

**Class 7: Novelty**

Next Time: 212-237;  
240-44 (skip Comments  
and Questions); Facts  
and claims only of  
Amazon.com v.  
Barnesandnoble.com  
(1081-83)

Administrative

No Class on Tuesday  
Guest on Thursday Please be on your best behavior

Last Time

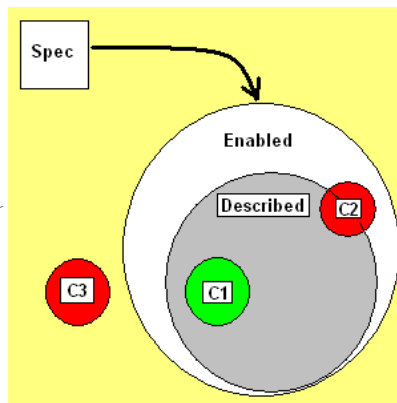
Written Description

Gentry Gallery

Rule/Test  
And Biotech

Best Mode Test on 183

Comparing the Three



Enablement  
Written Description  
Best Mode ⊕

Facts

Disclosure:

Object of invention: with  
a console that  
accommodates the  
controls  
"clearly identifies" "only  
possible location for the  
controls"  
"top/side/front" — no other variation

Testimony

This is the "way we  
solved it"

Claims at issue

Originally: controls  
located upon the center  
console  
Amended claim: as in  
book, page 175.

Damning fact: Inventor  
admitted he did not  
consider placing controls  
outside console until he  
became aware of  
competitors putting it  
elsewhere

Held

**Class 7: Novelty**

**Novelty**

**Defined**

Two requirements embodied in section 102 (p. 186)

**Novelty (102(a))**

known or used by OTHERS in this country or patented or described in print in any country before the INVENTION by applicant.

**Statutory Bar (102(b))**

Patented or described in print in any country OR in public use or on sale in this country MORE THAN ONE YEAR prior to FILING of application.

**Basic Facts**

Invention: Max invents the Clickable Sharpie on July 1, 2003.

**Elements**

- 1. Sharpie
- 2. Clickable button on top.
- 3. Spring-loaded, retractable mechanism



**Hypotheticals**

Hypo 1: On June 30, 2003, his rival Eleanor invents the same thing (same exact elements)

Hypo 2: On June 30, 2003, Eleanor publishes article laying out all elements of invention.

Hypo 3: On June 30, 2003, Eleanor published a blog post read by only her mom about the invention. Google's Spider indexes post three weeks later.

Hypo 4: Max himself had an earlier prototype he created with essentially all of the elements on January 1, 2003.

Hypo 5: On June 1, 2003, Eleanor invents all of it, except she uses gravity, not a spring; on June 2, 2003, Anna invents all of it, except she uses a button on the side, not on the end. Both publish immediately.

**More Facts ⊕**

Hypo 5: Competitor publishes article in "Markers and Pens" magazine, published December 19, 2003 describing in detail Max's bold new invention.

Hypo 6: Inventor himself sends prototypes to 50 of "best customers" on December 19, 2003.

Hypo 7: Inventor gives one prototype to best friend on December 19, 2003