



Preliminaries

# The Basic Framework and Initial Questions

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Konomark  
Most rights sharable

## Roadmap:

- What is intellectual property?
  - The kinds of IP
  - Comparisons
  - The label
- Why is IP law necessary?
- How did IP law come to be?

What is  
intellectual  
property?

the kinds  
of IP

What is  
“intellectual property”?

Copyrights  
Trademarks  
Patents  
Trade Secrets  
Rights of Publicity



# Copyright

- Books
- Poems
- Movies
- Computer software
- Photographs
- Paintings
- Sculptures

# Copyright

- original works of authorship fixed in any tangible medium of expression from which they can be perceived, either directly or with the aid of a machine

## Copyright ©

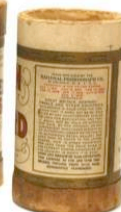
Protects	expression (text, images, recordings)
Requires	a mere modicum of creativity
Vests	automatically upon creation
Sustained by	<i>[nothing]</i>
Lasts	lifetime + 70 years; or 95 years
Theory	incentive to create; public goods problem

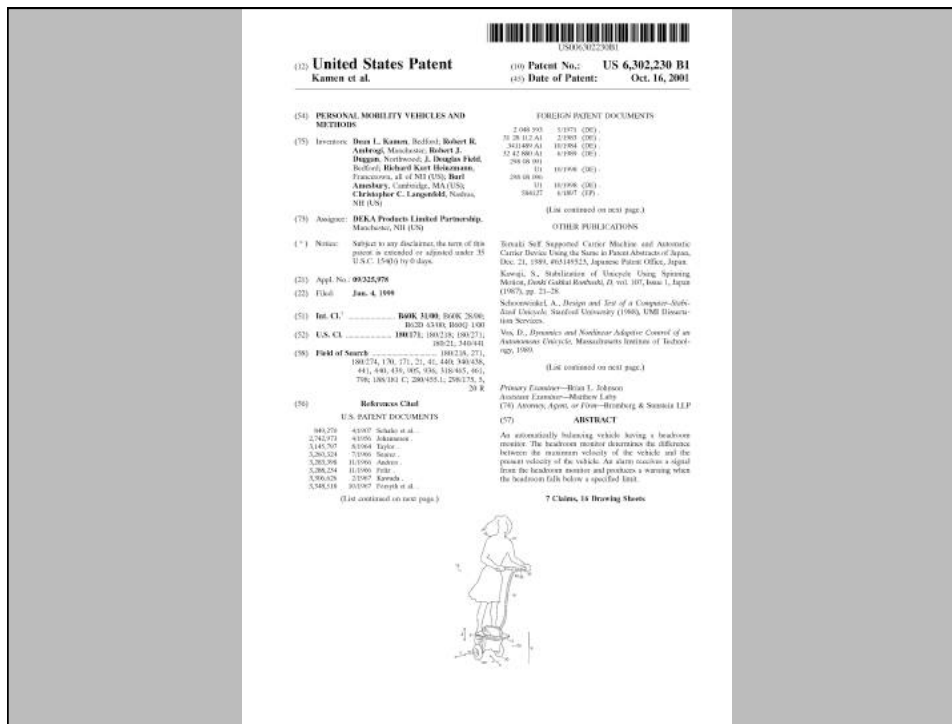
# PAT.

## Patent



## Patent





## Patent <sup>PAT.</sup>

Protects	machines, inventions
Requires	some level of cleverness (nonobviousness, inventive step)
Vests	after application, upon issuance by government
Sustained by	escalating maintenance fees
Lasts	up to 20 years
Theory	incentive to invent and disclose; public goods problem

