

Goals for Class 4

- Understand basics of fundamental IP
 - Validity requirements
 - Rights obtained
- General feel for :
 - What types of IP are good for what intangibles
 - Cost/time to obtain

Copyright – (1) Validity

Originality



Fixation



Expression/Not Idea



Copyrightable

breaking dawn



STEPHENIE MEYER

AUTHOR OF THE #1 BESTSELLING *TWILIGHT*, *NEW MOON*, AND *ECLIPSE*

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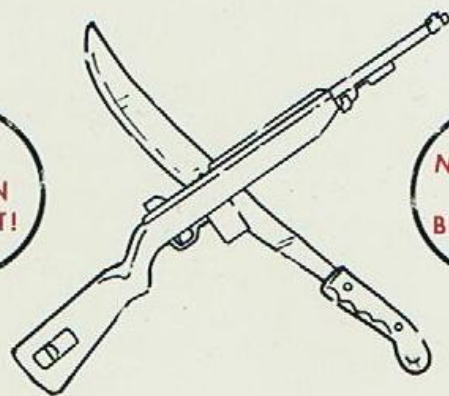
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Copyright – (2) Rights

- Reproduce

Rights to
Exclude?

- Derivative Works

- Public
Performance

- Public Display

Copyright – Defense -- Fair Use

“ In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole;
- (4) the effect of the use upon the potential market for or value of the copyrighted work.” § 107

Copyright – Defense -- Fair Use

- *Authors Guild v. Google*
 - Copied books to create database
 - Searchable
 - Snippet View



