

FOR THE LAST HUNDRED YEARS,
SWISS PATENT CLERKS HAVE BEEN
UNDER SOME WEIRD PRESSURES.

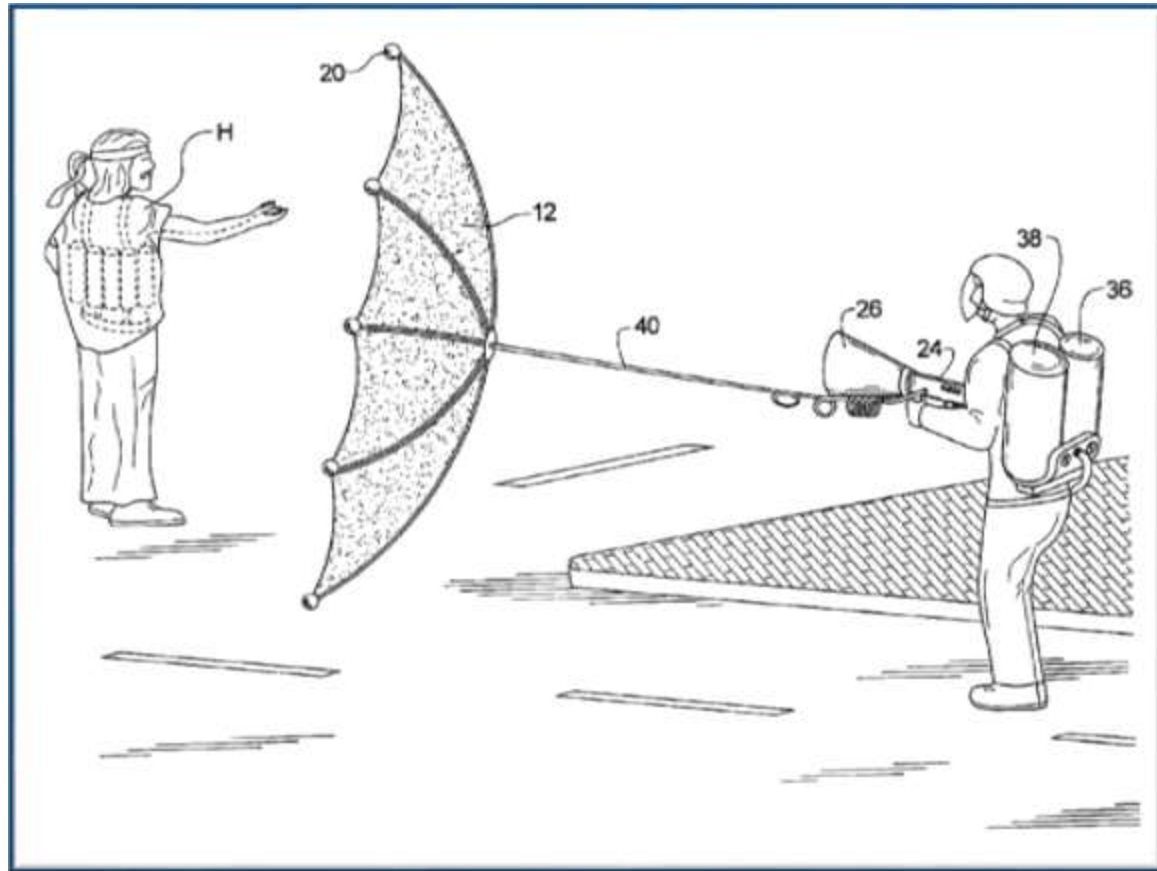
Patents

Class schedule

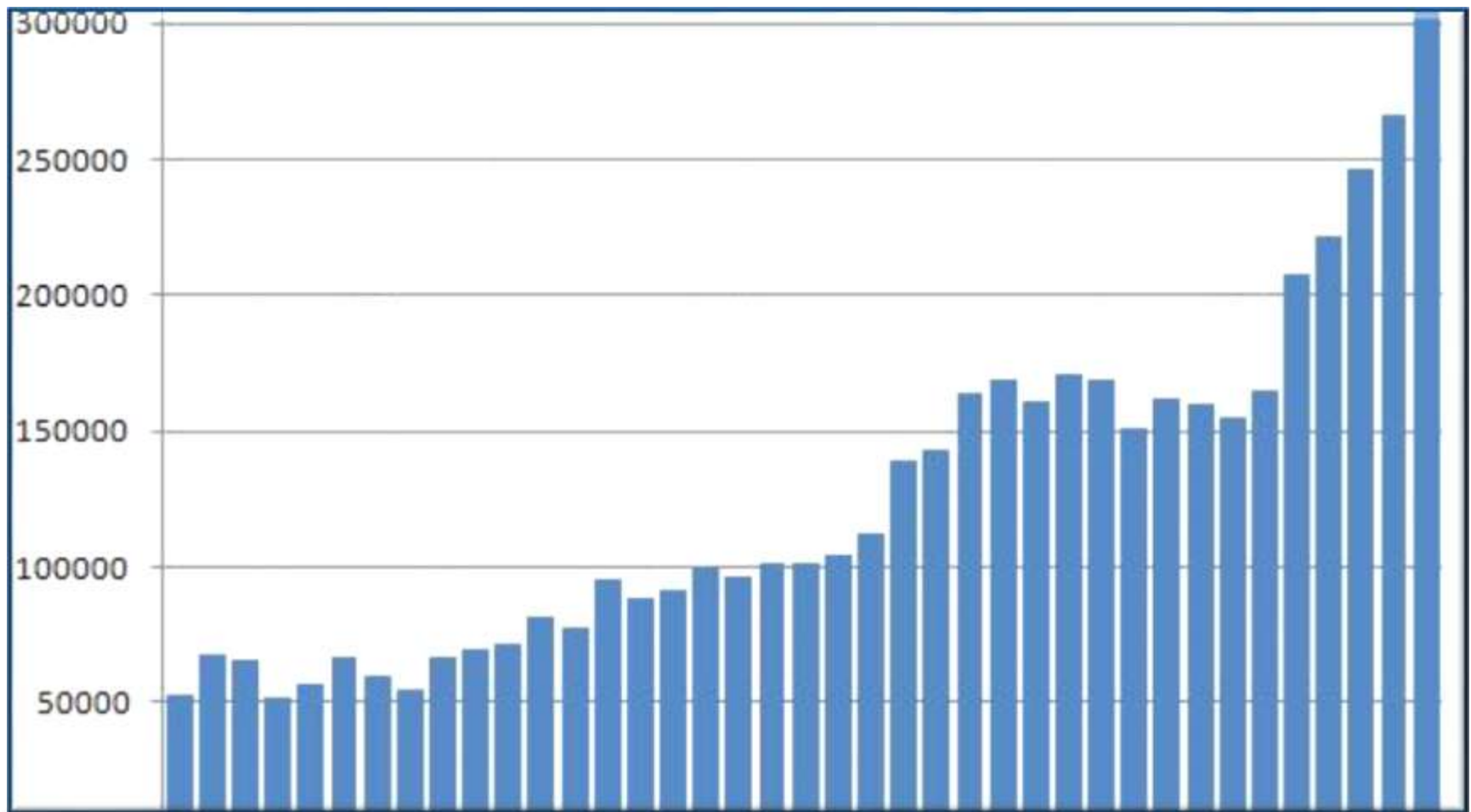
Class	Topic
9/10	Introduction
9/17	Copyrights
9/24	Trademarks
10/1	Patents
10/8	Digital futures

Course materials

Presentations are available on
www.queenlake.com/wise/ip-course



Explosion containment net



USPTO Breaks New Ground with 300,000 Patents Issued This Fiscal Year

most corporate-owned U.S. patents are actually owned by foreign corporations stemming from inventions first created outside of the U.S.

Patents

- ▶ The law
- ▶ Recent case law
- ▶ Obtaining and using patents
- ▶ Patents in the wild

Key concepts

- ▶ Prior art
- ▶ Usefulness
- ▶ Novelty
- ▶ Nonobviousness



United States Patent and Trademark Office

www.uspto.gov

About patents

- ▶ Definition
- ▶ Why patent?
- ▶ Why not patent?

Definition

Black's Law dictionary has more than seven pages of definitions regarding patents and patent-related topics.

- patent The right to exclude others from making, using, marketing, selling, offering for sale, or importing an invention for a specified period (20 years from the date of filing), granted by the federal government to the inventor if the device or process is novel, useful, and nonobvious. [35 USCA §§ 101–103.](#)

What can be patented?

- ▶ The invention must be one of the patentable subjects as specified in the law:
 - A utility patent describes how a thing works
 - A design patent describes how a thing looks
 - A plant patents describes a new, asexually reproducing plant, other than one found in the wild
- ▶ It must be useful.
- ▶ It must be novel.
- ▶ It must be nonobvious.

