



# Patents, Copyrights, and Trademarks

| Class 11

# Underlying Concepts of Patent Law

- **Patent:** In order to provide an incentive for invention, a patent gives an inventor – for a particular period of time – the right to exclude others from making his invention or creation.
- Patent v. Copyright
  - When protection begins
  - Display to the public
  - The hurdles to overcome when looking for protection
  - Renewal/entering the public domain
- Patent v. Trademark
  - When each acquires a value
  - What they go through to receive protection



# Origins of Patent Law

- The Statute of Monopolies
- Balance the distaste of monopolies with the desire to have incentives to invent
- Article 1, §8, Clause 8 of The Constitution grants Congress the 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.”
- The American Inventors Protection Act (1999)
- TRIPS Agreement



# Patentable Subject Matter

- §101 – The Patent Act
  - Process – a means of arriving at a certain goal
  - Products – *utility patent* – machine, manufacture, composition of matter
  - Dominant patent vs. subservient patent
  - *Bilski v. Kappos* (2009)



# Patentable Subject Matter (cont.)

- Judicial Exceptions & Limitations
  - Cannot patent a law of nature – *Mayo v. Prometheus Labs* (2012)
  - The Plant Patent Act (1930)
  - The Plant Variety Protection Act (1970)
  - CAN patent something living, but it must be human-modified.



# Utility, Novel, Statutory Bar & Non-Obviousness

- Utility
  - Does the invention do *anything*?
  - Does the invention *work*?
  - Does the invention possess some legal/moral utility?
  - These days, as long as an invention *does something*, that will satisfy the utility requirement.



# Utility, Novel, Statutory Bar & Non-Obviousness (cont.)

## ■ Novelty

- Invention must be *new* in order to receive a patent
- The following three things will cause a patent application to fail the novelty requirement:
  1. A prior patent that was not abandoned, suppressed, or concealed
  2. A prior patent application that was filed for which a patent was granted
  3. An invention known of or used by others in this country



# Utility, Novel, Statutory Bar & Non-Obviousness (cont.)

- Statutory Bar
  - Can be novel and still fail the statutory bar prong
  - No patent issued if:
    - The invention was patented or described in a printed publication in this
      - Or a foreign country
      - Or in public use
      - Or on sale in this country
    - More than one year prior to the date of the application for patent in the United States.



# Utility, Novel, Statutory Bar & Non-Obviousness (cont.)

- Non-Obviousness
  - The scope and content of the prior art are to be determined;
  - Differences between the prior art and the claims at issue are to be ascertained; and
  - The level of ordinary skill in the pertinent art is to be resolved.
  - *KSR v. Teleflex*, 550 U.S. 398 (2007)



# Questions?

- Questions, concerns, confusion about subject matter.
- Questions about the course.
- THANK YOU

