

PATENTS, TRADEMARKS, AND COPYRIGHTS

Caught them in the Net

By Jason H. Foster

We have all watched as the Internet has increased the quantity and ease of access to information. Very helpful resources on Intellectual Property Law are readily available at little or no cost to attorneys and their clients. Intellectual Property Law includes three well-known areas of the law (patents, trademarks and copyrights) and the lesser known such as trade secrets, trade dress (a subset of trademark law) and the right of publicity, among others. Here the focus is on basic resources on the Internet that relate to patents, trademarks and copyrights.

PATENTS are awarded by the United States Patent and Trademark Office (USPTO), and a good starting point online for basic information about patents is the USPTO Inventor Resources Site.¹ For information about patent law, go to Cornell Law School's web site² or the Franklin Pierce Law Center site,³ *Chisum on Patents*, which is the patent law treatise, is available on Lexis.com for a charge. A less comprehensive but excellent volume is Harmon: "Patents and the Federal Circuit" (BNA) on Westlaw.com under "BNA-PFC." Our firm has patent information on our web site,⁴ including costs and the typical chronology of the patenting process.

In assessing patentability of an invention, one must determine whether there exist any public documents that disclose the same or a similar technology as the invention. All U.S. patents are publicly available for review online, and because they are readily searched, the database of patents is a good place to start. U.S. patents granted since 1976 can be key-word searched, and U.S. patents dating back to 1790 are classified by the USPTO according to classes of technology. A searcher typically finds patents disclosing similar technology by keyword searching when possible and by locating subclasses related to the invention's technology. The classification search can be particularly helpful, because one can look at all U.S. patents in relevant subclasses.

Find the closest subclasses by going to the USPTO's Index To Classification⁵ and searching using keywords related to the invention. Indexed words are cross-referenced with classes and subclasses. Once a related class/subclass is found, go to the patent database page⁶ and under "quick search" enter the class and subclass as a "term" in the form "class/subclass." Be sure to enter "Current US Classification" in the "field" and select the desired year range. After clicking on

"search," a hyperlinked list of all patents in the class/subclass will appear.

Instead of searching by classification, one can keyword search through patents from 1976 to date. Go to the patent database page⁷ and under "quick search" enter the keyword or keywords in the "term" field or fields, and click on "search." You will get a list of all patents from 1976 to date that contain the keywords.

In order to view patent drawings, or any part of a pre-1976 patent, you will need a Tiff viewer.⁸ You should also consider when analyzing the search results that many pending patent applications are not available for searching because they have not been published. Therefore, one should not conclude that, just because nothing was found in the search, there is nothing similar to the invention in the USPTO. Finally, consider searching using a favorite search engine.

Apart from the difficulties of searching, scam artists try to take advantage of those uninformed about patent law by offering a combination of worthless marketing and patent services. Direct clients to the Federal Trade Commission's scam information⁹ and USPTO resources relating to patent-related scams.¹⁰ A few other sites of interest are the National Inventor Fraud Center,¹¹ The United Inventors Association,¹² and the Houston Inventors Association.¹³

If an invention appears to be patentable, the first step in the process of obtaining a patent is the filing of a patent application. Patent applications can be filed electronically but this is very complicated and should not be attempted by anyone without significant experience in the patent field. You can learn about electronic filing at the USPTO web site.¹⁴

TRADEMARKS are normally words or symbols used on goods or services to indicate their source. They can also include colors, scents and sounds. Basic information about trademarks is available at the USPTO,¹⁵ and from Cornell Law School.¹⁶ The excellent trademark treatise, *McCarthy on Trademarks*, is available



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on Westlaw.com under "MCCARTHY." Our firm's introduction to trademarks, including information about the costs and process of obtaining a trademark registration, is available online.¹⁷

Whether a trademark is already in use by someone else is the most important question in determining whether one can obtain rights in a trademark. Answering this question requires searching, starting at the USPTO's trademark registration database.¹⁸ On this site, click on "search trademarks" in the center column, then click "New User Form Search (Basic)." Enter a "search term" that will produce the most relevant results and the fewest irrelevant results. A trademark attorney should be consulted in analyzing search results.

Trademark applications are filed online,¹⁹ but this is also complicated, so experienced legal assistance is essential.

COPYRIGHTS protect original works of authorship, such as books, paintings, architectural works and musical recordings, among others. Learn the basics online at Cornell Law School²⁰ and view the Copyright Act online.²¹ The Copyright Office home page²² contains a lot of information, including a search engine for existing copyrights, forms for applying for a copyright registration and circulars that address the most common situations.

Happy surfing!



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Editor's note: For easy surfing, this article and all other Bar briefs' stories reside on our web site (under publications) and most web addresses have a hyperlink.

¹ <http://www.uspto.gov/web/offices/com/iip/index.htm>

² <http://www.law.cornell.edu/topics/patent.html>

³ <http://www.fplc.edu/tfield/ipbasics.htm>

⁴ <http://www.ohiopatent.com/patcosts.htm>

⁵ <http://www.uspto.gov/go/classification/uspcindex/indextouspc.htm>

⁶ <http://www.uspto.gov/patft/index.html>

⁷ <http://www.uspto.gov/patft/index.html>

⁸ You can get a Tiff viewer at

<http://www.uspto.gov/patft/help/images.htm>

⁹ <http://www.ftc.gov/bcp/online/pubs/services/invent.htm>

¹⁰ <http://www.uspto.gov/web/offices/com/iip/index.htm>

¹¹ <http://www.inventorfraud.com/>

¹² <http://www.uiausa.org>

¹³ <http://www.inventors.org/links.htm>

¹⁴ <http://www.uspto.gov/ebc/efs/index.html>

¹⁵ <http://www.uspto.gov/web/offices/tac/doc/basic/>

¹⁶ <http://www.law.cornell.edu/topics/trademark.html>

¹⁷ <http://www.ohiopatent.com/tmcosts.htm>

¹⁸ <http://www.uspto.gov/main/trademarks.htm>

¹⁹ <http://www.uspto.gov/teas/index.html>

²⁰ <http://www.law.cornell.edu/topics/copyright.html>

²¹ http://assembler.law.cornell.edu/uscode/html/uscode17/usc_sup_01_17.html

²² <http://www.copyright.gov/>



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