

Intellectual Property Law

3

Resources

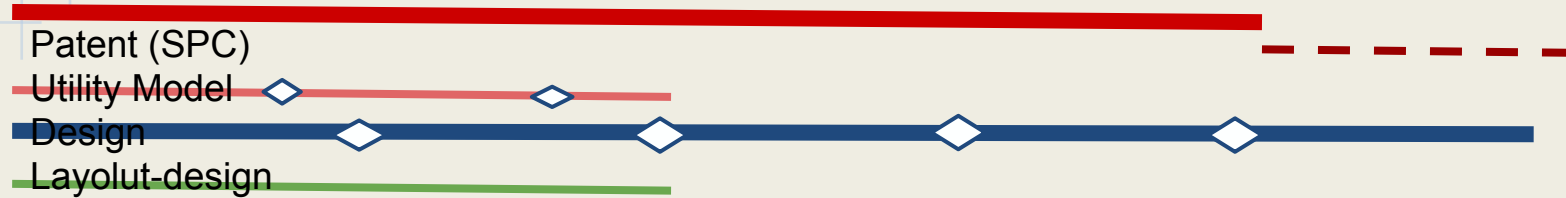
WIPO Intellectual Property Handbook: Policy, Law and Use,

www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf

WIPO Background Reading Material on Intellectual Property

[ftp://ftp.wipo.int/pub/library/ebooks/wipopublications/wipo_pub_659\(e\).pdf](ftp://ftp.wipo.int/pub/library/ebooks/wipopublications/wipo_pub_659(e).pdf)

Inventions, design, layout-design



Common: require author; commercial; protection for limited time.

Invention can be protected by a patent, as a utility model or as a trade secret (undisclosed information).

Design can be protected by registration or de facto for three years against reproduction; or by copyright or TM.

Layout-design (topology of integrated circuit) can be protected by registration or as a trade secret.

Inventions

Patents are granted for any inventions in all fields of technology provided that they are new, involve an inventive step and susceptible of industrial application.

Useful resources

web.mit.edu/invent/invent-main.html:

Inventor's Handbook web.mit.edu/invent/h-main.html

www.the-business-of-patents.com/invention-process.html

EPO Patent Teaching Kit www.epo.org/learning-events/materials/kit.html

(the following is mainly a synopsis of the Kit resources)

Inventions

Novelty

An invention must be new at the date of filing the patent application - not to form part of the "state of the art" (everything made available to the public before the filing date of the patent application). There must have been no public disclosure of an invention before the filing date of the patent application.

Classification (IPC, Strasbourg)

Search

Inventions

Inventive step

EPO applies the "problem-solution approach" in order to decide whether an invention involves an inventive step. The approach consists in:

1. identifying the *closest prior art*, the most relevant prior art;
2. determining the *objective technical problem*, that is, determining, in the view of the closest prior art, the technical problem which the claimed invention addresses and successfully solves; and
3. examining *whether or not the claimed solution* to the objective technical problem *is obvious* for the skilled person in view of the state of the art in general.

This last step is conducted according to the "could-would approach". Pursuant to this approach, the question to address in order to assess whether the invention involves an inventive step is the following: Is there any teaching in the prior art, as a whole, that *would, not simply could*, have prompted the skilled person, faced with the objective technical problem formulated when considering the technical features not disclosed by the closest prior art, to modify or adapt said closest prior art while taking account of that teaching, thereby arriving at something falling within the terms of the claims, and

Inventions

Not patentable (EPC):

Discoveries, scientific theories and mathematical methods as such

Aesthetic creations as such

Schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers as such

Presentations of information as such

Inventions whose commercial exploitation would be contrary to "ordre public" or morality

Plant or animal varieties or essentially biological processes for the production of plants or animals

Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body

Inventions

Application:


Request for grant

Description of the invention – a summary of the prior art, a disclosure of the invention and what problem it is supposed to solve

Claims – determine the extent of protection conferred by a patent

Drawings (if any) referred to in the description or the claims – the description and drawings are used to interpret the claims

Abstract – around 150 words that can be used as a search tool for other patent applications

	Europäisches Patentamt European Patent Office Office européen des brevets	Publication number: 0 275 343 A1
EUROPEAN PATENT APPLICATION		
Application number: 87100961.9	Int. Cl.* H01L 39/12	
Date of filing: 23.01.87		
Date of publication of application: 27.07.88 Bulletin 88/30	Applicant: International Business Machines Corporation Old Orchard Road Armonk, N.Y. 10504(US)	
Designated Contracting States: AT BE CH DE ES FR GB GR IT LI LU NL SE	Inventor: Bednorz, Johannes Georg, Dr. Sonnenbergstrasse 47 CH-8134 Adliswil(CH) Inventor: Müller, Carl Alexander, Prof.Dr. Haldenstrasse 54 CH-8908 Hedingen(CH) Inventor: Takahige, Masaaki, Dr. Rottfarbweg 1 CH-8803 Rüschlikon(CH)	
Representative: Rudack, Günter O., Dipl.-Ing. IBM Corporation Säumerstrasse 4 CH-8803 Rüschlikon(CH)		
33 New superconductive compounds of the K2NIF4 structural type having a high transition temperature, and method for fabricating same.		
37 The superconductive compounds are oxides of the general formula RE _{2-x} AE _x TM.O _{4-y} , wherein RE is a rare earth, AE is a member of the group of alkaline earths or a combination of at least two member of that group, and TM is a transition metal, and wherein		

Inventions

United States Patent (19)

(11) 3,899,144

Werle et al.

