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Intellectual Property Law (Quickstudy: Law)

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INTELLECTUAL PROPERTY

PATENT LAW

MAIN SOURCES OF THE LAW

U.S. Constitution, Art. I, Cl. 8, Sec. 8
Congress has the power "to promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive rights to their...discoveries."

1. Statute of limitations - 18 U.S.C. § 1801 et seq.
2. Patent regulations - 37 C.F.R. § 1.1 et seq.
3. Federal regulations - 37 C.F.R. § 1.1 et seq.
4. Judicial precedents

WHAT IS A PATENT?

1. A patent is a "negative right"; a limited right
exclusively to exclude others from making, using,
offering for sale or selling the which falls within the
claims of the patent.

2. Patent holder may exploit a patent but may not
assign the rights of other patent holders.

3. Patent generally enjoys 20-year term, non-
negotiable, extension of up to 7 years based on
prior art dates.

4. COMPARE: a) secret protection applies to
inventions until they are made public; trade secret
law protects against others misappropriating the
invention for their own use; b) "industrial
entity" consists of the same invention

WHAT IS PATENTABLE?

1. Patentable: any new, useful process, machine,
manufacture or composition of matter, or any new
and useful improvement (35 U.S.C. §101)

2. Includes:

- a. Process including business, artificial intelligence and mathematical processing related inventions
- b. A composition of matter, a manufactured item, natural source material, or a mixture of natural source material and human intervention (e.g., a genetically modified plant, a biologically occurring plant)
- c. Design: the non-functional aspects of objects of use, e.g., auto-based ornaments
- d. Ornament, considered as "beautiful" objects of utility
- e.imitation: term of design patent is shorter (14 years)

3. Not patentable:

- a. Laws of nature
- b. Abstract ideas
- c. Naturally occurring plants or animals
- d. Things that are unpatentable (significantly)

ANALYZE PATENTABILITY

1. Must be "new" (i.e., not published or known to
public) [35 U.S.C. § 102] must not be found in
"prior art".

2. "Non-obvious" - includes anything found in
prior art (issued patents, published patent applications,
published articles, white papers, technical
books, trade sales brochures)

3. Disobeyance of an invention under a nondisclosure
and non-use clause is not a "prior disclosure".

4. Nonobvious disclosure of an invention by itself
or contact (e.g., defense against a patent
infringement) does not constitute a "prior
disclosure" [35 U.S.C. §102]

5. Invention must have a "useful purpose".

6. Invention must require a "non-obvious" step.

7. Invention must teach a "useful purpose".

8. Obviousness analysis does not apply to
mechanical rather than consider whether the
invention is "obvious" from the prior art. The
question is whether a person of ordinary skill in the art
would "apply" the prior art to the invention.

9. Disobeyance of a stated invention is worth no, a true
invention.

Statutory test of obviousness:

1. Survey the scope and content of prior art
2. Analyze differences between the invention and
prior art

3. Determine the ordinary skill that is part of the art
4. Considerutory considerations, including *Ajka-Davis*
factors that measure

- a. whether the invention addresses long-felt needs
- b. whether the invention clearly discloses to those skilled in the art
the number of people attempting to solve problem
- c. commercial success these teach the invention
to commercial success

4. Patent Examiner evaluates the results of the
obviousness analysis

5. Patent application should include these elements:

- a. Title
- b. Cross-references to other patents
- c. Statement regarding federally sponsored research
or development
- d. Brief description of invention
- e. Detailed description of drawings (if any)
- f. Detailed description of invention
- g. The claims of the invention

5. Filing fee 37 C.F.R. §1.72 et seq., 37 C.F.R.
§1.77

6. 12/09/00 publication applies to 18 months from first
priority date; unless applicant timely requests
non-publication

7. Patent application allows later correction of defects in
specification

8. Re-examination: allows a third party to request a
limited examination of an existing patent

9. Judicial review: U.S. Court of Appeals for the
Federal Circuit provides appellate review of patent
decisions

LEGAL DATE OF INVENTION

1. U.S. patent law protects the person who invents *first*,
not the person who files first. [COMPARISON: design
patent law protects the first person to file, the
PRACTICE NOTE: check for legislative changes to
U.S. law in 2000]

2. Several ways to establish date of invention:

- a. The date the invention is recorded in a tangible
medium (e.g., a drawing or specification) [not if
recorded by a patent attorney]
- b. The date the invention was first "reduced to
practice"?
- c. The date the patent application is filed, termed as
"constructive reduction to practice".

