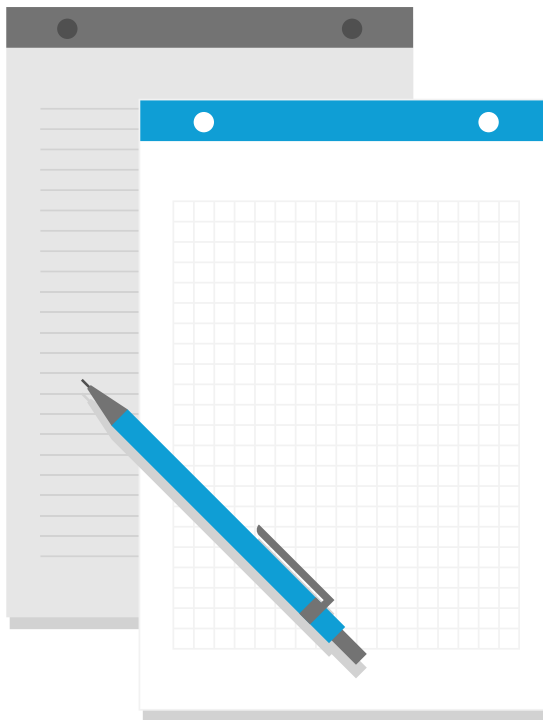


# Remedies for Infringement: **Injunctive Relief**



# Injunctive Relief

in·junc·tion in- 'jən(k)-shən

1 : a writ granted by a court of equity whereby one is required to do or to **refrain from doing** a specified act

Source: [merriam-webster.com](https://www.merriam-webster.com)

In the context of an intellectual property infringement case, injunctive relief is intended to halt the activity that was determined to infringe on the right in order to prevent further harm to the property owner.



Private  
Property  
Rights  
Protect  
the Fruits of  
One's Labors

# Private Property: Defined

private property

Private property refers to the ownership of property by private parties - essentially anyone or anything other than the government. Private property may consist of real estate, buildings, objects, intellectual property (copyright, patent, trademark, and trade secrets). The transfer of a private property commonly takes place by the owner's consent or through a sale or as a gift.

**Source: Legal Information Institute, WEX**



Intellectual Property Laws Secure  
Property Rights to Mental Labors



# CONSTITUTIONAL FOUNDATIONS: Intellectual Property Rights

[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**.

## **U.S. Constitution**

**Article One, Section Eight, Clause Eight**



**Patents are intellectual property rights to inventions and discoveries**

# STATUTORY BASIS:

## Patent Rights

PART I—UNITED STATES PATENT AND TRADEMARK OFFICE (§§ 1 – 42)

PART II—PATENTABILITY OF INVENTIONS AND GRANT OF PATENTS (§§ 100 – 212)

PART III—PATENTS AND PROTECTION OF PATENT RIGHTS (§§ 251 – 329)

PART IV—PATENT COOPERATION TREATY (§§ 351 – 376)

PART V—THE HAGUE AGREEMENT CONCERNING INTERNATIONAL  
REGISTRATION OF INDUSTRIAL DESIGNS (§§ 381 – 390)

## **United States Code**

### Title 35



# Statutory Basis:

## Patentability of Inventions and Grant of Patents

CHAPTER 10—PATENTABILITY OF INVENTIONS (§§ 100 – 105)

CHAPTER 11—APPLICATION FOR PATENT (§§ 111 – 123)

CHAPTER 12—EXAMINATION OF APPLICATION (§§ – 135)

CHAPTER 13—REVIEW OF PATENT AND TRADEMARK OFFICE DECISIONS (§§ 141 – 146)

CHAPTER 14—ISSUE OF PATENT (§§ 151 – 157)

CHAPTER 15—PLANT PATENTS (§§ 161 – 164)

CHAPTER 16—DESIGNS (§§ 171 – 173)

CHAPTER 17—SECRECY OF CERTAIN INVENTIONS AND FILING APPLICATIONS IN FOREIGN COUNTRY (§§ 181 – 188)

CHAPTER 18—PATENT RIGHTS IN INVENTIONS MADE WITH FEDERAL ASSISTANCE (§§ 200 – 212)

**United States Code**

**Title 35, Part Two**

# Statutory Basis: Patentability of Inventions

§ 100. Definitions

§ 101. Inventions patentable

§ 102. Conditions for patentability; novelty

§ 103. Conditions for patentability; non-obvious subject matter

[§ 104. Repealed. Pub. L. 112–29, § 3(d), Sept. 16, 2011, 125 Stat. 287]

§ 105. Inventions in outer space

**United States Code**

**Title 35, Part Two, Chapter 10**

# Invention: Defined

## § 100 – Definitions

When used in this title unless the context otherwise indicates—

- (a) The term “invention” means invention or discovery.
- (b) The term “process” means process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.

# Inventions Patentable (Eligible Subject Matter)

## § 101 - Inventions patentable

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.



