Practice Materials & Secondary Sources

Lauren M. Collins
Reference Librarian
Duke University Law Library
April 3, 2007
Secondary Authority

- All materials not considered primary
- Persuasive authority only though some stronger than others
- Explanations, summaries, citators
Why Secondary Resources?

- Background
- Research Roadmap
- Analysis & Commentary
- Some place the legal topic in social, political, historical context
- Understanding the application of a particular substantive legal topic
Legal Treatises

- Publications on legal topics that give commentary and explanations

Examples

- Williston on Contracts – scholars
- The Elder Law Answer Book – practitioners
- Constitutional Law in a Nutshell - students

- Locate Using the Library Catalog
  http://catalog.library.duke.edu
Search type: Title begins with...

Search for:
- Title: chisum on patents
- Example(s): old man and the sea
<table>
<thead>
<tr>
<th>#</th>
<th>▼Author▼</th>
<th>▼Title▼</th>
<th>Format</th>
<th>▼Year▼</th>
<th>▼Location/Call No.▼</th>
</tr>
</thead>
</table>
| 1 | Chisum, Donald S., 1944- | Patents: a treatise on the law of patentability, validity and infringement | Book | 1978 | Location/Request:  
- Law Library:  
  - General (II) | KF 3110.C4 Suppl. Pamphlets  
- Law Library:  
  - KF3110 .C4  
- Law Library:  
  - General (II) | KF3110 .C4 Looseleaf Updates  
- Library (Owned/Out):  
  - Law-Library(33/1) |
When print versions are not available, publisher’s information will help you locate resources on Lexis or Westlaw.
Source Information

Chisum on Patents

FILE-NAME: CHISUM

COVERAGE: Through December 2006; Release No. 106

FREQUENCY: Quarterly

UPDATE-SCHEDULE: Updated regularly - Atypical update schedule/as received from the publisher

HIER-LOC:
Area of Law - By Topic/Corporate Counsel/Treatises and Analytical Materials/Mathew Bender
Area of Law - By Topic/E-Commerce/Treatises & Analytical Materials/Mathew Bender(R)
Area of Law - By Topic/Patent Law/Treatises & Analytical Materials/Mathew Bender(R)
Secondary Legal/Mathew Bender(R)/By Area of Law/E-Commerce
Secondary Legal/Mathew Bender(R)/By Area of Law/Intellectual Property
Secondary Legal/Mathew Bender(R)/By Area of Law/Patent Law
States Legal - U.S./California/Treatises & Analytical Materials/Intellectual Property

CONTENT-SUMMARY:
Westlaw will give you secondary resources with your search for primary authority.
3. Lindsay v. Roraback
4 Jones Eu. 124, 37 N.C. 124, 1858 WL 1838, N.C., August Term 1858

...16th day of September, 1857, the defendant Roraback, professing to act for himself and the defendant Lyons, sold the said patent right to them, in and for the State of North Carolina, excepting the 8th congressional district, and made a deed...

...described in the bill; that in making the said sale, the defendants fraudulently represented to the plaintiffs, that the said patent secured to them the exclusive right of making, using, and vending two kinds of soap, one of which was called "Roraback's compound chemical toilet soap," and the other, "Roraback's compound chemical washing soap," that they were ignorant of the extent of the rights conferred by the said letters patent, and relied on the representations made by the defendant Roraback; that to give semblance to his false representation in this...

...printed form of directions for making these two kinds of soap, which was formally headed in large letters, "Roraback's compound chemical toilet soap," and "Roraback's compound chemical washing soap;" that the first of these recipes, pursues the schedule affixed to the letters patent, with the exception that the spirits of wine is omitted, and six pounds of the soap of commerce is stated...
Hints for finding Treatises

Well known treatises are often known by author name, A keyword search rather than a title search may be necessary to locate these resources in the catalog

- *Nimmer on Copyright*
- Wright and Miller, *Federal Practice and Procedure*
- Williston, *A Treatise on the Law of Contracts*

Several Law School Libraries have lists of common scholarly treatises arranged by subject. Examples:
Other Catalogs

- **WorldCat**
- **Area Consortia**
  - **Michigan**
  - **Boston**
  - **Ohio**
  - **NELLCO**
  - **Washington, DC**
  - **California**
Legal Encyclopedias & Dictionaries

- Provide explanations of most legal topics with references to relevant primary resources

- General
  - American Jurisprudence, 2d (Am. Jur. 2d)
  - Corpus Juris Secundum (C.J.S.)
  - Words and Phrases
  - Black’s Law Dictionary
  - Cornell’s Wex:

*Hint*

Practice using the print! You don’t want to rely on Lexis or Westlaw for these.
Welcome

Welcome to Wex, a collaboratively built, freely available legal dictionary and encyclopedia.

What is Wex?

Wex is an ambitious effort to construct a collaboratively-created, public-access law dictionary and encyclopedia. It is sponsored and hosted by the Legal Information Institute at the Cornell Law School. Much of the material that appears in Wex was originally developed for the LII’s “Law about...” pages, to which Wex is the successor.

More information about Wex, its aims, and project plans can be found in the Wex FAQ.

