

Introduction to Intellectual Property Law for Business Lawyers

IDAHO STATE BAR BUSINESS & CORPORATE LAW SECTION

SEPTEMBER 13, 2017

DANA M. HERBERHOLZ & CHRISTOPHER G. SIMBOLI
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Goals

1. Identify IP
2. Protect IP
3. Enforce IP



FORMS OF INTELLECTUAL PROPERTY

Patents

- Protect inventions from unauthorized use. Provides right to exclude others.

Trade Secrets

- Protect commercially valuable secrets.

Copyrights

- Protect creative content from copying and unauthorized use.

Trademarks

- Protect established goodwill between a producer and consumers.

PATENTS

What is patentable?

Any **new and useful** and **non-obvious**

- process,
- machine,
- article of manufacture, or
- composition of matter, or
- any new and useful improvement thereof.

Any **new, original** and **ornamental** design for an article of manufacture

Distinct and **new** varieties of plants

Useful?

United States Patent [19] (11) **Patent Number:** 5,023,850
Metts et al. [45] **Date of Patent:** Jun. 11, 1991

[54] **CLOCK FOR KEEPING TIME AT A RATE OTHER THAN HUMAN TIME**
 [76] **Inventors:** Rodney H. Metts, 520 Amherst Ave., Columbia, S.C. 29205; Barry D. Thomas, 560 Powder Springs Rd., Apt. 15A2, Marietta, Ga. 30064

[21] **Appl. No.:** 850,167
 [22] **Filed:** Jul. 9, 1990

Related U.S. Application Data
 [63] **Continuation-in-part of Ser. No. 411,740, Sep. 25, 1989, abandoned.**

[51] **Int. Cl.:** G04B 19/24; G04B 25/00
 [52] **U.S. Cl.:** 368/28; 368/62; 368/223

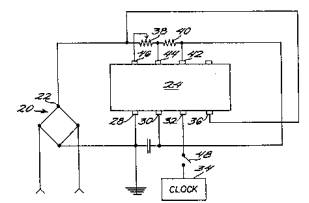
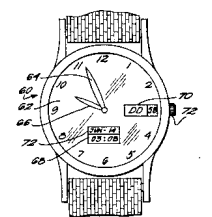
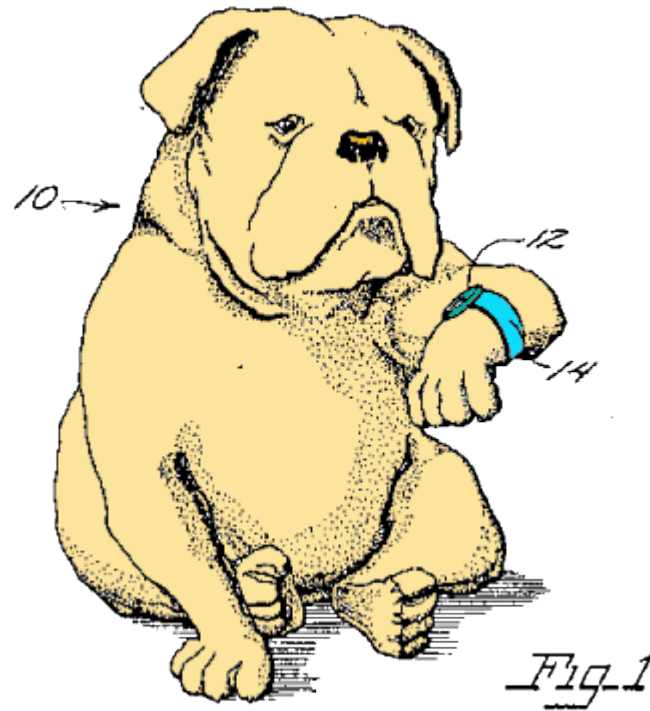
[58] **Field of Search:** 368/10, 28-30, 368/15-20, 62, 78, 80, 64, 66, 204, 223

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 4,175,378 11/1979 Shelton 368/221

4,201,039 5/1980 Marice 368/204
 4,541,726 9/1983 Rachofsky 368/80
 4,763,311 8/1988 Marvosh 368/223