(45) Aug. 12, 1975

[54] POWDER CONTRAIL GENERATION

2,045,865	6/1936	Morrey	40/213
2,591,988	4/1952	Wilcox	241/5 X
3,331,310	9/1970	Goodspeed et al.	241/5 X
R15,771	2/1924	Savage	40/213

[75] Inventors: Donald K. Werle, Hillside; Roman Kasparus, Riverside; Sidney Katz, Chicago, all of Ill.

[73] Assignee: The United States of America as represented by the Secretary of the Navy, Washington, D.C.

[22] Filed: July 22, 1974

[21] Appl. No.: 490,610

[52] U.S. Cl. 244/136; 40/213; 116/114 F; 241/5

[51] Int. Cl.¹ B64D 1/16

[58] Field of Search 244/136; 40/213; 241/5, 241/29; 222/3, 4; 239/171; 116/28 R, 114 R, 114 F, 114 N, 124 R, 124 B, 124 C

[56] References Cited

UNITED STATES PATENTS

1,619,183 3/1927 Bradner et al. 244/136

FOREIGN PATENTS OR APPLICATIONS

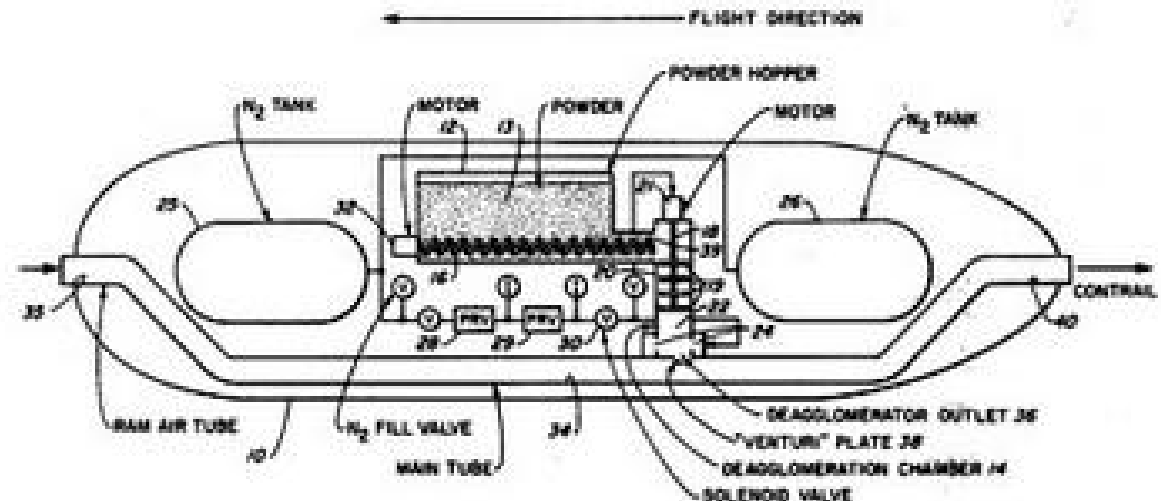
1,022,621 3/1966 United Kingdom 241/5

Primary Examiner—Trygve M. Blix
 Assistant Examiner—Barry L. Kelmacher
 Attorney, Agent, or Firm—Richard S. Sciascia; Joseph M. St. Amand

[57] ABSTRACT

Light scattering pigment powder particles, surface treated to minimize interparticle cohesive forces, are dispersed from a jet mill deagglomerator as separate single particles to produce a powder contrail having maximum visibility or radiation scattering ability for a given weight material.