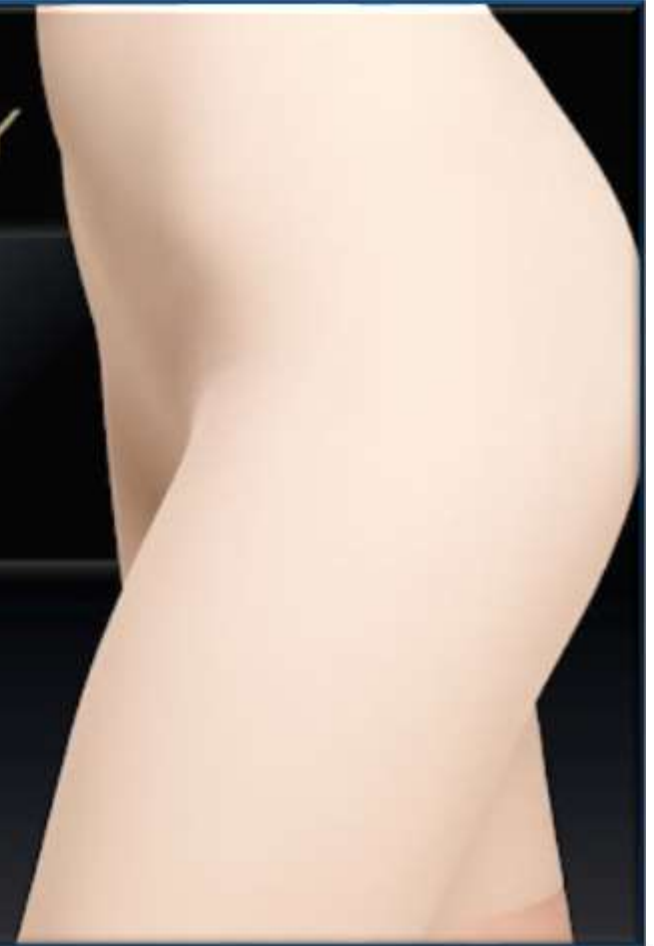
It has to be useful

- ▶ It has to work
 - You can't obtain a patent for a perpetual motion machine.
- ▶ It has to be for a legal purpose
 - You can't patent a machine that's intended to deceive.
- ▶ It doesn't have to be saleable