**Clear property lines tell others what is and is not  
protected by the owner's rights**



# Statutory Basis: Specification (Boundaries of Property Right)

§ 111. Application

§ 112. Specification

§ 113. Drawings

§ 114. Models, specimens

§ 115. Inventor's oath or declaration

§ 116. Inventors

§ 117. Death or incapacity of inventor

§ 118. Filing by other than inventor

§ 119. Benefit of earlier filing date; right of priority

§ 120. Benefit of earlier filing date in the United States

§ 121. Divisional applications

§ 122. Confidential status of applications; publication of patent applications

§ 123. Micro entity defined

**United States Code**

**Title 35, Part Two, Chapter 11**

# Specification and Claim(s)

## § 112 - Specification

### (a) In General.—

The specification shall contain a **written description of the invention**, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor or joint inventor of carrying out the invention.

### (b) Conclusion.—

The specification shall conclude with **one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention**.



**Sorry, private property**

# Statutory Basis: Specification (Scope and Effect of Property Right)

§ 151. Issue of patent

§ 152. Issue of patent to assignee

§ 153. How issued

§ 154. Contents and term of patent; provisional rights

**United States Code**

**Title 35, Part Two, Chapter 11**

# The Scope of the Patent Right

§ 154 - Contents and term of patent; provisional rights

(a) In General.—

(1) Contents.—

Every patent shall contain a short title of the invention and a grant to the patentee, his heirs or assigns, of the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States, and, if the invention is a process, of the right to exclude others from using, offering for sale or selling throughout the United States, or importing into the United States, products made by that process, referring to the specification for the particulars thereof.

...

(4) Specification and drawing.—

A copy of the specification and drawing shall be annexed to the patent and be a part of such patent.



Breaking into  
Another's Home  
is Illegal Trespass



# Trespass: Defined

trespass

Trespass is knowingly entering another owners' property or land without permission, which encroaches on the owners' privacy or property interests.

Legal Information Institute, WEX



IP Infringement is Trespass, Too



# STATUTORY BASIS:

## Patent Rights

PART I—UNITED STATES PATENT AND TRADEMARK OFFICE (§§ 1 – 42)

PART II—PATENTABILITY OF INVENTIONS AND GRANT OF PATENTS (§§ 100 – 212)

**PART III—PATENTS AND PROTECTION OF PATENT RIGHTS (§§ 251 – 329)**

PART IV—PATENT COOPERATION TREATY (§§ 351 – 376)

PART V—THE HAGUE AGREEMENT CONCERNING INTERNATIONAL  
REGISTRATION OF INDUSTRIAL DESIGNS (§§ 381 – 390)

## **United States Code**

### Title 35

# Statutory Basis: Infringement

§ 271. Infringement of patent

§ 272. Temporary presence in the United States

§ 273. Defense to infringement based on prior commercial use

**35 U.S. Code**

**Part Three, Chapter 28 – Infringement of Patents**



# Infringement Defined

## § 271 - Infringement of patent

(a) Except as otherwise provided in this title, whoever 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.

(b) Whoever actively induces infringement of a patent shall be liable as an infringer.

(c) Whoever offers to sell or sells within the United States or imports into the United States a component of a patented machine, manufacture, combination or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer.

**U.S. law  
provides  
remedies for  
infringement**



# Statutory Basis:

## Remedies for Infringement of Patent

§ 281. Remedy for infringement of patent

§ 282. Presumption of validity; defenses

§ 283. Injunction

§ 284. Damages

§ 285. Attorney fees

§ 286. Time limitation on damages

§ 287. Limitation on damages and other remedies; marking and notice

§ 288. Action for infringement of a patent containing an invalid claim

§ 289. Additional remedy for infringement of design patent

§ 290. Notice of patent suits

§ 291. Derived patents

§ 292. False marking

§ 293. Nonresident patentee; service and notice

§ 294. Voluntary arbitration

§ 295. Presumption: Product made by patented process

§ 296. Liability of States, instrumentalities of States, and State officials for infringement of patents

§ 297. Improper and deceptive invention promotion

§ 298. Advice of counsel

§ 299. Joinder of parties

**35 U.S. Code**

**Part Three, Chapter 29**

# Remedies

§ 281 - Remedy for infringement of patent

A patentee shall have remedy by civil action for infringement of his patent.



# Injunctions Put a Stop to Trespass on IP Rights





# Injunctive Relief

## § 283 – Injunction

The several courts having jurisdiction of cases under this title may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable.

# Types of Injunctive Relief

There are three types of injunctions:

- Permanent Injunctions
- Temporary Restraining Orders
- Preliminary Injunctions.

Temporary restraining orders (TRO) and preliminary injunctions are equitable in nature. They can be issued by the judge early in a lawsuit to stop the defendant from continuing their allegedly harmful actions. Choosing whether to grant temporary injunctive relief is up to the discretion of the court. Permanent injunctions are issued as a final judgment in a case, where monetary damages will not suffice.

A cartoon illustration set in a courtroom. A man in a dark blue suit and tie stands on the left, handing two stacks of green money to a woman seated on the right. The woman, with brown hair and wearing a white top, looks up at him with a surprised expression. In the background, two American flags stand on poles, and other people are seated in the audience. A wooden bench is visible on the far left. A speech bubble above the man's head contains the text 'Sorry...'.

Sorry...

**Damages are  
recompense for  
harm already done**

# Damages

## § 284 – Damages

Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court.

...





But as a  
substitute,  
Damages are to  
Injunctive Relief  
as a  
Mop is to a Dam

# Primary Resources:

Cornell Law School, Legal Information Institute, Title 35,  
United States Code

(<https://www.law.cornell.edu/uscode/text/35>)