12 Claims, 1 Drawing Figure



Inventions

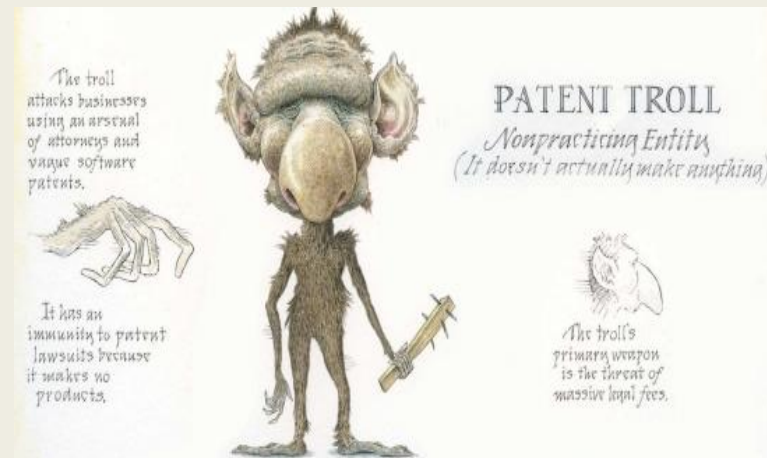
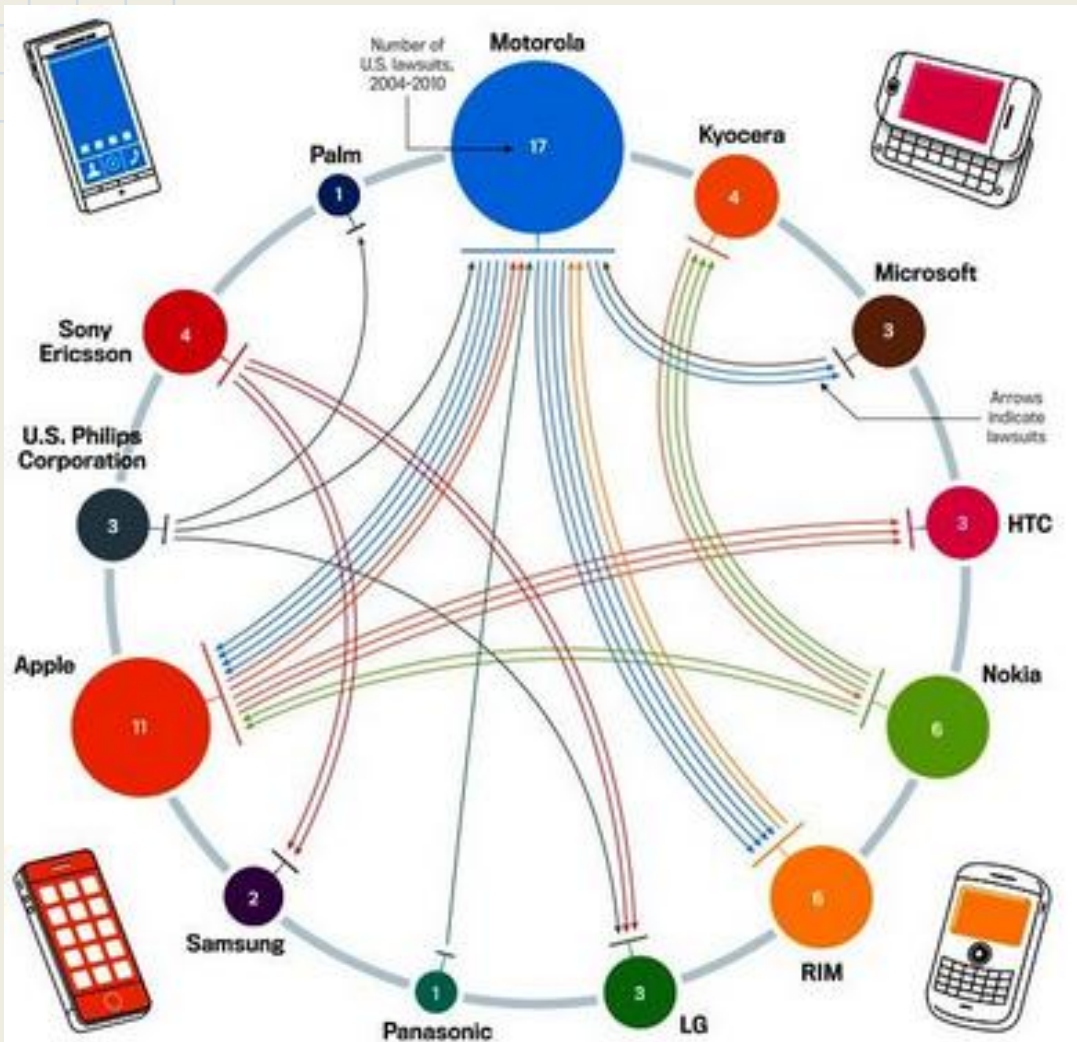
Exclusive right to prevent third parties from commercially exploiting an invention without authorisation.

Not a right to use – instead a patent protects an invention by giving the owner of the patent the right to stop anyone from making or using the invention without their consent (negative right).

Right to assign or transfer ownership of a patent and to conclude licensing contracts

Exceptions concerning private and non-commercial use, experiments, etc.

Inventions



Drawing: J.Burgoyne.

Kris Frieswick: The Real Toll of Patent Trolls

www.inc.com/magazine/201202/kris-frieswick/patent-troll-toll-on-businesses.html

Design

The appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation.

