

CLASS 1

**INTRODUCTION
TO PATENT LAW**

**PATENT LAW & POLICY
PROFESSOR WAGNER**



Today's Agenda

Why Study Patents?

The Architecture of the Patent System

Course Administration

1

Why Study Patents?

Why Study Patents?

**Patents are Critical to
National Industrial Policy**

From the industrial age ...



... to the information age.

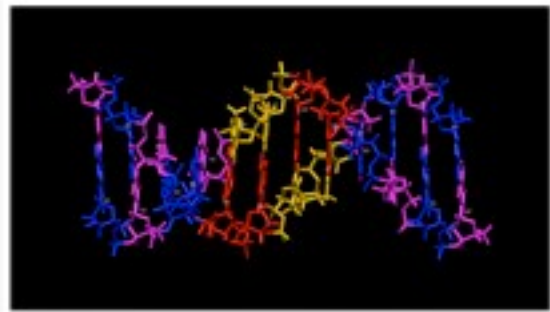
Patenting Has Spread Across the Economy



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Why Study Patents?

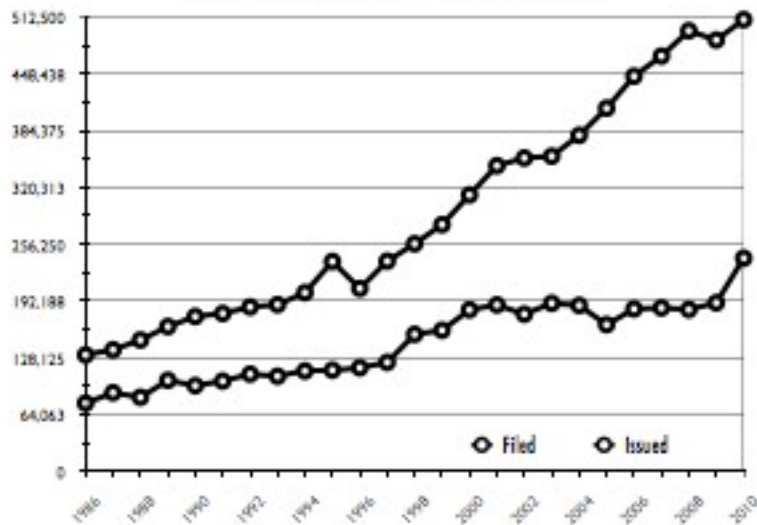
Key Policy Changes in Patent Law in Recent Decades



Why Study Patents?