A list of all existing pages is here.

Editorial contributors wanted

The Legal Information Institute welcomes contributions from qualified experts. We describe qualifications and process thoroughly on the Editorial contributions page.
Patent law: an overview

Patents grant an inventor the right to exclude others from producing or using the inventor’s discovery or invention for a limited period of time. U.S. patent laws were enacted by Congress under its Constitutional grant of authority to protect the discoveries of inventors. See U.S. Constitution, Article I, Section 8. The main body of law concerning patents is found in Title 35 of the United States Code. In order to be patented an invention must be novel, useful, and not of an obvious nature. See 35 U.S.C. 101-103 of Title 35. Such “utility” patents are issued for four general types of inventions/discoveries: machines, human made products, compositions of matter, and processing methods. See § 101 of Title 35. Changing technology has led to an ever expanding understanding of what constitutes a human made product. Specific additions to the Patent Act provide, in addition, for design and plant patents.
patent law: an overview

Patents grant an inventor the right to exclude others from producing or using the inventor's discovery or invention for a limited period of time. U.S. patent laws were enacted by Congress under its Constitutional grant of authority to protect the discoveries of inventors. See U.S. Constitution, Article I, Section 8. The main body of law concerning patents is found in Title 35 of the United States Code. In order to be patented an invention must be novel, useful, and not of an obvious nature. See 35 U.S.C. 103. Such “utility” patents are issued for four general types of inventions/discoveries: machines, human made products, compositions of matter, and processing methods. See § 101 of Title 35. Changing technology has led to an ever expanding understanding of what constitutes a human made product. Specific additions to the Patent Act provide, in addition, for design and plant patents.

Prior to a recent amendment prompted by the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) accompanying the Uruguay Round GATT, patents were normally issued for a non-renewable period of seventeen years, measured from the date of issuance. See 35 U.S.C. § 154 of Title 35. Under the amended provision (which took effect June 8, 1995) the term will be twenty years measured from the date of application.

Patent infringement cases arise under Federal patent law over which the Federal courts have exclusive jurisdiction. See 35 U.S.C. § 133(a).
Trade-Related Aspects of Intellectual Property (TRIPS) accompanying the Uruguay Round GATT, patents were normally issued for a non-renewable period of seventeen years, measured from the date of issuance. See [(USC:35:154) § 154 of Title 35]. Under the amended provision (which took effect June 8, 1995) the term will be twenty years measured from the date of application.

Patent infringement cases arise under Federal patent law over which the Federal courts have exclusive jurisdiction. See [(USC:28:1338) § 1338(a) of Title 28] of The United States Code.

The Federal agency charged with administering patent laws is the Patent and Trademark Office. See §§ 1-26 of Title 35. Its regulations, pertaining to Patents, are found in Parts 2 - 6 of Title 37 of the Code of Federal Regulations. Each patent application for an alleged new invention is reviewed by an examiner to determine if it is entitled to a patent. See § 1.104 of Part 1 of Title 37 (C.F.R.). While historically a model was required as part of a patent application, in most cases today, only a detailed specification is necessary. See §§ 112-114 of Title 35.

If an application is rejected, the decision may be appealed to the Patent Office's Board of Appeals, with further or alternative review available from the United States Court of Appeals for the Federal Circuit, or in the United States District Court for the District of Columbia. See §§ 134, 141, & 145 of Title 35.

In 1975 the Patent Cooperation Treaty was incorporated into Title 35. See §§ 351-376 of Title 35.

Retrieved from "http://www.law.cornell.edu/wex/index.php/Patent"
Legal Encyclopedias

- State Specific
  - Strong’s North Carolina Index

- Some other States also have versions
  - Michigan Law and Practice Encyclopedia
  - Texas Jurisprudence 3d
  - Florida Jurisprudence, 2d (Fla. Jur. 2d)

A complete list can be found at:
http://www.law.harvard.edu/library/services/researchguides/united_states/basics/alr_legal_encyclopedias.php
Strong's is published by West so... but...
Partitions

Patents

Summary

I. In General

- Research References
  - § 1. Generally
  - § 2. Jurisdiction of federal and state courts
  - § 3. Transfer of patent rights; validity of agreement not to compete
  - § 4. Construction of patent in relation to prior art
  - § 5. Infringement

II. Licenses and Royalties

- Research References
  - § 6. Nature of royalties; relationship created by licensing contract
  - § 7. Effect of means or method used by licensee on liability for royalties; doctrine of equivalents
  - § 8. Effect of eviction which deprives licensee of right to enjoy patent
  - § 9. Recovery of payments made with knowledge of claim of infringement by third person
  - § 10. Defenses and counterclaims in actions to recover under contract or license agreement

Correlation Table
American Law Reports (ALR)

- Analyzes specific legal issues as addressed in selected cases and provides annotations - primary resources addressing those issues in state and federal jurisdictions.