INTRODUCING
THE REVOLUTIONARY

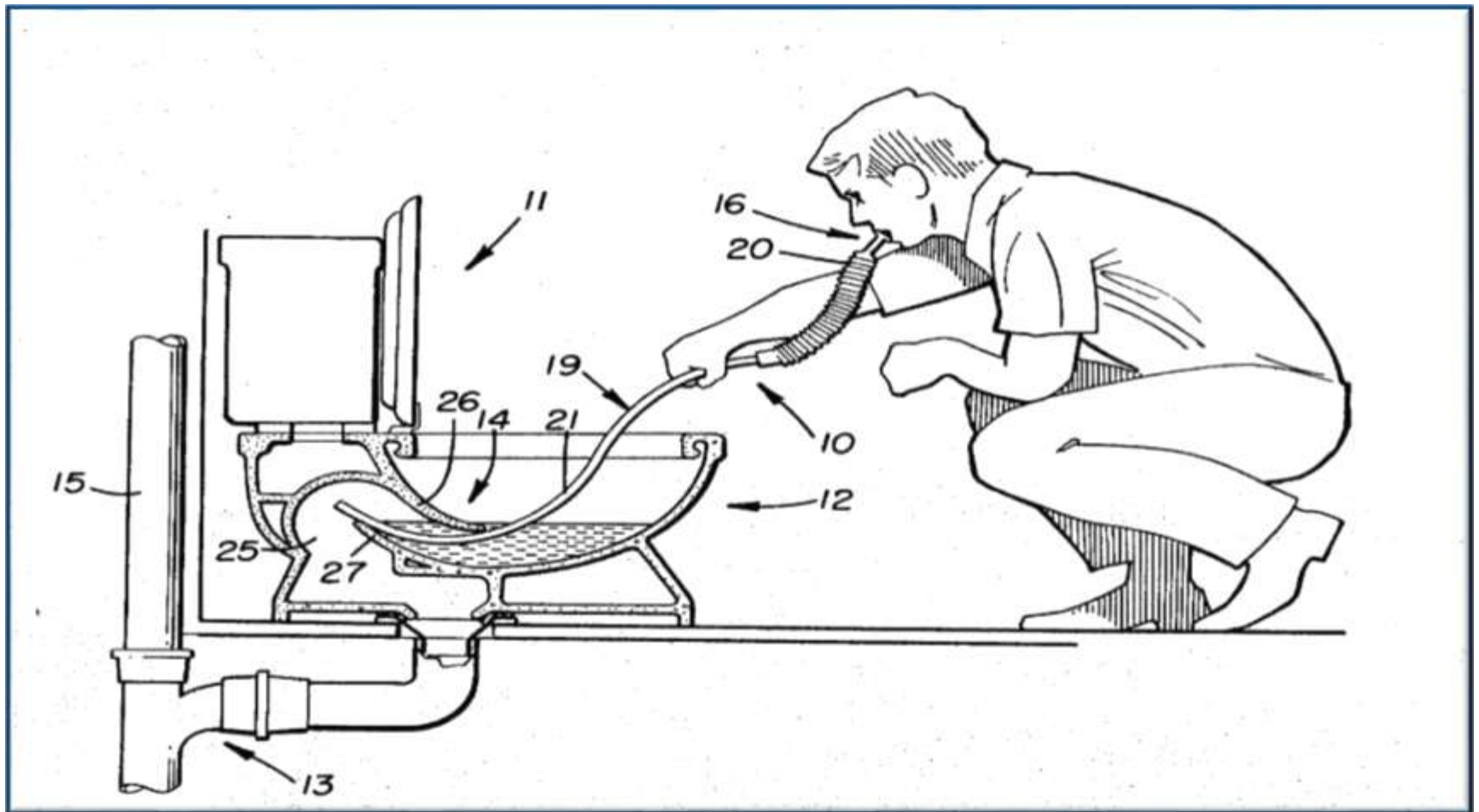
iPANT

ANTI-CELLULITE
SHAPEWEAR



Caffeinated underwear won't keep you slim

Chinese patent: [Slimming healthcare underclothes](#)



Fresh-air breathing device and method

US Patent 4,320,756

It has to be new

You can't patent an invention that

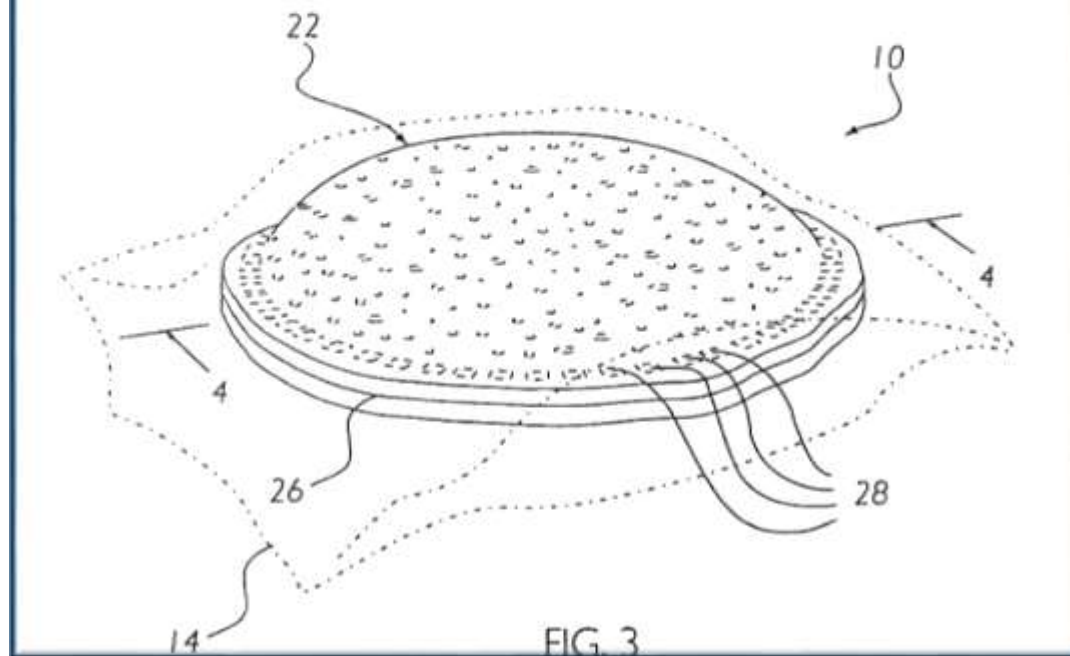
- ▶ Has been known and used by others §102(a)
- ▶ Is in use or on sale §102(b)
- ▶ Has been abandoned: §102(c)
- ▶ Is the subject of a foreign patent §102(d)
- ▶ Has been described in another patent or application §102(e)
- ▶ Wasn't invented by the inventor §102(f)
- ▶ Was first invented by someone §102(g)

It has to be nonobvious

- ▶ Even if it's useful and novel, if a smart person could have or should have already thought of it, you can't obtain a patent.

§ 103(a) Patentability shall not be **negatived** by the manner in which the invention was made.

- ▶ Changing a type material used in a device
Jefferson's [comment](#) on “chain, rope, or leather”
- ▶ If multiple people created the same invention at the same time



Crustless PB&J - [6,004,596](#)

