

Intellectual Property Law Section MCLE Webinar October 14, 2026

Noon

Welcome/Introductions

Susan Earley, Chair of Intellectual Property Law Section

12:00 – 1:00 PM

Program

Patent Law: What Past Inventors Can Teach Us

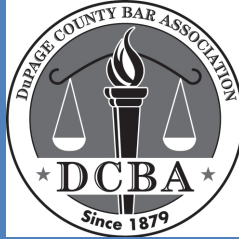
Adam Sussman, Patent Attorney

Adam D. Sussman is an independent patent attorney in Chicago. He also has a weekly article series on LinkedIn that profiles world-changing inventors. Adam earned his B.A. in Chemistry from the University of Pennsylvania and, in 2010, his Ph.D. in Chemistry from the University of Illinois, Chicago. Adam earned his J.D. in 2014 from The John Marshall Law School in Chicago (now UIC). For the past decade, Adam has both litigated on behalf of generic pharmaceutical manufacturers and prepared and prosecuted patent applications in territories around the world. He has protected inventions in numerous technology areas including chemistry, pharmaceuticals, materials, applied chemistry, polymers, plastics, batteries, aerospace, electric engineering, mechanical devices, medical devices, and crystal forms. He lives with his wife and two young sons in Deerfield, Illinois.

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Patent Law: What Past Inventors Can Teach Us

Adam D. Sussman

October 14, 2026

Today's Talk

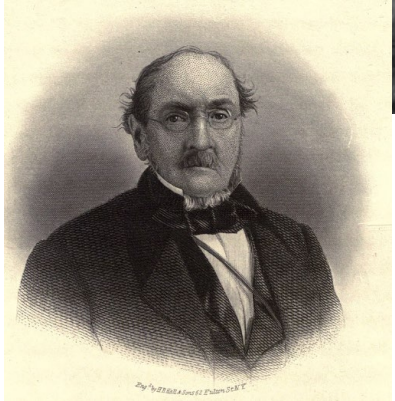
- What is a Patent?
- What Can and Can't Be Patented?
- What are the Legal Requirements for Patentability?
- Ownership and Value
- Past Inventors' Stories Along the Way

What is a Patent?

Patents: Enforceable Right to Exclude

- Official document or certificate issued by federal government that describes a new invention, including:
 - Written description of invention;
 - Drawings of the invention;
 - Numbered paragraphs of long, run-on sentences defining scope of invention (“claims”).
- Right to exclude is enforceable by Article III federal courts for limited time (20 years), in exchange for providing public with detailed description of invention
- May be transferred (by “assignment”) or licensed (exclusively or non-exclusively)
- Owner or exclusive licensee may exclude any person or entity from making, using, selling, offering to sell, or importing into the U.S. the patented invention defined in the patent (35 U.S.C. § 271)
 - Right to exclude may be enforced by enjoining infringer or awarding royalty to patent owner

Gridley Bryant (1789 – 1867)



- Construction engineer
- Built first commercial railroad in the United States, Granite Railway (still in Milton, Massachusetts)
- Invented most of basic technologies involved in commercial railroad still used today
 - Railroad was essentially new technology
 - Created designs for 4- and 8-wheel traincars, track, switches, wheels, turntable, railroad frog, and load transfer equipment
 - Designs were modified to allow for heavier, more concentrated loads and three-foot frost line
- Did not file for any patents on any of his railroad inventions

Nils Bohlin (1920 – 2002)



- Born in Härnösand, Sweden
- Earned degree in mechanical engineering
- At Volvo, worked on a three-point seat belt
- Received U.S. Patent No. 3,043,625 in 1959
- In 1968, Volvo announced that the new seat belt design would be free for the public to use

Comparison with Copyrights, Trademarks, and Trade Secrets

- Copyrights: protects expressive, aesthetic aspects of an article, work of art, writing, or performance
 - Copyright of architectural drawings protects against building according to drawings
 - Copyright can protect written codes of software
- Trademarks: protects names associated with goods and services and are designed to protect the public from confusingly similar marks so marks may become surrogates for source identifiers of products
- Trade Secrets: protects subject matter that a company diligently maintains in secrecy

John Stith Pemberton (1831-1888)



- Born in Knoxville, Georgia
- Earned medical degree by 19
- Opened drug store in Columbus, Georgia
- Lieutenant Colonel in Georgia State Guard in the Civil War
- April 1865 – sustained sabre wound to the chest, became addicted to morphine
- 1866 – began experimenting with coca and coca wines, eventually crafting recipe including kola nut extracts and damiana: “Pemberton’s French Wine Coca”
- In 1886, in Atlanta, developed non-alcoholic version due to city’s temperance legislation
- Accidentally, blended base syrup with carbonated water
- Frank Mason Robinson, partner and bookkeeper, came up with name “Coca-Cola”
- Pemberton and son ultimately sold rights to an Atlanta pharmacist for \$300
- Modern formula of “Coca-Cola” (without coca) has remained a secret for 130 years

What Can and Can't Be Patented?