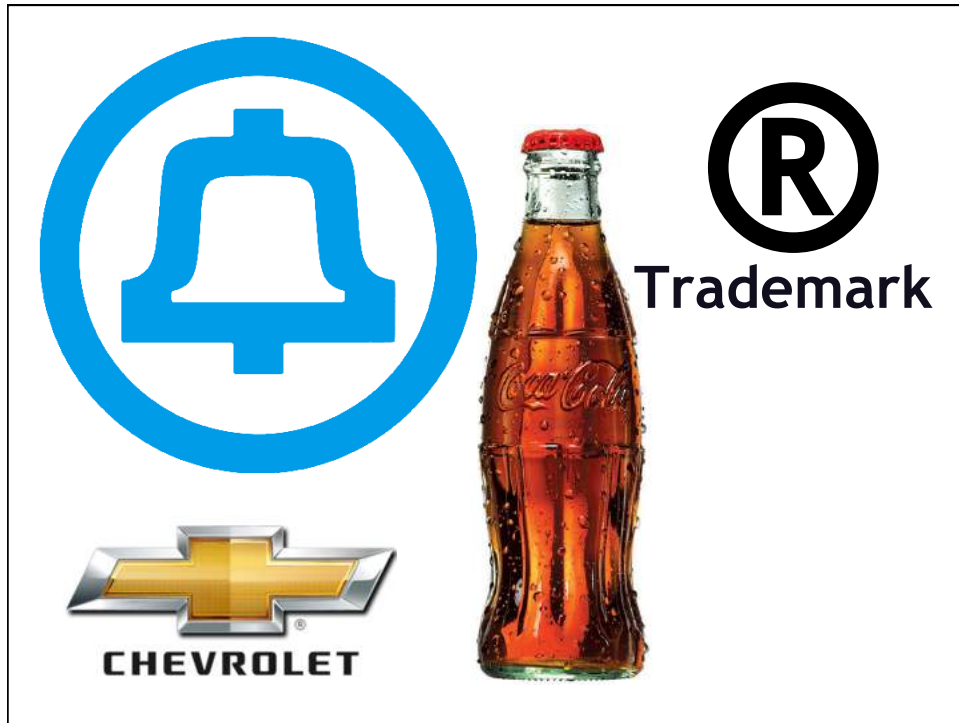
# Trade Secret



## Trade Secret

Protects	formulas, recipes, manufacturing techniques, and other intangibles with independent economic value
Requires	secrecy and reasonable efforts to keep secret
Vests	automatically
Sustained by	continuing secrecy and efforts to keep secret
Lasts	potentially forever
Theory	???





**source**

# Trademark ® ™

Protects	names, logos, slogans, other indications of commercial source
Requires	distinctiveness (can identify a commercial source)
Vests	common law: upon use federal: after use, upon registration
Sustained by	continued use
Lasts	as long as used, potentially forever
Theory	provide information to consumers

## Right of Publicity



## Right of Publicity

Protects	name, voice, image, other indicia of identity
Requires	nothing; fame in a few jurisdictions
Vests	automatically
Sustained by	<i>[nothing]</i>
Lasts	lifetime; post-mortem in some states
Theory	???

**You**  
own intellectual  
property

# Comparisons

## What is protected?

©	Expression (text, images, recordings)
Pat.	Inventions (manmade)
TM	Indications of commercial source
Trade Secret	Transferrable commercial secrets
Right of Publicity	Indications of personal identity

## What does it take to get it?

©	Fixation (immediate)
Pat.	Application, gov' t review
TM	Use in commerce, creating meaning
Trade Secret	<i>Nothing</i>
Right of Publicity	<i>Nothing</i> (fame, some places)

## What does it take to keep it?

©	Nothing
Pat.	Payment of maintenance fees
TM	Continued use in business
Trade Secret	Keeping it secret
Right of Publicity	Nothing

## How long does it last?

©	about 100 years
Pat.	about 20 years
TM	forever (if used)
Trade Secret	forever (if kept secret)
Right of Publicity	life + extra sometimes

## How is it lost?

©	<i>Very difficult</i>
Pat.	Unpaid fees; successful challenge
TM	Failure to keep exclusive control
Trade Secret	The secret gets out
Right of Publicity	<i>Very difficult</i>

## Defenses include ...

©	Fair use, first-sale
Pat.	Invalidity, first-sale
TM	Non-trademark uses, fair uses, first-sale
Trade Secret	Reverse engineering
Right of Publicity	News, free speech, non-commercial