Copyright – DMCA

- Anti-Circumvention Protection

Patentable Subject Matter -- § 101

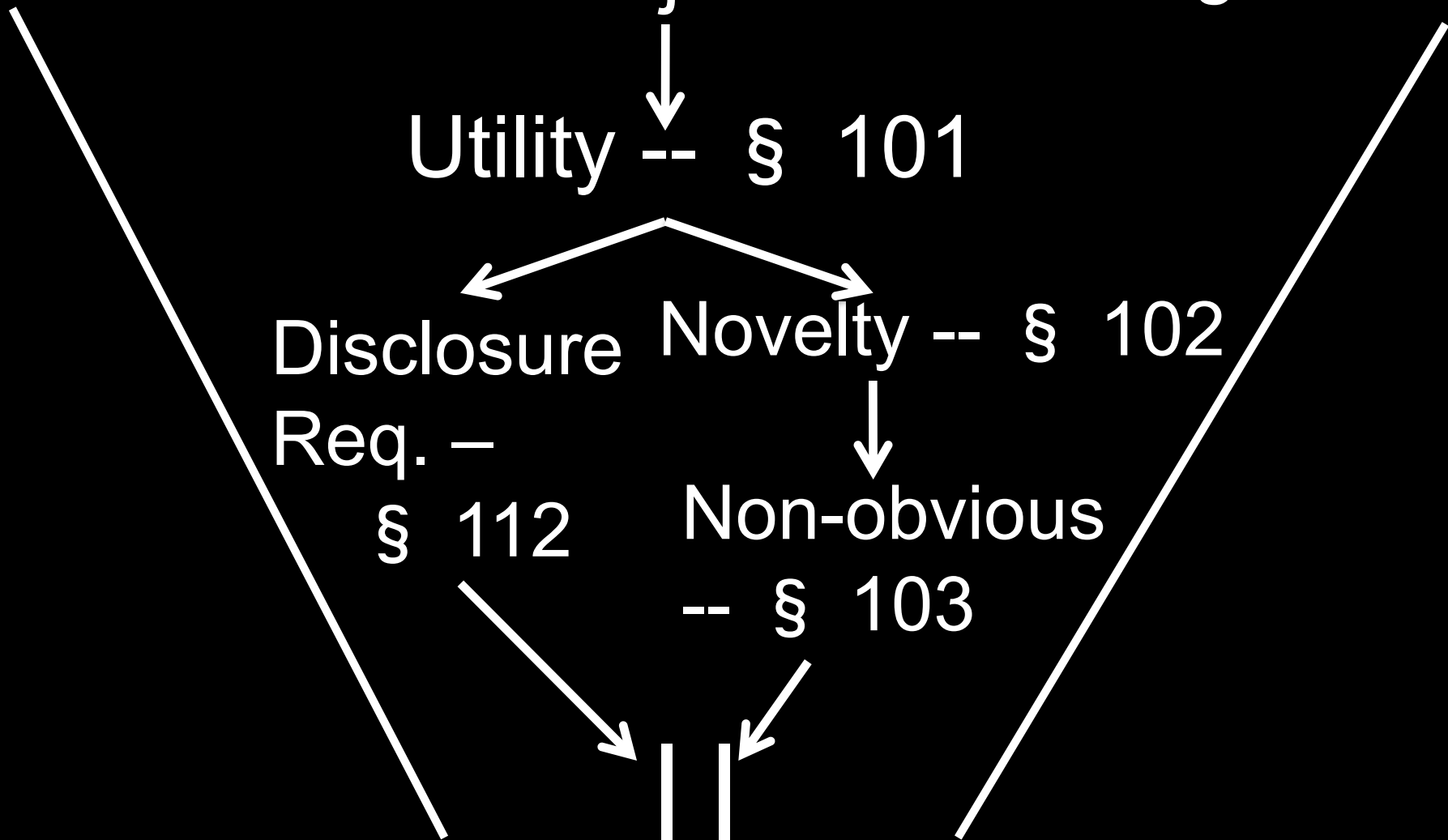
Utility -- § 101

Disclosure
Req. --
§ 112

Novelty -- § 102