Types of Patents and Patentable Inventions

- Utility Patents (most prevalent): new functional things and processes
 - Term of up to 20 years
- Design Patents: new ornamental designs for manufactured products (35 U.S.C. § 171)
 - Term of up to 15 years
- Plant Patents: new plant varieties through asexual reproduction (35 U.S.C. § 161)
 - Term of up to 20 years

Utility Patent Subject Matter

- Processes: manufacturing processes; new uses for devices and materials
- Machines or Apparatus: devices including mechanical elements that move or interact
- Manufactured Articles: Products without moving or interacting parts
- Compositions of Matter: Chemical compounds, mixtures, formulas, plastics, metal alloys, DNA (35 U.S.C. § 101)
 - Includes living organisms that are human creations (genetically engineered bacteria that eat oil, mice useful for scientific studies)
- Computer Software and Computer-Related Inventions
- Business Methods

Amazon.com, Inc. v. Barnesandnoble.com, Inc., 239 F.3d 1343 (Fed. Cir. 2001)

Bilski v. Kappos, 561 U.S. 593, 177 (2010);
Alice Corp. Pty. Ltd. v. CLS Bank International, 573 U.S. 208 (2014)

Nonpatentable Subject Matter

- Laws of nature
- Physical phenomena
- Abstract ideas, mental processes, or mathematical formulas
- Printed matter
- Naturally occurring substances (if not purified or isolated unnaturally)
- Inventions violating laws of physics (e.g., perpetual motion)
- Inventions having only an illegal or immoral purpose (e.g., torture device)
- Subject matter invented solely by artificial intelligence

Thaler v. Vidal, 43 F.4th 1207, 1213 (Fed. Cir. 2022), *cert. denied*, 143 S. Ct. 1783 (2023)

What are the Legal Requirements for Patentability?

Requirements for a Patent

- Subject-Matter Eligibility (35 U.S.C. § 101)
- Utility (35 U.S.C. § 101)
- Novelty (35 U.S.C. § 102)
- Nonobviousness (35 U.S.C. § 103)
- Definite (35 U.S.C. § 112(b))
- Sufficient Written Description (35 U.S.C. § 112(a))
- Enabled (35 U.S.C. § 112(a))

Novelty

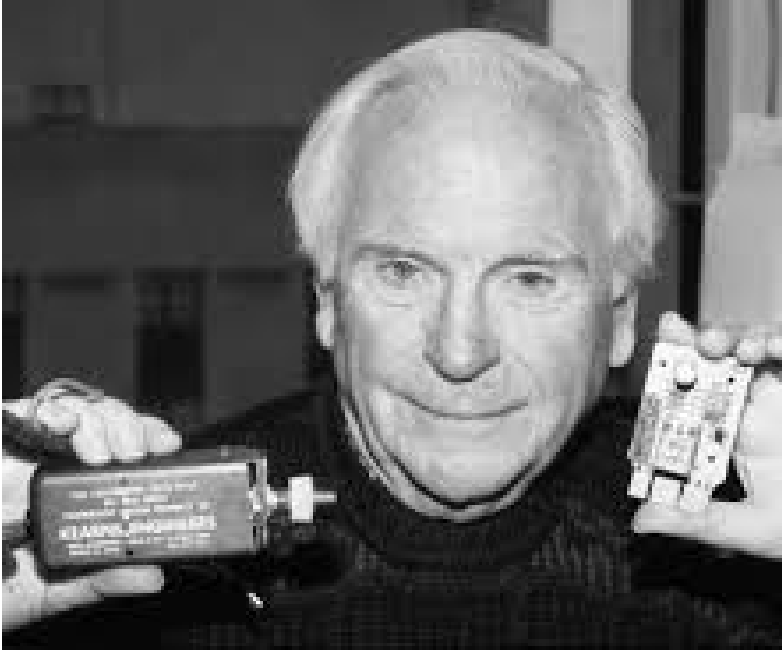
- Inventor(s) must be first to create the invention and file an application within one year from first publicly disclosing or first commercially exploiting the invention
- Not novel if identical invention was known or used by others in the United States or patented or described in a printed publication (in any language) anywhere in the world (“prior art”) (35 U.S.C. § 102(a))
- What is a “printed publication”? Disseminated and publicly accessible:
 - Single copy of graduate school thesis indexed and shelved in college library
In re Hall, 781 F.2d 897 (Fed. Cir. 1986)
 - A few copies of a paper at a scientific conference
Massachusetts Institute of Technology v. AB Fortia,
774 F.2d 1104, 1109 (Fed. Cir. 1985)
 - Posting on websites

