Purpose

Define intellectual property (IP), distinguish the four types of intellectual property, and give examples of each type.
Video Segments

1. Introduction to Intellectual Property
2. Introduction to Patents
3. Utility Patents
4. Copyright
5. Trademarks and Trade Secrets
References

1. United States Patent and Trademark Office
   www.uspto.gov
   http://www.uspto.gov/trademarks/basics/definitions.jsp


4. Copyright Term and the Public Domain in the United States
   http://copyright.cornell.edu/resources/publicdomain.cfm

5. Creative Commons alternative to copyright
   http://creativecommons.org/

6. Trademark Basics
   http://www.uspto.gov/trademarks/basics/

7. Trade Secrets Basic FAQ:
The concept of intellectual property requires the belief that you can own the right to use ideas or to prohibit others from using those ideas.
Senator Leahy Kills Patent Reform (For Now)

Patent reform suffered a massive setback today when Senator Patrick Leahy, as chair of the Judiciary Committee, announced that he is taking patent reform “off the agenda.” We understand that other senators—particularly Sens. Chuck Schumer and John Cornyn—were still working hard to reach a bipartisan deal. Just as they were ready to release a new bill, Leahy stepped in to kill the process.

The Senate’s failure is especially galling given that the House overwhelmingly passed the Innovation Act in December. The strong patent reform bill passed with a 325-91 vote that included a majority of both Republicans and Democrats. Meanwhile, President Barack Obama was slated to be the "great slayer of patent trolls." This is an issue that crosses both sides of the aisle; when small businesses are facing extortionate patent threats, politics must be set aside. And Leahy has gone ahead and thrown that all away.

Leahy’s stated reason for killing the bill was concerns that the House-passed bill "would have severe unintended consequences on legitimate patent holders." But Leahy is just wrong about the Innovation Act. When we look at what was in it, we see reform that would have little—if any—impact on legitimate claims.

For example, the Innovation Act included provisions that would allow a manufacturer to step into the shoes of its customer and defend its products against claims of infringement. Legitimate patent holders should not be concerned about this: they could protect their rights through one lawsuit against a manufacturer, instead of suing countless customers. This provision does not prevent a legitimate patent holder from protecting its invention; in fact, it makes it easier by consolidating its claims into one forum.

As another example, the Innovation Act required a plaintiff to provide details in its complaint about how a defendant supposedly infringed its patent. This is a sensible pleading requirement. A patent holder should know at the outset what their patent claims and how it believes a defendant infringes. A patent holder, if its claim is legitimate, would suffer no harm from this requirement—their lawyers are already required to do this sort of analysis before bringing a claim.

Today is not the first time Leahy has disappointed us on the IP front. Remember PIPA, the Senate’s counterpart to the awful censorship bill SOPA? Leahy introduced that horrendous piece of legislation, throwing the public interest under the bus in favor of moneyed interests. This case is no different. Leahy effectively deferred a problem—a serious problem he readily admits exists—in order to please the pharmaceutical, biotech, and university lobbies that are hardly the victims of patent trolls anyway. (In the case of universities, they sometimes fuel patent trolls.)

For over a year, intellectual property reform advocates and their allies in Congress have been trying to advance legislation designed to crack down on so-called patent trolls, which are firms that don’t build products, but rather seek to extract license fees or legal judgments from other companies. Until recently, prospects for reform appeared good, as lawmakers honed legislation that would curb the worst kind of patent troll abuse.
Four Types of IP

1. Patents
2. Copyrights
3. Trademarks
4. Trade secrets
Question:
Where are patents first mentioned in U.S. Law?
Question:
Where are patents first mentioned in U.S. Law?

Hint:
Question:
Where are patents first mentioned in U.S. Law?

Hint:
Article 1 of the US Constitution

We the People of the United States, in Order to form a more perfect Union, ... establish this Constitution for the United States of America.

“Section 8, The Congress Shall have 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”
Definition

“A patent is an intellectual property right granted by the Government of the United States of America to an inventor ‘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’ for a limited time in exchange for public disclosure of the invention when the patent is granted.”

Source: http://www.uspto.gov/patents/
Definition

“A patent is an intellectual property right granted by the Government of the United States of America to an inventor ‘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’ for a limited time in exchange for public disclosure of the invention when the patent is granted.”