Non-obvious
-- § 103

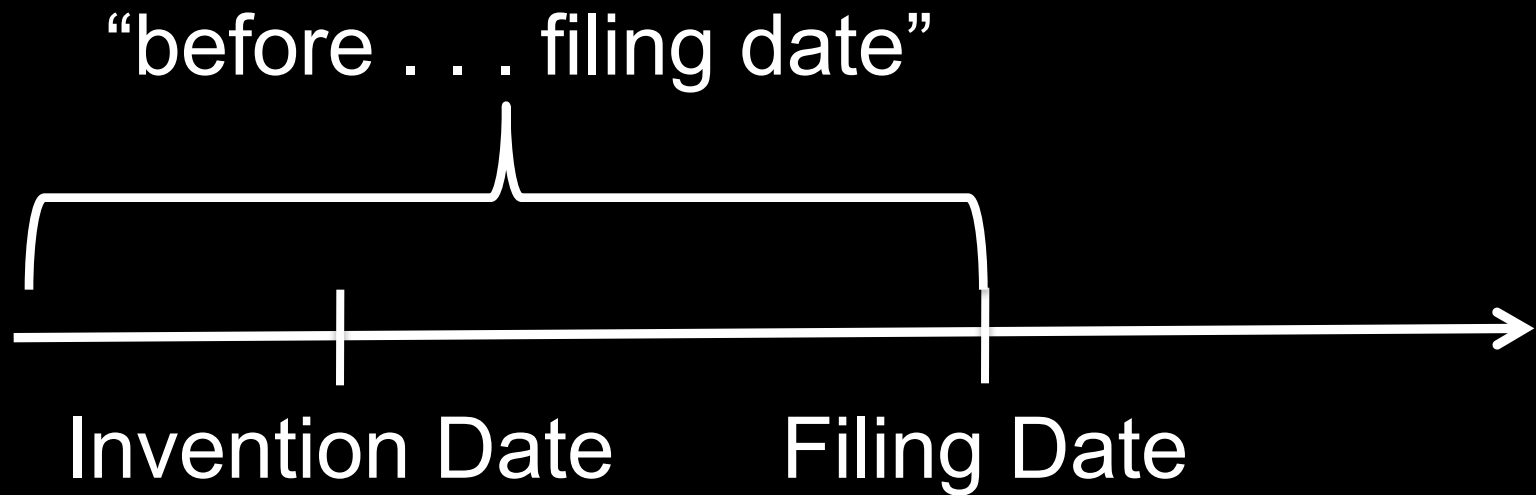
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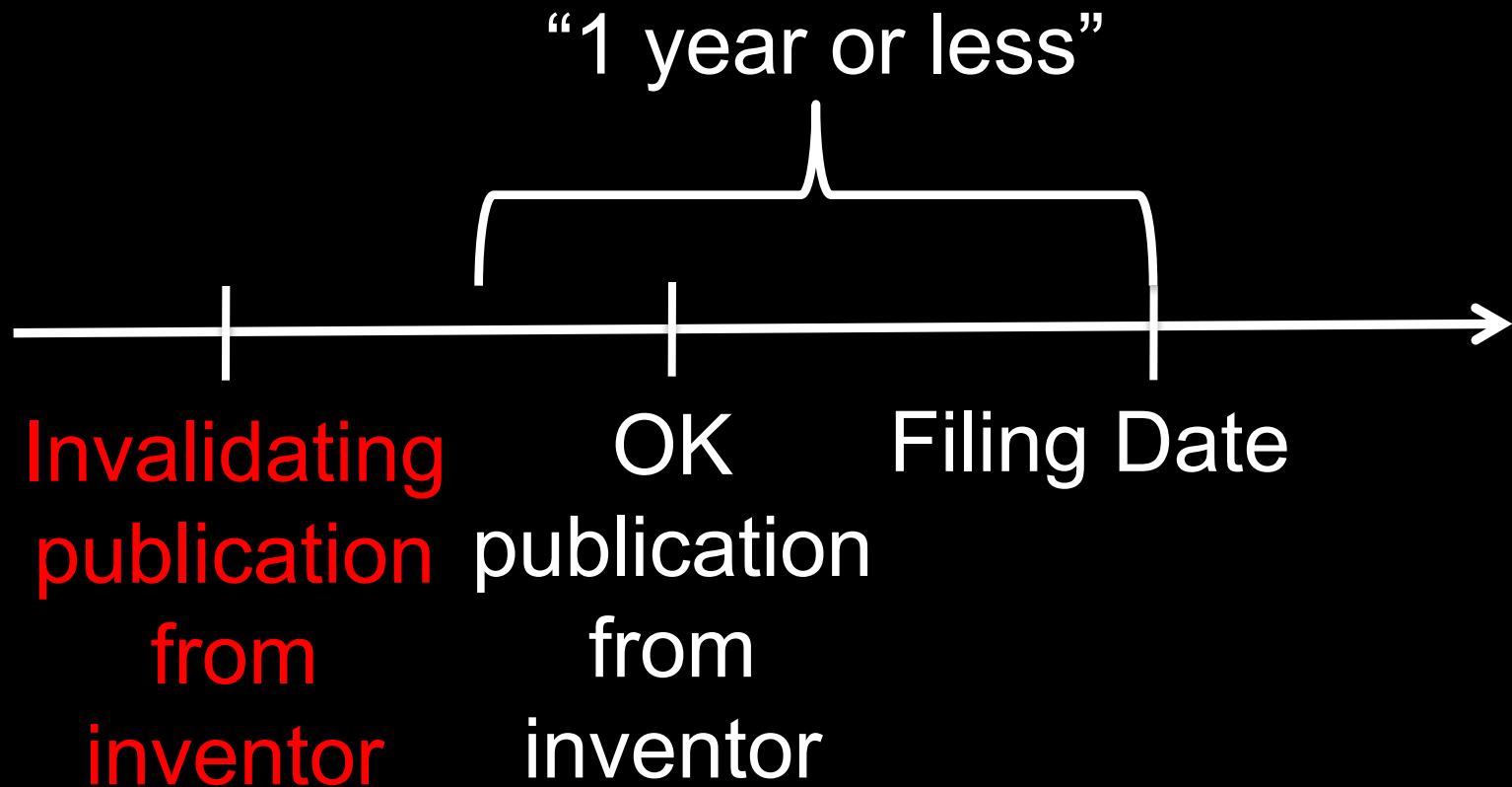
Patents – § 101 -- Exceptions

