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Intellectual Property Law (Quickstudy: Law)

AMERIC'S 50 LEGAL REFERENCE CHART		
Intellectual Property		
INTELLECTUAL PROPERTY		
PATENT LAW		
MAIN SOURCES OF THE LAW <ol style="list-style-type: none">U.S. Constitution, Art. I, § 8, clause 8; creates upon Congress the power "to promote the progress of science and the useful arts by securing, for limited times to... inventors the exclusive rights to their discoveries"Federal statutes - [35 U.S.C. § 101 et seq.]Federal regulations - [37 C.F.R. § 1.1 et seq.]Federal judicial precedents		
WHAT IS A PATENT? <ol style="list-style-type: none">A patent is a "negative right," a limited right temporarily to exclude others from making, using, selling, or importing that which falls within the "scope" of the patentPatent holder may exploit a patent but may not infringe the rights of other patent holdersPatent generally expires 20-year term, non-renewable; extension of up to 5 years based on Patent Office delaysCOMPARE: trade secret protection applies to inventions kept from the public; trade secret law protects against others misappropriating the secret; but not against others who "independently" create "copies" of the same invention	Statutory bar of obsolescence: <ol style="list-style-type: none">covers the scope and content of prior artapplies to differences between the invention and prior artdetermine the ordinary skill that is part of the artsecondary considerations, including John Derris factors that examine:<ul style="list-style-type: none">whether the invention addresses long-standing needsextent of resources devoted to solving the problemnumber of people attempting to solve problemcommercial success (does such the invention displace prior solutions)	3. Patent Examination evaluates the merits of the invention: <ol style="list-style-type: none">Application should include these elements:<ul style="list-style-type: none">TitleConciseness to other patentsStatement regarding federally sponsored research or developmentBackground of inventionShort summary of inventionBest description of drawing (if any)Detailed description of inventionThe "claims" of the inventionAnswer from 37 C.F.R. § 1.72 et seq., 37 C.F.R. § 1.77USPTO publishes application 18 months from first priority date, unless applicant timely requests non-publicationRe-examination: allows a third party to request a "second examination" of an existing patentJudicial review: U.S. Court of Appeals for the Federal Circuit provides appellate review of patent decisions
WHAT IS PATENTABLE? <ol style="list-style-type: none">Patentable: any new, useful process, machine, article of manufacture, or composition of matter or any new useful improvement [35 U.S.C. § 101]Includes:<ul style="list-style-type: none">Process including business, artificial intelligence and mathematical processing-related inventionsProducts: a composition of matter, a man-made item (even natural product of human effort)Machine, a mechanically recurring processDesign: the non-functional aspects of objects of utility, e.g., utility model operationsComputer: invented to "materially" improve utilityInventions: term of design patent is shorter (14 years)Not patentable:<ul style="list-style-type: none">Law of natureAbstract ideasNaturally occurring plants or animalsThings that are <i>completely</i> unpatentable	LEGAL DATE OF INVENTION <ol style="list-style-type: none">U.S. patent law protects the person who invents first, not the person who files first (COMPARE: foreign patent law systems protect the first person to file) PRACTICE NOTE: check for legislative changes in U.S. lawSeveral ways to establish date of invention:<ol style="list-style-type: none">The date the invention is recorded in a legally reliable medium (e.g., a drawing or specification that is signed by independent witnesses)The date the invention was built (called the "reduction to practice")The date the patent application is filed, treated as "constructive reduction to practice" TIP: producer request filing as early as feasible	PATENT INFRINGEMENT <ol style="list-style-type: none">Infringement: where a copy of a patent holder's work, uses, imports, offers for sale or sells a substantially identical item, design or process without the owner's authorization [35 U.S.C. § 271]Invention of Inventions: the new work exists for bringing out the infringement, but necessary limited to necessary damages calculated for 60 days prior to filing of lawsuitFirst sale rule: the patent holder's rights do not extend beyond the "first sale" of the patented item, the issue of a patented item may not be to work the item; the issue may regard a patented item, prior that the issue does not constitute "making" the item
ANALYZE PATENTABILITY <ol style="list-style-type: none">Must be "new" (i.e., not published or known to "prior art")"Prior art" includes anything known to previously issued patents, published patent applications, published articles, white papers, lecture slides, trade show brochuresDisclosure of an invention under a non-disclosure agreement is not "public disclosure""Public disclosure" of invention, even if by itself or related branch, before disclosure for patent unless patent application has been filedMust be "useful" (i.e., the invention must teach a specific or demonstrable utility) [35 U.S.C. § 102]Must be "non-obvious" [35 U.S.C. § 103]<ol style="list-style-type: none">Invention must have an "inventive step"Does not require a "flash of genius"Obviousness analysis does not apply a mechanical rule; must consider whether the invention results from "intuitiveness and creative steps" that a person of ordinary skill in the art would employ, including things it would be obvious to tryExhaustive: a skilled mechanic's work on a new invention	APPLICATION FOR PATENTS <ol style="list-style-type: none">To apply for a patent:<ol style="list-style-type: none">Prepare a clear written description of the invention (patent application, which provides a "full teaching" of the invention so that another could make or implement it)File with the U.S. Patent & Trademark Office ("USPTO") by Express Mail, first-class mail or electronically:<ol style="list-style-type: none">the applicationthe fee paidthe declaration of inventorshipApplication must name the actual inventor(s) (CAVEAT: multiple inventors may exist if they contributed to the actual claimed invention, even if some did not work together or did not attend an occasion)The patent application is not produced for the inventor's lack of formal education or ignorance of technical termsInventors may represent themselves in the patent process or may employ an attorney or agent admitted to practice before the USPTOProducer suggests filing an application before publicly disclosing the invention, some inventors, however, use public forums of invention before submitting the funds to apply and prosecute the patent, given the "inventorship" the patent provides, consider, however, holders of foreign novelty if such of invention occur prior to patent filing	ELEMENTS OF PROOF OF INFRINGEMENT <ol style="list-style-type: none">Determine the scope of patent's "claims" (a question of law for a judge; may be determined in Hickman pre-trial hearing)Determine 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 <ol style="list-style-type: none">Litigational infringement: when the accused does not dispute the "scope" of the patented itemUnder the "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 resultThe wrapper around: any changes to the patent application made during the course of 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 TYPES OF INFRINGERS <ol style="list-style-type: none">Direct infringer: one who makes, uses or sells the patented invention without permissionIndirect infringer: one who offers to infringeContributory infringer: knowingly offers for sale or supplies, items solely used in connection with a patented invention DEFENSES TO INFRINGEMENT ACTION <ol style="list-style-type: none">Inability of the patent (NOTE: an issued patent is presumed valid)Patent without, intellectual extension by the prior owner of the limited monopoly conferred by the patentPatent user defense: applies where commercial use of the business method issue from 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 Trademark Law Plus, it includes a special section for easy reference for students and IP professionals: Selected Federal IP Statutes Useful Internet IP Links

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

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