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Intellectual Property (Quick Study: Law)

AMERICA'S #1 LEGAL REFERENCE-CHART

INTELLECTUAL PROPERTY

PATENT LAW

MAIN SOURCES OF THE LAW

1. The U.S. Constitution (Art. I, §8, cl. 1) confers upon Congress the power "to promote the progress of science and useful arts, by securing for limited times to... inventors the exclusive right to their respective writings and discoveries"
2. Federal statute (35 U.S.C. §§1-351 et seq.)
3. Federal regulations (37 C.F.R. §§1.1-3.1 et seq.)
4. Federal judicial precedents

WHAT IS A PATENT?

1. A patent is a "negative right" that gives the inventor the exclusive right to exclude others from making, using, or selling, or importing that which is within the "claims" of the patent
2. The patent holder may exploit a patent but may not infringe the rights of other patent holders
3. A patent generally confers a nonexclusive, 20-year term, an extension of up to 5 years is based on U.S. Patent and Trademark Office (USPTO) delays
4. In comparison, trade secret protection applies to inventions until they are made public; trade secret owners prohibit others from using the invention but not against others who "independently" conceive of the same invention

WHAT IS PATENTABILITY?

1. Any new, useful process, machine, article of manufacture, or composition of matter or any new, useful improvement is patentable (35 U.S.C. §101)
2. Includes:
 - A. Process: including business, artificial intelligence, and mathematical processing related processes
 - B. Machine: a apparatus of matter, a manufactured tree (timber), product of human effort, a machine, or a naturally occurring plant
 - C. Article: The nonfunctional aspects of objects of utility (e.g., auto-based ornaments)
 - D. Article: Intrinsic to "utility" objects of utility
 - E. Invention: Items of design placed in disorder (35 U.S.C. §175)
 - A. Laws of nature, physical phenomena, naturally occurring plants or animals, and things that are copied (i.e., not created)
3. Must be "useful" (i.e., not patented as known to the public) (35 U.S.C. §102), must not be found in "prior art"
 - A. "Prior art" includes anything found in previously issued patents, published patent applications, published articles, white papers, lecture slides, and even sales brochures
 - B. "Public disclosure" of an invention, even if it's itself or commercial breach, defeats eligibility for patent unless patent application has been filed
 - C. Disclosure of an invention under a nondisclosure agreement are not "public disclosure"
4. Must be "new" (i.e., the invention must teach a specific or demonstrable utility) (35 U.S.C. §102)
5. Must be "nonobvious" (35 U.S.C. §103)
 - A. Invention must have an "inventive step"
 - B. Invention does not require a "flash of genius"
 - C. Offered to determine whether an application is "obvious" requires a "rational" analysis of the invention's disclosure and prior art. Ask: "Is the invention so far removed from the prior art that a person of ordinary skill in the art would consider including things that would obvious to try, for instance, distinguish between a skilled machinist work versus a true invention that improves a machinist's function"
5. Not likely to be obvious:
 - A. Survey the scope and content of prior art
 - B. Identify differences between the invention and prior art
 - C. Consider the inventors' technical background
 - D. Secondary considerations, including:
 - A. Whether the invention addresses long-sought needs
 - B. Ease of invention devoted to solving the problem
 - C. Number of people attempting to solve the problem
 - D. Commercial success (i.e., how much the invention displaces prior solutions)
6. Prior to March 16, 2013, U.S. patent law protects the person who invents first, on March 16, 2013, U.S. law changes to protect the person who files first
 - A. First to file is the change in priority for the person who files first
 - B. Date of invention will only be relevant to applications filed before March 16, 2013
 - C. Several ways to establish date of invention
 - A. The day the invention is recorded in a tangible medium (e.g., a drawing or specification dated and signed by an independent witness)
 - B. The day the invention was built (called the "induction to practice")
 - C. The date the patent application is filed, which is treated as "constructive induction to practice"

