links to online articles. For this reason you may find it easiest to use these workbook guides on a computer with an Internet connection.

Look for these icons:





denotes a key IP term that will recur in these workbook guides



indicates an example drawn from a real-world business in order to illustrate an important idea



denotes a link to a more in-depth online article, video or template



appears wherever you are asked to record something in the accompanying workbook template while completing the exercises



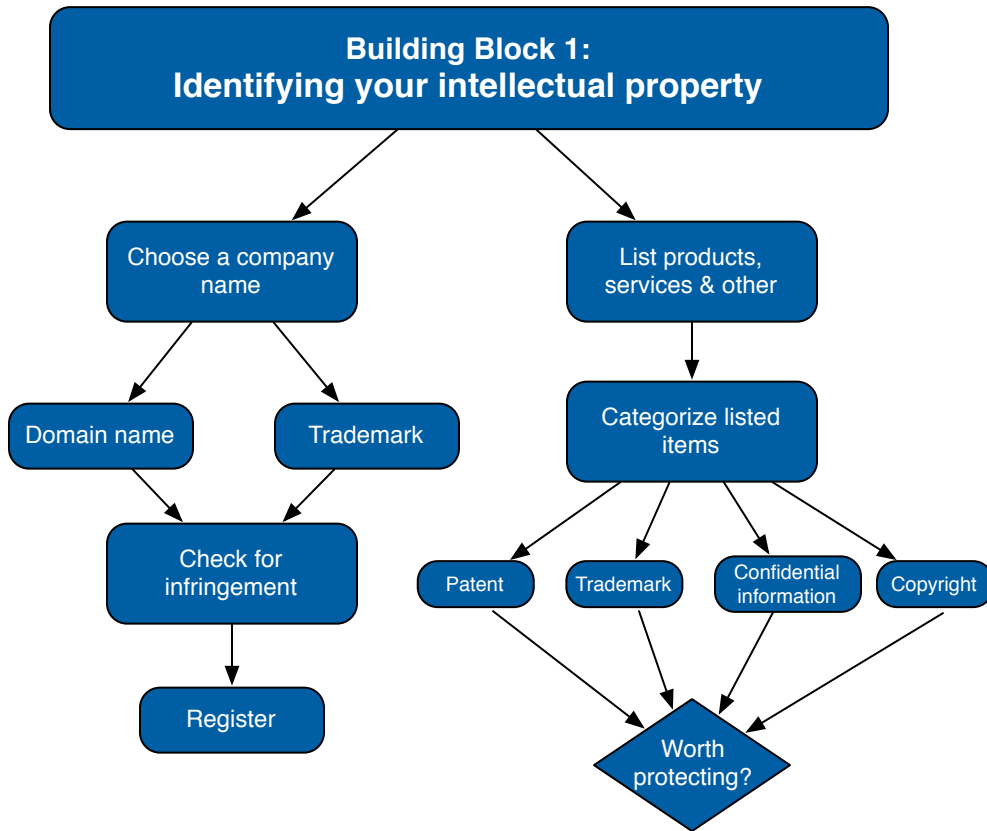
indicates key information for your business plan, pitch deck or other documents you might be preparing for potential external investors

Assumptions

These workbook guides are designed to assist entrepreneurs in early-stage companies that will provide innovative products or services. The workbook guides are based on IP management practices relevant for start-ups within a wide-range of industries including software, electronic and information technology products, web-based services, biotechnology, drug discovery and medical devices.

Before you start

The workbook guide will walk you through the process of identifying your IP and provide relevant examples to clarify what is required. The tasks described utilize information provided in the existing IP learning materials. If you find you require more information about terms or concepts described in the exercise, you may find it helpful to refer to the relevant article. The following chart outlines the curriculum and progression of this building block.



The next building block in this series will focus on understanding the ownership of the IP identified.

Building Block 1: Identifying your intellectual property

This workbook guide focuses on helping you identify the IP that your company potentially owns. It will help you address the following issues:

- Selecting a company name, domain name and trademark.
- Identifying your products or services.
- Determining which of your products and services can be protected as IP.
- Distinguishing what type of IP protection applies to each of your products and services.

