Intellectual Property 101:
Patents, Copyrights,
Trademarks, and Trade Secrets
– A Primer



Overview

What Is each one?
How do you get it?
What does it protect?
How long does it last?
Where are the lawsuits filed?



Fundamental Concepts



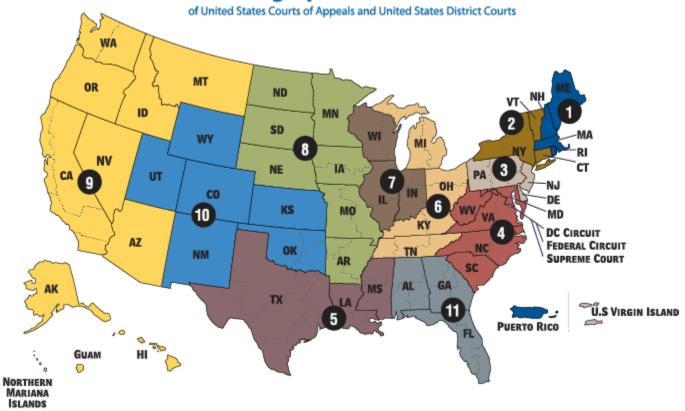
Dual Sovereigns

- In the United States, laws relating to intellectual property can be made by:
 - States
 - The federal government
- Knowing which controls dictates:
 - Whether there is one law or up to 50
 - Which courts/where, a lawsuit would be filed (generally)



Dual Sovereigns

Geographic Boundaries ted States Courts of Appeals and United States District Co





Trade Secrets



Trade Secrets







Trade Secrets

- Arise under State law
- Anything you keep secret/confidential
 - Customer lists, pricing, manufacturing processes
 - Other people can use/have the same secret as long as they did not improperly get it from you
- Last indefinitely and you do not have to apply for or register trade secrets
- Must make efforts to keep secret/confidential
- Employment agreements



(also Servicemarks)



- Arise under BOTH State and Federal law
- Any distinctive mark that indicates origin/source of goods/services in a particular field of commerce
 - Can be a word, a made up term/phrase, a figure, a color, a sound







- Arise under BOTH State and Federal law
- Any distinctive mark that indicates origin/source of goods/services in a particular field of commerce
 - Can be a word, a made up term/phrase, a figure, a color, a sound
- Lasts indefinitely and you do not have to apply for or register a trademark, unless you want more protection











- Why register?
 - More protection against new people using the mark
 - Damages, ability to file lawsuits
- Why choose State registration vs. federal?
 - State registration is typically cheaper and faster but only protects in your State
 - Federal registration is nationwide, but costs more, takes longer, and has more hoops









- If someone uses a mark in a manner that is likely to cause confusion among the interested public, that is called "infringement."
- Infringers can be sued.
- If likelihood of confusion is found, under federal law, infringers have to prove that profits were not the result of the infringement
- In the case of willful infringement, damages can be trebled.



- Must police the mark
 - If you know/reasonably should know of infringers, you must take steps to stop the infringement or risk losing you mark





DRY ICE



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TRAMPOLINE







U.S. Constitution, Art. I, § 8: The Congress shall have 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 respective writings and discoveries."



- Arise under federal law (mostly)
- An original work of authorship, fixed in a tangible medium of expression
 - An article, book, manual, painting, picture, movie, song, map, etc.
- As soon as you record it, you have a copyright
 - No need to resister or write "copyright"
 - Indicating copyright helps for damages
 - Registration is a pre-requisite for suit



- Protects not only the work but derivatives (e.g., sequels).
- The "author" of a work is the presumptive copyright owner.
- The "author" of a work can be an individual or a company he works for.
 - If creating works is within the scope of employment, then the "author" is the company and it automatically owns the copyright
- Copyright owner has exclusive right to make copies, prepare derivatives, public performances, etc.





