

Overview of the US Patent System

The Basic Concept of Patent Rights

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A patent is an exclusionary property right granted by a government to inventors of new and useful inventions.

Patent rights are described as exclusionary because by virtue of the existence of a patent, the patent owner is given the right to exclude others from doing any of the following acts in the United States:

- a. making the invention;
- b. using the invention;
- c. selling the invention;
- d. offering to sell the invention; and
- e. importing the invention.

Also, having a patent, by itself, will not stop anyone from practicing an invention. Instead, a patent owner must file suit to enforce his, her or its patent rights in order to stop someone from exploiting the invention.

Think you understand the basic concept of a patent? Consider the following scenario:

Attorney A calls his client, Client C, to let him know the good news that the United States Patent and Trademark Office ("PTO") will grant him a patent on a device that speeds up and controls the flow of signals in computers specifically using Panatachi's proprietary hard drives. The controllers, once integrated into the hard drives, result in the computers having improved performance over other computers. With the good news, Client C has dollar signs in his eyes. He tells Attorney A that he is taking him to a fancy dinner that night to celebrate and discuss commercializing the invention. At dinner, Client C announces that he already has financing lined up to construct a plant to build the controllers and that as a result of the good news from the PTO he will ink his deal with the contractor to build his factory tomorrow. Attorney A tells Client C: "Hold your horses. Your patent does not allow you to build your controller." In shock, Client C demands to know what went wrong.

Question: What should Attorney A tell Client C?

Answer: Remember that Client C's invention controls signals in Panatachi's hard drives. Those hard drives, being proprietary, are covered by patents. Obtaining a patent on his invention did not give Client C the right to make controllers that can be put in another patented device. His patent only gave him the right to stop others from making, using, selling, offering to sell or importing his controller. Client C does not have the right to combine his invention with that of another. Client C just learned a very important lesson on the need and value of cross licensing. If Client C wants his patented controllers to be used in the latest and greatest hard drives, he needs to make a deal with Panatachi. Conversely, if Panatachi wants to sell the latest and greatest hard drives then it needs to make a deal with Client C.

There is a very real historical example of such a situation. Can you think of it? Hint - see the original patent granted to Bell for the telephone (the embodiment of which invention Bell stole from Elijah Gray). To work properly in practice, the telephone needed a carbon element to convert speech into electrical signals. Edison is credited with conceiving the idea of the carbon element.

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Don V. Kelly
Evans & Dixon, LLC
Suite 2500
211 N. Broadway
St. Louis, MO 63102
dkelly@evans-dixon.com