Express or Inherent Anticipation

- Prior art establishing lack of novelty of claims “anticipates” claims
- Express – single prior art document explicitly describes each element of claimed invention
- Inherent – prior art does not literally recite element or characteristic of claimed invention, but unrecited portion of claimed invention necessarily and inevitably flows from explicit prior art
 - Method of treating hypertension by administering aspirin

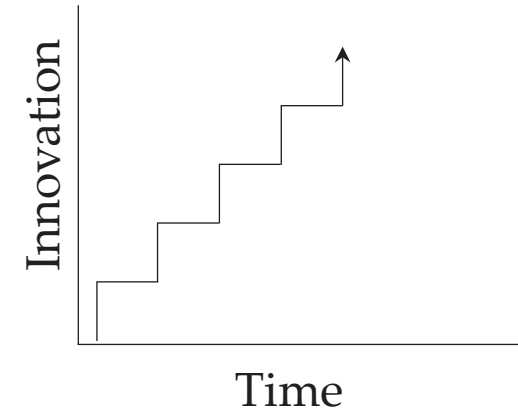
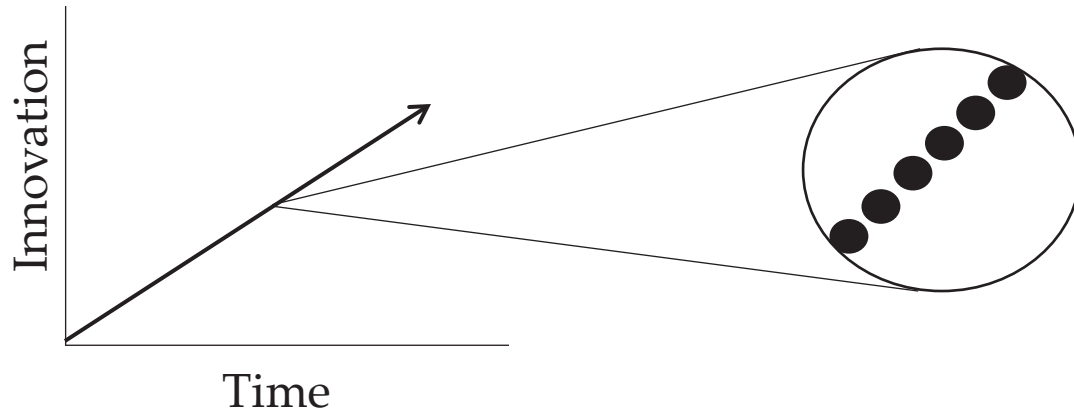
Titanium Metals Corp. Am. v. Banner

Robert Kearns (1927 – 2005)



- U.S. Army Corporal in Intelligence-related groups and tool manufacturing
- Member of O.S.S.
- In 1953, on his wedding night, an errant champagne cork caused legal blindness in left eye
- In 1963, driving in light rain and constant wiper movement irritated his vision
- Designed intermittent windshield wiper
- Tried to interest Big Three; rejected his offer and then began to install wipers based on his design
- Kearns sued Ford; Ford defended that wiper invention was “obvious”
- Kearns prevailed pro se, arguing that his invention was a novel and non-obvious combination of parts, and Ford paid \$10.2 million in 1990
- Kearns won \$30 million from Chrysler pro se in 1992
- Dramatized in *Flash of Genius* (2008) starring Greg Kinnear

Nonobviousness – Incremental Progress or Revolutionary Change?



- An invention is not obvious if a technically skilled individual would not have been reasonably expected to arrive at the invention given the prior art available as of the filing date

Determining Whether Invention is Obvious

- Factors considered:
 - Scope and content of the prior art;
 - Level of ordinary skill in the art (typically undergraduate/graduate technical degree and a few years' industrial experience);
 - Differences between the prior art and the claimed invention.

