



Patents

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

- 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

- 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:
 - A prior patent that was not abandoned, suppressed, or concealed
 - A prior patent application that was filed for which a patent was granted
 - An invention known of or used by others in this country

Utility, Novel, Statutory Bar & Non-Obviousness

- 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

- 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)