Designs may be protected if:

- they are *novel*, that is if no design identical or differing only in immaterial details has been made available to the public;
- they have *individual character*, that is the "informed user" would find the overall impression different from other designs which are available to the public. Where a design forms part of a more complex product, the novelty and individual character of the design are judged on the part of the design which is visible during normal use.

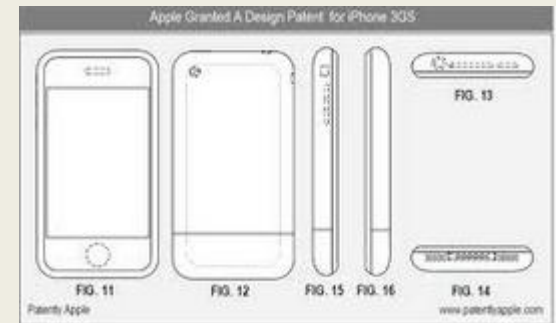
Designs are not protected insofar as their appearance is wholly determined by their technical function, or by the need to interconnect with other products to perform a technical function.

Design

ec.europa.eu/internal_market/indprop/design/index_en.htm,
oami.europa.eu/t4t/rw/pages/index.en.do#-, www.ipo.gov.uk/design.htm,
www.uspto.gov/patents/resources/types/designapp.jsp

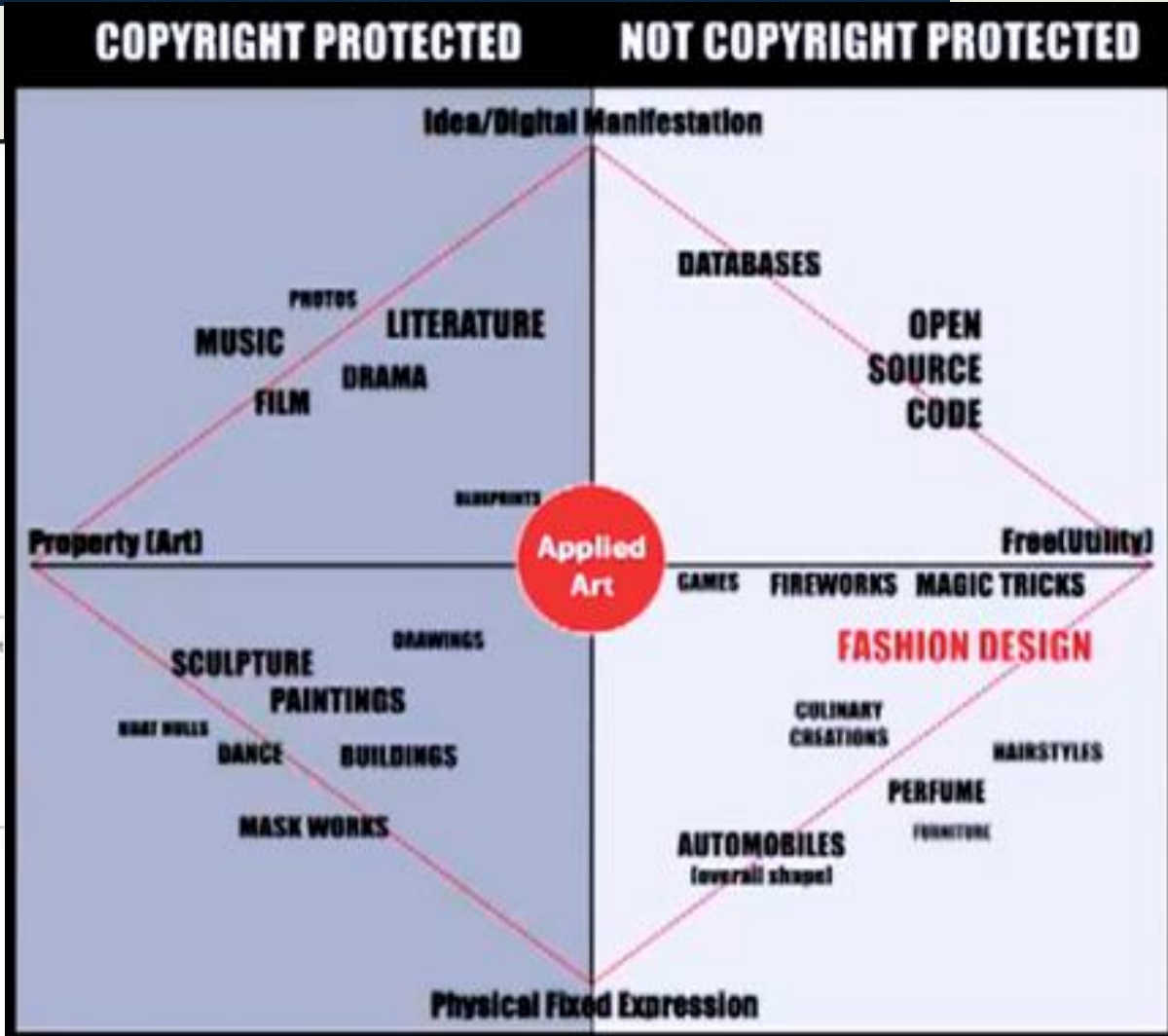
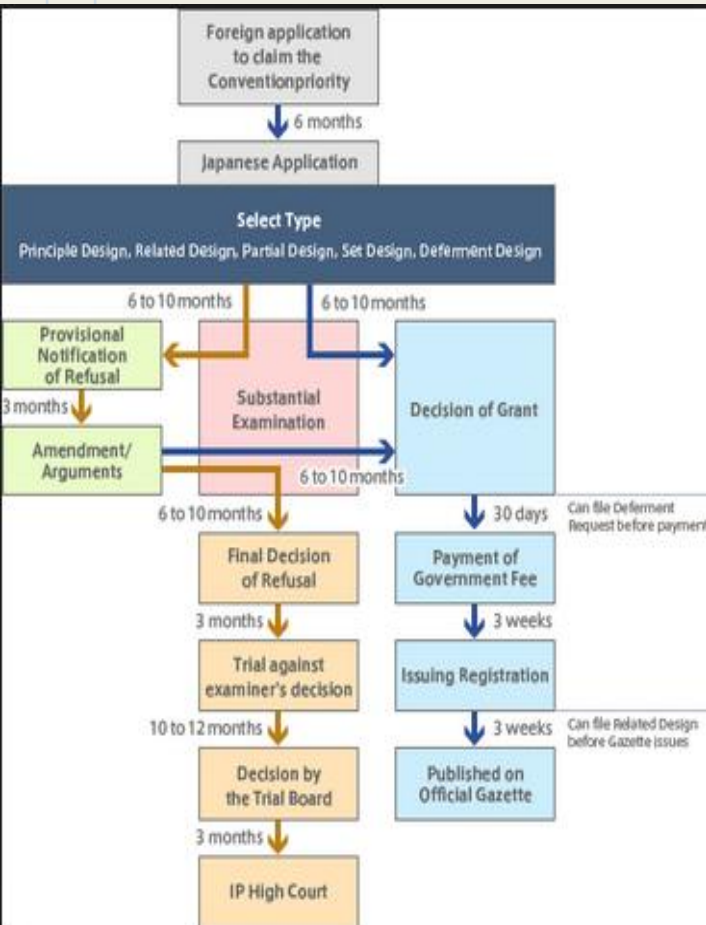
Examples:

www.google.com/patents?id=6esWAAAAEBAJ&pg=PA1&source=gbs_selected_page_s&cad=2#v=onepage&q&f=false,
www.google.com/patents?id=9_poAAAAEBAJ&pg=PA1&source=gbs_selected_pages&cad=1#v=onepage&q&f=false

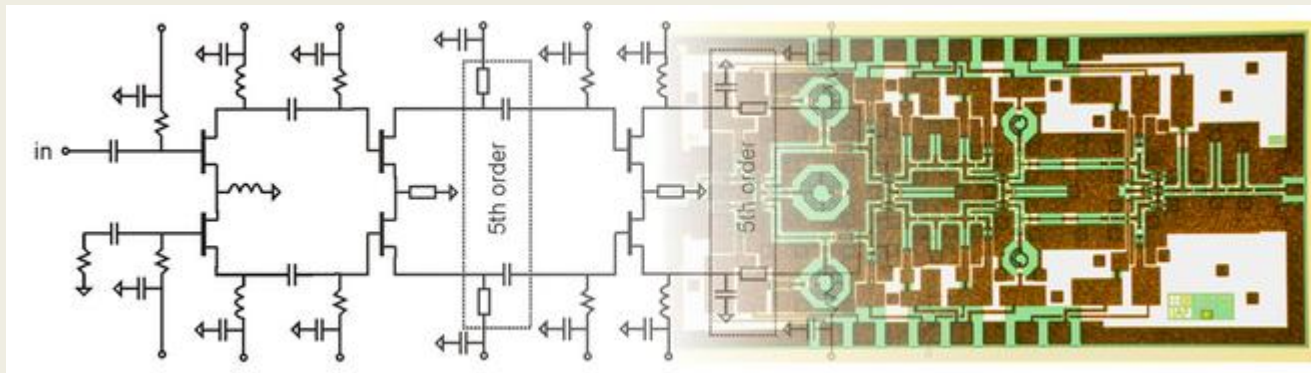
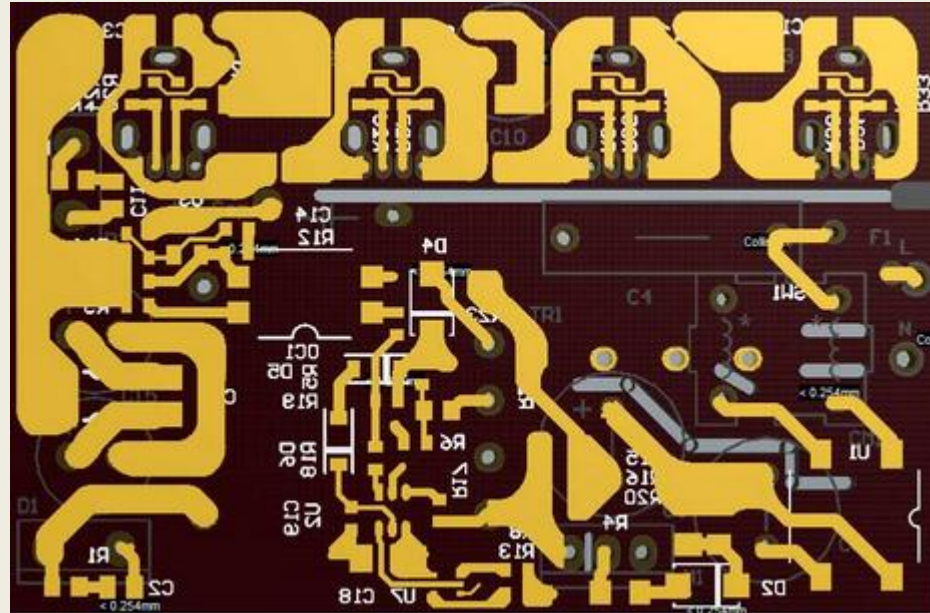
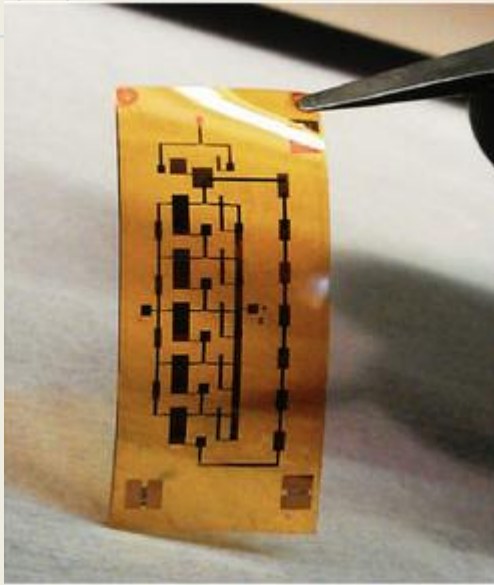