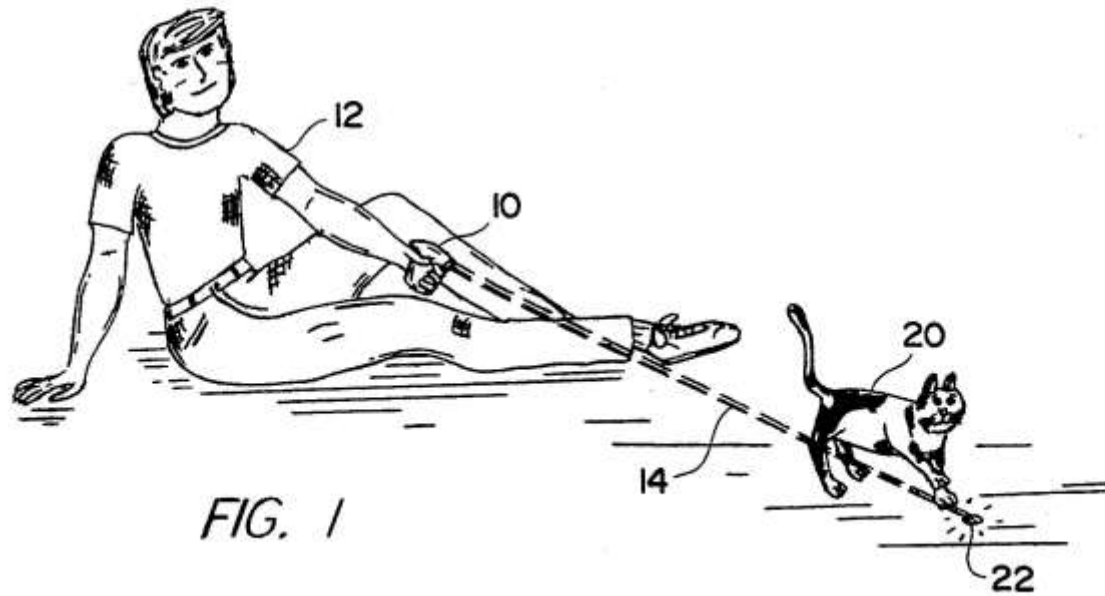
Eventually overturned on obviousness

Why Patent?

- ▶ To obtain exclusive rights to your invention
- ▶ To recoup research and development costs
- ▶ To attract investors
- ▶ Patents are often about business, rather than invention.

Why not patent?

- ▶ Trade Secrets
- ▶ Why didn't we patent the spreadsheet? Were we stupid?
- ▶ Because you believe that patents are evil



Patent law



Patent law

- ▶ First U.S. Patent issued on July 31, 1790 Samuel Hopkins was issued the first patent for a process of making potash, an ingredient used in fertilizer. The patent was signed by President George Washington
- ▶ 1830s – expansion to allow aliens to file patent applications, add clarity on novelty, and use prior to filing
- ▶ 1842 – design patents permitted
- ▶ 1930 – first plant patent
- ▶ 1998 – business methods
- ▶ Current patent law: 35 U.S.C

Case law

- ▶ Graham v. John Deere Co. 383 U.S. 1 (1966)
Clarifying the nonobviousness clause
- ▶ Gottschalk v. Benson (S. Ct. 1972)
Disallows software patents
- ▶ Diamond v. Diehr (S. Ct. 1981)
Allowed a patent, even though a computer program was involved
- ▶ State Street Bank & Trust Co. v. Signature Financial Group, Inc. (Fed. Cir. 1998)
Established that software is patentable, even though there is no machine transformation



Alice Corporation Pty. Ltd. v. CLS Bank International et al.

Maybe software is an abstract idea that can't be patented. Maybe

in re Bilski

- ▶ The case [Bilski v. Kappos \(S. Ct. 2010\)](#)
 - Whether a particular patent for a business process was valid.
 - CFC said that it was not.
- ▶ The decision
 - The Court decided that the patent in this case was invalid because Bilski sought to patent an abstract idea
 - The Court did not rule that all business process patents were invalid. (The four-justice minority held this position.)
- ▶ Columbia Law School professor Eben Moglen -
 - “[The Supreme Court said] we all agree this is a crappy patent that can't issue but we don't agree about why.”
 - [More ...](#)

America Invents Act of 2013

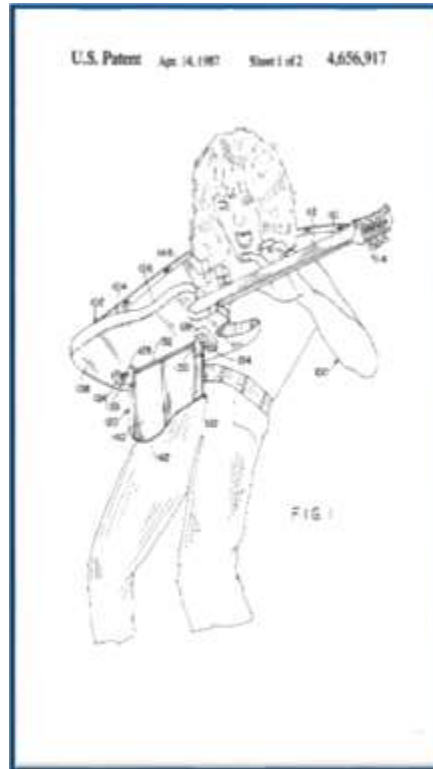
- First Inventor to File - Section 3
- Human Organism Patents - Section 33
- Patents on Tax Strategies - Section 14
- Virtual Marking and False Marking Limits - Section 16
- Prioritized Examination - Sections 11(h), 25



