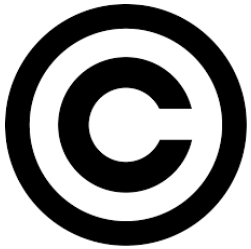
Åbo Akademi

Intellectual Property, Copyright, Patent, Licenses

Project Course

How does a work become copyrighted?



- As soon as a work is fixed in a tangible medium, copyright subsists

Legal basis for copyright

- U.S. Const. Art. 1 § 8 Cl. 8.
- The Copyright Act, 17 U.S.C. §§ *101 et seq.*
- The Berne Convention for the Protection of Literary and Artistic Works
- FINLAND / Copyright Act 8.7.1961/404

FINLAND / COPYRIGHT ACT 8.7.1961/404

- (1) **A person** who has created a literary or artistic work shall **have copyright therein**, whether it be a fictional or descriptive representation in writing or speech, a musical or dramatic work, a cinematographic work, a photographic work or other work of fine art, a product of architecture, artistic handicraft, industrial art, or expressed in some other manner. (24.3.1995/446)
- (2) Maps and other descriptive drawings or graphically or three-dimensionally executed works and computer programs shall also be considered literary works. (11.1.1991/34)

- Copyright **remains for 70 years** (after the death of the author). After that, it is transferred to the public domain (today: old books, classical music)

Exception: Section 40b (11.1.1991/34)

- (1) If a computer program and a work directly associated with it has been created in the scope of duties in an employment relation, **the copyright in the computer program and the work shall pass to the employer**. …
- (2) The provisions of subsection 1 **above shall not apply** to a computer program, or to a work directly associated therewith, created by an author **independently engaged in teaching or research** in an institution of higher education, with the exception of institutions of military education. (7.5.1993/418)

COPYRIGHT ACT / economic rights

- (1) Within the limitations imposed hereinafter, copyright shall provide the **exclusive right** to control a work by **reproducing it and by making it available to the public**, in the original form or in an altered form, in translation or in adaptation, in another literary or artistic form, or by any other technique

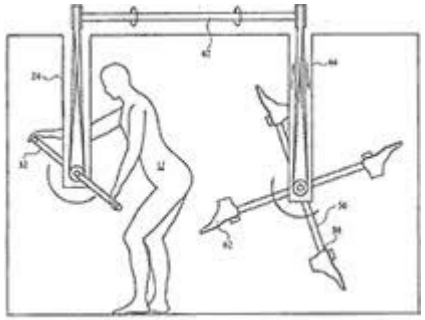
Patents – what is patentable?

- "[A]ny new and useful process, machine, manufacture, composition of matter, or any new and useful improvement thereof." 17 U.S.C. § 101
- Must be novel, useful, and non obvious and be patentable subject matter

Have you come up with an idea or an invention?

- **An idea is not patentable if it is a product you are hoping for or dreaming of**

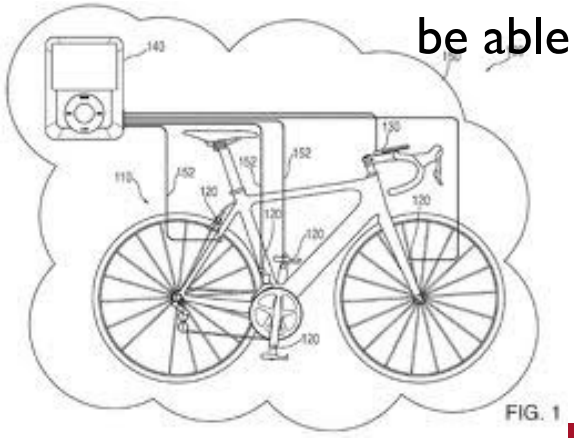
- Let's say that you have hit upon an idea that elderly people, or people having difficulty in moving, need a **chair**, preferably a comfortable armchair **that is easy to get out of**, and you are considering patenting your idea, so that no one else could use it. If you have only reached this point, you have **not yet** come up with a **patentable invention**. But if you have **prepared all the details of the chair and its technical solutions**, your invention might be developed enough that you can apply for a patent.



