Class 5: Patent Intro And Subject Matter

- Administrative
  - Next Time: 1043-44; 1047-56; 185-86; 192-95; 196-201 (CORRECTION FROM SYLLABUS -- NO NEED TO READ 202 and 203)
  - Reduced Office Hours Today (gone by 3pm)
  - News
    - HP
      - Not exactly Trade Secrets, but raises questions about business ethics and common standards of business morality.
    - More Later
- Last Time
  - Non-Compete K's
    - Defined
    - Three State Regimes
      - Reasonableness Tests
      - Limited to situations where TS likely to be used or disclosed.
      - Forbidden
    - Competing Policy Interests
  - K's to Keep Secrets
    - Transition
      - Moving from K's between Employers and Employees to K's between arms length businesses -- often Competitors.
    - Apparent conflict in rules:
      - Licensing Expired Patents/ Coprs. vs. Expired TSes
      - Limits on Non-Compete K's versus K's to Keep Secrets
      - What about Contracts preventing reverse engineering?
- Patent Overview
  - History
    - Generally, good to know, but not required
    - Here: Most Important Part: Federal Circuit (1982)
  - Requirements to get a Patent
    - 1. patentable subject matter
      - Today and Monday
    - 2. Novelty (has not been preceded in identical form in the public prior art
      - Monday
    - 3. Utility
      - Not in this class
      - Basic Point: Low hurdle. Satisfied unless "no practical utility"
    - 4. Nonobviousness (nontrivial extension of what was known)
      - One Week
    - 5. Enabled: Disclosed and described in such a way as to enable others to make and use.
      - Not in this class.
      - "One of ordinary skill in the art" can read patent and make or use the invention.
      - Point: Reflects bargain with public -- public gains knowledge in return for time-limited monopoly to inventor.
  - How do you get a patent?
    - 1-4 year (or longer) process.
      - 2.77 year average.
    - Process called "Patent Prosecution"
      - US PTO has "patent examiners" and law firms hire "patent agents" who pass a specialized bar.
    - More later.
  - Rights Conferred
    - Make
    - Use
    - Sell
    - Offer for Sale
    - Import
    - Term: 20 years from filing.
    - Blocking Patents
  - Parts of a Patent
    - Claims
      - Independent
      - Dependent
      - Consisting of vs. Comprising
        - Note: Typo on page 126 (first "consisting of" should be a "comprising.")
    - Drawings
    - Specification
      - E.g.'s on 125
  - Theory
    - Pure Utilitarianism
    - Others don't really cut it well.
- Patentable Subject Matter
  - Clearly patentable
    - Section 101
      - Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.
        - Processes
        - Machines
        - Manufactures
        - Compositions of Matter
      - When syllabus says "read statute," enough to read excerpt in book.
    - Congressional Report: Anything under the sun that is made by man.
      - Congressional hyperbole?
  - Clearly Unpatentable
    - Laws of Nature
    - Physical Phenomena
    - Abstract Ideas
  - Patenting Living Things