[TIP: practice suggests filing as early as feasible]

APPLICATION FOR PATENTS

1. To apply for a patent:

- a. Provide a detailed description of the invention
b. Drawings (specifications), which provide a "full
teaching" of the invention so that another could
make or implement it
- c. File with the U.S. Patent & Trademark Office
("PTO"), by Express Mail, first class mail or
electronic filing
- d. The application
- e. the fee and
- f. the declaration of inventiveness

2. The date of the application is the "actual" application
date. [CAVEAT: multiple inventors may file if they
contribute to the actual claimed invention, even if
one or more inventors did not work together or did not intend
to contribute]

3. The patent application is not finalized for the
inventor's lack of formal education or ignorance of
technical terms.

4. Inventor may represent themselves in the patent
process or may employ an attorney or agent admitted
to practice before the USPTO.

5. PTO may issue a patent application as an application before
publicly disclosing the invention, some inventors, however,
will offer a "non-publication" of the patent
application, giving the holder the right to apply for a
patent prior to publication. [TIP: practice suggests filing
as early as possible to obtain a "non-publication" of the
patent application prior to publication]

**PROVISIONAL PATENT
APPLICATIONS**

1. U.S. has provisional patent application for a reduced fee and formal requirements
(e.g., claims not required)

2. Provisional applications are not examined and are
not made public.

3. A provisional application is useful to procure a priority
date recognized in the U.S. and under the Patent
Cooperation Treaty (PCT), as long as a U.S. non-
provisional or PCT patent application is filed not later
than 1 year after the provisional filing.

PATENT PROSECUTION

1. Patent prosecution refers to process of patent
application for examination by the U.S.P.T.O.
2. Copyrighted Material

**ELEMENTS OF PROOF
OF INFRINGEMENT**

1. Determines the scope of patent's "claims" (a question
of law for a judge, may be determined in *Markman*
patent hearing)

2. Determines if the accused infringement falls within
the scope of the claims (a question of fact that may
be decided by a jury)

TYPES OF INFRINGEMENT

1. Literal infringement: when the accused item
overlaps the "claims" of the patented item

2. Under the "doctrine of equivalents": the accused
item infringes the patent if the item performs
substantially the same function in substantially the
same way to obtain substantially the same result

3. The "wanton" approach: any changes to the patent
application made during the course of prosecution
cannot be ignored or disputed after the patent issues.
Changes made to the patent after the patent issuance
of the patent can later be challenged.

TYPES OF INFRINGERS

1. Direct infringer: who infringes or sells the
patented invention without permission

2. Indirect infringer: infringes others to infringe

3. Counterfeiting infringer: knowingly offers for sale
or supplies, items which only are in connection
with a patented item

**DEFENSES TO
INFRINGEMENT ACTION**

1. Inability to claim patent (NOTICE: an issued patent is presumed valid)

2. Patent defense: invalidity asserted by the patent
owner or the defendant (usually considered by the patent
owner or the defendant)

3. Prior user defense: applies where commercial use
of the business method more than a year prior to the



Synopsis

A one-stop resource for students, inventors, writers, attorneys and businesses, this 3-panel (6-page) guide contains the latest, most comprehensive information on all aspects of IP law—“from patent and trademark application to copyright infringement. Stumped by what Fair Use governs? Eager to learn every aspect of the Lanham Act? Look no further than this no-nonsense resource! Written in our fluff-free format, this guide’s need-to-know information is conveniently divided into sections that correspond to the 3 main areas of IP Law: Patent Law, Copyright Law, and Trademark Law. Plus, it includes a special section for easy reference for students and IP professionals: Selected Federal IP Statutes and Useful Internet IP Links.

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A paralegal, I like to have these notes laminates to refer to to. they are very hands on and a ton of information are in these pamphlet.

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