- Made up of 1st through 6th and Federal series. Remember updating distinctions for ALR and ALR 2d.
Legal Periodicals

**Law Reviews**

- Scholarly
- Peer reviewed
- Heavily footnoted
- Current trends and issues

**Locations**

- Hein – including historical volumes & in PDF
- Lexis & Westlaw – added features but limited scope
- Finding tools – ILP & LegalTrac
- Law Review’s own website
## Database List

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Current Search: (chemical patent) <in> ALL AND (north carolina) <in> ALL

Records: 1

In: Legal Periodicals Full Text, Legal Periodicals Retro

60% 1 Lewis, C. R., student author. Close only counts in horseshoes, hand grenades, and... patents? The Supreme Court upholds the each-element test of the doctrine of equivalents and "clarifies" the role of prosecution history estoppel in Warner-Jenkinson Co. v. Hilton Davis. Chemical Co. (117 S. Ct. 1040 (1997)). North Carolina Law Review. 76 no. 5 (June 1998) p. 1936-72

WilsonLink
HeinOnline
The Modern Link to Legal History

Image-Based • Comprehensive • Fully-Searchable

Winner: Best Commercial Website Award - International Association of Law Libraries (2002)

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"The Congress shall have 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."¹ Pursuant to this constitutional authority, Congress created a patent system that grants an inventor "the right to exclude others from making, using, offering for sale, or selling the invention" for a period of twenty years.² In exchange for this twenty-year exclusivity, the inventor is required to disclose the contents of his invention such that a "person skilled in the art" could "make and use" the invention by merely using the information in the patent.³ In the application for the patent, the inventor must include "one or more claims particularly pointing out and distinctly claiming the subject to which . . ."
Legal Periodicals

Bar Journals

- Practical
- Geared toward litigation
- Few footnotes or references
- Current trends and issues

Locations

- ABA Microfilm set, ProQuest
- Some in Lexis & Westlaw w/ scope limitations
- Finding tools – more in LegalTrac
Advanced Search

Select index(es) and enter search term(s)

Keyword(ke) | patent
And          | Keyword(ke)
And          | Keyword(ke)

Add a Row
Search

Limit the results:
- to documents with full text
- to peer-reviewed publications
- to documents with images

by publication date(s): [ ] 01/01/2005 or 01/01/1990-12/31/2005
by publication title: georgia bar journal
by publication subject: [ ]

Browse Publication Title
Browse Publication Subject
Results for Advanced Search: (ke (patent))UMTS:JN (georgia bar journal)


Periodical Finding Tools

- LegalTrac
- Index to Legal Periodicals
- Index to Foreign Legal Periodicals
- Proquest
- Current Issue Lists

~ Jurist: http://jurist.law.pitt.edu/lawreviews/

~ USC: http://law.usc.edu/library/resources/journals.cfm
Pros & Cons of LegalTrac

- Uses familiar Boolean Searching
- Browse Table of Contents of journals
- Limited scope – only covers through 1980 in most cases
- Rarely full text
- No aid with search terms like print resource – will only search for the term you give it
Pros & Cons of ILP

- Retro file
- Browse/Thesaurus – help with terminology
- Save function
- Good help and directory components
- Scope varies per publication
- Somewhat complex – flip side: it’s flexible
Legal News

Practitioner Information

- Settlement information
- Classifieds
- Newly Decided Cases
  - Even some local court opinion information

Online

- Jurist: [http://jurist.law.pitt.edu/](http://jurist.law.pitt.edu/)
- Law.com: [http://www.law.com/](http://www.law.com/) (from the publisher of several prominent legal newspapers)
Practitioner Materials

- Generally Associated with the State Bar or a local university
  - Usually state specific
  - Intended audience: practitioners rather than scholarly analysis of topics
  - Can be useful for locating primary materials
  - In NC try Institute of Government
    http://www.sogpubs.unc.edu/ or NC Bar Foundation Association
Looseleaf Services

- Multi-volume sets that bring together statutes, regulations, cases, administrative law, newsletters and analysis on issues in a single substantive area of law.

- Examples
  - BNA EEOC Compliance Manual
  - CCH Secured Transactions Guide
Looseleaf Services

- Legal Looseleafs in Print
  
  KF1 .S7  2004  Reference Collection

- Each Looseleaf Service has its own directions for use.
  - References may be to sections, not pages
  - There are usually multiple tables or indices
  - Be aware of transfer binders
  - Check the front for alerts to new information
Restatements of the Law

http://www.ali.org

- Written by the American Law Institute, these attempt to clarify and harmonize common law across jurisdictions on specific legal topics.
- Often treated as authority by courts
- Find out their arrangement method
  - May be by topic – use the catalog
  - May be set aside in a Restatements collection
Selecting Online Secondary Resources

Generally Reliable
- Government resources
- Law Library Sites
- Cite maintained by the collector of the information
  - Eg., Martindale-Hubbell
- Professional Associations

Selection Criteria
- Accuracy
- Currency
- Authority
- Objectivity
- Coverage
Some Online Secondary Resources

- Legal Information Institute: http://www.law.cornell.edu
- LLRX: http://www.llrx.com
Remaining Workshops

Free Low Cost Alternatives to Lexis & Westlaw
April 5, 2007

Putting It All Together
April 9, 2007

Room 4000
12:15 – 1:15

Dessert & Drinks provided!