1. Choose a company name

a. How to select a company name with trademark protection

Normally, the first potential trademark selected is for the company brand name or trade name. As part of the marketing strategy, the company's Internet domain name should be chosen at the same time. Online searches can be conducted in order to identify a brand name that is ideally available as a trademark, trade name and Internet domain name.

It is advantageous to pick your company's domain name prior to settling on your company name. There are two main reasons for this:

1. You will want to register at least the .com version of your domain name. Ideally, the .com, .net, .org, and .ca versions of the name you want will all be available. Thus, if you are flexible and willing to pick your company name based on the availability of a domain name, you will ensure you get the domain name you want.
2. By securing the .com, .net, .org. and .ca domain extensions you can be relatively confident that you are not infringing on another company's name or trademark. The reason for this is one of marketing and branding—it is unlikely a company would spend time and money on their company or product branding without registering its corresponding domain name. You should consider employing this tactic as well.

Consider the following well-chosen trade name, trademarks and domain names:

- Trade name (or, company name): Research In Motion Limited
- Trademarks: RIM, Research In Motion, BlackBerry
- Domain name: rim.com, rim.net

A practical problem in selecting a brand name is that trademark law makes it easier to protect unique names, whereas marketing needs to focus on simple names that communicate the meaning of the brand. Talking about and considering the competing requirements raised by marketing and IP law early on in the process will reduce

wasted effort. It can also maximize the chance of developing a successful branding strategy that you can legally protect.



Tips for selecting a trademark:

1. Initially, choose a name that can be used as a trade name and a domain name and is available for protection as a registered trademark.
2. Select brands and slogans for trademark protection if they are to be used for the long term.
3. Avoid wording that is confusingly similar to any existing trademark or brand.
4. Do not choose a name that is the name or surname of an individual.
5. Avoid wording that clearly descriptive or deceptive of the wares or services being offered.
6. Do not choose wording that uses the name in any language of the wares or services.
7. Avoid wording is specifically prohibited by the [Trademarks Act](#).

Bear in mind that other options exist for obtaining trademark protection, and that there are further prohibitions on what constitutes an acceptable trademark. If a name does not appear in the trademark database, it does not necessarily mean that you can obtain a trademark registration for it.

Follow these steps to find available domain names:

1. Go to [Network Solutions](#) (or other domain search websites, such as [Who Is](#) or [Tucows](#)).
2. Find the area on the page that says "Search for a Domain Name."
3. Keep the default selections of ".com" and ".net".
4. Type in the name you want without any spaces or hyphens and do not abbreviate or change the spelling in any way.
5. Click the "Search" icon.
6. Examine the displayed results.
7. Repeat these steps until you find a name that is available and then consider using it as your company name.



Record the results of your domain name search in the corresponding section of the IP workbook template. It is best to immediately register any available name with which you are satisfied.



Learn more about [choosing a corporate name](#).

Follow these steps to find available trade names:

1. Determine if you are planning to proceed with a provincial or



federal incorporation. Be aware that both the provincial and federal name searches cost money to perform.

2. To search incorporated companies in Ontario, use ServiceOntario's [Enhanced Business Name Search](#).
3. To search federally incorporated companies, use the [NUANS Name Search System](#).
4. Review the instructions and perform the appropriate search for the corporate or trade name of interest.
5. Examine your results.
6. Repeat these steps until you find a name that is available and then consider using it as your corporate name.



Record the results of your trade name search in the corresponding section of the IP workbook template. It is best to immediately register any available name with which you are satisfied.

At this point, you may have found a corporate name that you can use to incorporate your company.



Learn more about [when, how and where to incorporate](#).

Follow these steps to search the trademarks database for the chosen domain name and corporate names, and to assess availability. Note that trademarks are administered by the Canadian Intellectual Property Office (CIPO) on behalf of the federal government.