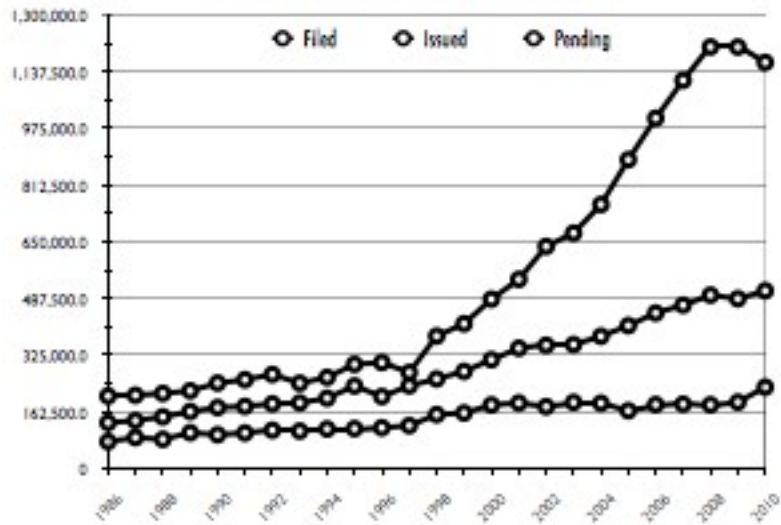
Recent Expansion in Patenting Activity

Patent Activity, 1986-2010



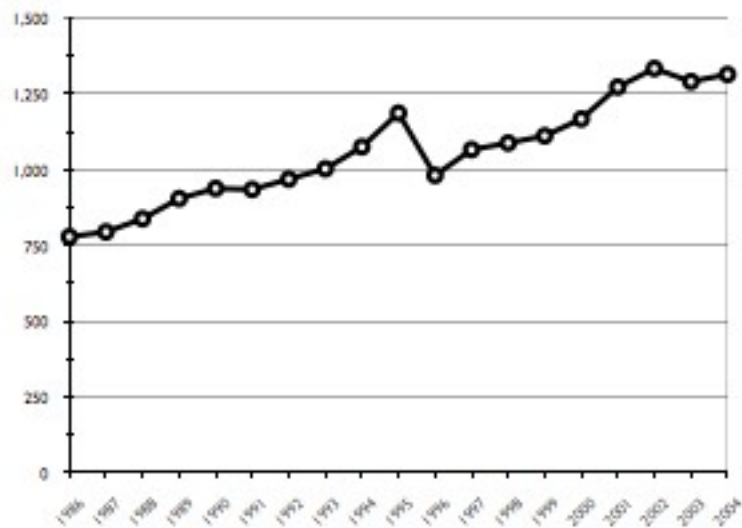
[Source: USPTO Performance and Accountability Reports, 1986-2007]

Patent Activity, 1986-2009



[Source: USPTO Annual Reports]

Patent Intensity, 1986-2004 - Patents per \$B R&D



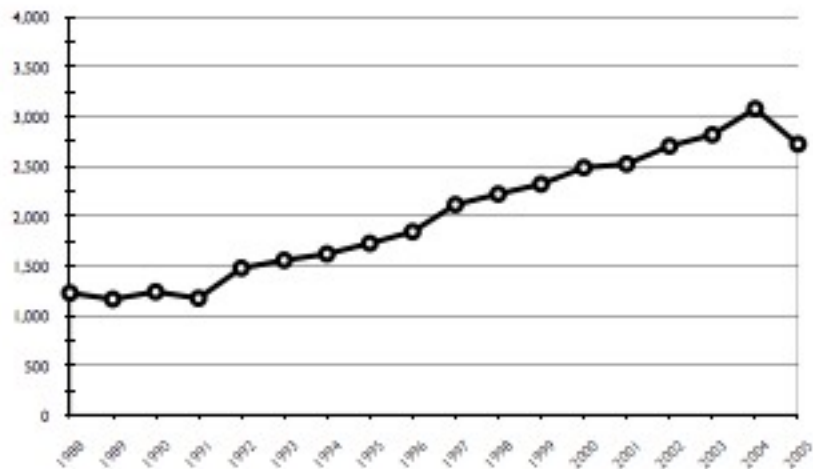
[Source: USPTO Annual Report 2004]

Why Study Patents?

Recent Increases in Patent Enforcement

Patent enforcement activity is rising ...

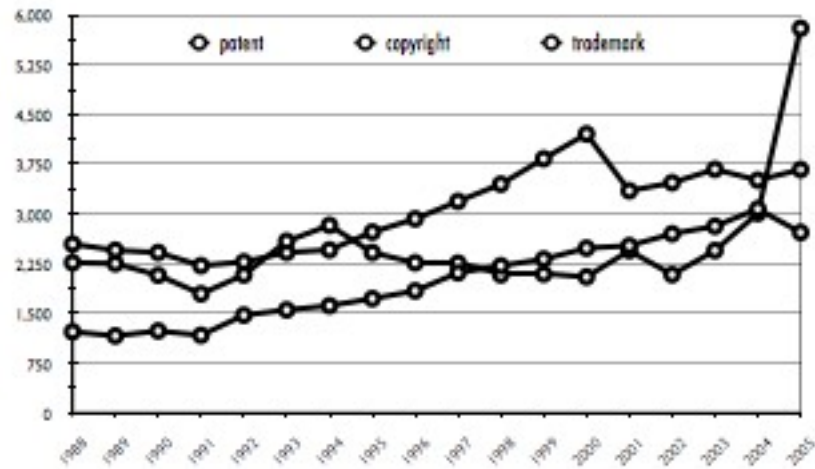
Patent lawsuits filed, 1988 – 2005



Source: Administrative Office of the US Courts

... but still lags other IP enforcement.

