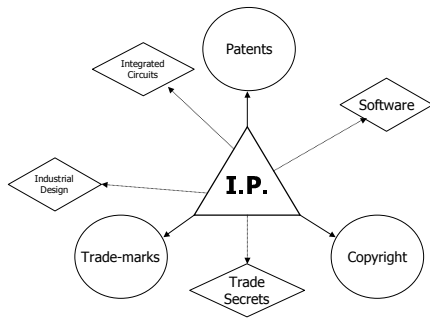


Intellectual Property

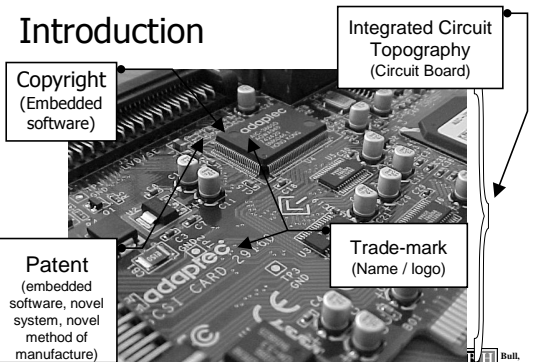
Christopher S. Wilson



Overview



Introduction



Trade Secrets

- Duty of confidentiality
- Contract:
 - What type of information is being disclosed
 - What can the receiver do with it?
 - What happens if they fail to abide by the agreement?

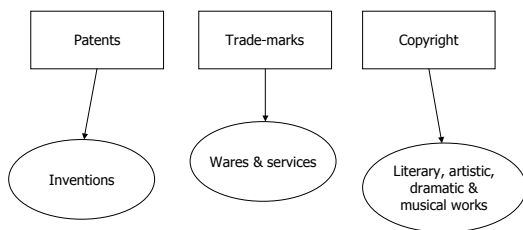


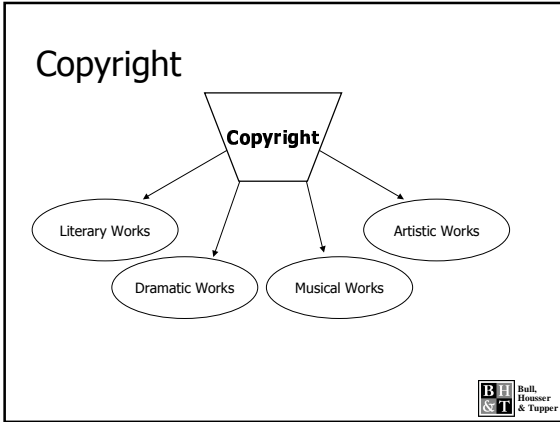
Trade Secrets

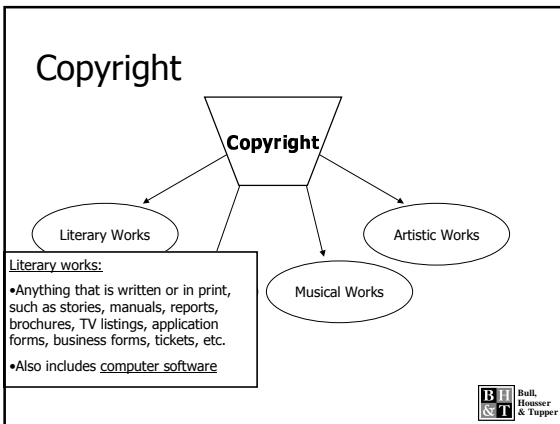
- Create an inventory
- Contract before disclosure
- Need to know basis
- Confidentiality clauses with customers, distributors, etc.
- Physical and electronic security
- Train your employees
- Mark all documents
- Shred, don't discard
- Do not disclose source code
- Enforce confidentiality and conduct exit interviews