Source: prh.fi

Patent application

- **No prototypes are necessary when you apply for a patent or a utility model**
- Once you have figured out how to implement your idea and have arrived at a detailed, concrete embodiment of a chair, you may consider applying for a patent. Please do not send us any prototypes, but do note that applications must be filed in writing.
- In the application, you must be able to describe your invention in detail, and give an example of implementing your idea, for instance the chair above, so that a person skilled in the art would be able to prepare the product or use the method.



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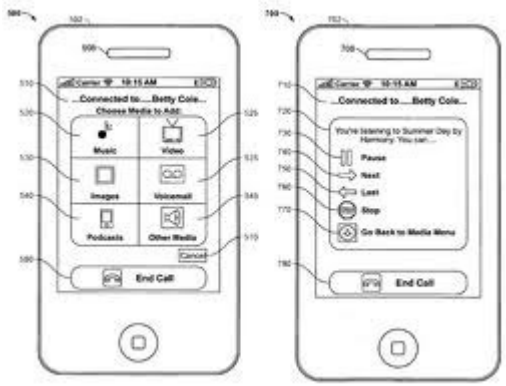
Before applying for a patent

- **Keep your invention secret before applying for a patent**
- **Determine whether your idea is new by using free online databases**
  - Patent are only granted to novel ideas



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Patent or utility model ?

- Patent
  - (Can be) International
  - 20 years protection
  - Licensable
- Utility model
  - Protect the technical solution nationally

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Is software patentable ?

- Answer 1: Depends on geographical region: In the Europe: NO, in the US: ~YES (but also a little vague)
- Answer 2: Depends on the role of the software
  - The software itself is not patentable (but it's under the Copyright Act)
  - But software that as a part of a technical system can be patented. i.e. if the system provides a technical solution

European Patent Convention (EPC), Article 52, paragraph 2, excludes from patentability, in particular

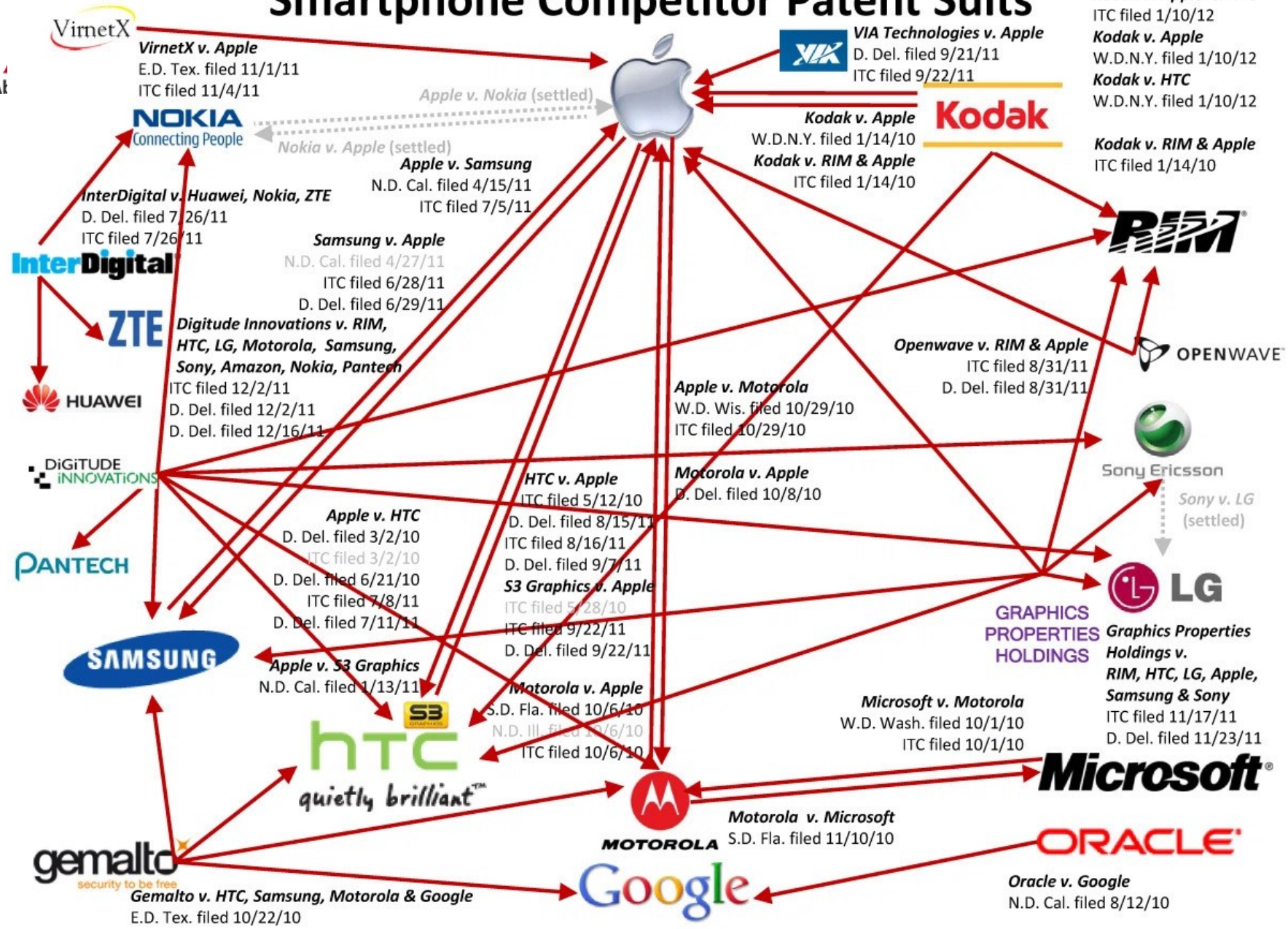
1. discoveries, scientific theories and mathematical methods;

