

Class 5: Patent Intro And Subject Matter

Administrative

Next Time: Skim
158-163; Read
163-69; 173-83

Patent Overview

Get used to routine {
Requirements for Protection
Infringement Actions
Defenses
Remedies

History {
Generally, good to know, but not required
Here: Most Important Part: Federal Circuit (1982)

Requirements to get a Patent {
Patentable subject matter
Novelty (has not been preceded in identical form in the public prior art) { first to invent
EU: first-to-file
Utility
Nonobviousness (nontrivial extension of what was known) { KSR
PHOSITA
Enablement/Written Description

How do you get a patent? {
1-4 year (or longer) process. ~ 2.77 year average.
Process called "Patent Prosecution" ~ US PTO has "patent examiners" and law firms hire "patent agents" who pass a specialized bar.

Class 5: Patent Intro And Subject Matter

Patent Overview

Rights Conferred

- Make
- Use
- Sell
- Offer for Sale
- Import
- Term: 20 years from filing.
- Not Exceptions
 - Reverse Engineering
 - Independent Invention

Theory

- Pure Utilitarianism
 - Public Goods
 - Insufficient incentive to create/develop/market inventions without Patents
 - Patents give market-driven incentives.
- Others don't really cut it well. ☹

Patentable Subject Matter

Clearly patentable ☺

Clearly Unpatentable ☹

Patenting Living Things

How to square these cases:

- Legislative History on 131: Mineral created wholly by nature unassisted by man [is not patentable.]
- Chakrabarty
- Funk
- Parke-Davis

Chakrabarty

Basic Facts

- Microbiologist (working or GE) genetically engineered bacterium for treatment of oil spills
- Three types of claims
- Odd procedural history: PTO rejected and PTO Board of Appeals affirmed. PTO Commissioner himself sought cert.

Supremes 1980

Software Patents ☹