



# AT THE BAR WITH BOWDITCH

A Legal Blog for the Craft Brewing Community

## The Secret Sauce: Protecting Brewing Recipes and Processes – The Role of Intellectual Property

BY ROGER ZIMMERMAN • SEPTEMBER 16, 2016

How can a brewer protect the brewing recipe that he or she has put so much effort into perfecting? [The U.S. Copyright Office takes the position](#) that copyright law does not protect recipes that are mere listings of ingredients. If the recipe includes secret ingredients, registration of a copyright requires the publication of the recipe, which may pose a problem – while the recipe itself is not eligible for protection, any secret ingredient would become public knowledge, a lose-lose situation. While a copyright registration can be obtained for a cookbook that contains the recipe, the protection is for the cookbook as a whole as a creative work of authorship, not an individual recipe.

Patent protection of the product and the method of making the product, which is usually more complicated than a mere listing of ingredients, could be eligible for protection by a utility patent if it can clear the hurdles of the prior art (i.e. publically-available information upon which the recipe expands or improves) and publication of the brewing process (that again). Beer recipes have been [reconstructed from residue in 5,000 year old pottery from China](#), and archaeological evidence from the Middle East suggests that [brewing may be as much as 5,000 years older than that](#). While there are few other areas of technology with records going back to the ancient Sumerians and Egyptians, patents are still being granted for improvements in the art and science of brewing. However, the process of applying for a patent is expensive, time-consuming, and requires the disclosure and publication of the very improvement that the brewer is trying to protect.

A key to your protection strategy should be keeping at least part of the recipe or some of the ingredients secret. Perhaps your grandmother was one who was always happy to share her recipes, but always left out a key ingredient that made the result uniquely hers. Trade secrets can be protected under state law, and a new federal law enacted in May 2016, the Defend Trade Secrets Act, supplements, but does not replace, the state trade secret laws. However, all of the trade secret laws only provide some recourse in the event that the secret is stolen. Preserving the secret itself depends on the diligent attention and effective methods taken by the owner of the trade secret. In an industry where brewers and assistants commonly move from one brewery to the next, keeping certain brewing ingredients or processes as closely guarded secrets may ensure that a departed employee does not bring your flagship beer to his

new brewery, even inadvertently.