NOTE: Producers suggest filing as early as possible

APPLICATION FOR PATENTS

1. To apply for a patent:
 - A. Provide a detailed written description of the invention (patent application), which provides a "full teaching" of the invention so that another could make or implement it
 - B. Filing by U.S.P.T.O. Express Mail, first-class mail, or electronic submission, file the following with the U.S.P.T.O.
 - A. The application
 - B. The drawings
 - C. The description of inventing
 - C. The application must name the actual inventor(s)
 - A. CAVEAT: Multiple inventors may exist if they contributed to the actual claimed invention, even if some did not work together or did not intend to co-invent
 - B. The patent application is not precluded for the inventor's lack of formal education or ignorance of formal patent application requirements
 - C. Inventors may assign their disclosure to the patent process or may employ an attorney or agent admitted to practice before the U.S.P.T.O.
 - D. Producers suggest filing an application before publicly disclosing the invention; some inventors, however, test sales volume of inventions before committing the funds to apply and prosecute the patent, gives the "federal monopoly" patent protection to the inventor, and, in turn, inventors of foreign entities file a patent prior to patent filing
2. **PROVISIONAL PATENT APPLICATIONS**
 - A. U.S. law permits filing a "provisional application" for a reduced fee and without formal requirements (i.e., claims are not required)
 - B. A provisional application is not a patent and is not made public
 - C. A provisional application is useful to obtain a priority date recognized in the United States and under the Patent Cooperation Treaty (PCT), as long as a U.S.-coordinated or PCT patent application is filed no later than one year after the provisional filing
3. **PATENT PROSECUTION**
 - A. Patent prosecution refers to the process of patent application and the communication by U.S.P.T.O.
 - A. The process is adversarial
 - B. A Patent Examiner evaluates the merits of the application
 - C. Application should include these elements:
 - A. Title
 - B. A brief description to other patents
 - C. Statement regarding federally sponsored research or development
 - D. Background of invention
 - E. Brief summary of invention
 - F. Brief description of drawings (if any)
 - G. Detailed description of the invention
 - H. The claimed or the invention
 - I. Abstract (see 37 C.F.R. §1.75(a) et seq.)
 - B. USPTO publishes applications 18 months from the first priority date, unless the applicant timely requests nonpublication
 - C. Examiner: Admits or rejects a claim of obviousness or originality
 - D. Reexamination: allows a third party to request formal examination of an existing patent
 - E. Judicial review: The U.S. Court of Appeals for the Federal Circuit provides appellate review of patent decisions
 4. **PATENT INFRINGEMENT**
 - A. **Infringement:** When a nonowner of a patent makes, uses, imports, offers for sale, or sells within the United States, or practices without the owner's authorization (35 U.S.C. §271)
 - B. **Statute of limitations:** No time limit exists for bringing suit for infringement, but recovery is limited to statutory damages calculated for the six years prior to the inventor's filing
 - C. **First sale rule:** The patent holder's rights do not extend beyond the "first sale" of the patented item to the buyer of a patented item may use or resell the item, the buyer may repair a patented item, and the buyer may resell that item without committing "infringing" the item
 5. **ELEMENTS OF PROOF OF INFRINGEMENT**
 - A. Determine the scope of patent rights (i.e., a question of law for a judge may be determined in a *judicial* pretrial hearing)
 - B. Determine if the accused infringement falls within the scope of the "claims" (a question of fact that may be decided by a jury)
 6. **TYPES OF INFRINGEMENT**
 - A. **Literal infringement:** When the accused item overlaps the "claims" of the patent
 - B. **Doctrine of equivalents:** the accused item infringes the patent if the item performs substantially the same function in substantially the same way to accomplish substantially the same result
 - C. **File wrapper estoppel:** Any changes to the patent application made during the course of patent prosecution cannot be argued or disputed after the patent issues, changes made to narrow the claims prior to issuance of the patent cannot later be challenged



Synopsis

Now that everything seems available at our fingertips via the Internet, the issues surrounding intellectual property and content protection have become even more relevant. Whether you are a student of intellectual property law or a content producer concerned about your rights and responsibilities, our updated QuickStudy® guide contains easily accessible information about inventions, content, trademarks, and more. Protect your brand or creations with access to the most pertinent laws regarding intellectual property in this handy, three-panel guide.

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Customer Reviews

I recently started a new job working for an IP Software Company. I have an extensive background in Software Development and Services, but had never been exposed to Intellectual Property before. This "cheat sheet" was perfect to bring me up to speed on the processes and terminology used in this subject area.

Not updated for AIA.

Was great and helped me study, I got an A in the class.

Brief but very informative.

Great product. Thanks scully

Helpful.

It's great

excellent

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