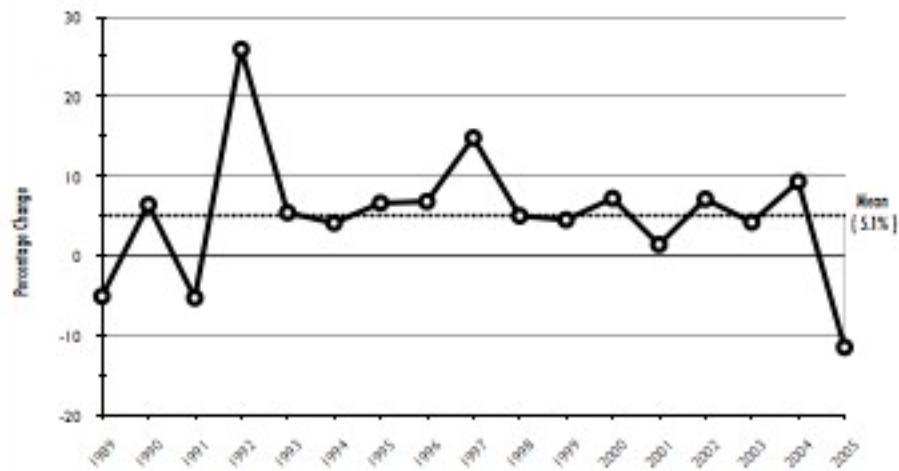
Federal lawsuits filed, 1988 – 2005



Source: Administrative Office of the US Courts

The growth rate in patent litigation has been uneven, but rising ...

Year-over-year change (%) in patent suit filings, 1989-2005



Source: Administrative Office of the US Courts

... enforcement per in-force patent has risen ...

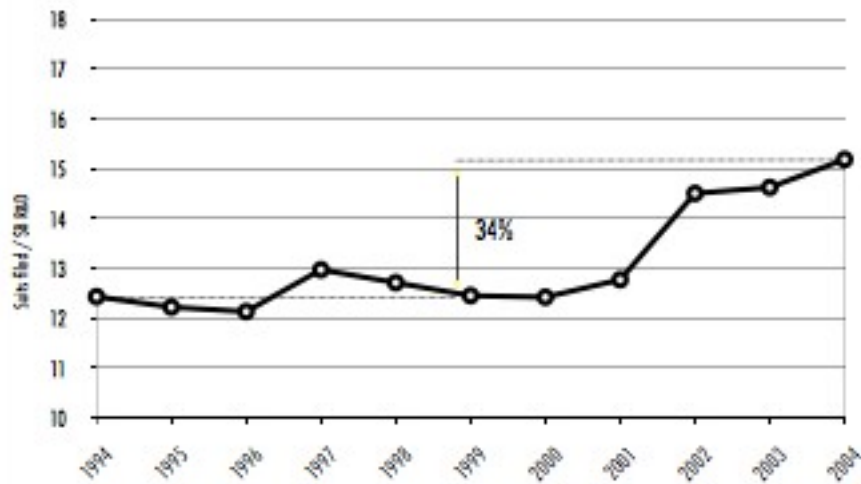
Patent suits filed per 1000 in-force patents



Source: Administrative Office of the US Courts, USPTO

... as has patent litigation intensity ...

Patent suits filed per \$B non-Federal US R&D (constant 2000 dollars)



Sources: NSF 06-327 (09/2006), Administrative Office of the US Courts

Why Study Patents?

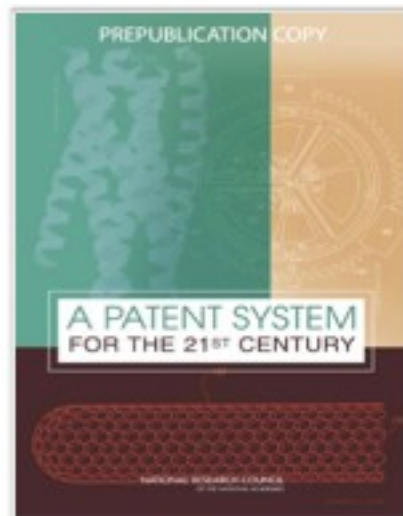
**Limited Knowledge About
True Costs vs. Benefits of System**

Why Study Patents?

