

Intellectual Property Outline: High School, Ages 15-18

~ 30 MINUTES ~

Note: The following may provide a turnkey solution for your presentation but is offered simply as a starting point. Please feel free to selectively use sections as appropriate for your own tailored session. To the extent that it is helpful, please refer audience members to the more encyclopedic catalog of materials that can be found at MichelsonIP.com.

PART 1: INTRODUCTION TO IP

What is IP? High level overview of each subsection with a focus on patents.

- *Types of IP; Patents, Copyrights, Trademarks, and Trade Secrets*

Overview of IP: Defining Patents, Copyrights, Trademarks, & Trade Secrets

The legal foundation for U.S. intellectual property rights was laid by the Founders in 1787, in the very first Article of the U.S. Constitution, which outlined the precepts of our democratic society. In Article 1, Section 8, Clause 8 of the Constitution, Congress was given the authority 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”

- Patents: *A patent is an intellectual property right granted by the government of a nation to an inventor that gives him or her the exclusive right to the invention for up to 20 years, in exchange for disclosing the details of the new technology to society for its ultimate benefit.*
- Copyright: *A copyright is an intellectual property right granted by a government to the author of an original literary, dramatic, musical, artistic, or other eligible creative work. It gives the creator the exclusive right for a limited time to control how the work is published, reproduced, performed, or displayed.*
- Trademarks: *A trademark is an intellectual property right granted by a government to an individual, business, or legal entity that creates and uses a distinctive word, name, symbol, or device to distinguish its products or services from those from any other entity in the marketplace.*
- Trade Secrets: *Trade secret law is a source of protection for intellectual property that serves as an alternative to patent or trademark law; requiring that the intellectual property not be publicly disclosed.*

PART 2: IN DEPTH REVIEW OF PATENTS IN THE U.S.

The History of Patents & The U.S. Patent System

The History of Patents - *What are the origins of the patent system?*

- Patent-like incentives first appeared in ancient Greece in 500 BC, and continued to spread throughout Europe through the 1700s. Early patent systems reinforced the wealth of elites instead of the welfare and productive capacity of the whole of society.
 - British patent application fees, for example, were more than 11 times the per capita income of the average citizen. This restricted innovation to a small sector of the population.

Foundations of Patent Protection - *What is the rationale for issuing a patent?*

- As the first country in the world to incorporate intellectual property rights in its national constitution, America's founders viewed intellectual property rights as vital to the nation's economic survival.
 - They consciously designed a patent system that would do what no patent system had ever done before — **stimulate the inventive genius and entrepreneurial energy of the common man.**
- Today's U.S. patent system satisfies two broad goals:
 - Stimulates invention: The inherent property rights of inventors and authors to their creations are protected, thereby helping to ensure that the wellsprings of creation and productivity do not dry up for lack of incentive.
 - Is an effective tool for knowledge sharing: The benefits derived from these inventions and creations are ultimately harnessed to the public good through disclosure, thus promoting the progress of the nation and "the general welfare" of its citizens.

America's Uniquely Democratic Patent System - *How did the U.S. create a patent system for everyone?*

- In order to create a patent system that benefits everyone and facilitates innovation, the founding fathers integrated **six unique democratic features into the U.S. patent system**:
 - Low fees: making patents affordable to ensure that all citizens, including the poor, could participate in the developing industrial revolution.
 - Simplified application procedures
 - Disclosure of new technology developments
 - World's first examination system of patents for validity
 - No "Working Requirements" reduced monopoly control
 - A new technology marketplace

- As a result, these unique features of the U.S. patent system greatly expanded the number of inventors in our nation, and led to a dramatic surge in innovation.

Requirements and Limitations of Patentability

Criteria for Patenting - *What, Exactly, Can You Patent?*

- Title 35 of the United States Code, also known as “The Patent Act,” says that a machine, manufacture, process, or composition of matter can be patented if it demonstrates the following three characteristics:
 - Novelty
 - Non-obviousness, and
 - Utility
- Patentable inventions fall into one of two categories: products or processes.
 - You cannot patent ideas; the most important reason why one thing is patentable and another is not lies in the difference between ideas and applications.
 - You cannot patent mathematical formulas, a law of nature or a natural phenomena; they all exist independently of human intervention, making this knowledge freely available.
- The highest hurdle facing inventors is non-obviousness requirement; the vast majority of rejections at the patent office are for obvious reasons.
- **Camera phone example:**
 - Inventing the camera phone was not so obvious in meeting the non-obviousness patent requirement.
 - While composed of well-known and widely-available components, combining the two did satisfy the non-obviousness requirement because it became more than the sum of its parts, and met a large and previously-unfilled need in the marketplace.
 - This is apparent as we see millions of people who take selfies everyday.