Source: http://www.uspto.gov/patents/
Owning a patent does not give you the right to use your invention

From USPTO.gov

“What is granted is not the right to make, use, offer for sale, sell or import, but the right to exclude others from making, using, offering for sale, selling or importing the invention. Once a patent is issued, the patentee must enforce the patent without aid of the USPTO.”

http://www.uspto.gov/patents/resources/general_info_concerning_patents.jsp#heading-2
Patent theory

Good idea + money + time → Innovative device or process → Sales of product
Patent theory

Good idea + money + time → Innovative device or process → Sales of product

$$$
Patent theory

Good idea + money + time → Innovative device or process → Sales of product

Patents are designed to protect this feedback
Types of Patents

1. Utility patents
   provisional and non-provisional

2. Design patents

3. Plant patents
   Provisional and non-provisional
Types of Patents

1. Utility patents
   provisional and non-provisional

2. Design patents

3. Plant patents
   Provisional and non-provisional

In 2013, USPTO received about 609,052 patent applications (all types). 571k of those were utility patent applications.
609k/year = 11712/week = 2343/day (5 days/wk)

http://www.uspto.gov/about/stats/
Utility Patents

Provisional

- Establishes a starting date for a one-year period to complete the filing
- Allows you to claim “Patent Pending”
- Is cheaper than non-provisional, at least initially

Non-provisional

- Requires a complete application
- Filing date marks the date of your disclosure, and begins the examination process by USPTO

http://www.uspto.gov/patents/resources/types/utility.jsp
Utility Patents
ME 370: Intellectual Property Notes
Utility Patents

“Utility patents may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof;”

Source: http://www.uspto.gov/patents/
Design and Plant Patents

“Design patents may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture; and Plant patents may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant.”

Source: http://www.uspto.gov/patents/
What can be patented?

A utility patent can be granted for something that may be

- A process
- A machine
- An article of manufacture
- A composition of matter (e.g. a material)
- An improvement in any of the above

These criteria do not apply to design and plant patents.

http://www.uspto.gov/inventors/patents.jsp
What’s Patentable?

Methods, devices, systems, business procedures, software, and improvements to existing technologies can all be patented.

Requirements:

- Novel: invented by you, and not known by others.
- Must be non-obvious.
- Must be useful.

Source: Douglas and Popadopolous, pp. 134 – 135
What cannot be patented?

The following are not patentable

- Laws of nature
- Physical phenomena
- Abstract ideas
- Literary, dramatic, musical and artistic works (these can be protected by copyright)
- Inventions which are
  - not useful (e.g. perpetual motion machines)
  - offensive to public morality

http://www.uspto.gov/inventors/patents.jsp
Requirement of Novelty

The “newness” or novelty and non-obviousness of a patent is lost if the idea is revealed to the public before it is disclosed in a patent application.

“In order for an invention to be patentable it must be new as defined in the patent law, which provides that an invention cannot be patented if:

(1) the claimed invention was patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention’ or

(2) the claimed invention was described in a patent issued [by the U.S.] or in an application for patent published or deemed published [by the U.S.], in which the patent or application, as the case may be, names another inventor and was effectively filed before the effective filing date of the claimed invention.’ ”

http://www.uspto.gov/patents/resources/general_info_concerning_patents.jsp#heading-5
Requirement of Novelty

The “newness” or novelty and non-obviousness of a patent is lost if the idea is revealed to the public before it is disclosed in a patent application.

“In order for an invention to be patentable, the patent law, which provides that:

(1) Prior disclosure or sale means the invention is no longer novel or non-obvious

(2) First to file gets to claim the invention

http://www.uspto.gov/patents/resources/general_info_concerning_patents.jsp#heading-5
Patent Facts

• Patents protect inventions – things or processes that are both new and useful.
• Patents give legal holder the right to exclude others from making, using, selling, or offering.
• Patents are valid for 20 years.

Douglas and Popadopolous, pp. 134 – 135
Patent statistics
The number of utility patent applications have grown continuously.

Utility Patent Applications

- **US origin**
- **Foreign origin**

![Graph showing the number of utility patent applications from 1970 to 2010](http://www.uspto.gov/web/offices/ac/ido/oeip/taf/us_stat.htm)

Accessed 11 October 2014
The number of utility patents granted has also increased, and recently surged.

Utility Patents Granted

- **US origin**
- **Foreign origin**

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Accessed 11 October 2014
The number of design patents is a small fraction of the number of utility patents.