## Remedies include ...

©	Injunctions; restitution (of D's wrongful gains); statutory damages up to \$150K per infringement
Pat.	Injunctions; royalties; treble damages
TM	Injunctions; punitive damages; treble damages
Trade Secret	Injunctions; restitution (of D's wrongful gains); punitive damages; royalties
Right of Publicity	Injunctions; punitive damages

the  
LABEL

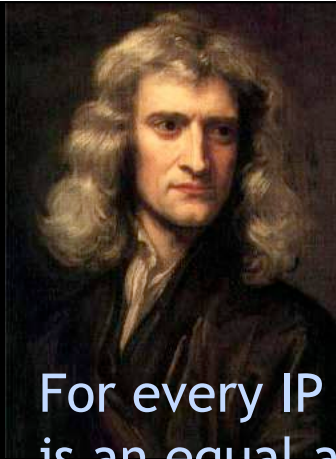
  
“intellectual property  
infringement”



What is  
“intellectual property”?

Is it  
“property”?  
*It depends on who you ask.*

What's  
“intellectual”  
about it?

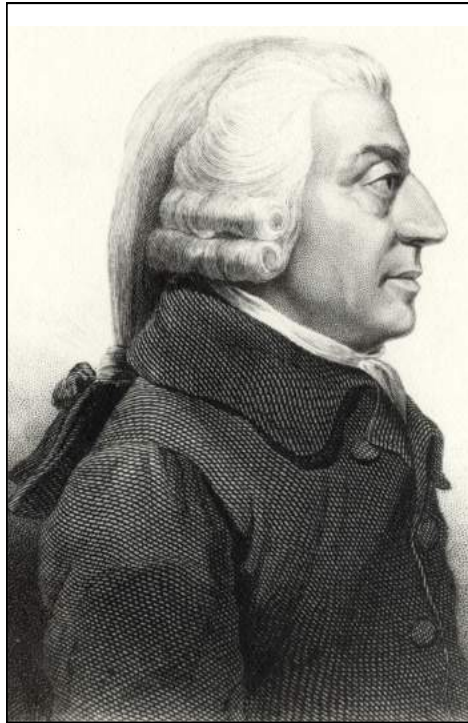


### Newton's Third Law of IP

For every IP entitlement, there  
is an equal and opposite  
reduction in freedom.

Why is  
intellectual  
property law  
necessary?

