

Intellectual Property Overview

Presentation to AIAA

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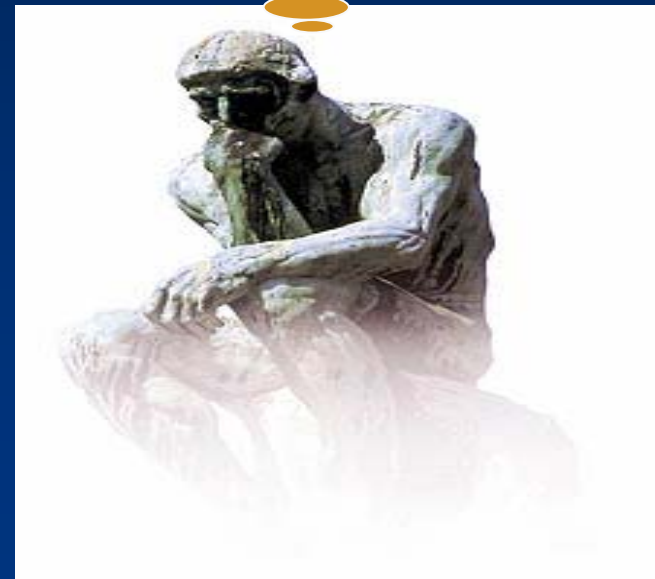


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Intellectual Property ("IP")

- What is it? Webster's Dictionary defines intellectual property as: Property (as an idea, invention, or process) that derives from the work of the mind or intellect; *also*: an application, right, or registration relating to this.



4 Basic Types of IP

- **Patents** – inventions
- **Copyrights**– original works of authorship
- **Trademarks** – distinguish source of goods
- **Trade Secrets** – confidential information that provides a competitive advantage

Different Ways of Obtaining IP Rights

- **Patent:** Examination/grant by govt.
- **Copyright:** Automatic upon creation; also can register with govt.
- **Trademark:** Automatic upon use (some)
Registration required (some)
- **Trade Secret:** Automatic when maintain in secrecy

Patents

- What is a patent?
 - It's a right created by law that allows the holder to exclude others from making, using, selling or importing the invention for a certain period of time.
 - Basically a contract between the inventor and the government: in exchange for the right to exclude others, the inventor must disclose the invention to the public.

Types of Patents

- **Utility** – protects any new and useful process, machine, manufacture, composition of matter, or improvement thereof.
- **Design** – protects any new, original and ornamental design for an article of manufacture.
- **Plant** – protects invented or discovered asexually reproduced plant varieties.

Patent Rights

- It's a common misconception that a patent allows the holder the right to make, use, sell or import the invention. It does **NOT**. It only allows the holder the right to exclude others from making, using, selling or importing the invention.

Patent Rights cont.

A + B Basic patent

A + B + C Improvement – still patentable

- Holder of basic patent can NOT make, use, sell or import invention with patented improvement, but can make, etc. the A+B invention if no one else has patent on A or B.
- Holder of improvement patent can NOT make, use or sell A+B+C because doing so would infringe rights of holder of basic (A+B) patent.

How Long Do Patent Rights Last?

- Utility and Plant Patents
 - For patent applications filed after June 7, 1995: patent expires 20 years from earliest filing date.
 - For patent applications filed before June 7, 1995 that issued into patents before June 8, 1978, patent expires 17 years from date of grant.
 - If filed before June 7, 1995 and issued after June 7, 1978, patent expires either 17 years from date of grant or 20 years from filing date, whichever date is later.
- Design Patents – 14 years from date of grant

What is required to get a patent?

- Patentable subject matter
- Novelty
- Nonobviousness
- Usefulness

What is patentable subject matter?

- Section 101 of Title 35 U.S.C. defines patentable subject matter:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

Things Not Patentable

- Abstract Ideas (Ex. pure algorithms)
- Laws of Nature (Ex. $e=mc^2$)
- Physical Phenomena (Ex. Photosynthesis)
- New minerals or plants found in nature
- Printed Matter
- Human Beings
- Inventions useful solely in the utilization of special nuclear material or atomic energy in an atomic weapon.

Sensitive Subject Matter

- If the subject matter of an invention is “technical data with military or space application” it is subject to review by the DoD or another law enforcement agency and may be denied a patent. 10 U.S.C. § 140(c).
 - A foreign filing license (needed to file for foreign patents) may be denied and application may be placed under a secrecy order.

Novelty

- Invention must be new - inventions already known (in the public domain) are generally not patentable.
- 1 year rule: In the U.S., a patent application must be filed within 1 year after the invention is first publicly disclosed.
 - In other countries, there is generally no 1-year grace period.
 - Disclosure to government entity or under NDA is generally not public disclosure (at least for some period of time).

Novelty cont.