How it works

How it works

- ▶ Inventing something
- ▶ Deciding to patent your invention
- ▶ Applying for your patent
 - What to do while waiting?
 - Revising your application
- ▶ Using your patent
 - Marking your product [note new case law]
 - Licensing your patent
 - Selling your patent
- ▶ Protecting your patent



Musical instrument support – Edward L. Van Halen

[U.S. Patent 4,656,917](#)

Applying for your patent

- ▶ Process for Obtaining a Utility Patent

- ▶ How it works

Note: pending legislation may change first-to-invent to first-to-file

- ▶ How much does it cost?

- How much do you have?

- ▶ How long does it take?

- Average is 22 months

How much does it cost?

- ▶ In summary:
 - ~\$3500-\$4500 – basic utility patent
 - ~\$5000-\$7000 – computer and electronics
- ▶ Current Fee Schedule
 - \$220-\$330 for basic filing
 - Additional fees for searches
 - Additional fees for attorneys

Using your patents

- ▶ Applying it to your product
- ▶ Note: recent court decision on patent marking
- ▶ Licensing your patent
- ▶ Selling your patent

Protecting your patent

- ▶ Follow new patent filings
- ▶ Follow products in your market area
 - [Americana: Wrenching Sears – TIME](#)
- ▶ Watch court decisions
 - [CAFC](#)- Court of Appeals for the Federal Circuit
 - Federal District courts
 - State court (contracts and licensing)
- ▶ Watch for patent trolls
 - [Intellectual Ventures Files Its First Lawsuits; Giant Patent Troll Awakened | Techdirt](#)

Patent infringement

- ▶ Someone uses your patent without your permission
- ▶ Someone uses an idea very similar to yours
- ▶ Software patents can also be covered under copyright law

FIGHT PATENT TROLLS: TELL THE SENATE TO PASS

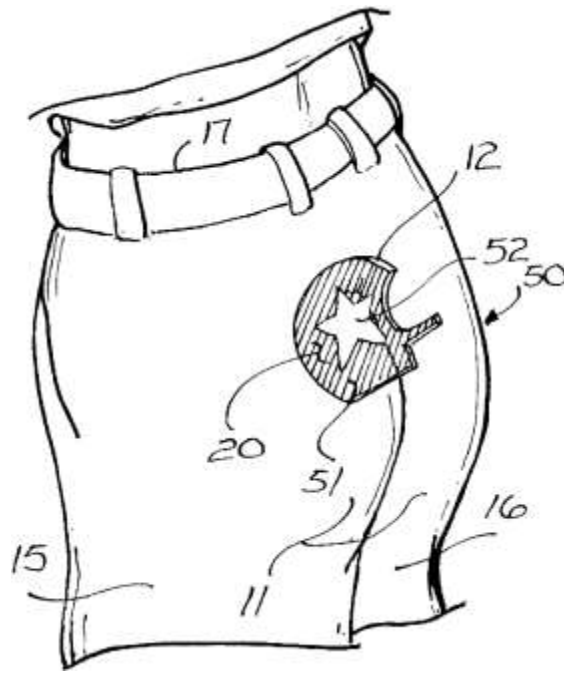
PATENT REFORM

CLICK HERE TO TAKE ACTION



On patent trolls

[Electronic Frontier Foundation](#)