Design patents granted

Year

Number vs Percent

Accessed 11 October 2014
The number of plant patents is an even smaller fraction of the number of utility patents

Plant patents granted

Accessed 11 October 2014
Top 3 and representative patents counts granted to organizations in 2013

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<th>Organization</th>
<th>Count</th>
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<tr>
<td>2</td>
<td>Samsung Electronics*</td>
<td>4652</td>
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<tr>
<td>3</td>
<td>Canon Kabushiki Kaisha</td>
<td>3820</td>
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<td>5</td>
<td>Microsoft</td>
<td>2659</td>
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<td>Google</td>
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<td>Apple, Inc.</td>
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<td>43</td>
<td>Boeing</td>
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<tr>
<td>80</td>
<td>University of California</td>
<td>397</td>
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</tbody>
</table>

*Other divisions of Samsung are counted separately

# Top 3 and representative patents counts granted to organizations in 2013

<table>
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</tr>
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*Other divisions of Samsung are counted separately


26.1 per work day, 3.3 per hour
Weislogel, Thomas and Graf
US # 7,905,946
March 15, 2011

<table>
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<th>Patent No.</th>
<th>Date of Patent</th>
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<tr>
<td>US 7,905,946 B1</td>
<td>Mar. 15, 2011</td>
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</table>

**System and Methods for Separating a Multiphase Fluid**

**Inventors:** Mark M. Weislogel, Tigard, OR (US); Evan A. Thomas, Boulder, CO (US); John G. Graf, Seabrook, TX (US)

**Assignee:** The United States of America as represented by the Administrator of the National Aeronautics and Space Administration, Washington, DC (US)

**Notice:** Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 324 days.

**Appl. No.:** 12/190,364

**Filed:** Aug. 12, 2008

**Int. Cl.** B01D 43/00 (2006.01)

**U.S. Cl.** 96/272; 55/447; 55/461; 55/465; 55/520; 55/428; 55/429; 55/DIG. 14; 95/271; 95/261; 96/208; 96/209; 96/216

**Field of Classification Search** 96/208, 96/209, 216; 95/272, 271, 261; 55/447, 55/461–465, 529, 459, 428, 429, DIG. 14

See application file for complete search history.

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**References Cited**

**U.S. PATENT DOCUMENTS**

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<th>Patent No.</th>
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<td>1/1995 Yoon</td>
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<td>6,080,217 A</td>
<td>6/2000 Gohl et al.</td>
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<td>6,364,940 B1</td>
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<td>6,969,233 B1</td>
<td>5/2009 Pyshkov</td>
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<td>6,925,680 B2</td>
<td>8/2005 Oh</td>
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<tr>
<td>RE35,325 E</td>
<td>9/2006 Jatsos et al.</td>
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<td>7,125,711 B2</td>
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<td>1/2008 Hopper</td>
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<td>7,473,289 B2</td>
<td>1/2009 Oh et al.</td>
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<td>7,547,151 B2</td>
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<tr>
<td>7,556,662 B2</td>
<td>7/2009 Lee et al.</td>
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<td>12/2009 Oh et al.</td>
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<td>7,662,199 B2</td>
<td>2/2010 Willis et al.</td>
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<td>7,678,366 B2</td>
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**ABSTRACT**

Apparatus and methods for separating a fluid are provided. The apparatus can include a separator and a collector having an internal volume defined at least in part by one or more surfaces narrowing toward a bottom portion of the volume. The separator can include an exit port oriented toward the bottom portion of the volume. The internal volume can receive a fluid expelled from the separator into a flow path in the collector and the flow path can include at least two directional transitions within the collector.

28 Claims, 4 Drawing Sheets
A multiple string tuning peg for a stringed musical instrument capable of independently tuning at least two strings. It minimizes the amount of clutter at the top end of a stringed instrument and maximizes the use of the mechanical gearing assemblies by sharing mechanical components. A single thumb twist can be physically manipulated to operated the multiple string winding mechanisms.
Copyright
ME 370: Intellectual Property Notes
Copyright is ownership of the *expression of an idea*. It does not extend to the idea itself or the factual information contained in the expression.

Copyright is the right to reproduce, distribute (and sell), display, and perform the expression.
Copyright vs. Patent

A Utility Patent

- gives you the right to prevent someone else from using your invention
- expires in 20 years
Copyright vs. Patent

A Utility Patent

- gives you the right to prevent someone else from using your invention
- expires in 20 years

A copyright

- gives you the right to perform or sell the creative work
- expires in 70 years after the death of the author, or 120 after creation of the work. Can be renewed
- does not prevent someone else from creating a different expression of the same idea
Registration

When you write something, it is *automatically copyrighted*.

You can declare your copyright and use the © sign without registering your document.

http://www.copyright.gov/
http://www.copyright.gov/document.html
http://www.copyright.gov/fls/sl4d.pdf
Registration

When you write something, it is *automatically copyrighted*.

You can declare your copyright and use the © sign without registering your document.