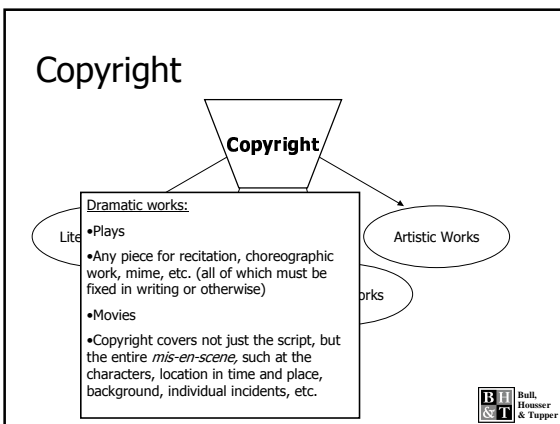


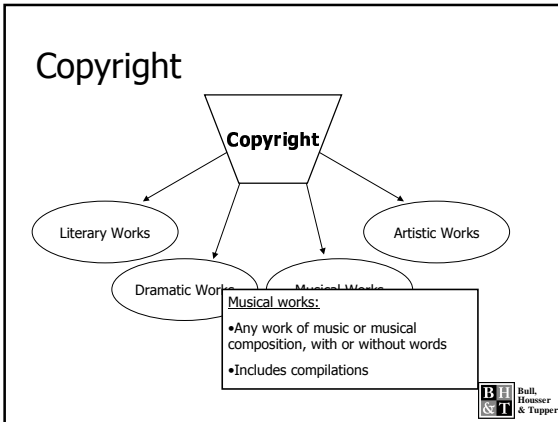
Patents, Trade-marks and Copyright

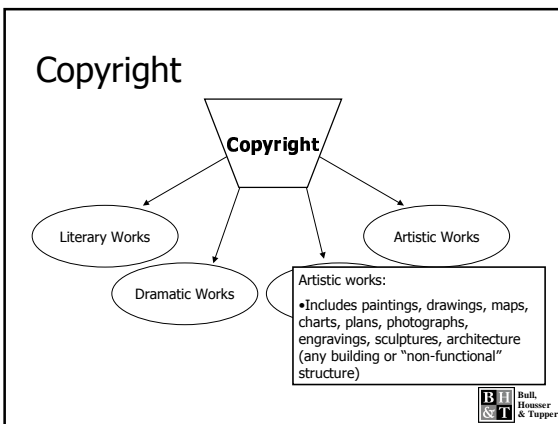


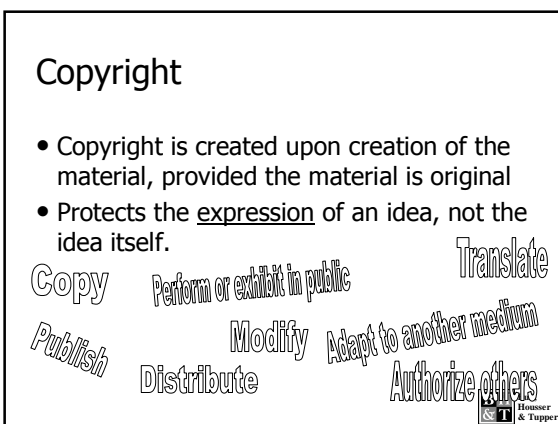












Copyright

- Term: life of the author plus 50 years
- Owner: The author is the first owner of the copyright, except:
 - Employees: the employer is the first owner of copyright in a work created by an employee working within the ordinary scope of his or her employment
 - Photographers: The person who commissions and pays for a photograph is the first owner of the copyright in the negative / photograph, not the photographer



Copyright

- Registration has some advantages if your rights are ever tested in Court
 - Cost: \$65 filing fee
- Use the © symbol, as follows:
 - © 2002 Bull, Houser & Tupper
 - © <date(s) of publication> <owner>



Copyright

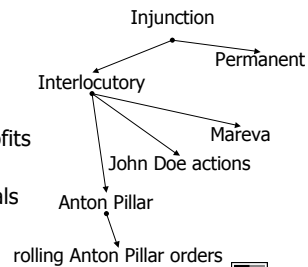
- Infringement
 - Direct infringement
 - Must prove ownership, access and a substantial copy
 - Knowledge of copyright irrelevant
 - Indirect infringement
 - Selling, distributing or exhibiting a work in public that you know infringes copyright



Copyright

- Remedies:

- damages
 - general
 - statutory
- accounting of profits
- delivery up of offending materials
- declaratory relief



Copyright

- Exceptions

- Fair dealing: research, private study, criticism or review, in certain circumstances
- Must be for an allowable purpose, and must be fair

- Example:

- MP3s (private recording of audio onto tape or CD)



Copyright – Moral Rights

- Right of the author to:

