thor or inventor.[1406] Also, in extending the duration of existing copyrights and patents, Congress may protect the rights of purchasers and assignees.[1407]

The copyright and patent laws do not, of their own force, have any extraterritorial operation.[1408]

Patentable Discoveries

The protection traditionally afforded by acts of Congress under this clause has been limited to new and useful inventions,[1409] and, although a patentable invention is a mental achievement,[1410] for an idea to be patentable it must have first taken physical form.[1411] Despite the fact that the Constitution uses the term "discovery" rather than "invention," a patent may not be issued for the discovery of a previously unknown phenomenon of nature. "If there is to be invention from such a discovery, it must come from the application of

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[1406] The Court in *Eldred* upheld extension of the term of existing copyrights from life of the author plus 50 years to life of the author plus 70 years. Although the more general issue was not raised, the Court opined that this length of time, extendable by Congress, was "clearly" not a regime of "perpetual" copyrights. The only two dissenting Justices, Stevens and Breyer, challenged this assertion.

[1407] Evans v. Jordan, 13 U.S. (9 Cr.) 199 (1815); Bloomer v. McQuewan, 55 U.S. (14 How.) 539, 548 (1852); Bloomer v. Millinger, 68 U.S. (1 Wall.) 340, 350 (1864); Eunson v. Dodge, 85 U.S. (18 Wall.) 414, 416 (1873).

[1408] Brown v. Duchesne, 60 U.S. (19 How.) 183, 195 (1857); *see also* Deepsouth Packing Co. v. Laitram Corp., 406 U.S. 518, 531 (1972) ("Our patent system makes no claim to extraterritorial effect . . . ."); Quality King Distrib., Inc. v. L'Anza Research Int'l, Inc., 523 U.S. 135, 154 (1998) (Justice Ginsburg concurring) ("Copyright protection is territorial"); Microsoft Corp. v. AT&T, 550 U.S. 437, 454–55 (2007) ("The presumption that United States law governs domestically but does not rule the world applies with particualr force in patent law."). It is, however, the ultimate objective of many nations, including the United States, to develop a system of patent issuance and enforcement which transcends national boundaries; it has been recommended, therefore, that United States policy should be to harmonize its patent system with that of foreign countries so long as such measures do not diminish the quality of the United States patent standards. President's Commission on the Patent System, To Promote the Progress of Useful Arts, Report to the Senate Judiciary Committee, S. Doc. No. 5, 90th Cong., 1st sess. (1967), recommendation XXXV. Effectuation of this goal of transnational protection of intellectual property was begun with the United States agreement to the Berne Convention (the Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886), and Congress' conditional implementation of the Convention through legislation. The Berne Convention Implementation Act of 1988, Pub. L. 100–568, 102 Stat. 2853, 17 U.S.C. §§ 101 and notes.

[1409] Seymour v. Osborne, 78 U.S. (11 Wall.) 516, 549 (1871). *Cf.* Collar Company v. Van Dusen, 90 U.S. (23 Wall.) 530, 563 (1875); Reckendorfer v. Faber, 92 U.S. 347, 356 (1876).

[1410] Smith v. Nichols, 89 U.S. (21 Wall.) 112, 118 (1875).

[1411] Rubber-Tip Pencil Co. v. Howard, 87 U.S. (20 Wall.) 498, 507 (1874); Clark Thread Co. v. Willimantic Linen Co., 140 U.S. 481, 489 (1891).