- U.S. is the only country that adheres to a first-to-invent system. Everyone else grants patent rights to the first-to-file.

Nonobviousness

- A patent may not be obtained if the differences between the invention sought to be patented and prior existing technology would have been obvious at the time of the invention to a person having ordinary skill in the art to which the invention pertains.

Inventors

- A patent must list all the inventors or it is invalid. Caution: listing someone who did not contribute to conception of the invention can also invalidate the patent.
- Inventor(s) must form a definite and permanent idea of the complete and operable invention to establish conception.

Best Practice: Conception

- The chief requirement in establishing conception is corroboration by someone other than the inventor of the date and contents of the invention.
 - For example, maintain an inventor's notebook or set forth a clear policy of invention disclosure.
- Review any substantive work with an individual other than the inventor. Have the individual sign and date the pages of the notebook or disclosure.

Patent Ownership

- If invented while working for someone else, inventor may not own patent.
 - Check employment agreement
 - Did inventor use company resources?
 - Invented on company time?
 - Is invention subject matter related to work?


Ownership cont.

- If an invention relates to atomic energy or space, the inventor must certify that it was not developed under a government-sponsored program or grant (includes situation where inventor works for a subcontractor to a company working under a government contract).

Govt. Use of Inventions

- 28 U.S.C. § 1498 allows patent and copyright infringement lawsuits to be brought against U.S. Govt., its subcontractors or any person, firm or corporation working on its behalf.
 - However, no claim may be brought for any invention made while inventor was “in the employment or service” of the U.S., “where the invention was related to the official functions of the employee, in cases in which such functions included research and development, or in the making of which Government time, materials or facilities were used.”
- 48 C.F.R. § 27.3 states U.S. Govt. shall own employee inventions if made using govt. resources, related to employee job, etc. Where govt. does not take ownership, it can get royalty-free, nonexclusive license.

Sample Patent



US005934226A

United States Patent [19] [11] **Patent Number:** **5,934,226**
Moore et al. [45] **Date of Patent:** **Aug. 10, 1999**

[54] **BIRD DIAPER** 943116 11/1963 United Kingdom .
 981247 1/1965 United Kingdom .

[76] Inventors: **Lorraine Moore, Mark Moore**, both of 217 S. Glen Ave., Watkins Glen, N.Y. 14891; **Cely Giron**, 9388 Sawtooth Way, San Diego, Calif. 92129

OTHER PUBLICATIONS

Penny Ward Moser, "Dreams, Schemes, and 3,300 Better Mousetraps," *Discover*, p. 85, Dec. 1985.

[21] Appl. No.: **08/951,171**

[22] Filed: **Oct. 15, 1997**

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

[57] **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.

[60] **Related U.S. Application Data**

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**

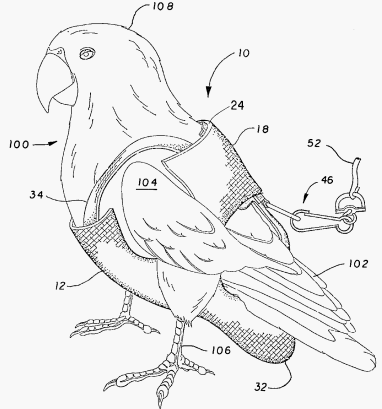
U.S. PATENT DOCUMENTS

1,949,004	2/1934	Boardman	119/853
2,190,115	2/1940	Fagna	
2,703,553	3/1955	Cooke	
2,882,858	4/1959	Dlugi	119/868
4,353,330	10/1982	Baumgartner	119/868
5,218,928	6/1993	Mack et al.	119/714

FOREIGN PATENT DOCUMENTS

672569	10/1963	Canada	
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18 Claims, 7 Drawing Sheets



Patent Specification

- Specification must contain a written description of the invention sufficient to enable one skilled in the art to make and use the invention, and
- Any best mode known for making and using the invention.

Patent Claims

We claim:

1. A sanitary apparatus for use with a bird comprising:
 - a front section of fabric including a top surface and a bottom surface;
 - a back section of fabric connected to said front section of fabric, said back section of fabric including a bottom surface and a top surface having a top edge, said bottom surface of said back section of fabric containing means defining an aperture therethrough, said aperture being sized for receiving the tailfeathers of the bird, said top surface of said back section of fabric being longitudinally split from said top edge of said top surface to said aperture to form a first tab and a second tab;
 - fastening means for fastening said first tab to said second tab;
 - a pouch formed from the interconnection of said front section of fabric and said back section of fabric, said pouch being suited for receiving fecal matter therein; and
 - a pair of connectors, each of said connectors includes two ends, wherein one end of each of said connectors is connected to the top surface of said front section of fabric and the other ends of said connectors are connected to the top surface of said back section defining a first orifice, a second orifice, and a third orifice, said first and second orifice being suited for receiving the wings and legs of the bird and said third orifice being suited for receiving the head of the bird.

