**Topic:** Patent

**Module I:** What is a patent?

**Information:**

A patent is a type of property right granted to an inventor. This property right was originally derived from language in the Constitution of the United States, which grants Congress the power:

"To promote the progress of science and useful arts, *by securing for limited times to authors and inventors the exclusive right* to their respective writings and discoveries." Article I, Section 8, Clause 8, of the United States Constitution (emphasis added).

In other words, a patent is a limited monopoly granted to inventors as a reward for their input or advancement to the fields of science or the useful arts. The overarching goal of the patent system is to incentivize research and development.

Patents differ significantly from other types of intellectual property such as copyrights and trademarks. To learn more about copyrights, visit our Copyright Tutorial. To learn more about trademarks, visit our Trademark Tutorial.

**Module II:** What rights do patent holders have?

**Information:**

Unlike other positive legal rights, a patent provides an inventor *exclusionary* rights to their invention. More specifically, a patent holder is entitled to *exclude* others from the following actions:

* Making the patented invention
* Using the patented invention
* Offering the patented invention for sale
* Selling the patented invention in the United States
* Importing the patented invention into the United States

Importantly, a patent does not give patent holders the right to make, use, or sell their invention; instead a patent holder has only the right to exclude others from using their invention. Furthermore, a patent is not required to make an invention, but is required to prevent others from making an invention.

**Module III:** Are there different types of patents?

**Information:**

Yes. There are three major types of patents:

1. Utility Patents
2. Design Patents
3. Plant Patents

Utility Patents are issued for a “new and useful process, machine, manufacture, or composition of matter, or a new and useful improvement thereof.” See U.S. Code Title 35 – Patents.

Design Patents are issued for “new, original, and ornamental design embodied in or applied to an article of manufacture.” See U.S. Code Title 35 – Patents.

Plant Patents are issued “a new and distinct, invented or discovered asexually reproduced plant including cultivated sports, mutants, hybrids, and newly found seedlings, other than a tuber propagated plant or a plant found in an uncultivated state.”

**Module IV:** What are the general requirements for obtaining a patent?

**Information:**

An invention must meet several requirements in order to qualify for patent protection. Below is a brief introduction to these requirements:

* Novelty – an invention must be a new idea, not thought of, published, presented, or patented before
* Utility – an invention must be useful in some way, shape or form (this is a low bar)
* Nonobviousness – an invention must not be obvious with respect to what is already known in the field.
* Conception – an inventor must conceive of the entire invention (partial ideas for an invention do not meet this requirement)
* Reduction to practice – an inventor must embody the invention with complete disclosure

NOTE: If you are interested in patenting your invention, you should contact a patent attorney and discuss if your invention meets the requirements. The patent attorney can also help you prepare a patent application. To learn more about the basic patent application process, see *Module V: How do you apply for a patent?*

**Module V:** How do you apply for a patent?

**Information:**

The United States Patent and Trademark Office (“USPTO”) handles both patent and trademark registrations. This section will introduce the process of applying for a patent. If you are looking for more information about registering trademarks, *click here* for the Trademark Tutorial*.*

What do you need for a patent application in the United States?

There are several requirements for a successful patent application:

* You must be the first to file a patent application on your particular invention.
  + NOTE: This is different from being the *first to invent*. Current patent law awards a patent to the inventor who is first to file their application, not the person who can show they were the first to invent.

* You must file your patent application within one year of publically disclosing your invention.
  + Public disclosures include (but are not limited to):
    - Other patents
    - Publications
    - Posters
    - Oral presentations
    - Dissertations
* You must have a written description of your invention that would enable another person skilled in the art to make that invention
* You must write claims that define the boundaries of your invention

Two types of patent applications at the USPTO:

1. Provisional – this type of application is a quick and inexpensive application that inventors can use to establish a U.S. filing date for the invention. Once a filing date has been established, an inventor has a 12-month pendency period to file a nonprovisional application.
2. Nonprovisional – this type of application is a complete patent application that can begin the patent examination process with the USPTO. A patent *may* be issued as a patent if all the requirements for patentability are met.

Additional information can be found on the USPTO website: <http://www.uspto.gov>.

NOTE: If you are awarded a patent in the United States, your right to exclude others from making, using, and selling your invention only apply within the United States. In order to have the same exclusionary right in other countries, you need to file a patent in each and every country that you want to have protection in.

**Activity 1 (MC):**

New Section to work on – and complete usability test on this

Diagnostic questions: general for each type of IP

Example: if they answer C 🡪