A light blue Fibonacci spiral is overlaid on a grid of squares, serving as a background for the title text.

CPSC 310 - Patents, Copyright, and IP for Software Engineering

November 24, 2016

Disclaimer

- Not legal advice!
- Information only
- Who is this guy?

Agenda

- What is Intellectual Property?
- Patents
- Copyright
- Open source licensing
- Trade secrets
- Trade marks
- Discussion

Intellectual Property

"If nature has made any one thing less susceptible than all others of exclusive property, it is the action of **the thinking power called an idea, which an individual may exclusively possess as long as he keeps it to himself; but the moment it is divulged, it forces itself into the possession of everyone, and the receiver cannot dispossess himself of it.** Its peculiar character, too, is that **no one possesses the less, because every other possesses the whole of it.** He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me."

—Thomas Jefferson

Intellectual Property

Intellectual: “a product of intellect”

Property: a bundle of rights that typically creates control, *scarcity*, possession

Policy Rationale – The *Quid Pro Quo*:

- A “bargain” with the inventor
- Software inherently challenges this bargain

Intellectual Property

- Patents
- Copyright
- Trade Secrets
- Trademarks
- Informal: inventions and ideas, brands*, relationships, trade and general knowledge, and know-how

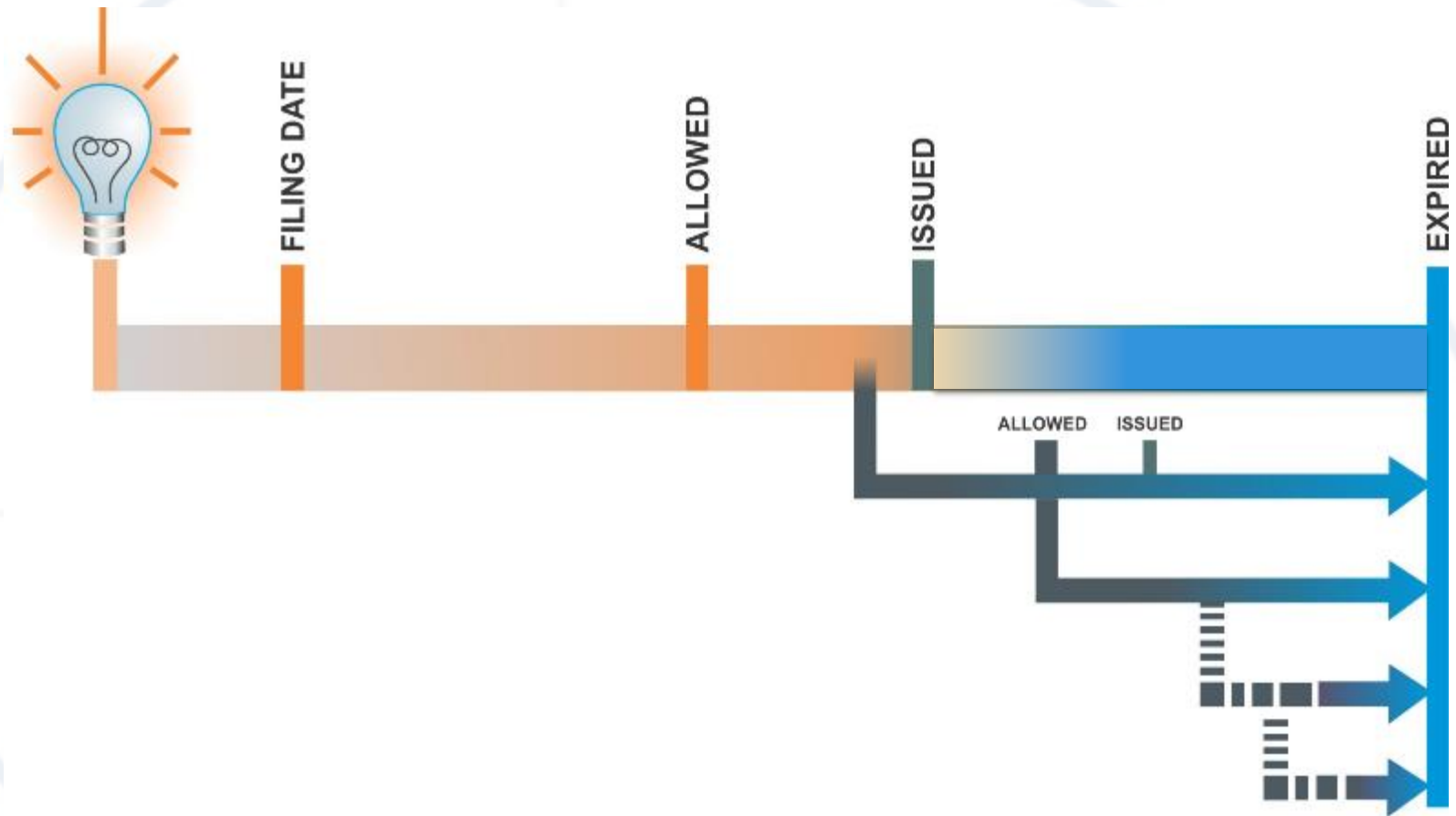
Patents

- What can I patent?
 - New
 - Inventive
 - Useful
 - Eligible subject matter
 - Is software eligible?

Patents

- What do I get?
 - For a period of 20 years from filing
 - Right to exclude others
 - To practice the claimed subject matter
 - Except if the patent is rendered invalid
 - Recently, significant pre and post-allowance activity
 - With significant enforceable remedies

Patents



Software Patents

- Canada
 - “scientific principle or abstract theorem”
 - Not patentable *per se*
 - Does it have practical application? (*Progressive Games*, FCA, 2000)
- US
 - Pre-Alice: Anything under the sun
 - Post-Alice:
 - Do the claims contain an *abstract idea*?
 - If so, does the patent add “something extra”?
- Europe, China
 - Problem-solution