Design

Discussion



Layout-design



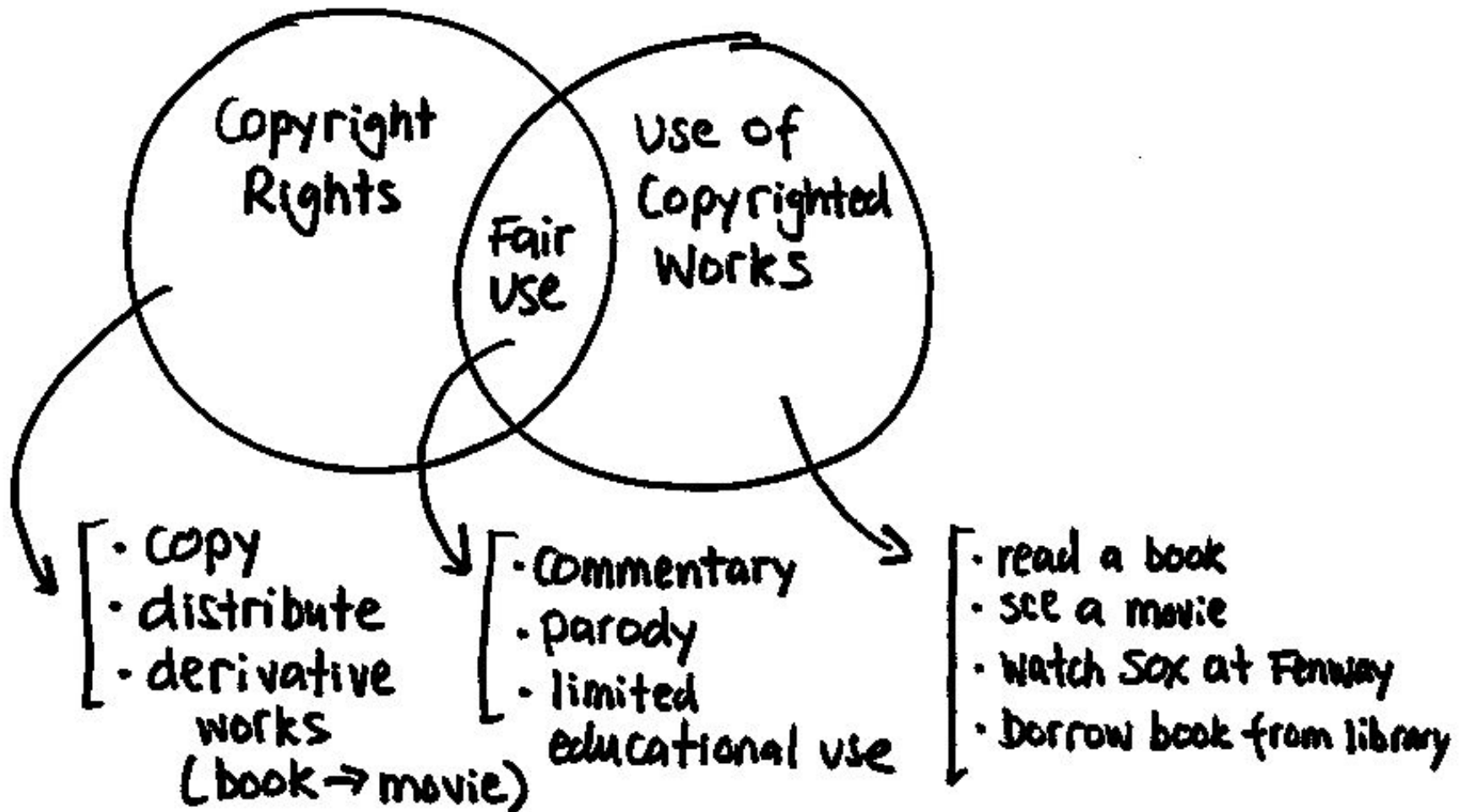
Copyright, neighbouring rights

- Moral rights vs economic rights
- Limitations
- Connections with fundamental rights (privacy, freedom of expression, etc)
- Commercial law, contract law, competition law
- International treaties (Berne, Rome, TRIPs, etc)
- EU law: fundamental freedoms, non-discrimination, harmonisation

Secondary EU law

- D 2009/24/EC, EP&C, 23/4/2009 on the legal protection of computer programs (codified)
- D 2006/115/EC, EP&C, 12/12/2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (codified)
- D 2006/116/EC, EP&C, 12/12/2006 on the term of protection of copyright and certain related rights (codified)
- D 93/83/EEC, C, 27/9/1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission
- D 96/9/EC, EP&C, 11/3/1996 on the legal protection of databases
- D 2001/29/EC, EP&C, 22/5/2001 on the harmonisation of certain aspects of copyright and related rights in the information society
- D 2001/84/EC, EP&C, 27/9/2001 on the resale right for the benefit of the author of an original work of art
- D 2012/28/EU, EP&C, 25/10/2012 on certain permitted uses of orphan works
- D 2014/26/EU, EP&C, 26/2/2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market
- D 2004/48/EC, EP&C, 29/4/2004 on the enforcement of intellectual property rights
- R 608/2013, EP&C, 12/6/2013 concerning customs enforcement of intellectual property rights

Rights and use



Basic concepts

- Work (literary in broad sense, artistic; scientific); photograph, design, performance, film, broadcast...
- Author (natural person; exceptions: phonogram, broadcast) – law / contract – owner (holder)
- Originality (individual expression, not trivial; not copy); may need assessment. Artistic or else value, or work needed has no meaning.
- Formalised result (not necessarily final, or complete), not idea or genre
- Exclusive right to reproduce (i.e copy, even indirectly, partially or temporarily) and publish (make available, perform, distribute, expose to the public), in original or derived form (translation, modification, another method)