Graham v. John Deere Co. Kansas City, 383 U.S. 1 (1966)
- Person of ordinary skill in the art assumed to be able to combine features or elements from different publications for their known or intended purposes and would be so motivated by the prior art to do so.
- Not obvious where a reference teaches that a combination should be avoided

Marie Van Brittan Brown (1922 – 1999)



- Nurse in Jamaica, Queens
- Worked long hours, returned home late in high-crime neighborhood with delayed police response times
- Determined to find way to see who was at her door if she heard knocking when alone at night
- In 1966, invented security system including four peepholes, a sliding camera, television monitors, and two-way microphones creating a system for surveillance abbreviated as “CCTV”
- Included remote door unlock and emergency panic button
- Obtained patent based on novelty of combination of known components
- Expensive for single-unit dwellings, but installed in apartment buildings, small businesses, offices, banks, hotels, and casinos

Karl Drais (1785 – 1851)



- In 1815, Mount Tambora erupted in Indonesia, resulting in “The Year Without a Summer” in Europe in 1816
- Severe crop failure in Europe due to lack of sunlight resulted in starvation and death of horses
- German noble Drais pursued a mechanical alternative to riding horseback
- Developed hobby-horse as the first commercially successful two-wheeled steerable human-propelled machine and became “Father of the Bicycle”
- Also invented earliest typewriter with a keyboard, early stenograph, device to record piano music on paper, first meat grinder, foot-driven human-powered railway vehicle
- Last residence was in Karlsruhe; two blocks away was a young Carl Benz

Secondary Considerations That Combination is Not Obvious

- Commercial Success of the Invention
- Failure of others to make the same invention
- Copying
- Long-felt but unresolved need in the industry for the invention
- Surprising or unexpected results or a synergy achieved by invention

B.F. Goodrich Co. v. Aircraft Braking Sys. Corp., 72 F.3d 1577, 1582 (Fed. Cir. 1996)

Additional Statutory Requirements

- Definiteness (35 U.S.C. § 112(b)):
 - Claims must define invention such that a person of ordinary skill in the art could discern the metes and bounds of the claims (what is infringing vs. not infringing)
 - Public must be able to reasonably determine what is and isn't trespass on private property
- Enablement (35 U.S.C. § 112(a)):
 - The specification of a patent must describe the invention in reasonable detail such that a person of ordinary skill in the art would be able to reproduce the claimed invention without undue independent experimentation
 - Specification should provide data and examples where appropriate
 - Enablement is a societal good by allowing for further innovation from a patent by others

Additional Statutory Requirements (cont'd)

- Sufficient Written Description (35 U.S.C. § 112(a)):
 - Specification must describe invention in sufficient detail to demonstrate to a person of ordinary skill in the art that the inventors were in possession of the invention as of the earliest filing date claimed
 - Requirement has an “honesty” function of anchoring the claims to be reasonably supported by the specification rather than being supplemented by additional undisclosed subject matter (“new matter”) to overcome prior art
 - Forces applicants to close out an application and file the application, rather than trying to continually add subject matter to application, as new ideas or data develop

Who is an Inventor?

- Invention is a two-part process:
 - Conception of the invention
 - Reduction to practice (may be constructive; actual working prototype is unnecessary)
- Within the two-part process, inventors are those who made significant contribution to the conception of the invention rather than contributing only routine skill to reduce invention to practice
- Incorrect inventorship: failure to correctly name all inventors, either by omission or by inclusion of non-inventors
 - Today, in research groups at universities or companies, identifying inventors may get political and difficult

Constantin Fahlberg (1850 – 1910)



- Russian postdoctoral fellow in chemistry laboratory of Professor Ira Remsen at Johns Hopkins
- Analyzed chemical compounds making up coal tar
- One evening he noticed his hands tasted sweet, and discovered that the cause of the taste was benzoic sulfimide he had been analyzing in the lab
- Named the compound “Saccharin”
- By 1884, applied for patents claiming methods of producing saccharin, and began production in a factory in Germany by 1886
- Grew wealthy, and Remsen grew frustrated without credit

Ownership and Value

Who Owns an Invention?