- Three judicial exceptions (Not patentable subject matter)
 - laws of nature
 - natural phenomena
 - abstract ideas

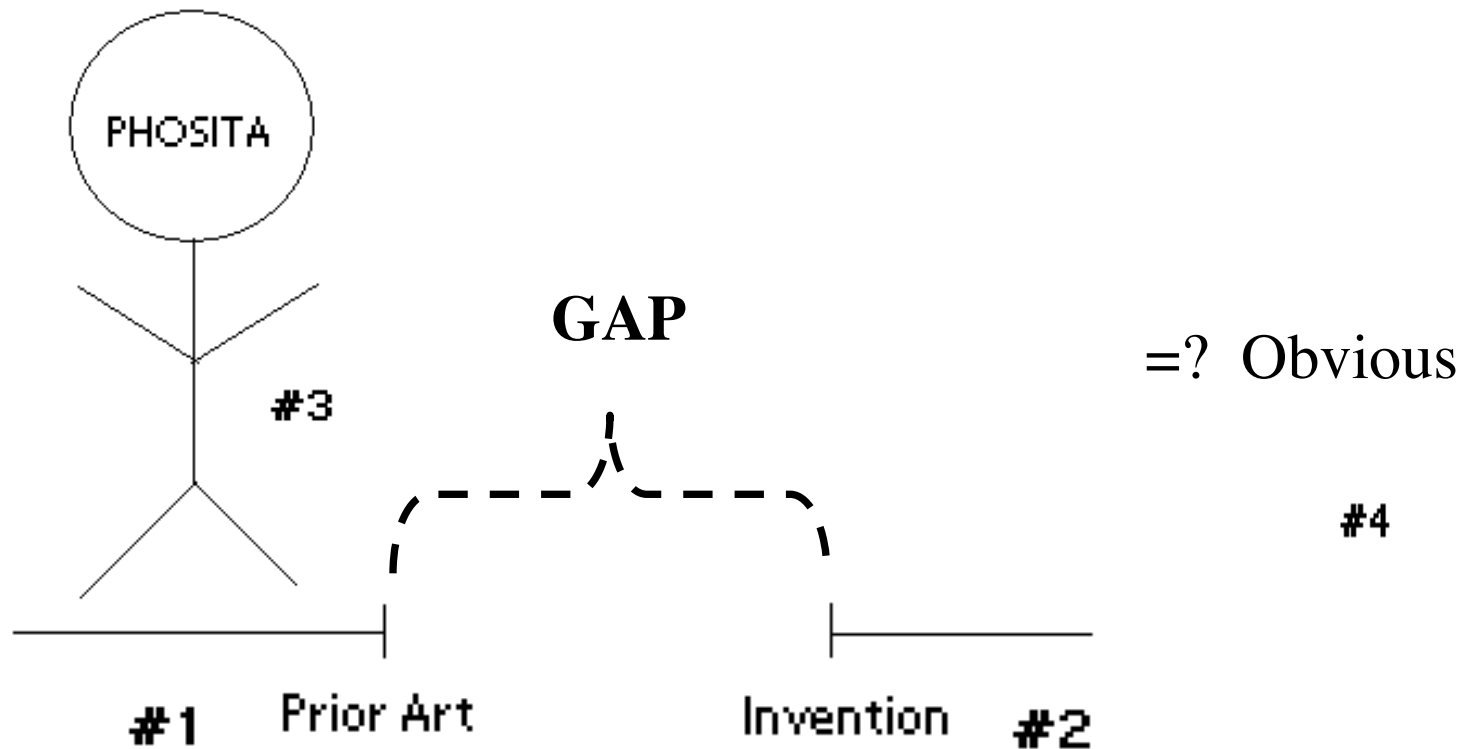
Patents – NEW § 102(a) – Novelty



Patents – NEW § 102(b) – Novelty



Patents – *Obviousness*



Patents –*Infringement*

- “[W]hoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States, or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.” 35 U.S.C. § 271(a)
- must have *every* element to infringe
- extra elements are irrelevant
 - if use “comprising” language

Patents – *Literal Infringement*

United States Patent [19]

Amiss et al.