2. aesthetic creations;

3. schemes, rules and methods for performing mental acts, playing games or doing business, and **programs for computers**; [emphasis added]

4. presentations of information.

Smartphone Competitor Patent Suits



Patent portfolios ?

- Why do companies try to have big patent portfolios?
  - Balance; if two actors have similar size in the same technical area; cross use all technology / no licencing
  - Patent pools: For some standards, a patent pool is built: the fee for using a technology is dependent on the patent portfolio in that pool
    - Major communication standards (DVB, 3G, 4G) are built this way

How about protecting a service ?

- One way is to create a good trademark for that service, and register the trademark
- The one with the original trademark of a service can claim to be the original one (but it does not really protect)

Source: prh.fi

Generally – how to protect intellectual property?

- Copyright – automatic protection, but only protects a specific work
- Patent – must apply for it. Not generally applicable to software
- Trademark, brand

To give other rights to use IP

- License – an agreement between a licensor and licensee to use some IP
  - **Copyrighted material**
  - Patent
  - Trademark etc.
- Sell the copyright / patent / trademark

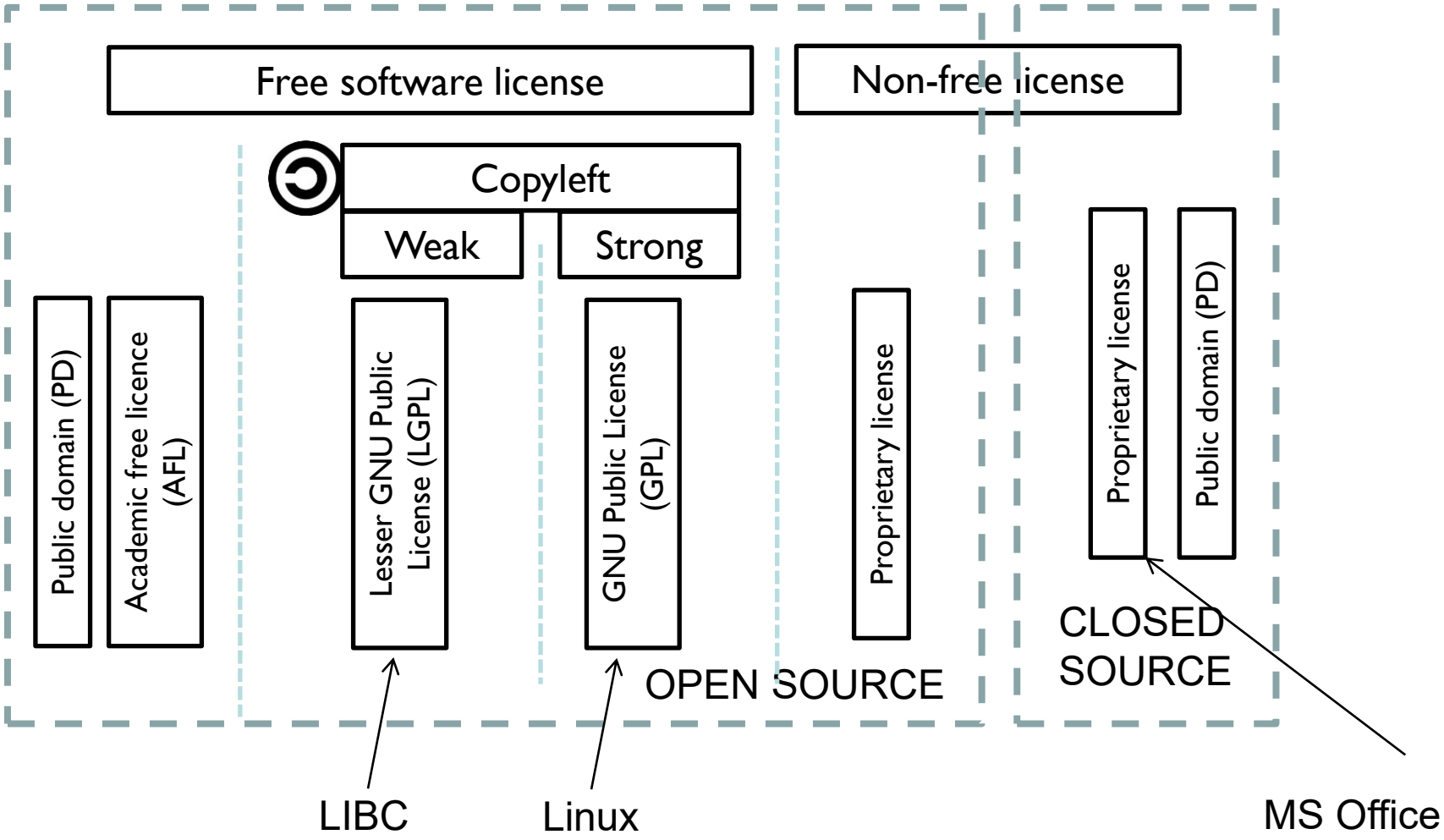
What is a license?

- Grants permission to use copyrighted work / patents / trademarks
- Can grant any or all of the rights associated with copyright / patent / tradmark