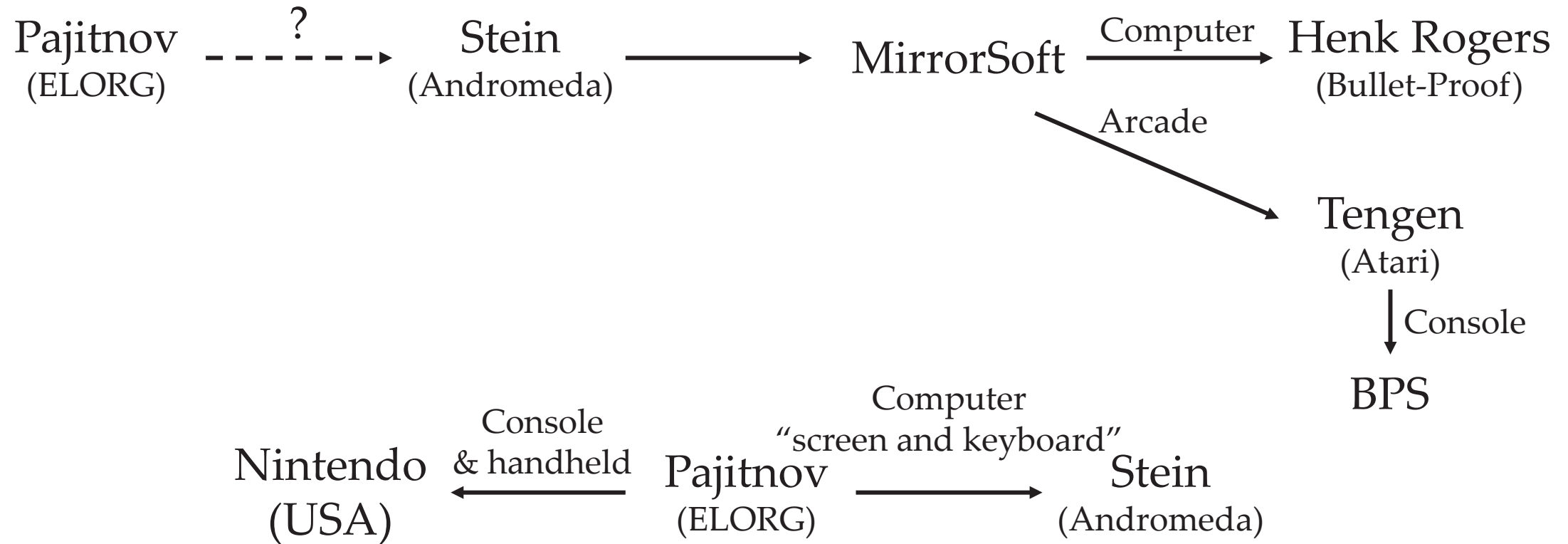
- Inventors have initial ownership of their own inventions
- Joint inventors: each co-inventor may exercise complete and independent control over the invention without accountability to other inventors (35 U.S.C. § 262)
- Laws may require written agreements for companies or universities to assert an obligation that employees assign ownership of inventions made in the course of employees' work to the employer. (765 ILCS 1060/2)
- U.S. Patent & Trademark Office records assignments evidencing transfers of ownership
 - Bona fide purchaser rule applies to subsequent purchasers of the patent rights (35 U.S.C. § 261)

Alexey Leonidovich Pajitnov (b. 1955)



- Developed *Tetris* on government computer without graphics card in Moscow in 1985
- IBM PC version distributed freely throughout Moscow
- Copies began circulating around Hungary
- Robert Stein (Andromeda) contacted Pajitnov by fax to seek license; Pajitnov expressed interest but interest taken as legal contract
- Stein sublicensed to Mirrorsoft/Spectrum Holobyte which sublicensed Japanese computer rights to Henk Rogers of Bullet-Proof Software

Tangled Web



Is A Patent Worth It?