Primary Examiner—Vit W. Miska
ABSTRACT
 [57] A novelty clock, watch, and the like for keeping time at an animal's rate, defined in terms of a multiple of human rate by dividing the average lifetime of a particular animal into the average lifetime of a human being. The multiple for dogs is seven, for example. The device comprises a housing, a source of reference frequency for producing pulses, means for producing 60 pulses per second times the multiple for the particular animal, means for accumulating time, and means for displaying time. The display is the usual clock face with the speed of the hands altered, preferably also with the data indicated as the number of days since the last "new year" in animal days. A digital display of time in human terms may be provided with an analog display of time in animal terms or, alternatively, a capability to switch from one to the other may be provided. Preferably, a variable resistor, between the frequency source and producing means allows the user to change the multiple for different types of animals.

8 Claims, 3 Drawing Sheets

Useful?



United States Patent [19] Patent Number: **5,934,226**
Moore et al. [45] Date of Patent: **Aug. 10, 1999**

[54] **BIRD DIAPER** 943116 11/1963 United Kingdom
 [76] Inventors: **Lorraine Moore; Mark Moore**, both 981247 11/1965 United Kingdom
 of 217 S. Glen Ave., Walkins Glen,
 N.Y. 14891; **Cathy Giron**, 9388
 Sawtooth Way, San Diego, Calif. 92129

[21] Appl. No.: **08/951,171**
 [22] Filed: **Oct. 15, 1997**

Related U.S. Application Data
 [60] Provisional application No. 60/029,142, Oct. 21, 1996.
 [51] Int. Cl. **A01K 23/00**
 [52] U.S. Cl. **119/868; 119/853**
 [58] Field of Search **119/714, 853, 119/868**

[56] **References Cited**
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 5,218,928 6/1993 Mack et al. 119/714

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 672569 10/1963 Canada
18 Claims, 7 Drawing Sheets

OTHER PUBLICATIONS

Penny Ward Moser, "Dreams, Schemes, and 3,300 Better Mouse-traps," *Discover*, 85, Dec. 1985.

Primary Examiner—Robert P. Swiatek
Attorney, Agent, or Firm—Richard C. Litman

ABSTRACT

A bird diaper for an uncaged pet bird to wear, featuring an enclosed pouch for receiving and containing excrement, and apertures to accommodate both the wings and the tail of the bird. Elastic straps and hook and loop fastener components (e.g., VELCRO) secure the diaper onto the body of the pet bird without restricting movement. The bird diaper is fabricated from spandex (e.g., LYCRA) or another stretchable, lightweight material, allowing absorption of bird excrement to prevent leaks and facilitating easy cleaning using soap and water. The bird diaper can incorporate decorative designs, bright colors and is available in different sizes. The bird diaper also has a leash which is insertable within the hook and loop fasteners. The leash serves to restrain or limit the bird's area of free flight.