**Just because it's patented
doesn't mean that it's a good
idea.**

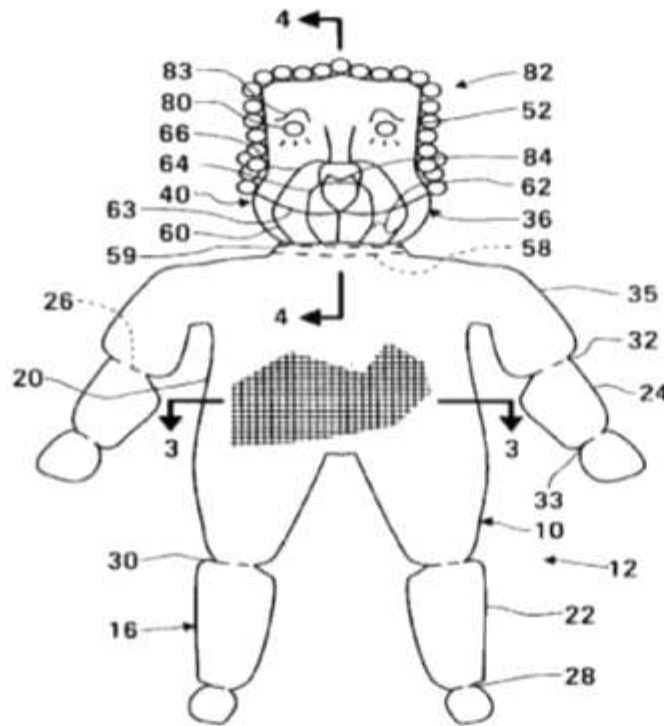


FIG. 1

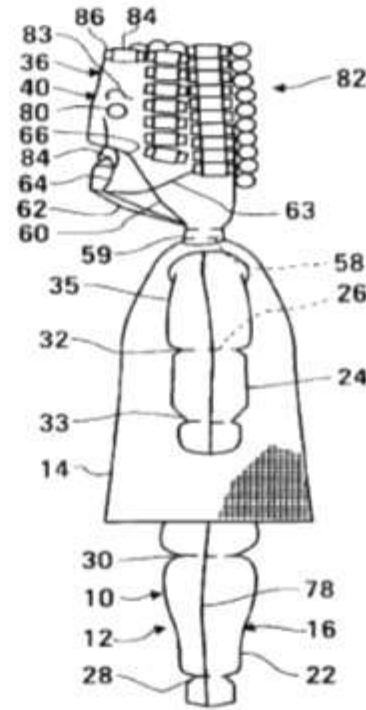
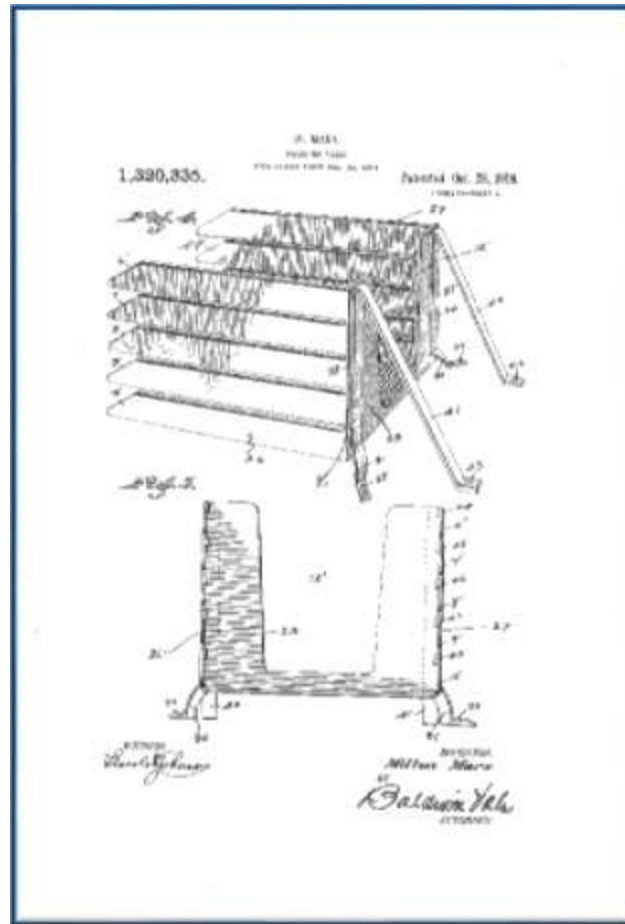


FIG. 2

Scented Doll with the Appearance of an Aged Person

[U.S. Patent 6,805,607](#)