*Classical  
Economics*

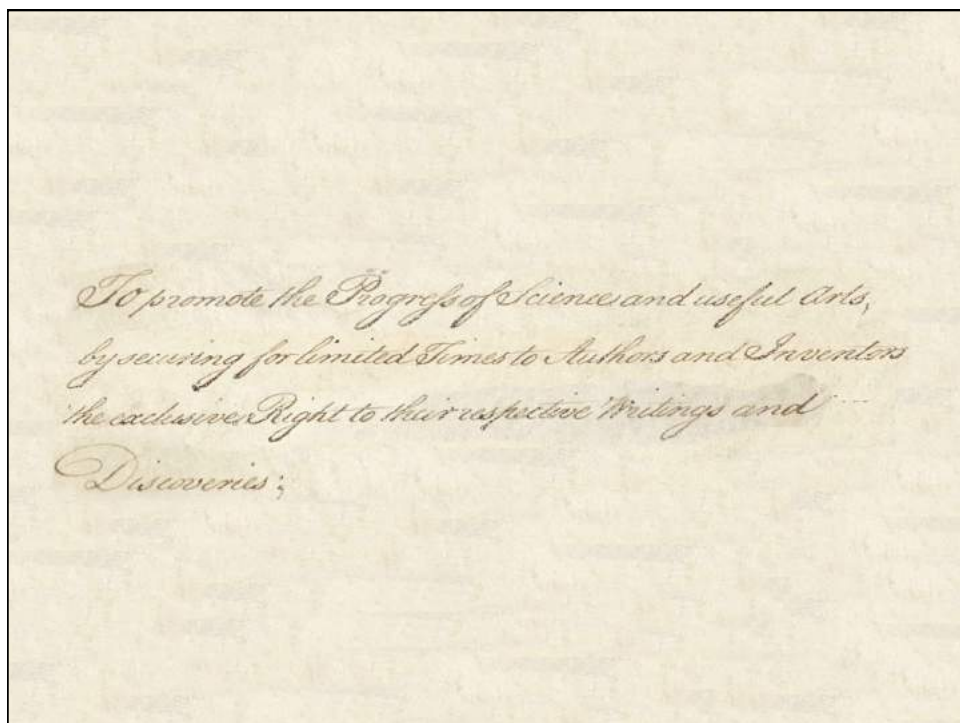
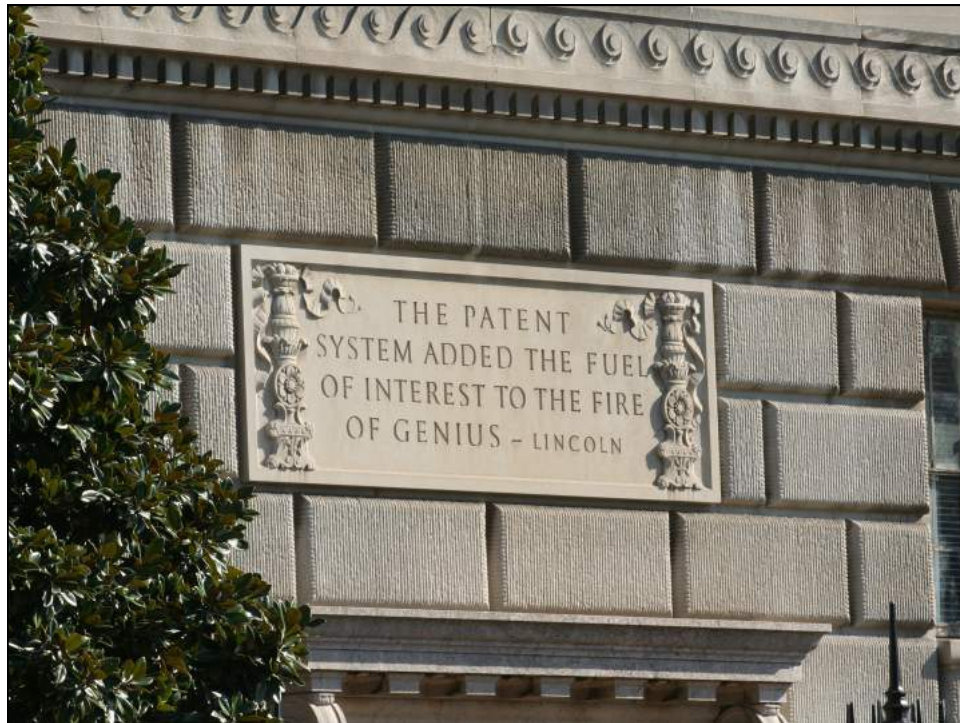


Adam Smith









How did  
intellectual  
property law  
come to be?



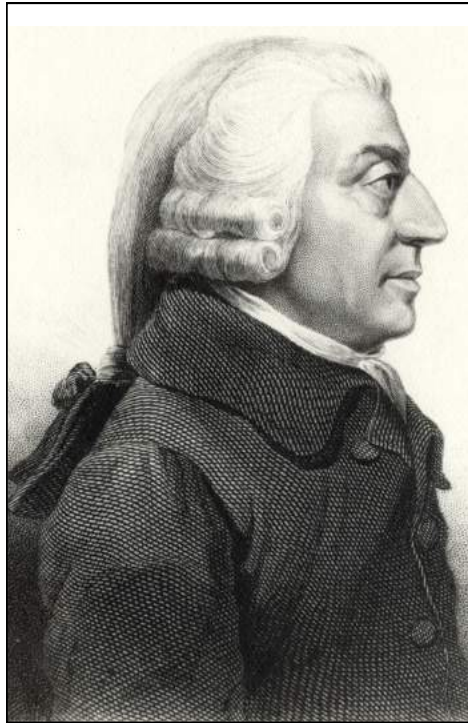


Queen Elizabeth



Queen Anne





Adam Smith

*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;*

**d'être raison**