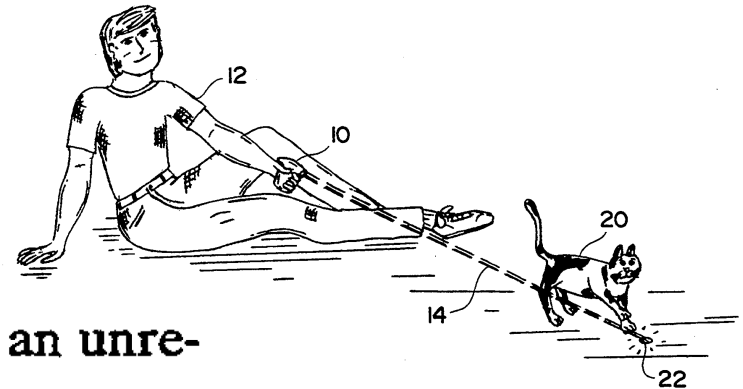
US005443036A

[11] Patent Number: 5,443,036

[45] Date of Patent: Aug. 22, 1995

[54] METHOD OF EXERCISING A CAT

5,194,007 3/1993 Mars



1. A method of inducing aerobic exercise in an unrestrained cat comprising the steps of:

- (a) directing an intense coherent beam of invisible light produced by a hand-held laser apparatus to produce a bright highly-focused pattern of light at the intersection of the beam and an opaque surface, said pattern being of visual interest to a cat; and
- (b) selectively redirecting said beam out of the cat's immediate reach to induce said cat to run and chase said beam and pattern of light around an exercise area.

Patents – *Design Patents*

United States Patent [19]
Greenberg

[11] **Patent Number:** Des. 299,081

[45] **Date of Patent:** Dec. 27, 1988

[54] **SHOE UPPER**

[75] **Inventor:** Robert Y. Greenberg, Woodland Hills, Calif.

[73] **Assignee:** L.A. Gear, Inc., Los Angeles, Calif.

[**] **Term:** 14 Years

[21] **Appl. No.:** 122,003

[22] **Filed:** Nov. 18, 1987

[52] **U.S. Cl.:** D2/314; D2/309

[58] **Field of Search:** D2/284, 265, 271, 272, D2/308-314; 36/45, 83, 84, 10, 87-89, 112, 100-107, 114, 132, 136

[56] **References Cited**

U.S. PATENT DOCUMENTS

D. 226,883 5/1973 Babicki et al. D2/310
D. 227,821 7/1973 Askew D2/309
D. 237,425 11/1975 Askew D2/310
D. 245,732 9/1977 Askew D2/310
D. 245,733 9/1977 Askew D2/310
D. 276,778 10/1983 Cusetta D2/310
D. 278,232 6/1985 Gunn D2/309
D. 284,943 6/1986 Lowe, Jr. et al. D2/310
D. 284,518 7/1986 Lowe, Jr. et al. D2/310

D. 287,505 12/1986 Tong D2/314
D. 290,541 6/1987 O'Rourke D2/310
D. 290,542 6/1987 O'Rourke D2/310
D. 291,383 6/1987 Campbell et al. D2/309
D. 291,848 1/1988 Brown et al. D2/310
D. 294,654 3/1988 Liggett et al. D2/309 X
D. 295,330 4/1988 Tong D2/309 X
D. 295,341 4/1988 Liggett et al. D2/314
4,736,331 4/1988 Richard 36/10 X

Primary Examiner—Louis S. Zurfas

Attorney, Agent, or Firm—Lerner, Marshall A.,

Matthew F. Jedziewicz

[57] **CLAIM**

The ornamental design for a shoe upper, as shown and described.

DESCRIPTION

FIG. 1 is a right side elevational view of a shoe upper showing our new design. The broken line showing of a shoe sole is for environmental purposes only and forms no part of the claimed design;

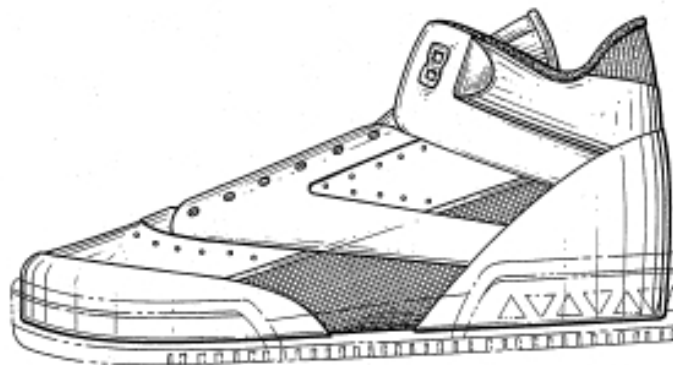
FIG. 2 is a top plan view thereof;

FIG. 3 is a bottom plan view thereof;

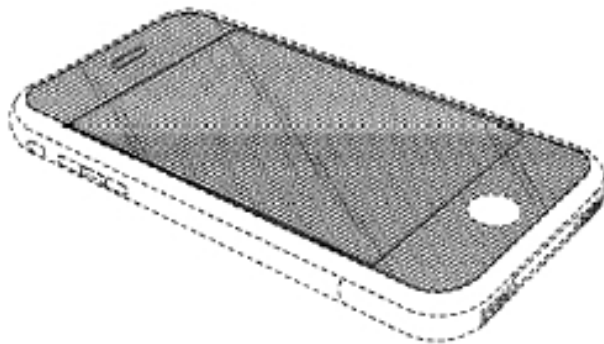
FIG. 4 is a left side elevational view thereof;

FIG. 5 is a front elevational view thereof; and

FIG. 6 is a rear elevational view.