1. Search the CIPO [Canadian Trademarks Database](#) for registered trademarks and applications.
2. Review the instructions and perform the appropriate search for the potential trademark of interest.
3. Examine your results.
4. Repeat these steps until you find a name that is available and then consider applying for a trademark registration



Record the results of your trademark search in the corresponding section of the IP workbook template. It is best to immediately register any available name with which you are satisfied.

2. List your company's products and services

The purpose of this exercise is to create a master list of everything that touches your business. Although this will be a time-consuming task, it can be a rewarding one because you will inevitably discover you own a lot more IP than you think. If you neglect to identify your IP you will almost certainly fail to protect it, and that may put you at a competitive disadvantage.

Not every company makes products. However, resist the urge to skip the products section if you are a service-based company. Instead, think about whether there is a possibility your service-based company has a product. For example, a technology consulting company might distribute a help guide, or a social media website might sell its distribution list to an ad agency.

a. Products

A product is anything your company makes with the intention of selling or giving away. Most start-ups do not have a problem identifying their products. The tricky part is breaking down a product into its individual components and adding these to your IP list. For example, a start-up might make software, solar panels or DNA vectors. If we consider each of the individual components that make up a product, we might have a list that looks like this:



Example: Product lists

Software	Solar panel	DNA vector
<ul style="list-style-type: none"> • idea • workbook templates • specifications • code written by your company • code written by a third-party • data residing in a database • graphics • layout <ul style="list-style-type: none"> ○ graphical user interface • alpha- and beta-test results • documentation <ul style="list-style-type: none"> ○ help files ○ install instructions • support <ul style="list-style-type: none"> ○ phone/web/email ○ integrated • packaging <ul style="list-style-type: none"> ○ graphics/text ○ box design and shape ○ UPC code • sales pipeline <ul style="list-style-type: none"> ○ web ○ store ○ mail-order ○ other than for public (in-house, government, industry) • marketing <ul style="list-style-type: none"> ○ ideas ○ slogans ○ graphics • customers <ul style="list-style-type: none"> ○ existing ○ potential • agreements with others regarding any of the above • sales data • profits 	<ul style="list-style-type: none"> • idea • type <ul style="list-style-type: none"> ○ monocrystalline ○ polycrystalline ○ amorphous panels ○ nanoparticle silicon printing ○ proprietary • workbook templates • specifications • chemical mix • processes <ul style="list-style-type: none"> ○ bonding ○ moulding ○ wiring ○ assembly ○ cooking ○ framing ○ cleaning • test results <ul style="list-style-type: none"> ○ efficiency levels ○ defects and problems • supplier list • certifications • branding • packaging & shipping • support • documentation • customers • sales • agreements with others regarding any of the above 	<ul style="list-style-type: none"> • idea • workbook templates • method of construction • coding sequences • protein products • test results • documentation <ul style="list-style-type: none"> ○ instructions for preparation ○ applications for use • support <ul style="list-style-type: none"> ○ phone ○ web ○ email • packaging <ul style="list-style-type: none"> ○ logo ○ company name ○ shape and design of packaging ○ text • marketing <ul style="list-style-type: none"> ○ ideas ○ slogans ○ graphics • sales pipeline <ul style="list-style-type: none"> ○ publication ○ web ○ email ○ distributor • customers <ul style="list-style-type: none"> ○ existing ○ potential



Create your products list in the corresponding section of the IP workbook template. List each of your products, and then itemize each of the individual components that together make up the product.

b. Services


A service is anything your company does for its customers. Services often complement products, but in some cases, such as websites and professional services firms, the service is the product.

We will use different examples in this section because we will focus on service-oriented start-ups. This does not mean you can skip this section if your company makes products.

