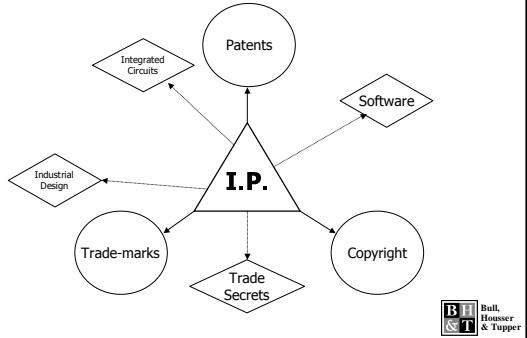


Intellectual Property

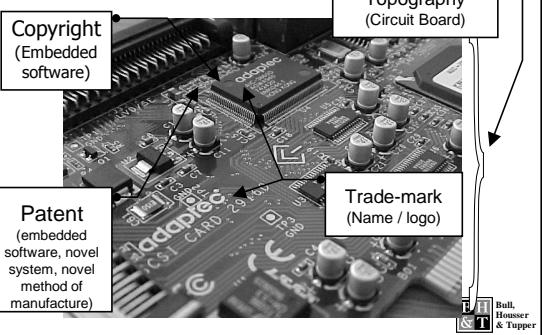
Christopher S. Wilson



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?

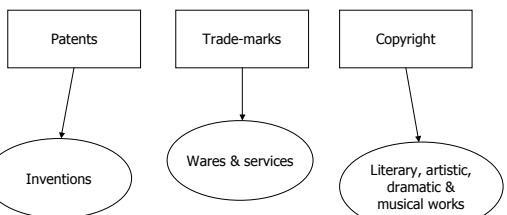


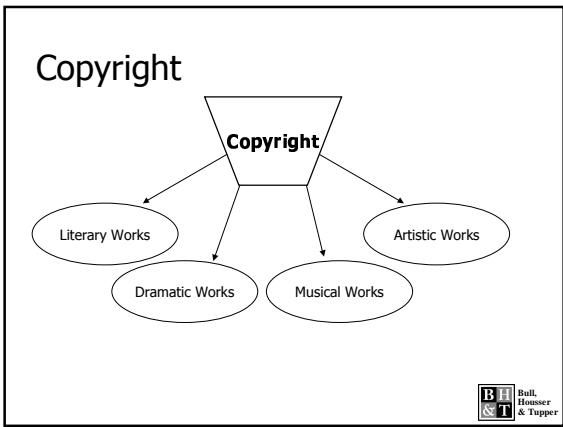
Trade Secrets

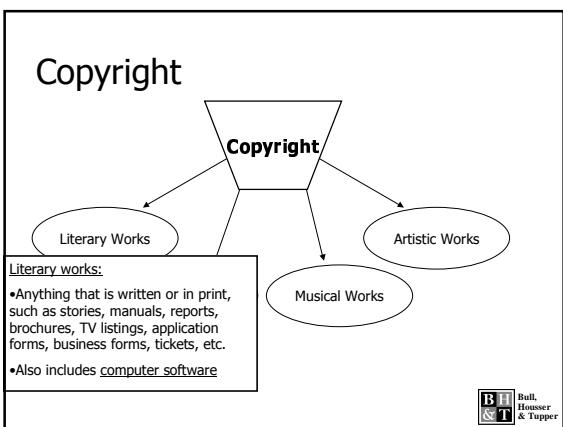
- Create an inventory
- Contract before disclosure
- Need to know basis
- Confidentiality clauses with customers, distributors, etc.
- Physical and electronic security
- Train your employees
- Mark all documents
- Shred, don't discard
- Do not disclose source code
- Enforce confidentiality and conduct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