To *register* a copyrighted work, submit a copy of the work to the Library of Congress. Pay $105 for an electronic filing.

http://www.copyright.gov/
http://www.copyright.gov/document.html
http://www.copyright.gov/FLS/SL4D.pdf
Example

From an earlier slide in this presentation:

Good idea + money + time → Innovative device or process → Sales of product

Patents are designed to protect this feedback
Example

From an earlier slide in this presentation:

Good idea + money + time → Innovative device or process → Sales of product

Patents are designed to protect this feedback

Copyright © 2011, Gerald Recktenwald, all rights reserved
Example

1. Download public domain image from Library of Congress
2. Apply Photoshop “cutout” filter
3. Use Adobe Illustrator to add $e = mc^2$ with chalk brush font
4. Save as JPEG file
5. Copyright as art
6. Make posters for sale
7. Profit!? 
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<td>Can be used for related expression</td>
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</table>

http://www.uspto.gov/patents/resources/general_info_concerning_patents.jsp
http://copyright.gov/help/faq/
Fair Use

The copyright owner has exclusive rights subject to “fair use” limitations.

The following are considered “fair use”

- Criticism
- Comment
- News reporting
- Teaching
- Scholarship
- Research

See: http://www.copyright.gov/fls/fl102.html
Fair Use

Boundaries on fair use are defined by case law.

“The distinction between fair use and infringement may be unclear and not easily defined. There is no specific number of words, lines, or notes that may safely be taken without permission. *Acknowledging the source of the copyrighted material does not substitute for obtaining permission.*”

(emphasis added)

See: http://www.copyright.gov/fls/fl102.html
Public Domain

A work is in the public domain if it does not have a claim of copyright.

Examples:

- Francis Scott Key’s poem, *The Star Spangled Banner*
- The words in the poems, sonnets, and plays of William Shakespeare
Creative Commons

An alternative to Copyright

- Attempt to balance ownership with reuse
- Owners designate the degree of restriction
- Six types of licenses
- See http://creativecommons.org/
# Creative Commons

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<td>Allow remix and reuse</td>
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<td>New work inherits the license!</td>
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[http://creativecommons.org/licenses/](http://creativecommons.org/licenses/)
Trademarks and Trade Secrets

ME 370: Intellectual Property Notes
What is a trademark

According to uspto.gov:

“A trademark is a brand name. A trademark or service mark includes any word, name, symbol, device, or any combination, used or intended to be used to identify and distinguish the goods/services of one seller or provider from those of others, and to indicate the source of the goods/services. Although federal registration of a mark is not mandatory, it has several advantages, including notice to the public of the registrant's claim of ownership of the mark, legal presumption of ownership nationwide, and exclusive right to use the mark on or in connection with the goods/services listed in the registration.”

http://www.uspto.gov/trademarks/
Trademark Indicators

 Registered Trademark

 Unregistered Trademark

 Unregistered Servicemark
Trademark Examples

- Nike
- iPhone
- Microsoft
- Business International Machines
- IBM
- Chevrolet
Nike Swoosh

Created in 1971 by Carolyn Davidson, a graphic design student at PSU.

She was paid $35, but later, in 1983 was given a diamond swoosh ring and an envelope filled with Nike stock certificates.

Source:  http://en.wikipedia.org/wiki/Swoosh
http://www.nikebiz.com/company_overview/history/1970s.html
Trademark on Hershey Bar Design

In June 2012, the USPTO’s Trademark Trial and Appeal Board (TTAB) rule that the Hershey Chocolate and Confectionary Company had a trademark on the appearance of the Hershey Bar


http://blogs.smithsonianmag.com/design/2012/10/copyright-confection-the-distinctive-topography-of-the-hershey-bar/
TTAB ruling on Hershey Bar Design

The description of the mark reads as follows: “The mark is a configuration of a candy bar that consists of twelve (12) equally-sized recessed rectangular panels arranged in a four panel by three panel format with each panel having its own raised border within a large rectangle.”

Trade Secrets
ME 370: Intellectual Property Notes
You can try to protect your IP by keeping it secret

Example: Recipe for Coca Cola

Benefits:
- No disclosure of the idea, as in a patent
- Protection can be indefinite, i.e. longer than 20 years of a patent lifetime

Costs
- Maintain vigilance to prevent disclosure
- Can allege theft only after secret has been stolen
Requirements for a Trade Secret are codified in the US legal code

To claim IP as a Trade Secret

- The owner has to demonstrably take measures to keep it secret
- The secret information provides economical benefits.

http://www.law.cornell.edu/uscode/text/18/1839
Agents Arrest 3 in Plot to Sell Coca-Cola Secrets to PepsiCo

By BRENDA GOODMAN
Published: July 6, 2006

ATLANTA, July 5 — Federal agents have arrested and charged an employee of the Coca-Cola Company and two others with stealing trade secrets and wire fraud, saying they tried to sell "highly classified" information to that company's competitor PepsiCo for $1.5 million.

The recipe for Coca-Cola Classic, perhaps the company's most closely guarded secret, was never in jeopardy, said Ben Deutsch, a spokesman for Coca-Cola.
Four Types of IP

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