- Advantages:
 - Market exclusivity for goods/methods covered by patent, resulting in higher price during patent term
 - Covering unique low-cost method of manufacturing or low-cost ingredient forces competitors' costs to increase and limits their price competitiveness
 - Marking “Patent Pending” on a product
 - has deterrence value because a company may not want to copy such a product if a lawsuit may follow once patent issues (even though patent may never issue)
 - may be impressive to customers as indicating “state-of-the-art” technology
 - Establishes record of innovation against activity of later collaborators
 - Patents and patent applications have value for securing loans and securing capital
 - Licensing may be lucrative; may depend on whether inventor is skilled at marketing

Ron Popeil (1935 – 2021)



- Father, Sam, invented Chop-O-Matic
- Impractical for door-to-door salesmen to carry enough vegetables for all home demonstrations
- Ron's Solution: film 1 demonstration, and broadcast as commercial, called "informercial"
- Invented Food Dehydrator, Electric Pasta Maker, Showtime Rotisserie, Spray-On Hair

Garrett A. Morgan, Sr. (1877 – 1963)



- Born in Kentucky to freed slaves
- Became handyman in Cincinnati while studying privately
- Tinkered with gadgets in Cleveland while working as sewing machine repairman
- Opened repair shop, then tailoring business, then *Cleveland Call* newspaper
- Witnessed a collision between automobile and carriage, and invented a three-position traffic signal, eventually used throughout N. America, sold rights to GE
- Received patent for early version of gas mask and personally rescued several men trapped in explosion in underground tunnel beneath Lake Erie; rescue made national news, and fire depts. nationwide flooded company with orders for gas masks

Vesta Stoudt (1891 – 1966)

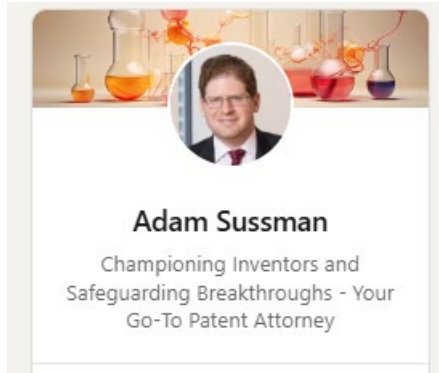


- Born in 1891 in Prophetstown, Whiteside County, IL
- Married Harry Stoudt in 1910 in Morgan, IL
- World War II: sons Clarence and Lowell served in Navy
- Vesta worked at Green River Ordnance Plant near Amboy, IL
- Inspected and packaged cartridges to launch rifle grenades; boxes taped with thin paper tape and covered in wax for waterproofing, with tape tab left unwaxed for opening box
- Pulling tape to break wax was ineffective under fire
- Stoudt created waterproof cloth tape now known as duct tape; supervisors were not interested
- She wrote directly to President Roosevelt, who passed her letter to the War Production Board
- Johnson & Johnson subsidiary was put in charge of manufacturing tape

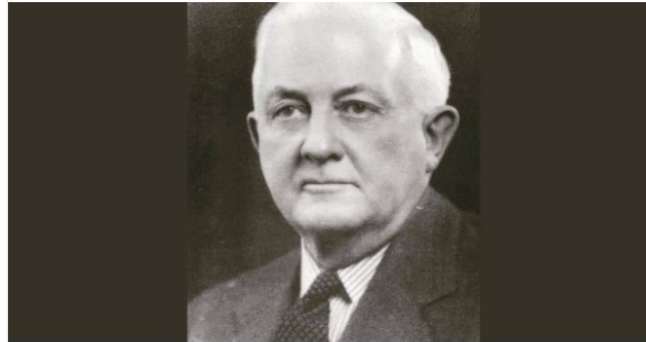
But Is A Patent *Really* Worth it?

- Disadvantages:
 - Limited term of patent before dedication to public
 - Cost of obtaining patent may be expensive
 - Duration of patent “prosecution” is at least approximately 3 years from filing application
 - Given pace of technology, the time to obtain a patent may be longer than a product lifecycle

Let's Connect on LinkedIn!



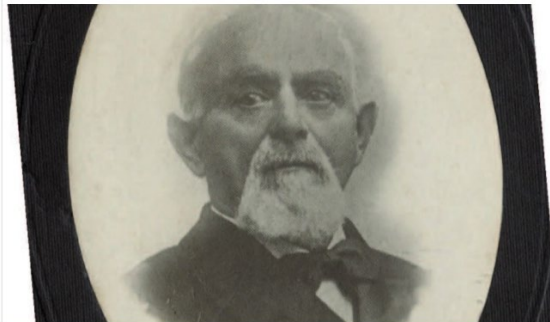
Creators Unfolding to Success



Creators Unfolding to Success #20. Harry Burnett ("H. B.") Reese (1879 - 1956)



Creators Unfolding to Success #21. Forrest Parry (1921 - 2005)



Creators Unfolding to Success #17. Jacob W. Davis (1831-1908)



Creators Unfolding to Success #23. Eugene Beals

Questions Welcome! Thank you!