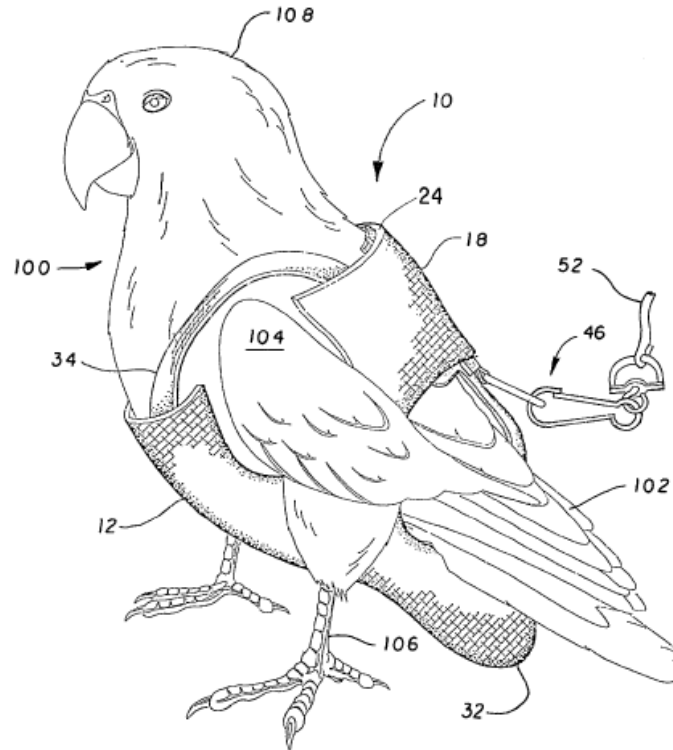
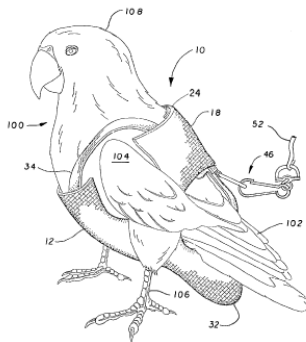
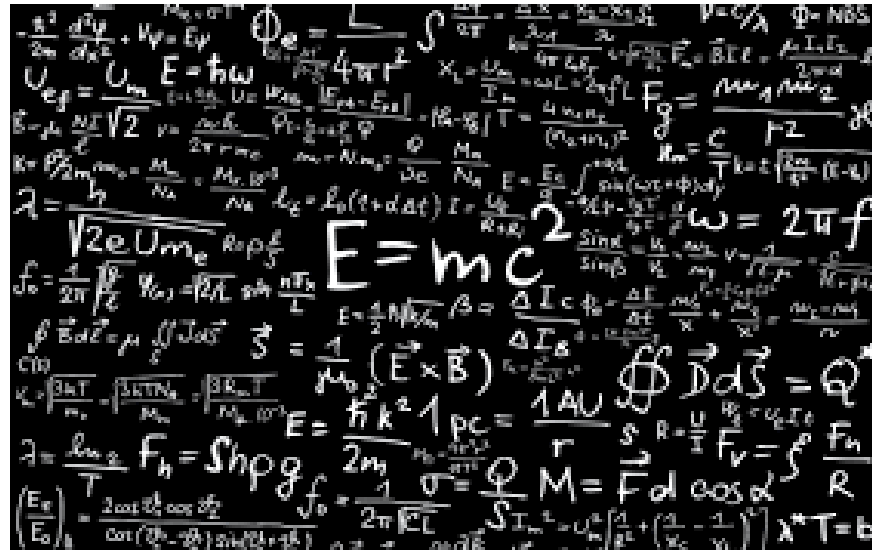


FIG. 1

What is not patentable?

1. Scientific theories or principles
2. Laws of nature – natural phenomena
3. Abstract ideas



What about software?

