

Protecting Innovation in Telemedicine

By Christopher M. Ramsey, PhD



The Florida Legislature is considering two telemedicine bills this session, but those bills are not aimed at protecting innovations in telemedicine technology. There are three general categories of telemedicine services, including: (1) interactive, (2) remote monitoring, and (3) data storage services. Interactive services allow for real-time electronic interactions between providers and patients. Remote monitoring services allow providers to monitor their patients remotely. Data storage services give the provider remote access to the patient's medical data.

These services are all computer software-based. Today, much of the innovation in telemedicine is associated with how the software functions. Because it can be very expensive to develop new software for telemedicine, software developers should try to minimize their competition through intellectual property (IP) protection. This article outlines some of the IP protection available for telemedicine software.

Patents. Software patents give their owners the ability to prevent others from copying the software's inventive functions, but they are more expensive and harder to obtain than other forms of IP protection. The United States Patent and Trademark Office decides whether software inventions are patentable during an extensive examination process. If the software merely allows someone to perform a previously known task on a computer, it is not patentable. But if the software makes a technical improvement to that task, the software is patentable so long as the improvement is not obvious.

Copyrights. Federal copyright protection is often the most useful source of IP protection for software. Owning a federal copyright registration permits the registrant to prevent others from copying the software's source code, which is written in a human-readable programming language. The bar for registering a software copyright is much lower than the bar for obtaining a software patent, but the drawback is that the scope of copyright protection is generally narrower than patent protection. Because copyright law protects the source code, but not necessarily the software's functions, copyrights are most useful against competitors that copy some or all of the copyrighted source code.

Trade Secrets. A trade secret is information that has value based on the fact that it is a secret. A software trade secret, for example, might be a proprietary algorithm required to make the software function. A drawback to relying on trade secret protection is that fact that once the secret is public, others can use it for their own purposes. This drawback makes it extremely important for trade secret owners to have a strict policy in place for maintaining confidential information. Trade secret protection is very

useful when (a) the software's functions cannot be easily reverse engineered by a competitor and/or (b) to prevent software developers from disclosing one party's trade secrets to another party.

Non-Disclosure Agreements (NDAs). An NDA allows parties to share confidential information while restricting how the information is used and disclosed. NDAs work in conjunction with patents, copyrights, and trade secrets, and also when the confidential information is not otherwise protectable. Even though a party might have protected its IP through all other available means, that party should still use an NDA when the need arises to disclose valuable information to someone else.

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