Most start-ups do not have a problem identifying their services. The tricky part is breaking a service down into its individual components and adding these to your IP list. For example, a start-up might provide one of the following services:

- software-as-a-service (SaaS)
- technology consulting
- gene knockouts

If we dissect each one of these services we might add the following to our master IP list:

 Example: Service lists		
Software-as-a-service ("SaaS")	Technology consulting	Gene knockouts
<ul style="list-style-type: none"> • idea • workbook templates • specifications • code written by your company • code written by a third-party • data residing in a database • data aggregation • graphics 	<ul style="list-style-type: none"> • idea • workbook templates • tools <ul style="list-style-type: none"> ○ hand-held tools ○ specialized equipment ○ software <ul style="list-style-type: none"> ⊙ created by you ⊙ created by a third-party 	<ul style="list-style-type: none"> • prepare knockout DNA vector <ul style="list-style-type: none"> ○ construct the vector ○ grow the vector in bacteria ○ purify the DNA • transform ES cells <ul style="list-style-type: none"> ○ grow ES cells ○ electroporate cells

<ul style="list-style-type: none"> • layout <ul style="list-style-type: none"> ○ graphical user interface <ul style="list-style-type: none"> ⊙ graphics ⊙ colour choice ⊙ page layout & design • delivery mechanism <ul style="list-style-type: none"> ○ web <ul style="list-style-type: none"> ⊙ add-ons to be installed in browser ⊙ program to run on PC ⊙ drivers ⊙ encryption • hosting <ul style="list-style-type: none"> ○ bandwidth requirements ○ service level agreement ○ physical location of hosting • alpha- and beta-test results • documentation <ul style="list-style-type: none"> ○ help files ○ install instructions • support <ul style="list-style-type: none"> ○ phone ○ web ○ email ○ integrated • marketing <ul style="list-style-type: none"> ○ ideas ○ slogans ○ graphics • customers <ul style="list-style-type: none"> ○ existing ○ potential ○ user statistics 	<ul style="list-style-type: none"> • supplies <ul style="list-style-type: none"> ○ physical hardware ○ software licenses • delivery of service <ul style="list-style-type: none"> ○ on-site ○ in-store ○ phone ○ Internet • documentation <ul style="list-style-type: none"> ○ telephone scripts ○ instructions ○ satisfaction surveys • know-how • marketing <ul style="list-style-type: none"> ○ ideas ○ slogans ○ graphics ○ company car • lists of consultants • customers <ul style="list-style-type: none"> ○ existing ○ potential • sales data • profits data • agreements with others regarding any of the above 	<ul style="list-style-type: none"> • select recombinant cells <ul style="list-style-type: none"> ○ select drugs ○ pick colonies • verify correct clones <ul style="list-style-type: none"> ○ expand colonies ○ analyze by PCR ○ analyze by Southern blot • store cells <ul style="list-style-type: none"> ○ expand colonies ○ freeze aliquots • update clients
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<ul style="list-style-type: none"> • sales data (e.g., number of subscriptions sold) • profits data (e.g., how much money you are making) • agreements with others regarding any of the above 		
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Using the above as an example, create your own list of services in the corresponding section of the IP workbook template. List each of your services, and then itemize each of the individual components that together make up each service.

c. Other items

Through its day-to-day operations, your company will create, receive or purchase a great deal of information and property. These items were probably not listed in your company's products and services list. Consequently, you should now build a catch-all list of items with which your company will come into contact. For example, your list might include items such as:

- incorporation documents
- bank statements
- employee agreements
- lease agreement
- correspondence
- office supplies
- physical property
- market intelligence
- signage




Create your own catch-all list in the corresponding section of the IP workbook template. List each of the items, and then break down each into its individual components.

3. Categorize your company's products and services

The goal of this section is to help you identify and categorize your IP. This is a

fundamental step before proceeding with the next building block of this workbook guide series, which will help you address other relevant IP issues.

The categories for IP are patents, confidential information, trademarks, copyright and “do not protect.” The characteristics for each of these categories are reviewed in the table on the following page.