IS IT JUST AN “ABSTRACT IDEA”
AND A **GENERIC COMPUTER**



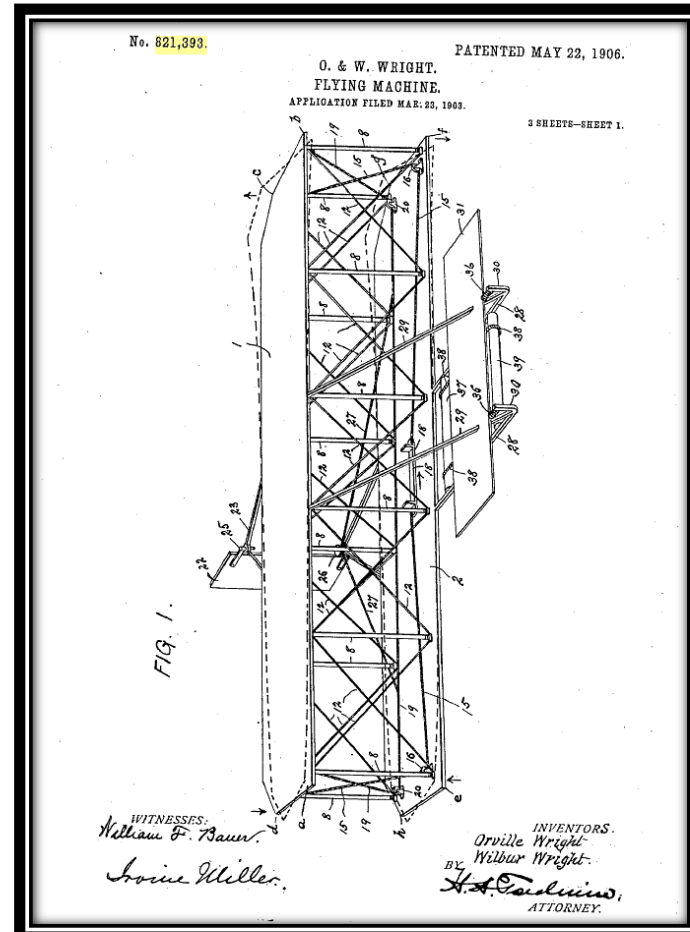
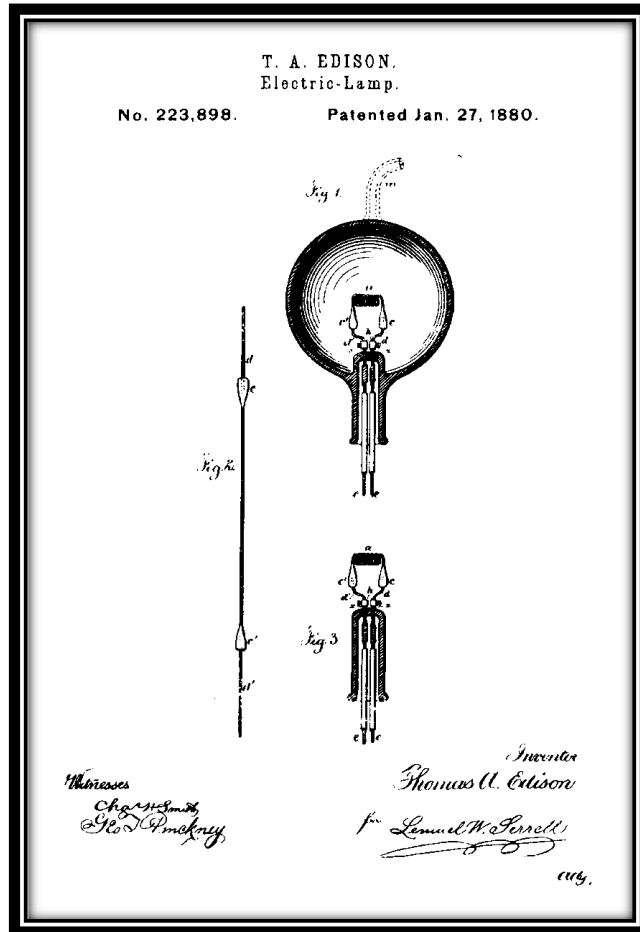
Alice Corp. v. CLS Bank International,
573 U.S. __, 134 S. Ct. 2347 (2014)

IS THE CLAIMED SOLUTION
NECESSARILY ROOTED IN COMPUTER
TECHNOLOGY TO OVERCOME A
PROBLEM SPECIFICALLY ARISING IN
THE REALM OF COMPUTERS?

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DDR Holdings, LLC v. Hotels.com,
L.P., 773 F.3d 1245 (Fed. Cir. 2014)

Utility Patents



Design patents

Protect ornamental designs

Protect the “look” of the object

Doesn't protect function

U.S. Patent

Nov. 17, 2009

Sheet 1 of 2

US D604,305 S

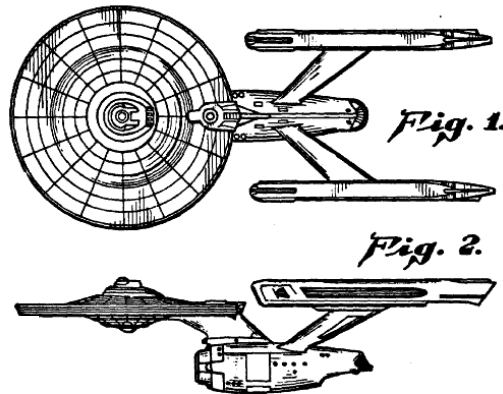


FIG. 1

Average Cost Expectations

Original Utility Patent Application

- Minimal Complexity: \$7,000
- Relatively Complex: \$9,000 – \$10,500 (depending on technology)

Patent Application Amendment/Argument

- Minimal Complexity: \$1,800
- Relatively Complex: \$2,000 – \$3,000 (depending on technology)

Source: 2015 AIPLA Economic Survey

Trade Secrets

What is a Trade Secret?