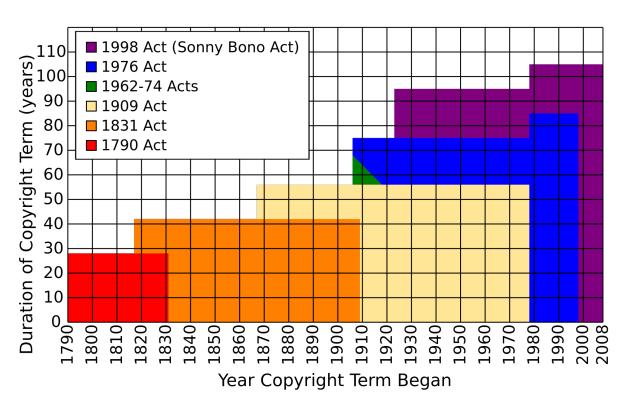




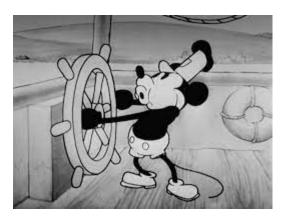
- If you hire someone to create a work/an employee creates works outside the scope of his employment, he is the "author" and owns the copyright.
 - You only get a license to use
- "work made for hire"
 - An agreement, in writing, transferring the copyright to whoever hired the creator.
- Employment agreements

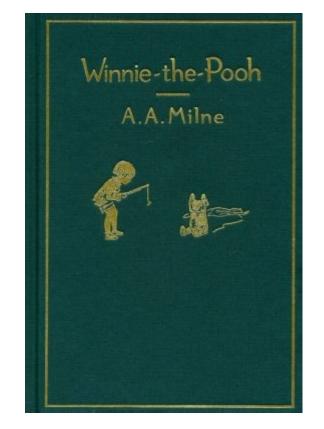


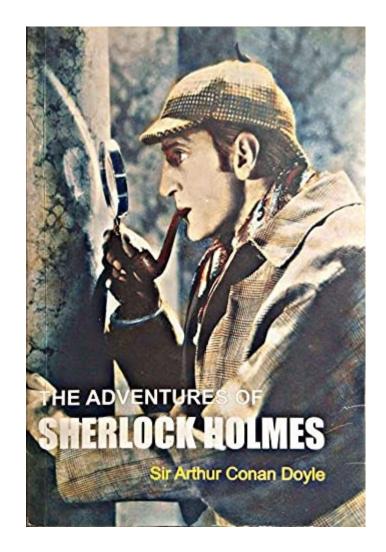
- Copyrights last for different amounts of time:
 - Basic rule, life of the author plus 95 years OR 120 years from the date of creation, whichever expires first
 - Many changes over time













- Lawsuits filed in federal court
- Registration is a pre-requisite to filing suit





- Defenses "fair use"
 - Use a limited amount of a work for commentary, criticism, news reporting, scholarly reports – including parody
 - Not a defense that you did not make money
- Damages
 - Actual damages
 - Statutory damages \$200-\$150K



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Copyright Office fees are subject to change.

MORE ON BACK ► Complete all applicable spaces (numbers 5-9) on the reverse side of this page . See detailed instructions. • Sign the form at line 6.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

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Patents – A Big Topic



Patents



U.S. Constitution, Art. I, § 8: The Congress shall have 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 respective writings and discoveries."



Patents

- Arise exclusively under federal law
- Three types of patents (utility, design, plant)
- "Anything under the sun that is made by man."
- "New, useful, and non-obvious"
- Basically, a contract:
 - If you tell us your idea, we will give you a monopoly on it for a limited time.
 - Patent applications are published.
- Lasts for 20 years from date you file application.



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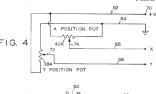
FIG. 1 shows a display system constructed in accord-

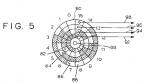
Nov. 17, 1970 D. C. ENGELBART X-Y POSITION INDICATOR FOR A DISPLAY SYSTEM 3 Sheets-Sheet 1 FIG. 1 TIME FOR FIG. 2 INVENTOR The street of th Lindenberg + Freilich

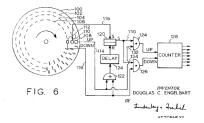
Nov. 17, 1970 D. C. ENGELBART X-Y POSITION INDICATOR FOR A DISPLAY SYSTEM