- Claims are found at the end of the patent document.
- It is the claims, not the patent specification, that define the metes and bounds of the invention.

Patent Claims cont.

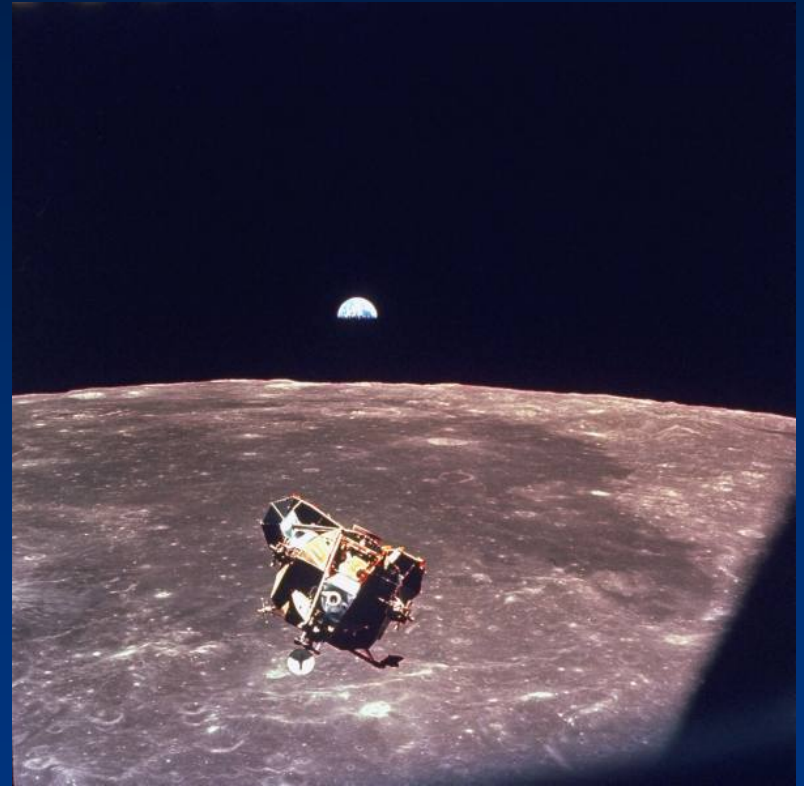
- Claims must particularly point out and distinctly claim the subject matter of the invention
- Others are only precluded from making, using, selling, offering for sale or importing the claimed invention.

Patent Infringement

- The unauthorized making, using, selling, offering to sell, or importing of a product or process embodying the claimed invention.
- All Limitations Rule: every element, or its equivalent, in the claim must be infringed.
- Only one claim need be infringed.

Copyrights

- Protect original works of authorship that have been fixed in a tangible medium of expression.
- Protect the expression of the idea, but not the idea. E.g., photographs taken from space may be copyrighted, but copyright cannot prevent others from taking their own photographs or from making a satellite capable of doing so.



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Copyrights

The work need only embody some reasonably substantial element of creative imagination.

- Simple business forms and factual information are likely not copyrightable.
- A training manual to teach individuals to use equipment is copyrightable.

Copyrights

Protection afforded the moment the original work is created and fixed in a tangible form that it is perceptible either directly or with the aid of a machine or device.

- E.g., an unpublished work
- But not an extemporaneous unrecorded speech or dance.

Rights Secured by Copyright Law

The 1976 Copyright Act generally grants the owner of a copyright the exclusive right to:

- reproduce the copyrighted work
- prepare derivative works
- distribute copies or phonorecords of the copyrighted work
- perform or display the copyrighted work publicly.

Rights Secured by Copyright Law

- The owner also has the exclusive right to “authorize” others, as by license.
- The rights owned can be, and often are, divided and separately sold or licensed. E.g., author of a novel may sell paperback rights to Party #1, movie rights to Party #2, right to make a stage adaptation to Party #3, etc.

Limitations on Exclusive Rights

- Fair use:
purposes such as criticism, comment, news reporting, teaching, scholarship, or research may not be an infringement.
- Independent creation:
complete defense to copyright infringement, even if after the creation of the copyrighted work.

Term

For works created (fixed in tangible form for the first time) on or after January 1, 1978:

- the author's life + additional 70 years, or
- in the case of works for hire, 95 years from publication or 120 years from creation, whichever comes first.

Registration

- The Copyright Office of the Library of Congress registers copyrights.
- As copyright rights exist from the moment the work is created, there is no need to register.
- But registration is necessary before bringing a lawsuit for infringement of a U.S. work.