- be associated with their work
- maintain the integrity of their work
 - distorting, mutilating or otherwise modifying a work
 - using a work in association with a particular product, service, cause or institution
 - but only if to do so would be to the prejudice of the author's honour or reputation

- Can be waived, but cannot be assigned



Copyright

- Assignment
 - You will own the copyright in your software unless:
 - (a) you create them as an employee; or
 - (b) you assign them.
 - Copyright can only be assigned in writing.
- License
 - Exclusive vs. non-exclusive
 - Perpetual vs. limited vs. renewable



Trade-marks

- A word, phrase or logo that is used by a person for the purpose of distinguishing the wares or services manufactured, sold, leased, hired or performed by him from those manufactured, sold, leased, hired or performed by others
- They are a visual clue that links wares or services with the person that makes, sells or distributes them



Trade-marks



Trade-marks

- Scope of Protection
 - Use
 - First use
 - Continued use
 - Distinctiveness
 - The mark and the product or service must be associated
 - The owner uses this association
 - The association enables consumers to distinguish the owner's product or services from those of others
 - Permits you to stop others from using the same or similar marks in association with similar products, in the area where your mark has a reputation

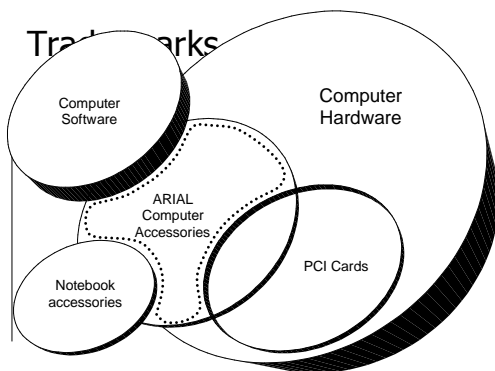


Trade-marks

- Registration:
 - Canada-wide protection without the need to prove reputation in a geographic area, plus certain other benefits
 - Cost:
 - \$750 to \$1,500 if unopposed
 - \$4,000 to \$10,000 if opposed
 - Can be expunged for failure to use



Trade-marks



Trade-marks

- Choose a “strong” mark:
 - A mark that bears no relation to the character or quality of the goods; e.g., KODAK or EXXON
- Examples: strong or weak?
 - SHAKE 'N BAKE
 - COCA-COLA
 - FRIGIDAIRE
 - FIBER-NET
 - APPLE



Trade-marks



Trade-marks

- Protect your mark's distinctiveness:
 - Consider kerosene, nylon, escalator, linoleum
 - Your mark is an adjective, not a noun
 - Use your mark on all packaging, labeling, advertising
 - Keep representative samples of all your packaging, labeling and advertising
 - Use ™ (for unregistered trade-marks) and ® (for registered trade-marks)
 - Refer to owner and licensee on packaging
 - Use your mark consistently
 - Educate your employees about use of your mark
 - Educate your licensees and other permitted users, such as distributors, the media and, if necessary the public
 - Enforce your rights against third parties

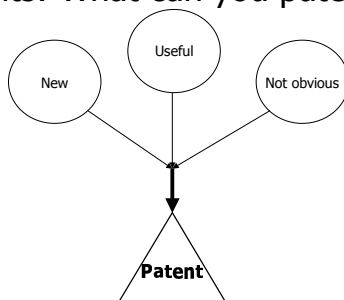


Patents

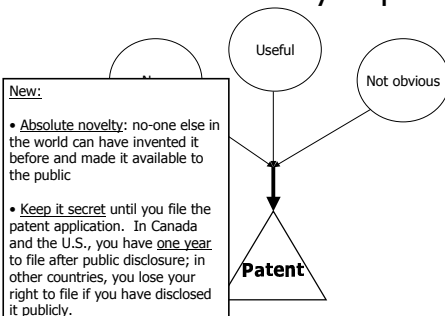
- What is a patent?
 - A government-sanctioned monopoly on an invention
- What can you patent?
 - Inventions: any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement.



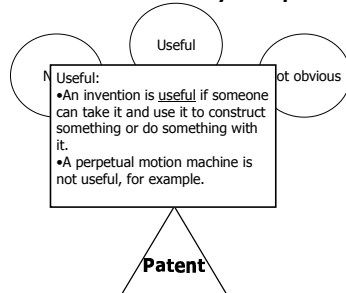
Patents: What can you patent?