 - Technical solution

Copyright

What is copyright?

- Expression not ideas
- Original works of authorship that is fixed in a tangible medium of expression
- What is not eligible?
 - “[t]he exercise of skill and judgment required to produce the work must not be so trivial that it could be characterized as a purely mechanical exercise.” “must be more than a mere copy of another work.” but “creativity is not required to make a work 'original'.”
 - Exceptions

Copyright

What do I get?

- Exclusivity
 - 50 years from death of author (usually)
 - Much more than copying:
 - Publish, perform, produce, translate, record (e.g. performances), adapt, **make available**, **make derivative works**, among others
 - Moral rights: Integrity and Attribution
 - Anti-circumvention and digital rights management
 - Litigation and remedies
 - Administrative and criminal penalties
- Statutory damages

Copyright

How do I get it?

A large, light blue Fibonacci spiral is centered on the slide, starting from a small square in the lower-left and expanding outwards to the top-right corner. The spiral is composed of quarter-circle arcs connected by straight lines.

Copyright

– Software-specific Issues

- Functional vs. Expressive
- Originality
- Limited protection over expression
- Open source licensing...

Licensing

- Open source = public domain?



Trade Secrets

- Information that:
 - Is secret
 - Has value because it is secret
 - It has been protected as such
 - Effort has been expended in development
- Not limited to technical information
- Unlimited term but can be lost...
 - Reverse engineering
- Common law vs. statutory
- Use an NDA! Secure storage!

Trademarks

“A recognizable sign, design, or expression that identifies goods and services of a particular source from those of others”

- Consumer protection rationale
- Common Law™ vs. statutory®
- How do I get a trademark?
 - Use v. registration

A large, light blue Fibonacci spiral is centered on the page, winding outwards from a small square in the lower-left quadrant. The spiral is composed of quarter-circle arcs connected at their centers, which are the vertices of a series of nested squares. The word "Questions?" is centered over the spiral.

Questions?