 The Canadian IP system at a glance					
	Patent	Trademark	Copyright	Confidential information	“Do not protect”
Term:	Up to 20 years (not renewable)	Renewable 15-year period	Generally life of author plus 50 years	As long as kept confidential	N/A
Geographic scope of protection:	Across Canada	Across Canada (common law protection varies)	Across Canada	Across Canada	N/A
Protects against:	Use, sale, manufacture	Use	Copying, reproducing	Disclosure of information	Nothing
What is protected:	Inventions	Identity of your products and services: words, symbols, designs; name or logo used in business in association with wares and services	Original literary, artistic, musical and dramatic works and other subject matters: sound recordings, performances, communication signals that are fixed in a tangible form	Commercially valuable information that is not in the public domain	Nothing

Source: This is a modified version of the original, from the Canadian Intellectual Property Office, <http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/wr00821.html>

In the IP workbook template, the table in section 2 includes a “Category” column to indicate how you would classify each item of IP in your master list. The steps below will help you in this process. Use the following abbreviations as you go:

- P = patent
- CI = confidential information
- TM = trademark
- C = copyright
- DNP = do not protect

Step 1: Assess potential patents

Review the information below and evaluate which items in your master list meet the fundamental criteria for a patent. To be eligible for a patent, an invention must meet all three criteria below:

- New—it wasn’t known or reported before.
- Useful—it has a practical application.
- Non-obvious—it would not be obvious from prior inventions or information already available.

The *Patent Act* defines an invention as “any new and useful art, process, machine, manufacture or composition of matter or any new and useful improvement in any art, process, machine, manufacture or composition of matter.” Therefore, patents can include both material things and processes, and can also include improvements to material or processes that already exist.

Some of the items you list as potential IP might already be patented. If you have any concerns about prior patents then you should make sure to note this in the workbook template. Keep in mind that reviewing existing patents and determining their scope is best done with expert advice.



Learn more about [patent basics](#).



Examples: What you can or cannot patent

- **A new DNA vector which makes a protein that converts glucose into gold**

Genes, DNA sequences and proteins can be patented as long as they fit the criteria for patentability: novel, useful and non-obvious. They are considered a “composition of matter” when purified.

- **ABC gene mutation to predict XYZ disease**

Genes can be patented. This might be a patentable process if the ABC gene and its use in predicting XYZ has not been published, and wouldn't be obvious from what was already known about ABC and XYZ.

- **A new method to introduce DNA into eukaryotic cells**

This might qualify as a new and useful process, as long as it is not obvious from prior available methods or publicly available information. It would no longer be new if your student presented it in a conference abstract and poster two years ago.

- **A new spreadsheet software**

Software is not considered patentable subject matter and cannot be patented *per se*. Software may be patentable as part of a product or process but to make this determination, we recommend you seek expert advice.



For each item you listed in Section 2 of the IP workbook template, decide if it meets the criteria to be eligible for a patent. If it does, place a “P” in the category column adjacent to that item.

Step 2: Assess your confidential information

Review the information below and evaluate which items in your master list might satisfy the criteria for confidential information. In practice, you will want to treat most of your company documents, procedures and ideas as such. In Canada, we use the term “confidential information” to refer to information that:

- has commercial value,
- is not publicly available,
- is reasonably protected, and
- is communicated to others in confidence.





Learn more about [confidential information and trade secrets](#).



Examples: Confidential information

Confidential information:

- ideas
- workbook templates
- specifications (*maybe*)
- data residing in a database (*maybe*)
- alpha- and beta-test results (*maybe*)
- code written by your company
- marketing
 - ideas
- market intelligence
- customers
 - existing (*maybe*)
 - potential

Items you probably would not treat as confidential:

- incorporation documents
- business and tax numbers
- marketing materials already in use
- third-party programs or code
- office supplies
- property (*maybe*)
- company cars
- user documentation
- support
- packaging
- sales pipeline
- certifications



For each item you listed in Section 2 of the IP workbook template, decide if it meets the criteria for confidential information. If it does, place a "CI" in the category column adjacent to that item.

Step 3: Assess potential trademarks

Review the information below and evaluate which items in your master list might satisfy the criteria for items you can trademark. Those items worth protecting are those you intend to use over the long term, such as your company name and the brand name of your flagship products or services. Remember, you can also register the corresponding domain names.

Since a trademark is used to indicate the source of a product or service, it is also necessary to develop a generic name for the product and services that you offer. One example of a generic name would be "tissue paper"—a well-known product branded as Kleenex.



