

Patent I

<http://wendy.seltzer.org/neu/IP/>

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Digital Millennium Copyright Act

- Sec. 1201's "paracopyright," makes it unlawful to "circumvent[] protection afforded by a technological measure that effectively protects" access to a copyrighted work or a right of a copyright owner under this title
- Sec. 512 sets up a "safe harbor" for ISPs who respond to notices of claimed copyright infringement

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Updates and Alternatives

- Does copyright law need revision?
 - In what direction?
- Free Software
- Creative Commons "some rights reserved"

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- What is protected?
- How do you get protection?
- What rights does it convey?
- What infringes?
- What defenses are available?

- What is the source of law?
- What is the policy behind it?

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U.S. Constitution Article I, Section 8, clause 8

The Congress shall have power ...

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

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Patent Basics

- Patent provides a 20-year monopoly on new and useful products or processes.
 - Trades incentive to invent for public disclosure of invention (contrast trade secret)
 - 20 years runs from date of filing
- Patent grants the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States.
 - Note that the right to exclude is not the right to make
 - that may be blocked by other patents in the field.

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35 U.S.C. § 101. Inventions patentable

- Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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Types of Patents

- Utility
 - Process Claims
 - Product Claims
 - Machines
 - Articles of manufacture
 - Compositions of matter
- Plant
- Design

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Utility Patents

- Process
 - The term “process” means process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.
- Machine
- Articles of manufacture
- Compositions of matter
 - Chemical compounds
 - Mixtures of existing ingredients

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Requirements

1. Patentable subject matter
2. Novelty
3. Utility
4. Non-obviousness
5. Enablement

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Patent Application

- Summary
- Written Description
- Drawings
- Specification
 - Must set forth the precise invention; must “enable any person skilled in the art ... to make and use” invention
- Claims
 - Independent
 - Dependent

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Claims

- Composition
- Process
- Apparatus
- Product-by-process
- Means-plus-function

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Life cycle of a patent

- Invention
 - U.S. patent system is “first to invent”
 - Elsewhere internationally, “first to file”
- Reduction to practice
- Prior art search
- Patent application
 - Office actions may lead to narrowing or dropping of claims
- Issuance (or rejection and abandonment)
- Enforcement/ litigation/ challenges/ sale ...

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Where do judges get involved?

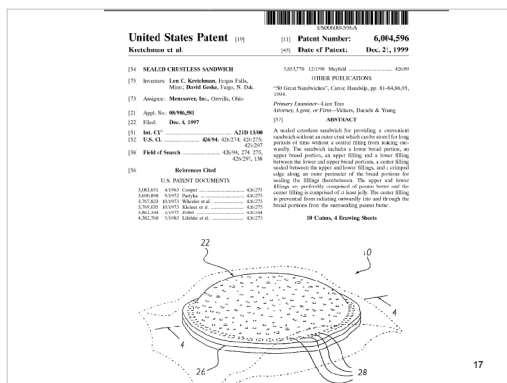
- Patent prosecution
 - Administrative action before Patent and Trademark Office (PTO)
 - Appeal to Board of Patent Appeals and Interferences
 - Appeal to Court of Appeals for the Federal Circuit (CAFC)
- Re-examination: PTO, BPAI, CAFC
- Interference: PTO, BPAI, CAFC
- Infringement action
 - Litigation before district court with personal jurisdiction
 - Appeal to CAFC

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A typical(?) patent: 6,004,596

- “The ‘596 Patent”
- Inventors Kretschman and Geske for Menusaver, Inc. (assigned to Smuckers)
- Filed Dec. 8, 1997; Issued Dec. 21, 1999
- What is claimed? What type of claims?
- What would infringe?
- How else could they have drafted the claims?

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Diamond v. Chakrabarty



- Stained *pseudomonas* bacteria (pictured without plasmid inserts)

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Where's the line?

- "Anything under the sun that is made by man." *Diamond v. Chakrabarty*

- "Only some of the handiwork of nature."
Funk Bros. Seed Co. v. Kalo Inoculant Co.

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