- Can impose other restrictions, such as type or place or usage, or duration of the license
- Does not transfer ownership of the copyright / patent / utility model

The license

- Terms for the usage
  - Valid for some time
  - Conditions
- Territory
  - Where is valid, in which markets
- Renewal
  - How to renew the license, terms for that
- Cost of licensing

Typical software licenses



Open source

- The source of software is provided to anyone that wants to read / modify / use
- A way of crowd sourcing
- Open source is not automatically free
  - For own use – you are free to use the code
  - For commercial use – check the license
- Should I open source my code?
  - My view: Yes – good way to protect

Types of software licenses

- The GPL, or “copyleft” family of licenses
  - GPL vs LGPL (Lesser General Public License)
- The BSD/academic family of licenses
  - No “copyleft”
  - MIT / Apache / Artistic
- The Mozilla/corporate type licenses
- Other open source licenses
- Traditional proprietary licenses
- Shareware/freeware
- Public domain (not a license, but a way of accessing software)

Other

- Creative Commons International http://creativecommons,org/international/
- Science Commons (a Creative Commons Project) http://sceincecommons.org
- Open Educational Resources Commons (OER) http://www.oercommons.org/
- Open Content (http://www.opencontent.org/
- For more see the Google Directory, http://www.google.com/Top/Computers/Open_Source/Open_Content/ (providing a list of websites dedicated to open source)