Packing-rack US 1320335 A

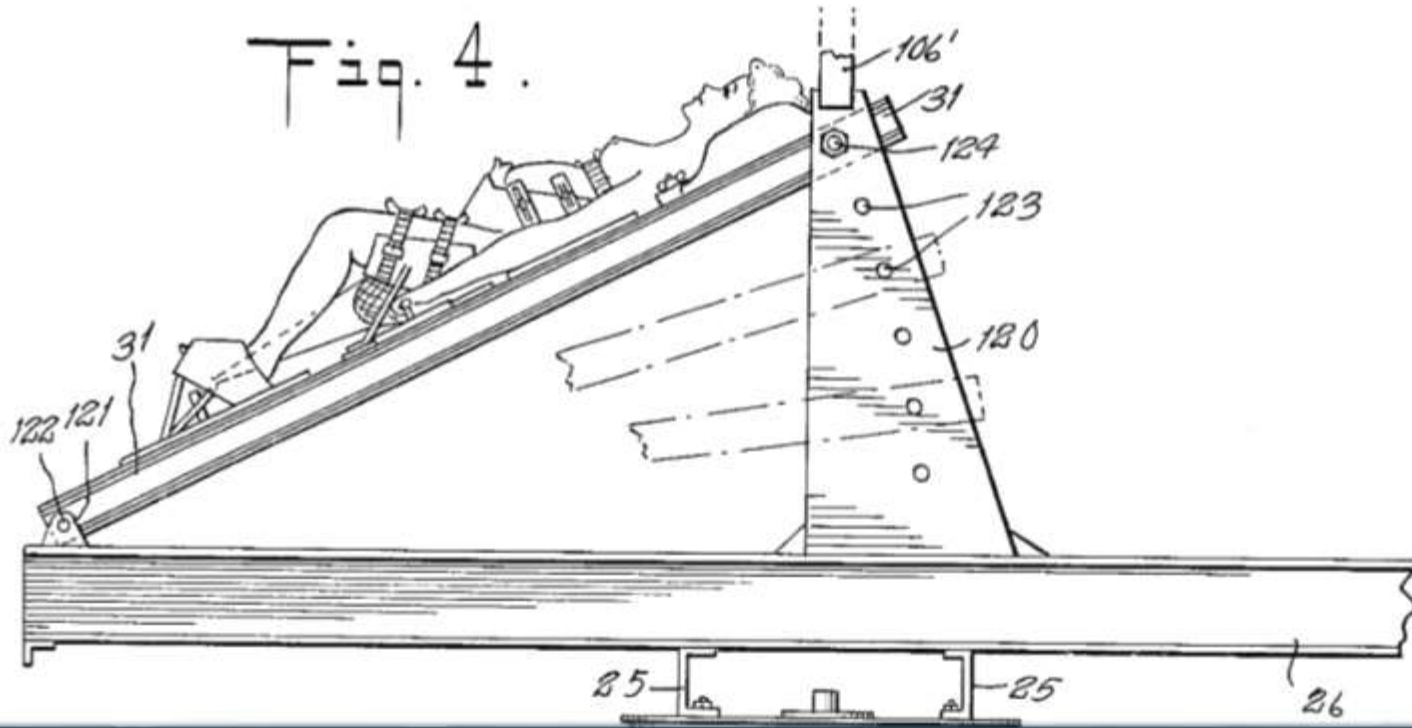
Milton (Gummo) Marx

APPARATUS FOR FACILITATING THE BIRTH OF
A CHILD BY CENTRIFUGAL FORCE

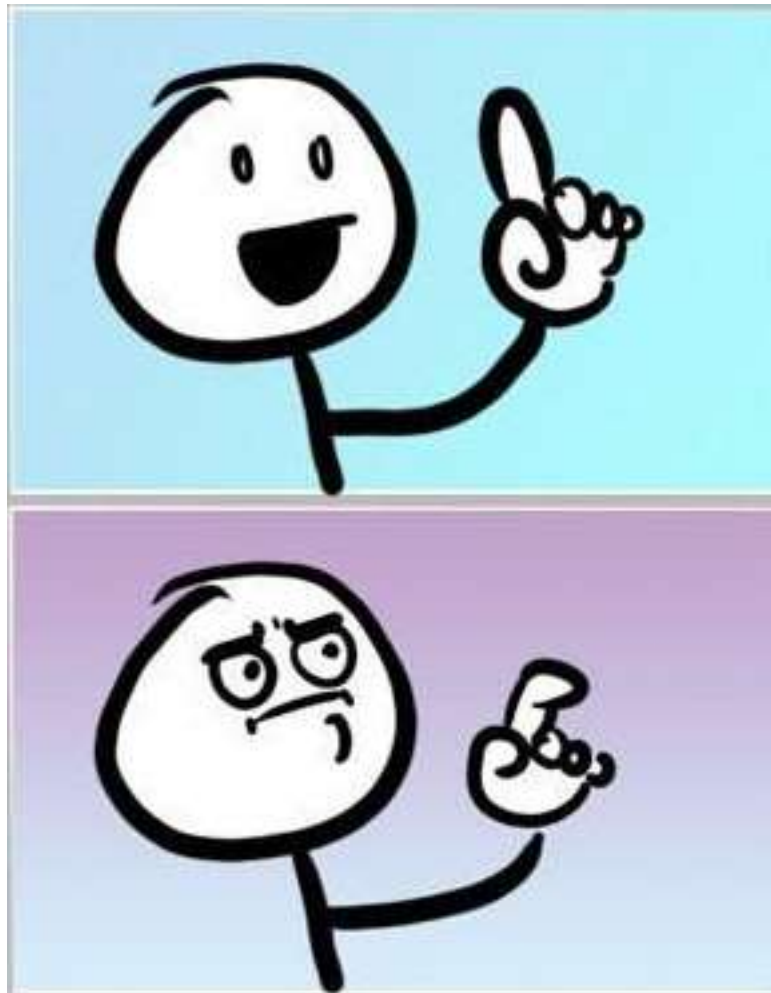
Filed Jan. 15, 1963

4 Sheets-Sheet 4

Fig. 4.



Apparatus for facilitating the birth of a child by centrifugal force US 3216423 A



Questions?



Next week

Digital futures