

Overview of the US Patent System Source of Patent Rights and Law

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The Founding Fathers of the United States had the foresight to make special provision for patents in the original Constitution. In this regard, Article I, section 8, clause 8 of the United States Constitution, in stately and elaborate penmanship, provides that Congress shall have the power to:

...promote the Progress of Science and useful Arts by securing for a limited Time the Authors and Inventors the exclusive Right to their prospective Writings and Discoveries..

On the authority of this simple and humble provision Congress has enacted the United States patent statute, currently set forth in 35 U.S.C. §§ 1-376, consisting of 149 separate statutory sections (not including subparts!)

Implementing the statutes are the regulations of the PTO, which are set forth at 37 C.P.R. §§ 1.1 -1.995; §§ 3.11-3.85, §§ 4.1-4.6, §§ 5.1-5.33 and §§ 10.1-10.170.

The PTO publishes a Manual of Patent Examining Procedure (MPEP) that sets forth the rules governing pursuit of patent rights in the USPTO. The MPEP is constantly being revised and updated. The current edition of the MPEP is several thousand pages long.

Were the foregoing not enough, on top of all those rules are thousands of court decisions interpreting the statutes, regulations and MPEP. Of course, the foregoing sources of law relate only to patent rights in the United States, not in other areas of the world.

Patent lawyers are extremely thankful for the job security created by the unmanageable amount of law pertaining to patents! On the other hand, having to keep abreast of such ponderous amounts of law ensures that patent attorneys will remain among the most socially awkward of our citizens.

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