Learn more about [using an IP strategy to choose a company name](#).



Learn more about [trademark basics](#).



**Examples: Trademarks****Potential trademarks:**

- Company name
- Company logo
- Company long-term slogan
- Brand name of core products
- Brand name of core services
- Long-term slogan associated with core products and services
- Shape of product and packaging

Poor choices for trademarks:

- Short-term slogan



For each item you listed in Section 2 of the IP workbook template, decide if it meets the criteria to be eligible as a trademark. If it does, place a "TM" in the category column adjacent to that item.

Step 4: Assess potential copyrights

Review the information below and evaluate which of the items in your master list you believe satisfy the criteria for copyright protection. In practice, almost anything that is your original work and is written down will be granted automatic copyright protection in Canada.



Learn more about [copyright basics](#).



Examples: Copyright

Items you can copyright:

- graphics
- photographs
- documentation of all types
- marketing ads
- packaging (*majority of it*)
- list of potential customers

Items you cannot copyright:

- names
- factual data
- titles, slogans and short phrases
- bank statements
- UPC code
- certification marks
- telephone numbers



For each item you listed in Section 2 of the IP workbook template, decide if it meets the criteria for copyright protection. If it does, place a "C" in the category column adjacent to that item.


Step 5: Assess what is not worth protecting

This is the final step in the process. Review your list and deem which items do not need IP protection. Note that every item you have not already marked probably falls into this category. It is also possible to have marked an item as belonging to an IP category, but to consider the item not worth protecting. In practice, companies often choose not to protect a lot of information. The most common reasons for this are costs and that not protecting the item has little-to-no negative impact on the business.



For each item you listed in Section 2 of the IP workbook template, evaluate whether it is something you do not need or want to protect. If it is an item not worth protecting, place a "DNP" in the adjacent category column.

Once you complete step 5, your master list should look something like this:

 Example: Master list—DNA vector		
Item	Category	Comments
idea	CI, DNP	You cannot patent, trademark or copyright an idea. You may or may not want to keep it as confidential.
workbook templates	CI, C, DNP	Your workbook templates are likely original and written down so they can be copyrighted.
method of construction	P, CI, DNP	You can patent a scientific method of construction as a process if it is novel, not obvious and has a use. <i>Note:</i> Business methods and processes warrant special attention—obtain expert advice.
coding sequence	P, CI, DNP	You can patent a sequence if it is novel, not obvious and has a use. If you patent the sequence it will be publicly disclosed and thus not confidential information.
protein products	P, DNP	You can patent a protein if it is novel, not obvious, and has a use.
test results	CI, C, DNP	Test results may or may not be confidential information. If you publish the results they will not be confidential but they will obtain copyright protection.
documentation	C	Your written documentation can be protected by copyright and is usually worth protecting.
support	DNP	You cannot protect the physical act of support unless the support involves a medium such as software or documentation.

<p>packaging</p> <ul style="list-style-type: none"> ○ logo ○ company name ○ box shape ○ text 	TM, C	You can obtain a trademark (design-mark) for a logo, as well as for a distinctive box shape (the text will likely receive copyright protection). You can obtain a trademark (word-mark) for company name.
<p>marketing</p> <ul style="list-style-type: none"> ○ slogans ○ graphics 	TM, C	Slogans can be word-marked in relation to specific wares and services (e.g., “I am Canadian,” in relation to beer). Graphics can be protected by copyright.
<p>sales pipeline</p>	CI	Your sales pipeline falls under know-how, which is confidential information. It’s best to protect this information to increase your industry’s barriers to entry.
<p>customers</p> <ul style="list-style-type: none"> ○ existing ○ potential 	CI, C, DNP	Companies commonly advertise who their existing customers are, but keep their sales leads confidential. If you publish a list of customers it may be protected by copyright.

Further study

Refer to the following for further study as required:

- Canadian Intellectual Property Office: [Learn about IP](#)
- World Intellectual Property Office: [PATENTSCOPE® Publications](#)
- World Intellectual Property Office: [Small and Medium-Sized Enterprises \(SMEs\)](#)