'D677 Patent



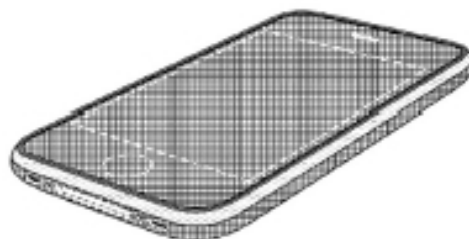
'D790 Patent



FIGURE



'D016 Patent



Trade Secret – (1) Validity

- Three requirements to have a protectable (valid) trade secret:
 - Must be a **secret**
 - Must have **value**
 - Owner must exercise **reasonable efforts to maintain secrecy**

Trade Secret – (2) Misappropriation

3426.1. Definitions.

As used in this title, unless the context requires otherwise:

(a) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means. Reverse engineering or independent derivation alone shall not be considered improper means.

(b) "Misappropriation" means:

(1) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(2) Disclosure or use of a trade secret of another without express or implied consent by a person who:

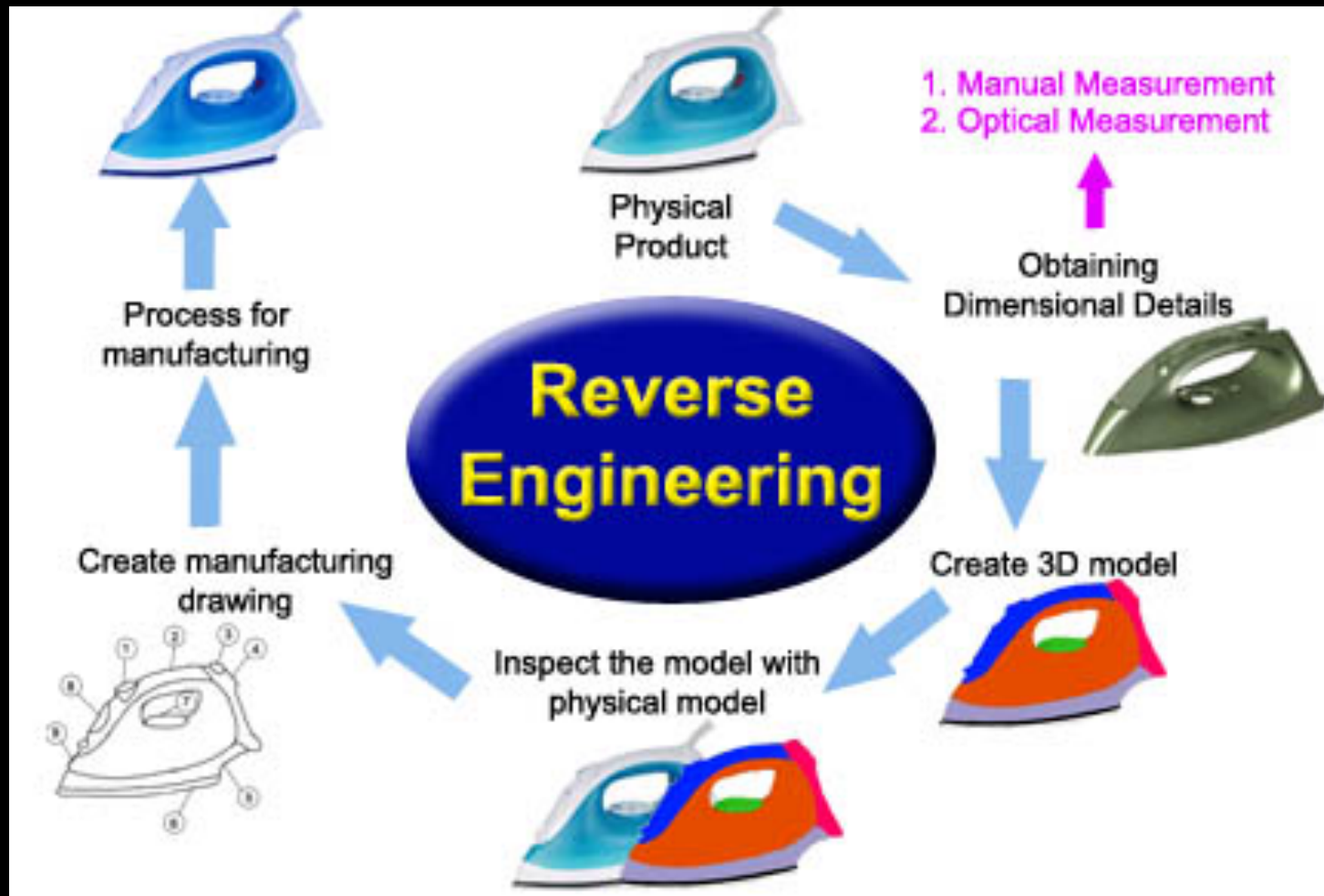
(A) Used improper means to acquire knowledge of the trade secret; or

(B) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was:

(i) Derived from or through a person who had utilized improper means to acquire it;