**Total Costs of the System are Increasing
(Are the Benefits?)**

Why Study Patents?

The Patent System Has Emerged as an Important Public Policy Question



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The Architecture of the Patent System

Administrative Agency

Evaluates applications for compliance with standards of patentability



The Patent Document

Establishes boundaries of protection (claims), disclosure required.



Private Enforcement (Litigation)

Market determines the reward; full review of PTO grant of rights.



The Patent Document

Title & Serial Number

Dates: Filing, Priority, Issue

Inventor/Assignee

Technology Fields (Classes)

References Cited

Abstract

Drawings

Specification

Claims

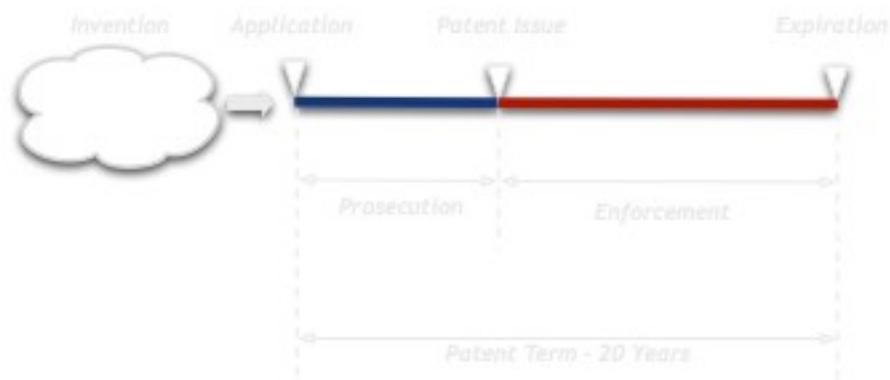


In Patents, “The Name of the Game is the Claims”

- Claims must “particularly point out and distinctly claim the invention.”
- Claims need not explain how to make/use the invention.
- Consider the goals of claim language for:
 - patentees’
 - public’s



The Life of a Patent



The Life of a Patent

Prosecution

- Ex parte administrative process
- Private/secret (for 18 months in most cases)
- Procedures allow for "continuing" applications
 - We think around 75% of all applications eventually result in a patent ('grant rate' is much lower)
 - Internal procedural incentives to issue patents
- Two-stage appeals
 - Board Patent Appeals and Interferences (Board)
 - Federal Circuit (also: District DC + Fed. Cir.)
- Reexamination (ex parte, inter-partes)

Enforcement

- A judicial / litigation process; jurisdiction in Federal Courts
- Courts are empowered to review the validity of patents.
 - But patents enjoy a statutory "presumption of validity"
- Declaratory judgment actions are not uncommon. (Why?)

The Patent System: Key Facts and Figures

- Less than 1% of all patents are litigated
- Most estimate that less than 5% of all patents are licensed
- Typical cost of litigation: \$4.5M per side for cases with more than \$25M at stake; \$2M per side for smaller cases.
- By most calculations, the average expected value of patents is less than zero.
 - The distribution of patent value is heavily skewed: a few patents are enormously valuable, most have no value.

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Course Administration



Course website

<http://patents.pennlaw.net/>

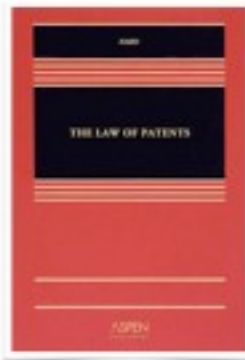
Blog, syllabus, downloads, course info.

Use blog for announcements, discussion, essays.

Readings

Casebook (2nd Edition)

also: supplements (electronic), statutes.



Class Sessions

cold-call + volunteers

Class participation counts 10%

Lecture slides will be provided when available

All class sessions audio-recorded, posted.

Optional Essays

Topic of your choice

3000-word limit

Worth 25% of your grade

Grading

**Final exam (90% or 65%)
Essays (optional) (25%)
Course participation (10%)**

NEXT CLASS

HISTORY AND THEORY OF PATENTS

**PATENT LAW & POLICY
PROFESSOR WAGNER**