Patent Enforcement Actions

Enforcing Patent Rights - *How are patent rights protected?*

Patent Law and Enforcement

- Patents can be enforced by their owners in U.S. federal courts. It is up to the owner of the patent, the “patentee,” to enforce it against infringers by filing a civil case in federal court for patent infringement.
 - It’s important to note that patent rights only exclude others from using the patentee’s invention; patent holders have the legal right to exclude others from making, using, selling, or importing the patented invention throughout the U.S.
- Patent infringement occurs regardless of the infringer’s lack of knowledge of the patent or their intent to infringe it.

- In modern times, patent enforcement has become a long and very expensive process. Patent litigation serves a vital function in society by settling the validity and disputed ownership of patent rights so these can be commercialized into new products, services, and medical treatments.

Patent Infringement

- If the patentee believes their patent is being infringed, they should first hire a patent trial lawyer; the lawyer will evaluate the patent and the accused device or process to provide a legal opinion about whether or not an infringement exists.
- If infringement is found, options for pursuing a patent infringement claim include:
 - Demand that the alleged infringer stop infringing and pay damages for past infringement.
 - Offer the alleged infringer a license to practice your invention for money, called “royalty.”
 - Ignore the infringement, or postpone any action for a time.
 - File a patent infringement lawsuit in federal court against the alleged infringer.

Should You Take the Claim to Court?

- While time consuming, successful patentees can reap huge monetary damages for another’s patent infringement and possibly increased market share.
- Once the decision to enforce a patent through litigation, a series of complex steps begins to determine the who, what, where, when, and how of events.
 - Who - determine the corporation or individual(s) who infringed and whether they should be sued individually or collectively.
 - What - create a claim chart detailing your patent claims and the product or service that has infringed upon them.
 - Where - Determine your location or “venue” options and select the one that aligns most closely with your objectives.
 - When - Once infringement has been discovered, the claim should be filed as soon as you have sufficient evidence to prove the claim.
 - How - Plaintiffs may select whether their claim is decided by a judge or jury. The complexity of the case often informs this decision.

Mediation and Arbitration - *What are the alternatives to litigation?*

- The high cost, delay, and disruption of litigation motivate many adversaries to seek alternatives to litigation to resolve their disputes. Two popular alternative dispute resolutions are mediation and arbitration.
 - Mediation is simply an exchange between adversaries overseen by an individual with expertise and/or training in helping parties reach an agreement.
 - The main difference between mediation and arbitration is decisiveness. Mediations result in settlements only if all parties agree to a resolution. In most arbitrations, the parties agree to be bound by the decision of the arbitrator(s).

- Alternative dispute resolutions are often faster, less expensive, and more private, as compared with public lawsuit procedures. The driving force behind ADR is confidentiality.

Conclusion

Intellectual Property (IP) rights are vital to a nation's economic survival; IP comprises an astonishing 38 percent of total U.S. GDP today, and represents 80 percent of the market value of all publicly traded companies in the U.S. As a result, any young person today who does not understand the basics of intellectual property--and its value and role in science, business, and arts professions--will find him or herself at a distinct disadvantage in the world of tomorrow.

- Over the last 40 years, intellectual property has grown from an arcane, narrowly-specialized legal field into a major force in American social and economic life.
- Intellectual property is now the chief engine of wealth creation and economic growth in the world.
- America's patent system helped create the most successful economy on the face of the earth. The Founders designed the world's first democratized intellectual property system, precisely because they believed in the ingenuity of the common citizen.

PART 3: SUPPLEMENTAL IP SECTIONS

Copyright

- Copyrights are automatically granted to an author at the moment of creation; as a result the work is protected by copyright laws without registration.
- Patents and copyrights seemingly try to accomplish similar goals, protect the property rights of creators, but they are distinct from one another in important ways.
 - Determining merit can be far more subjective for a creative work than for patent eligible inventions. For this reason, the U.S. does not have an examination system to determine whether a creative work merits copyright protection. This is not the case with patents.
- **Copyright infringement case in the music industry:**
 - The most significant copyright infringement case in recent years concerning music was the March 10, 2015, verdict against Robin Thicke and Pharrell Williams, the performer and primary songwriter-producer of the 2013 pop hit "Blurred Lines."
 - A federal jury ruled that Thicke and Williams committed copyright infringement by using elements of the 1977 Marvin Gaye classic "Got to Give It Up." The jury awarded Gaye's family \$7.3 million.
 - The case is significant as it challenges the growing practice in contemporary music production of incorporating elements of the work of other artists.