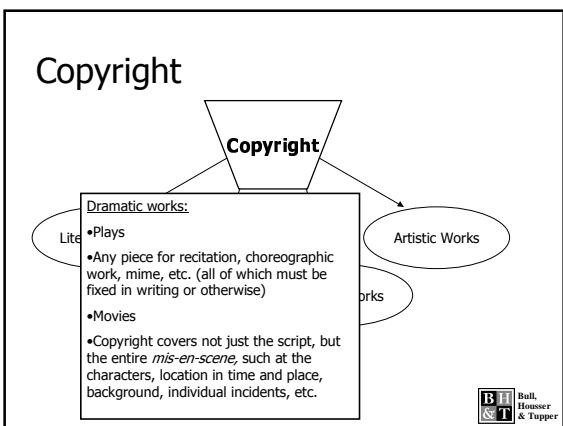


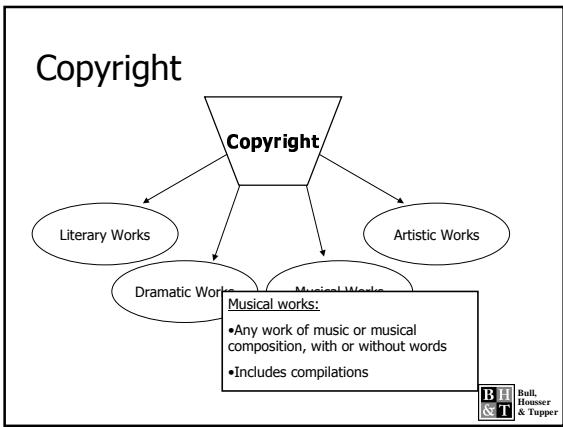
Patents, Trade-marks and Copyright

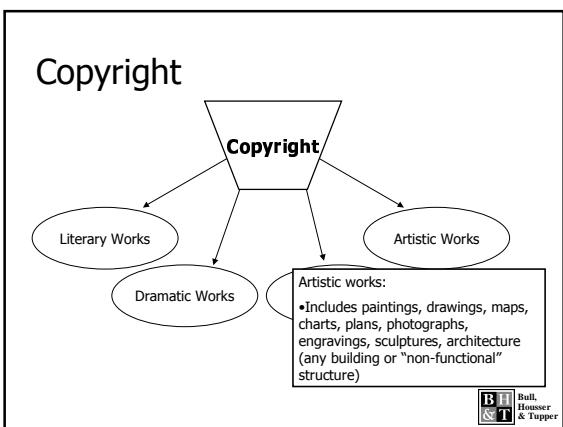


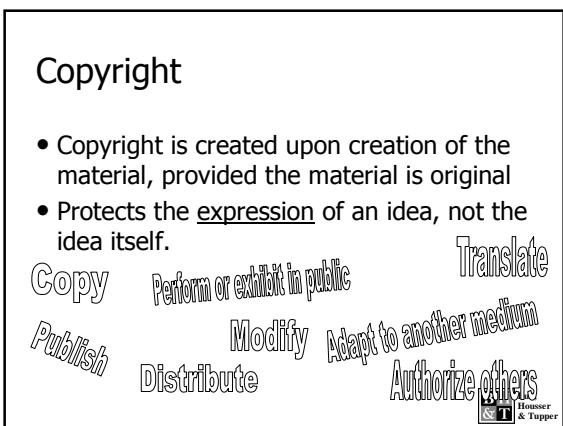












Copyright

- 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, Housser & Tupper
© <date(s) of publication> <owner>



Copyright

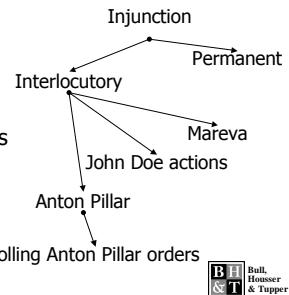
- Infringement
 - Direct infringement
 - Must prove ownership, access and a substantial copy
 - Knowledge of copyright irrelevant
 - Indirect infringement
 - Selling, distributing or exhibiting a work in public that you know infringes copyright



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

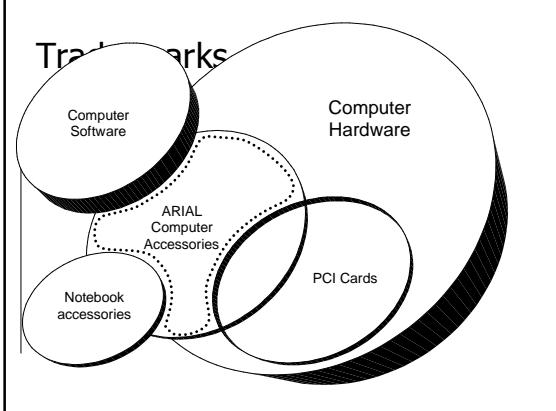


Trade-marks

- 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



Trademarks

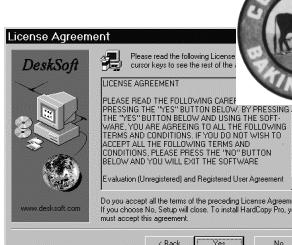


Trade-marks

- 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 trademarks) 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

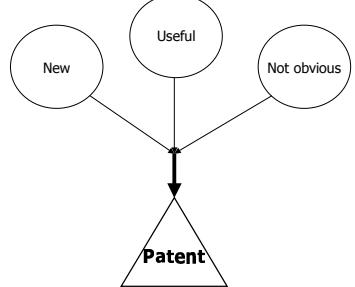


Patents

- 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.