(ii) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

Trade Secret – (3) Reverse Eng'g



Distinctiveness



Use in Commerce

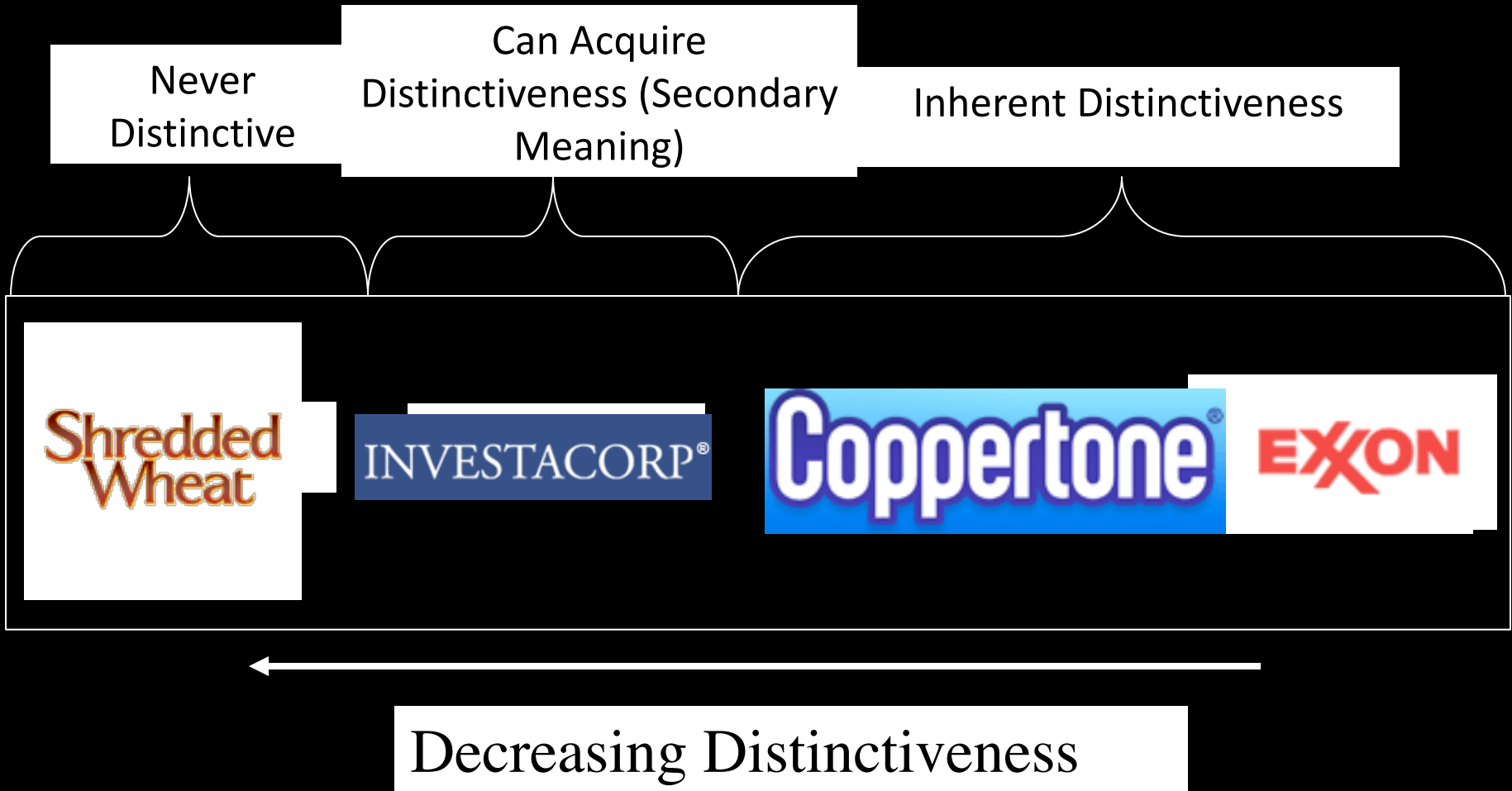


Priority



Trademarkable

Trademark—Spectrum of Distinctiveness



Trademark – Trade Dress

- Examples*

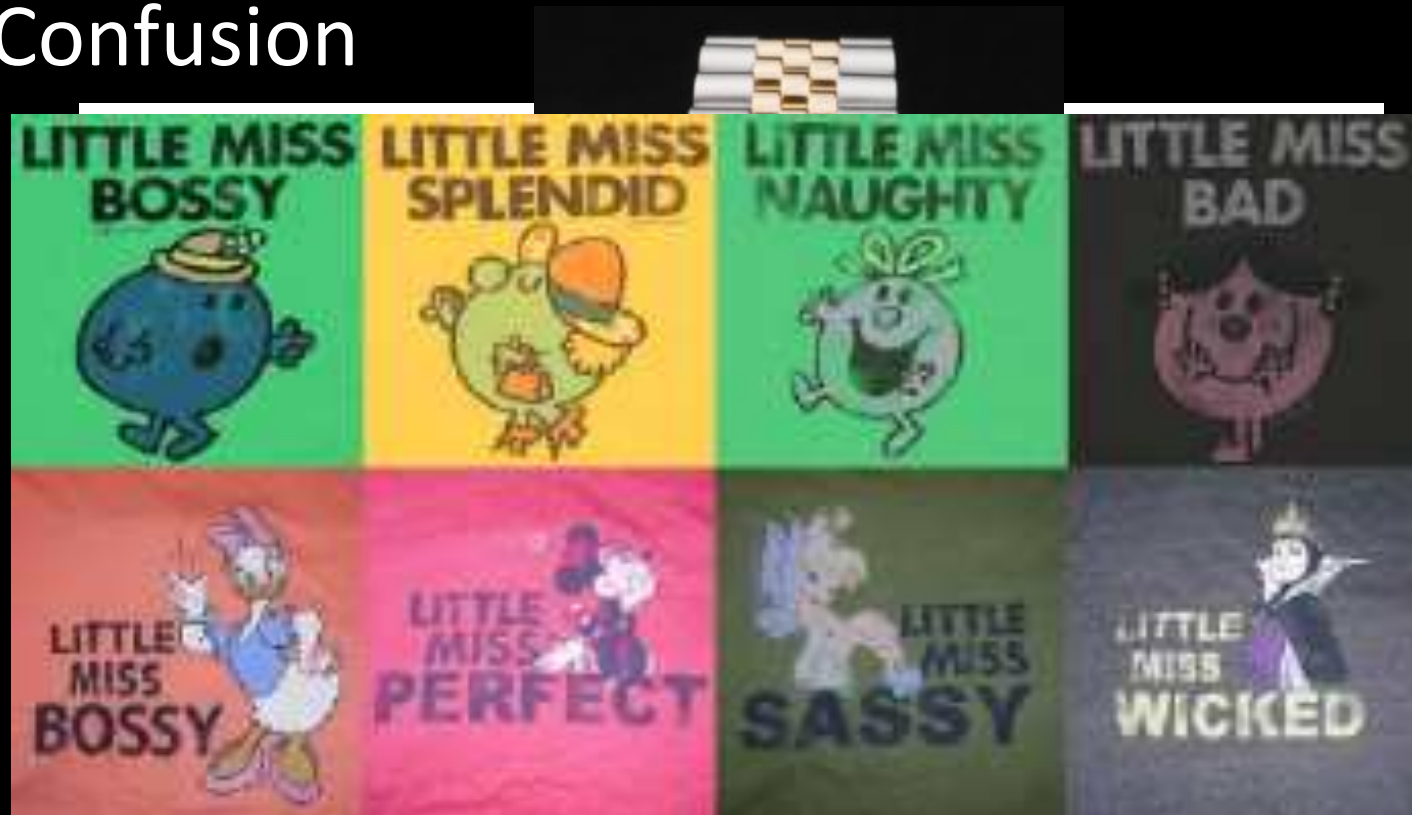


Trademark – Likelihood of Confusion



- Gateway questions:
 - compare goods/services at issue
 - If compete for sales, just look at similarity
 - If related, but not competitive, look at all factors
 - If completely unrelated, no LOC

Trademark – Likelihood of Confusion

- Confusion as to Sponsorship
- Initial Interest Confusion
- Post-Sale Confusion
- Reverse Confusion



Trademark – Likelihood of Confusion



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Trademark – Dilution

“(c) Dilution by blurring; dilution by tarnishment
(1) Injunctive relief . . . the owner of a famous mark that is **distinctive, inherently or through acquired distinctiveness**, shall be entitled to an injunction against another person who, at any time after the owner’s mark has become **famous**, commences use of a mark or trade name in commerce that is **likely to cause dilution by blurring or dilution by tarnishment** of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.” § 43

Trademark – Dilution



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- *Private Law* – Define Rights via License/
Contract
- Ability to contract
- Need for mutual assent
 - Avoid p[reemption


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public class Graph extends Applet {
    GraphPanel panel;

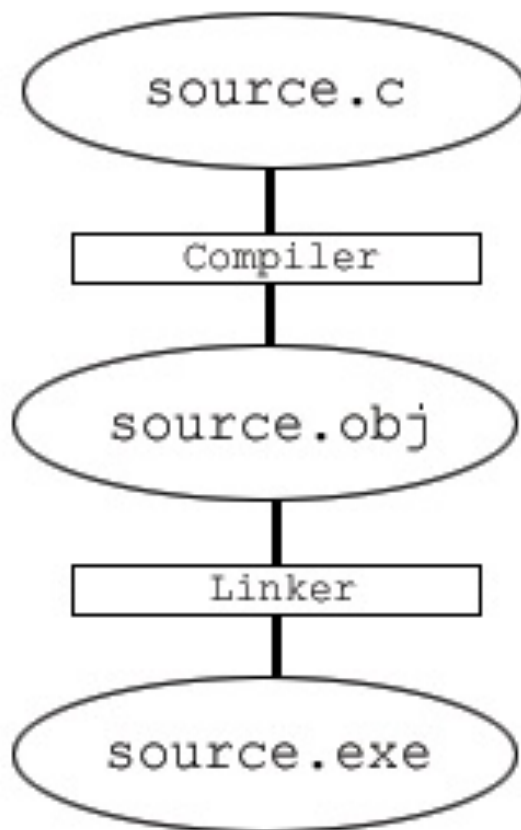
    public void init() {
        setLayout(new BorderLayout());