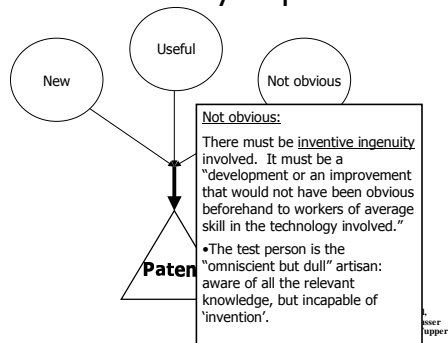
Patents: What can you patent?



Patents: What can you patent?



Patents: What can you patent?



Patents: Software / Algorithms

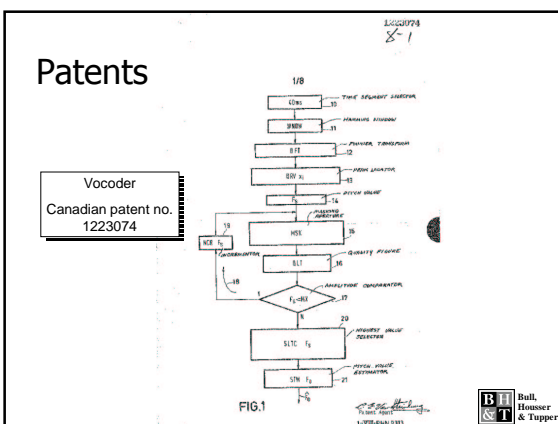
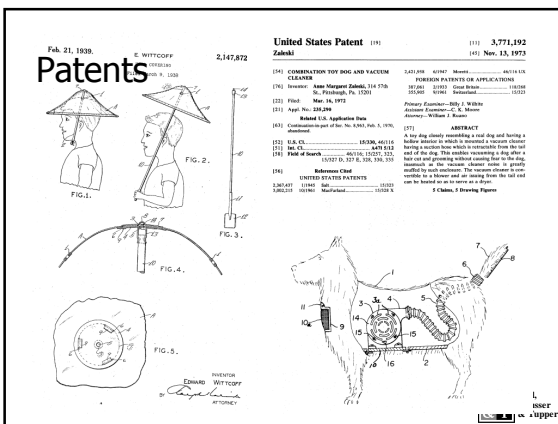
- Can patent a *process*
- Cannot patent mathematics or information
- There is no patentable invention in computer software or algorithms unless the actual physical aspects used are patentable, or unless the inherent capabilities of the computer have been combined with another patentable invention to create an improvement
- A process or a procedure for using a known computer to process information, without further integration of that information into some practical system, is not patentable.



Patents: Software / Algorithms

Examples:

- A signal generated by a computer model was patented where the generated signal was fed back into the feedback control loop of a gas turbine when the model detected an erroneous input signal from a faulty sensor in the turbine system.
- Telecommunications switching network controlled by computer processors
- Programmable system processor for an elevator



Patents

- How do you get a patent?
 - Patent search
 - Patent application
 - 1½ to 3 years before application even opened
 - Examined
 - Process of objections and responses
 - Patent issued
 - Cost: \$8,000 - \$10,000
- Paris Convention



Patents

- What can you do with a patent?
 - Manufacture and sell the invention
 - Stop others from manufacturing or selling the invention
 - for 20 years retroactively to the date of filing the application
 - License the invention for manufacture or use by others
 - Assign the patent



Industrial Designs

- An industrial design is:
 - a decorative feature, such as a design or shape, ...
 - ... applied to an object ...
 - ... that is intended to be reproduced more than 50 times.
- Industrial designs are excluded from copyright and must be registered under the *Industrial Design Act*.



Integrated Circuits

- Registration of the topography:
 - Exclusive right to reproduce, manufacture, etc.
 - Does not stop copying for research or teaching
 - Does not protect any idea, concept, process or system that may be embodied in the topography



Integrated Circuits

- Registration possible if:
 - the topography is original;
 - the application for registration is filed within two years after the first commercial exploitation (e.g., sale); and
 - the creator is Canadian or a national of a treaty country (e.g., the United States, Japan, and many others).





Further Discussion

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