

Patents: Orientation

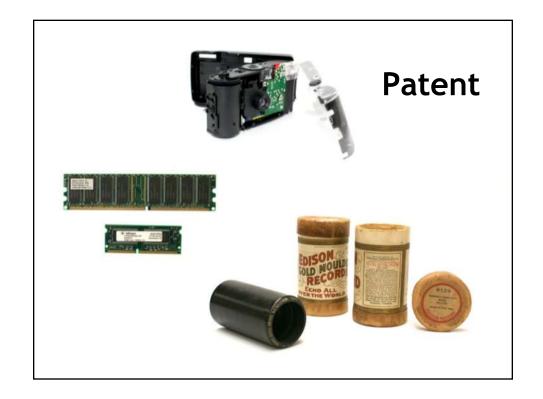
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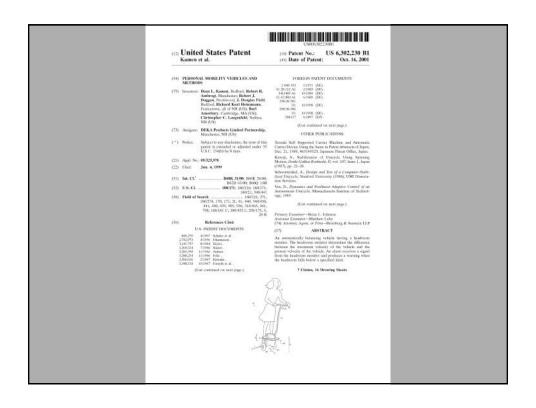


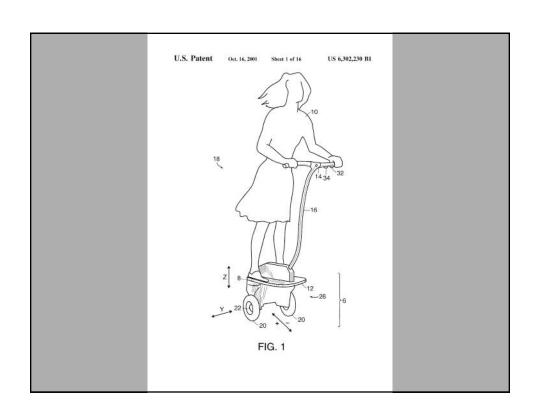
Five requirements for a valid patent:

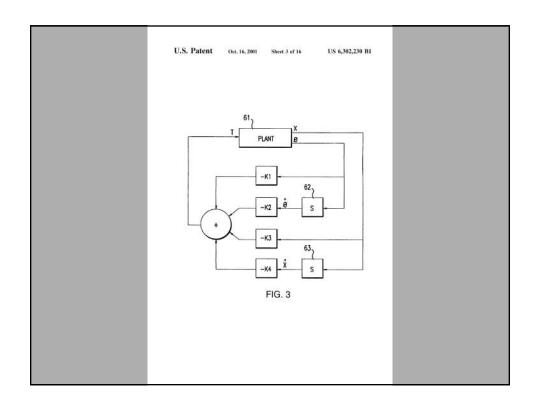
- Patentable subject matter
- Novelty
- Utility
- Nonobviousness
- Enablement

The following slides you've seen before ...









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Patent PAT.

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

Comparisons

What is protected?

©	Expression (text, images, recordings)
Pat.	Inventions (manmade)
ТМ	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
ТМ	Use in commerce, creating meaning
Trade Secret	Nothing
Right of Publicity	Nothing (fame, some places)

What does it take to keep it?

©	Nothing
Pat.	Payment of maintenance fees
ТМ	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
ТМ	forever (if used)
Trade Secret	forever (if kept secret)
Right of Publicity	life + extra sometimes

How is it lost?

©	Very difficult
Pat.	Unpaid fees; successful challenge
ТМ	Failure to keep exclusive control
Trade Secret	The secret gets out
Right of Publicity	Very difficult (?)

Defenses include ...

©	Fair use, first-sale
Pat.	Invalidity, first-sale
ТМ	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
ТМ	Injunctions; punitive damages; treble damages
Trade Secret	Injunctions; restitution (of D's wrongful gains); punitive damages; royalties
Right of Publicity	Injunctions; punitive damages

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Now, new slides ...

How might patents help society?

- Incentivize invention; assure appropriation of R&D costs through exclusivity.
- Incentivize commercialization; assure appropriation of commercialization costs of preexisting inventions through exclusivity.
 - Arthur Twinning Hadley, 1896
- Encourage the disclosure and enablement of new technologies
- Provide a record of technological progress (which may enable the use of technology and the efficient functioning of the patent system in the future)

What might patents do for patentees?

- Allow the making of money through licensing fees
- Allow the making of money through the charging of supracompetitive prices on patent-embodying products
- Signal achievement, talent, and skill
- Block latecomers from claiming novelty and trying to get a patent on the same invention
- Provide a bargaining chip to use in entering joint ventures, collaborations, pools, mergers, etc.
- Provide a credible threat of infringement counterclaims or counter lawsuits against potential plaintiffs suing for infringement of other patents

How might patents harm society?

- Raise prices for consumers above the efficient, competitively determined level.
- Disincentivize invention because of fear of infringement liability, litigation costs, and the introduction of uncertainty in those regards.
- Disincentivize economic growth because patents may help established players stay dominant in markets instead of encouraging disruptive innovation by upstarts and entrepreneurs.
- Waste resources through the introduction of various transaction costs (searching, prosecution of applications, litigation, hold-up costs, etc.)

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