

INTELLECTUAL PROPERTY

I. WHAT CAN BE PATENTED

A. START WITH THE STATUTE - THE PATENT ACT, WHICH IS AUTHORIZED BY THE US CONSTITUTION
"TO PROMOTE THE PROGRESS OF SCIENCE AND USEFUL ARTS."

1. MATTER OF FEDERAL LAW

2. § 101 SETS FORTH THE BASIC REQUIREMENTS: "NEW AND USEFUL" → MUST BE BOTH, AND ONE OF THESE: (a) PROCESS; (b) MACHINE; (c) MANUFACTURE; (d) COMPOSITION OR A NEW AND USEFUL IMPROVEMENT OF PRIOR ART.

(a) PROCESS → HAS GOTTEN DIFFICULT IN THE INFORMATION AGE

(b) "NEW" → THE INVENTION MUST NOT BE KNOWN OR USED BY OTHERS IN THIS COUNTRY. "NOVELTY" → LINGO FOR NOT BEING KNOWN. "NONOBVIOUS" → THIS IS THE TOUGHER ELEMENT; MUST BE NONOBVIOUS TO A PERSON ENGAGED IN THE ART WITH ORDINARY SKILL. THIS IS A FACTUAL QUESTION THAT FREQUENTLY ENDS UP W/ A JURY.

(c) § 102 (d) STARTS A CLOCK THAT REQUIRES YOU TO FILE A PATENT IN ONE YEAR FROM DATE OF PUBLISHING.

1. MOST COUNTRIES HAVE A ZERO YEAR PERIOD → YOU MUST FILE BEFORE YOU PUBLISH.

2. SO KEEP IT PRIVATE → MAKE PEOPLE SIGN NON-DISCLOSURE AGREEMENT.

3. FILING → MUST BE "TIMELY" AND INCLUDE FULL DISCLOSURE

(a) IN US, THE FIRST TO INVENT RULE IS APPLIED. WHEN TWO PEOPLE INVENT, FIRST TO INVENT IS GIVEN THE PATENT EVEN IF THE OTHER IS FIRST TO FILE.

1. SO KEEP RECORDS TO DOCUMENT WHEN YOU STARTED TO WORK ON THE INVENTION.

2. THE REST OF THE WORLD USES FIRST TO FILE

4. USEFUL → NO LITIGATION HERE: IF IT ISN'T USEFUL, NOBODY MAKES ANY MONEY OFF IT SO THEY DON'T FIGHT OVER IT.

5. "PROCESS" → COURTS HAVE EASED OUT TWO EXCEPTIONS:

(a) MATHEMATICAL ALGORITHM EXCEPTION → IS IT ABSTRACT OR CONCRETE. A CONCRETE OR APPLIED ALGORITHM IS PATENTABLE, BUT ABSTRACT FORMULAS ARE NOT. AN ABSTRACT ALGORITHM IS NO MORE THAN AN ABSTRACT IDEA.

(b) BUSINESS METHOD ~~AND~~ EXCEPTION → THE NEW PATENT ACT OF 1952 ELIMINATED THE BUSINESS METHOD EXCEPTION, IF IT EVER EXISTED

1. § 103 ADDED THE NONOBVIOUS REQUIREMENT

II. WHAT RIGHTS DO YOU HAVE AS A PATENT HOLDER

A. § 154 GIVES YOU THE RIGHT TO "MAKE, USE, AND SELL" → NOPE. YOU GET THE RIGHT TO EXCLUDE OTHERS FROM MAKING, USING, SELLING

1. RATIONALE

(a) MOST PATENTS BUILD OFF OTHER PATENTS. IF YOU WERE GIVEN THE RIGHT TO MAKE, USE OR SELL, IT WOULD INCLUDE THE RIGHT TO INFRINGE.

III. HOW DO YOU GET A PATENT

A. HIRE A PATENT ATTORNEY

B. REQUIREMENTS FOR FULL DISCLOSURE: (1) FULL AND CLEAR; (2) CONCISE; (3) EXACT; (4) ENABLING → SOMEONE W/ ORDINARY SKILL IN THE ART MUST BE ABLE TO DO IT BASED ON THE FILING.

1. NO PROTECTION WHILE PATENT IS PENDING