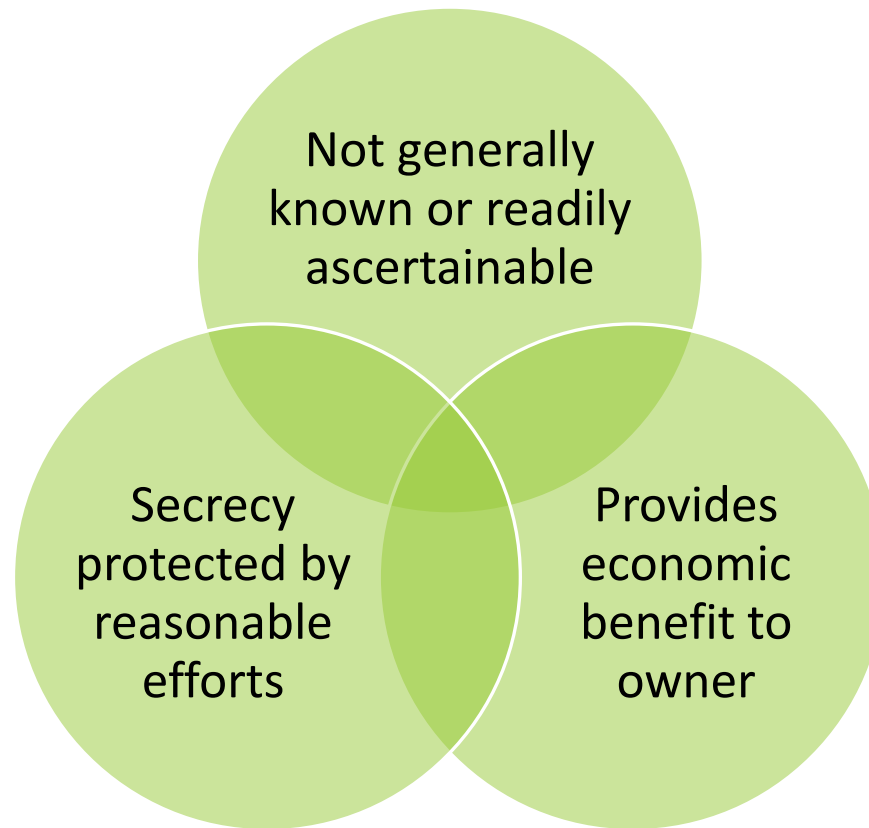


Google Search

I'm Feeling Lucky

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Characteristics of Trade Secret



Trade Secrets – Pros and Cons

ADVANTAGES

Last (potentially) forever

Cost savings?

Immediate rights

No agency review

Can cover “abstract ideas”

DISADVANTAGES

Reverse engineering

Vulnerable to theft

Immediate loss of rights

Must keep secrets

No agency review

Trademarks

What is a Trademark?