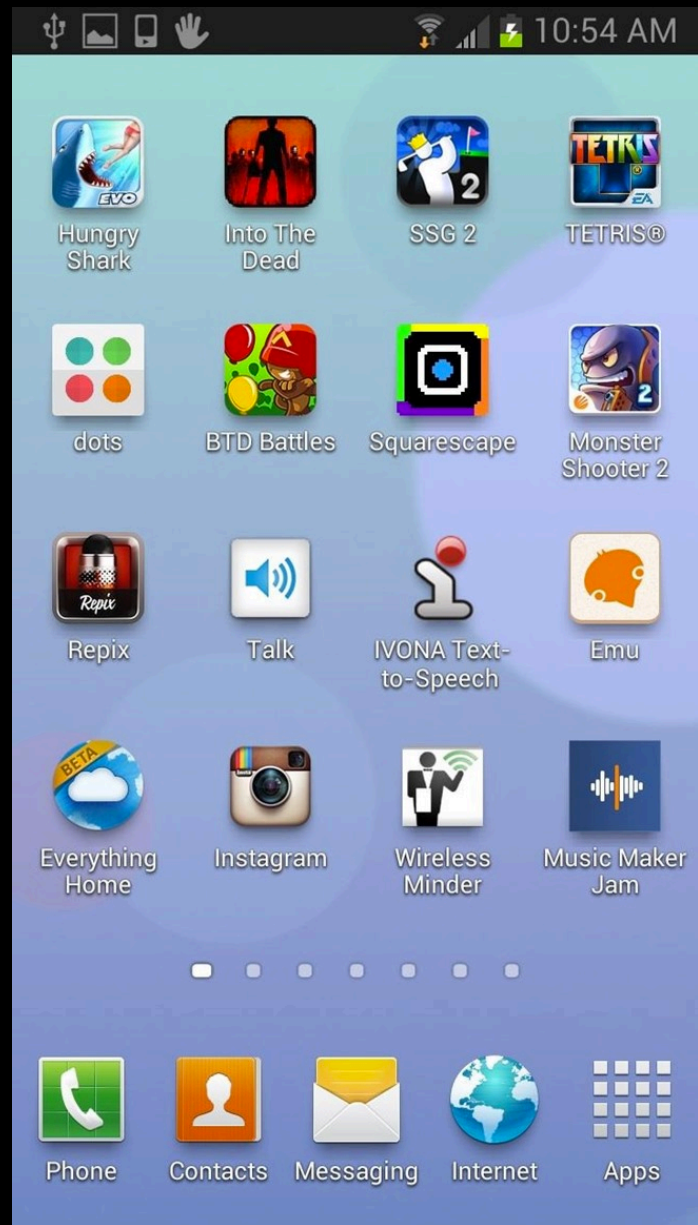
        panel = new GraphPanel(this);
        add("Center", panel);
        Panel p = new Panel();
        add("South", p);
        p.add(new Button("Scramble"));
        p.add(new Button("Shake"));
        p.add(new Checkbox("Stress"));
        p.add(new Checkbox("Random"));

        String edges = getParameter("edges");
        for (StringTokenizer t = new StringTokenizer(edges, ","); t.hasMoreTokens(); ) {
            String str = t.nextToken();
            int i = str.indexOf('-');
            if (i > 0) {
                int len = 50;
                int j = str.indexOf('/');
                if (j > 0) {
                    len = Integer.valueOf(str.substring(j+1)).intValue();
                    str = str.substring(0, j);
                }
                panel.addEdge(str.substring(0,i), str.substring(i+1), len);
            }
        }
        Dimension d = size();
        String center = getParameter("center");
        if (center != null){
            Node n = panel.nodes[panel.findNode(center)];
            n.x = d.width / 2;
            n.y = d.height / 2;
            n.fixed = true;
        }
    }
}

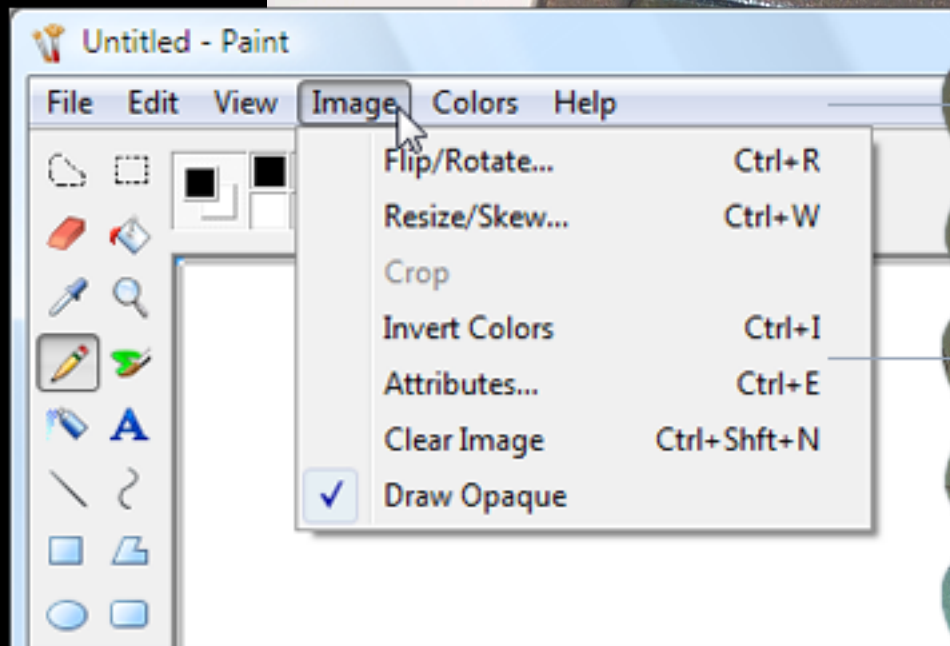
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② Menu