Registration

- If registration within 3 months of publication or before an infringement, then statutory damages and attorney's fees available. Otherwise, only actual damages and profits.
- If registration within 5 years of publication, then prima facie evidence of:
 - the validity of the copyright, and
 - the facts stated in the certificate.

Notice of Copyright

- “©” year of first publication, owner
- No longer required but helpful to defeat a defense of innocent, non-willful infringement.
- Use of the notice does not require advance permission from, or registration with, the Copyright Office.

Copyright Ownership

- Transfers of copyright must be in writing.
- Ownership of a physical object embodying copyrighted matter does not necessarily mean you own the copyrighted matter too. E.g., a sale of a painting does not mean you have the right to make reproductions.

Trademarks

- Words, names, symbols, sounds, fragrances, tastes, shapes, or colors that distinguish goods or services.
- Examples; the word Starbucks, the roar of the MGM lion, shape of the Coca-Cola bottle, pink of Owens-Corning insulation



Purpose of a Trademark

- Identify the origin of products or services
- Represent a particular standard of quality
- Distinguish products or services bearing mark from those of others
- Symbolize the goodwill of the company
- Helps ensure that consumers who want company products get those products

Types of Marks

- **Trademark** – distinguishes goods. (E.g., Starbucks)
- **Service Marks** – distinguishes services. (E.g., red umbrella for insurance services of Travelers)
- **Collective Mark** – distinguishes members of a cooperative association. (E.g., “NFL”)
- **Certification Mark** – distinguishes regional, material, mode of manufacture, quality or other characteristic. (E.g., “champagne”)

Trademark Rights

- Right to require others to avoid imitation of your mark that would create a likelihood of confusion as to the source, origin, affiliation or sponsorship of the goods or services being sold under the mark.
- Lanham Act (15 U.S.C. §1051, *et. seq.*) grants marks to first to use. Some other countries grant to first to register.

Acquiring Trademark Rights

- Common Law protection (State law)
 - Get by being first to make actual use of the mark in commerce. No registration needed.
 - Usually only protected within area in which it is actually used.

Acquiring Trademark Rights cont.

- U.S. Registration based on actual use:
 - Applicant is using mark in interstate commerce and applies to USPTO to register mark.
- U.S. Registration based on intent-to-use:
 - Applicant who has not yet begun using mark in interstate commerce but wants to reserve mark for use in future files an “intent-to-use” application.

Strength of Marks

Weak

Strong



Generic

Descriptive

Suggestive

Arbitrary

Fanciful

Trademark Registration Benefits

- Evidence of ownership
- Provides constructive notice nationwide
- Jurisdiction of federal courts may be invoked
- May be used as basis for obtaining registration in foreign countries
- Registration may be filed with U.S. Customs Service to prevent importation of infringing foreign goods

Protecting the Marks

- Notice:
 - ® - federal registration
 - ™ – common law trademark rights
 - ℠ – common law service mark rights
- May lose mark if don't enforce it. Also avoid using mark to refer to goods/services of similar type, or becoming generic. (E.g., “Xerox,” or “aspirin”)

Trade Secrets

- Typically, some sort of information, such as a formula, pattern, compilation, program, device, method, technique, or process;
- That is not generally known or readily ascertainable by others;
- That confers some actual or potential independent economic value on its owner;
- With objectively reasonable efforts made to maintain its secrecy.

Examples of Trade Secrets

- Technical information
 - Chemical formulas (e.g., Coca-Cola formulation)
 - Process technologies
- Business information
 - Customer lists, contracts, evaluations, sales strategies, pricing plans
- Financial information
 - Evaluations, profitability studies, supplier costs

Trade Secret Rights

- The Uniform Trade Secrets Act, enacted by most states, grants right to prevent others from knowingly acquiring the secret through improper means or disclosing the secret without consent.
- Remedies for misappropriation include injunctions, damages, and attorney's fees.

Trade Secret Rights cont.

- Pro. Unlimited term. Trade Secret protected as long as secrecy maintained.
- Con. No protection against independent development of the same idea or invention.
 - E.g., reverse engineering generally allowed. (It's not permissible if thing sought to be reverse engineered is illegally obtained or protected by license or end-user agreement that prohibits reverse engineering)

Maintaining Secrecy

- Restrict access to information to only those who need to know.
- Clearly mark information or documents containing trade secrets with a confidentiality legend.
- Restrict circulation of confidential documents.
- Restrict public access to company facilities.
- Institute a written trade secret protection policy.
- Confidentiality/nondisclosure agreements with employees, contractors, consultants, suppliers, etc

Initial Costs and Terms

	Term	Initial Cost
Patents	20 Yrs from filing	\$15,000
Copyright	Life + 70 Yrs 95 Yrs / 120 Yrs	\$300
Trademark	Indefinite	\$2000
Trade Secrets	Unlimited	None