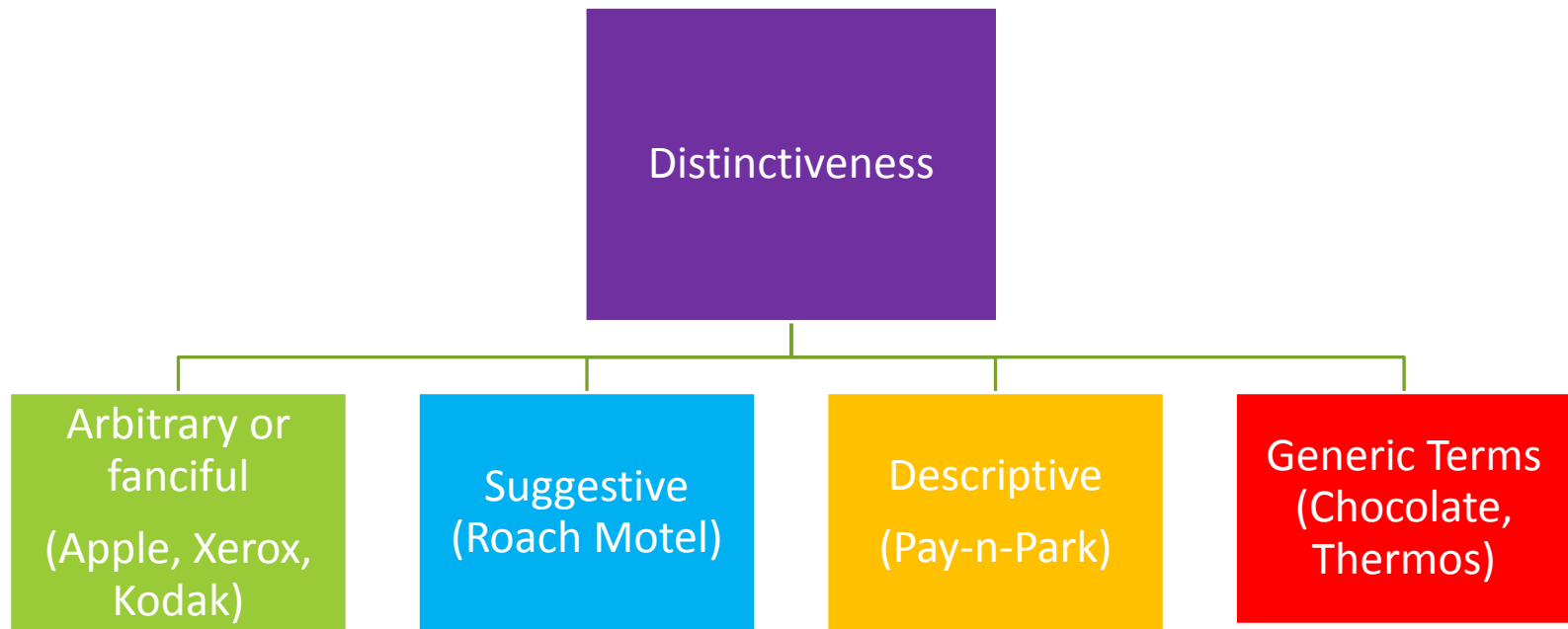


Google Search

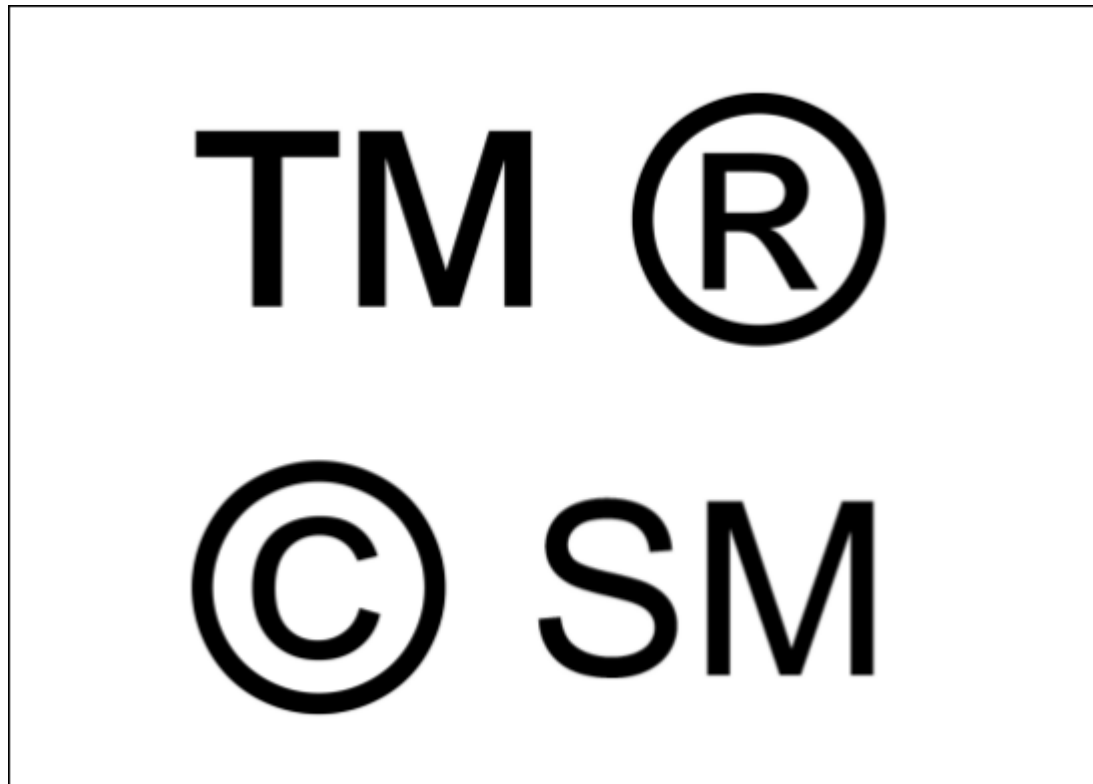
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Criteria for Choosing a Trademark