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Filed June 21, 1967

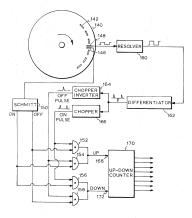






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DOUGLAS C. ENGELBART

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first position wheel rotatably mounted on said housing and having a rim portion extending past the boundards afries defined by said housing for supporting said housing on said surface;

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a second position wheel rotatably mounted on said housing with its nats of rotation oriented perpenposition when I have a firm portion cannot be a said housing or said or said from portion cannot be a said housing for supporting said housing on said our face; and transducer means connected to each of said first and second wheels, for generating digital position insaid wheels, and said said the said of said first and second wheels, for generating digital position insaid wheels.

FIG. 7

desting signals indicating the degree of rotation of said wheels.

6. The improvement described in claim 5 including: coupling means for substantially unrestrained coupling of said transducer means to said computer, to couple said position indicating signals to said computer while enabling substantially unrestrained movement

while enabling substantially unrestrained movement of said housing relative to said computer. In industrial to the control of the control of

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on said cathode ray the means and means for altering injust to said take means to cause a change in the display about the position of said cursor; a position indicator control connected to said coursor; a position indicator control connected to said composer means, and position indicator control having livering signals for causing movement of said cursor on said cathode ray tube means in response to move-ment of said bousing over a surface; and at least one cathode ray tube display control switch disposed on said position indicator control.

3,304,434 2/1967 Koster 33—141.5 X 3,346,833 10/1967 Koster et al. 340—324 X 3,355,730 11/1967 Neasham 178—18 X

D. L. TRAFTON, Assistant Examiner

Patents

- Why get a patent?
 - Marketing
 - Exclude competitors
 - Licensing



Patents

- Patent Prosecution
- Patent Litigation











- Do not evaluate whether the idea is a good idea or a bad idea
- Only evaluate whether the claims are new, useful, and non-obvious
- "One of the most difficult legal instruments to draft"



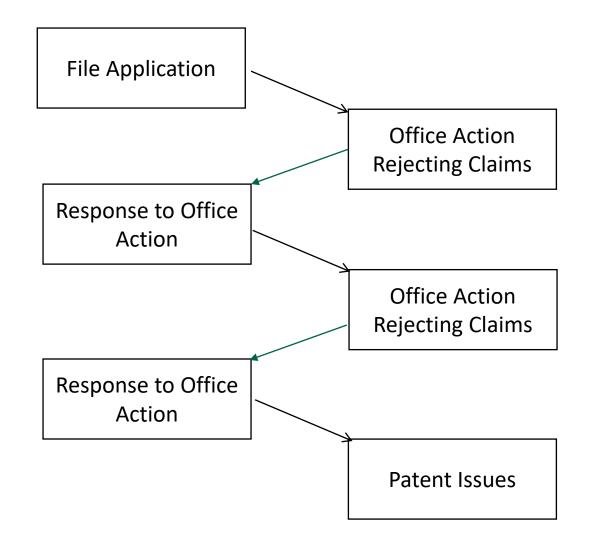
Patent Agent

- Person with a technical background
- Passed a special test the Patent Bar
- Licensed *only* to prepare and prosecute patent applications
- Patent Attorney/Lawyer
 - Same as Patent Agent but also went to law school and is admitted as a lawyer
 - In addition to preparing patent applications, can also do everything a lawyer can do
 - Draft contracts
 - Litigate



- Basically, a negotiation where your agent/lawyer tries to get you claims that are:
 - As broad as possible to cover/exclude the most activity
 - Not so broad that they cover what other people did before or are obvious in light thereof
- The broader the claims in a patent without being invalid, the more a patent may be worth







Patent Litigation

- "The Sport of Kings"
 - Compared to most litigation, VERY expensive
- Plaintiff tries to prove that the Defendant did what is covered by the claims
- Defendant tries to prove that he did not do what is covered by the claims OR that the claims are invalid
- If the Plaintiff wins, they can get damages AND and Order barring the Plaintiff from infringing



Questions



James Pistorino // October 2023