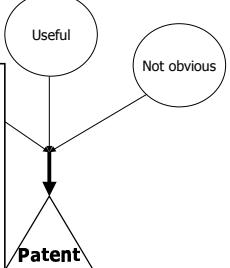
Patents: What can you patent?

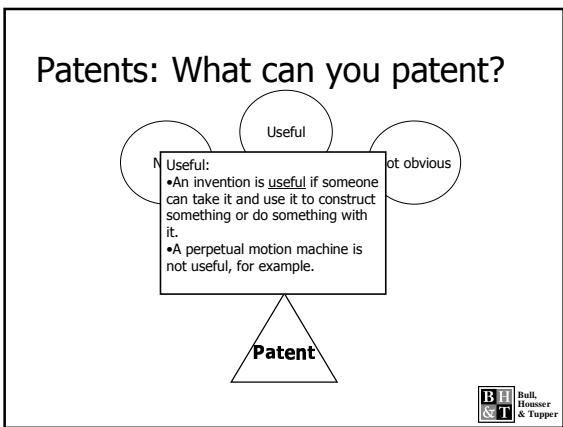


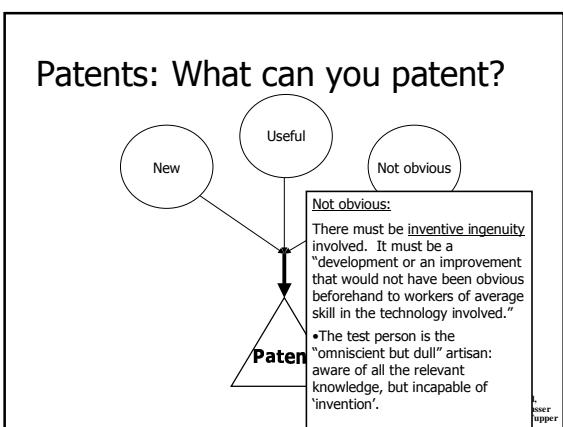
Patents: What can you patent?

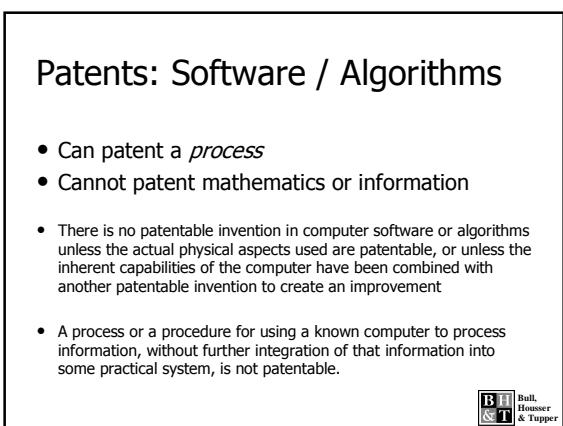
New:

- **Absolute novelty:** no-one else in the world can have invented it before and made it available to the public
- **Keep it secret** until you file the patent application. In Canada and the U.S., you have **one year** to file after public disclosure; in other countries, you lose your right to file if you have disclosed it publicly.





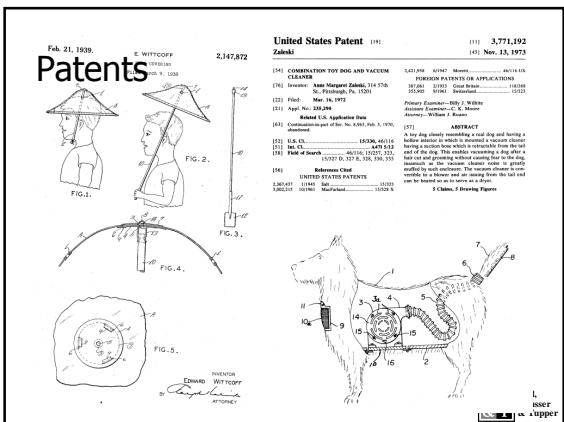




Patents: Software / Algorithms

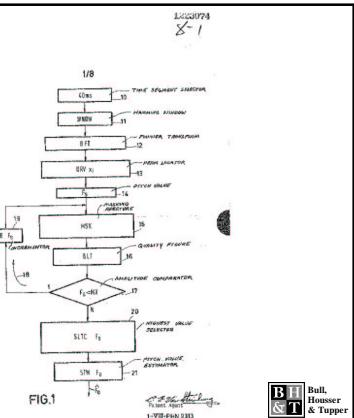
Examples:

- 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

Vocoder
Canadian patent no.
1232074



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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