Trademark Use and Registration



Copyright

What is a Copyright?

Protects What?

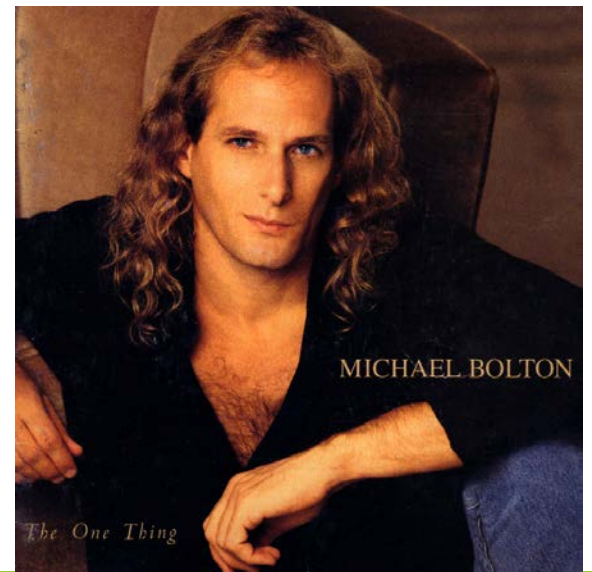
- The rights of a creator of an *original* work that has been fixed in a tangible form of expression

Scope?

- Exclusive rights to: reproduce, prepare derivative works, distribute copies, perform/display

How Long?

- Author's life plus 70 years



What Works are Protected?

- Literary works
- Musical works and sound recordings
- Dramatic works
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Architectural works
- Face tattoos



Acquiring Copyrights

Requirements

- Originality
- Authorship
- Fixation
- Expression

Formalities

- Notice
- Registration



Considerations for Business Lawyers

Identifying Intellectual Property – The IP Audit

Patents/Trade Secret

- Equipment, Processes, Formulas, etc.

Trademark

- Names, logos, designs, websites, trade dress, etc.

Copyright

- Photographs, webpage layout, manuals, marketing materials, etc.

Protecting Intellectual Property

Developing an Intellectual Property Plan/Strategy

- Recognizing IP as an asset
- Budgeting
- Registration?
- Limiting access
- Dealing with infringement

Protecting IP - Trade Secrets

NDA's

Employee confidentiality agreements

Secure networks and storage

Confidential info handling and storage policies

Limiting disclosure



"You spelled 'confidential' wrong."

Protecting IP – Employment

1. Internal/Compliance

- a. Ownership and works for hire
- b. Access
- c. Hiring & firing

2. Registration

Enforcing IP



Lawyer stuff

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Questions



DANA M. HERBERHOLZ
PARSONS BEHLE & LATIMER
800 West Main Street, Suite 1300
Boise, Idaho 83702
Telephone: 208.562.4906
dherberholz@parsonsbehle.com

CHRISTOPHER G. SIMBOLI
PARSONS BEHLE & LATIMER
800 West Main Street, Suite 1300
Boise, Idaho 83702
Telephone: 208.562.4897
ccuneo@parsonsbehle.com