Trademarks

- The original purpose of a trademark was to indicate the origin of goods and services to protect the public from confusion.
 - Trademarks developed into guarantees of quality and an avenue for branding.
- **Nike trademark “Swoosh” example:**
 - Nike’s “Swoosh” logo plays a significant role in the company’s \$106 billion shoe and apparel business.
 - Nike registered the logo with the U.S. Patent and Trademark Office in 1971. Nike founder paid a mere \$35 for the design but today, the logo is worth an estimated \$20 billion.
 - The logo is also recognized around the world as a symbol of Nike’s quality workmanship and design. Also, its vital role in protecting Nike’s market share and reputation explains why the company so strenuously protects its trademark rights from being infringed by counterfeiters.
- Trademarks offer similarities with other IP rights through
 - The power to encourage and reward creative enterprise.
 - The goal of marshaling the benefits of creative endeavor to the public good.
- Trademarks are different from other IP rights in three key areas:
 - The legal foundation comes from the commerce Clause of the Constitution, giving Congress the authority to regulate interstate commerce and enact whatever is necessary.
 - They are not limited in duration; trademarks are granted in perpetuity as long as they are not abandoned by the owner.
 - They exist only in conjunction with commercial activity. A trademark cannot be obtained by mere adoption, they can only be acquired through commercial use via the sale of goods and services.

Trade Secrets

- Trade secret is an alternative and valuable way to protect intellectual property. Trade secret law requires that the intellectual property not be disclosed, whereas patent and trademark law require just the opposite.
- **Coca Cola trade secret example:**
 - The vault which holds the secret formula for Coca Cola may be the most valuable trade secret in the world.
 - The company presents the formula as a closely held trade secret only known by a few employees, as a key publicity, marketing, and intellectual property protection strategy.
- Advantages of trade secret law:
 - Trade secrets provides indefinite future protection, so long as the trade secret stays a secret.

- Trade secret protection prevents the disclosure or use of the trade secret by one whom the secret was disclosed in confidence.
- Disadvantages of trade secret law:
 - Trade secret law does not offer any protection against the use of the same intellectual property that is independently derived or reverse engineered by a competitor.

KEY TERMS

Arbitration - is a process in which the parties to a dispute present arguments and evidence to a dispute resolution practitioner (the arbitrator) who makes a determination.

Complaint - A legal document filed that sets out why the filing party believes their claim against the defendant is valid.

Copyrights - A copyright is an intellectual property right granted by a government to the author of an original literary, dramatic, musical, artistic, or other eligible creative work.

Defendant - The party against which an action is brought.

Design Patents - A type of patent granted to protect new, original, and non-obvious ornamental designs for articles of manufacture.

Intellectual Property - Creations of intellect, such as inventions and artistic works.

Litigation - An action brought in court to enforce a particular right.

Mediation - Is simply an exchange between adversaries overseen by an individual with expertise and/or training in helping parties reach an agreement.

Non-obviousness - A patent requirement that ensures that the idea is inventive.

Novelty - A patent requirement that ensures that the idea is new.

Patent - A patent is an intellectual property right granted by the government of a nation to an inventor that gives him or her the exclusive right to the invention for up to 20 years, in exchange for disclosing the details of the new technology to society for its ultimate benefit.

Patent Infringement - Is a strict liability violation where you do not need to know that you are infringing a patent, or that a patent even exists to be liable for patent infringement.

Plaintiff - The party that brings a legal action or suit in a court.

Processes - or methods, are defined as a means to an end—either a means of doing something new, like being able to pay for purchases directly from your smartphone, or a new way of doing something old, like using “pinch, swipe, and zoom” gestures on a touchscreen, rather than clicking drop-down menus, to manipulate text and images on a smartphone.

Products - Are physical things, manufactures, or compositions of matter.

Royalty - Money by offered the alleged infringer a license to practice your invention

Trademarks - An intellectual property right granted by a government to an individual, business, or legal entity that creates and uses a distinctive word, name, symbol, or device to distinguish its products or

services from those from any other entity in the marketplace.

Trade Secrets - A law that requires that the intellectual property to be protected not publicly disclosed.

Utility - A patent requirement that ensures that the idea is usable and beneficial.

Utility Patents - The most common type of patents, which preclude others from making, using, or selling the invention during the term of the patent, which begins on the grant date and ends 20 years from the filing date.

Working requirements - Regulations that forced patentees to manufacture products based on their patents within two or three years of issuance or lose their patent rights.