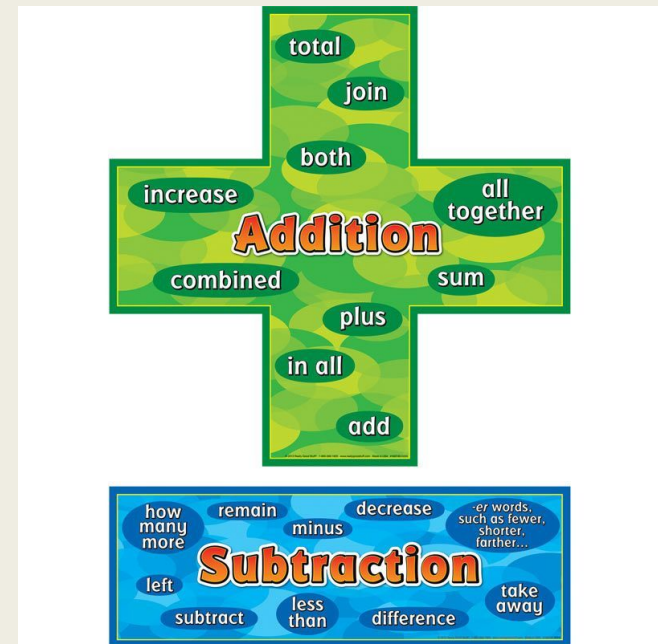
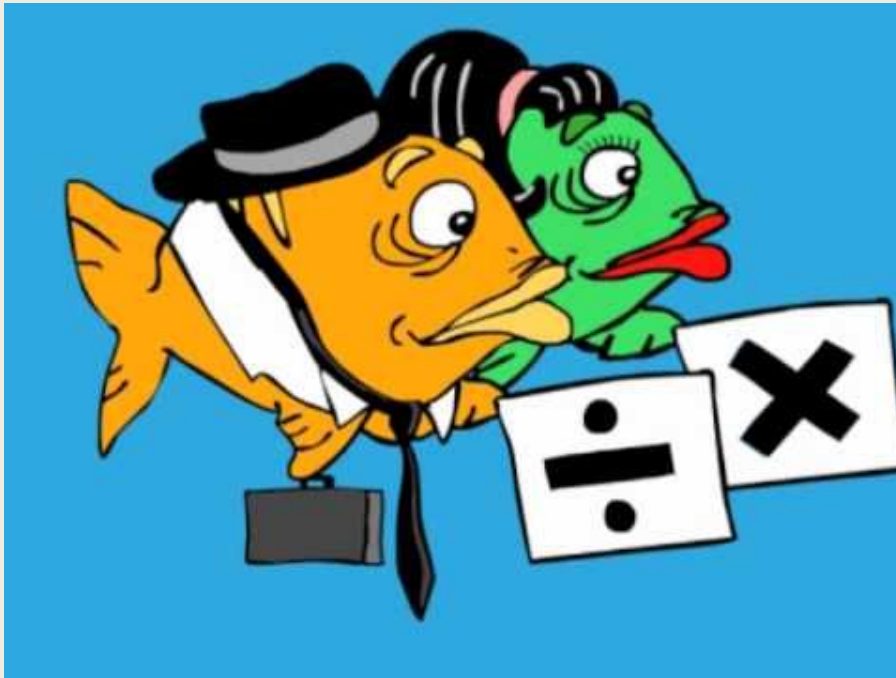
Basic concepts

- Moral (personal) right of the author to be named in a copy or publication, and to keep the integrity of the work or publication (i.e respecting the author's worth and repute).
- The authorship of the named author is presumed.
- Term of exclusive and moral (reservations possible) rights: death + 70 years (EU). Authorship may be protected forever. Exceptions for photographs etc.
- Authorship for derived works (translations, modifications, another method or art; NB, influence or material used in original work is not derivation), original collections (cf. sui generis rights on databases), collective works.
- No rights for ideas, formulas ... official documents (cf. Crown Copyright). Cumulative rights for designs.

Remember!

Reproduction – copying – multiplication

Publication – distribution – division



Modifying, derivation, addition, subtraction...

Limitations: fair use

- Fair use / fair dealing / Berne art 9(2) test: It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.

Fair use checklist

copyright.columbia.edu/content/dam/copyright/Precedent%20Docs/fairusechecklist.pdf. Fair use Handbook infojustice.org/wp-content/uploads/2013/03/band-and-gerafi-2013.pdf. WIPO Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment www.wipo.int/meetings/en/doc_details.jsp?doc_id=16805. The Three-Step Test www.eff.org/files/filenode/three-step_test_fnl.pdf. What does the Three Step Test NOT apply to, under the Berne Convention and the TRIPS Agreement? Marrakesh Note 6 keionline.org/sites/default/files/Provisionsnotsubjecttothreestepstest.pdf. The International Three-Step Test: A Model Provision for EC Fair Use Legislation <https://www.jipitec.eu/issues/jipitec-1-2-2010/2605/JIPITEC%202%20-%20Senftleben-Three%20Step%20Test.pdf>. The role of the three-step test in the adaptation of copyright law to the ROLE OF THE THREE-STEP TEST IN THE ADAPTATION OF COPYRIGHT LAW TO THE INFORMATION SOCIETY portal.unesco.org/culture/en/files/34481/11883823381test_trois_etapes_en.pdf/test_trois_etapes_en.pdf

Limitations

- Limitations for exclusive right
- Compulsory / law-based license
- License with collective management
- Contractual license with the owner

ebookfriendly.com/public-domain-copyright-info-graphics/

Traditional Copyright



Work cannot be used, adapted, copied, or published without the creator's permission

What does it apply to?

All original work is protected under copyright when it's created.

Creative Commons



Work may be used without permission, but only under certain circumstances.

...

Creators set rules for the way their work is used.



What does it apply to?

Only work that creators have chosen to designate as Creative Commons.

Public Domain



Work can be used, adapted, copied, and published, completely without restrictions, no permission needed.

What does it apply to?

Work published prior to 1923, work by long-dead creators, and work that creators have placed in the Public Domain.