



EDISON INVENTORS Association

Volume 18, Number 3

March 2010

March 2010 Regular Membership Meeting

(Wednesday, March 17, 2010 @
7 PM) Edison-Ford Estates

Main Program: *The Livingston Firm Patent Laws & Infringement*

Board of Directors Meeting

(Wednesday, March 10, 2010
@ 7 PM)

Perkins Restaurant
Just S. of Crystal Drive on Hwy. 41
Members welcome to network.

Edison Quote of the Month:

*"I never did anything by accident, nor did
any of my inventions come by accident; they
came by work "*

Newsletter Highlights

Links Section

How To: Apply for a Provisional Patent

Edison Inventors Association
PO Box 07398, Ft. Myers, FL 33919

www.edisoninventors.org

Mission Statement

A non profit, educational organization with goals to promote creativity and entrepreneurial success in our schools and community. We are a diversified group of people sharing time, information, experiences and resources to this effect.

Attending a Meeting?

The doors open by 6:15 p.m. The meeting will begin promptly at 7p.m. In respect to our speakers please arrive on time and give them your full attention. There is time before the meeting and at the end of the meeting to network.

The Edison-Ford Winter Estates parking area will only be accessible from the East entrance. The McGregor Blvd gates will be closed for security purposes.

Directions off Hwy 41: At the Edison Ave traffic light, go west onto Cortes Blvd. Go past Euclid Ave. and veer right onto Monte Vista Street. Take Monte Vista to the very end crossing over Harvard Road. You have arrived!

Directions off McGregor Blvd: Proceed to Larchmont Ave. on the north border of the Edison-Ford Estates property. Turn right on to Larchmont and the next right turn on Harvard Rd. Watch closely for the Estate signs on the right side of this road. Private homes border this drive Or, go to www.googlemaps.com and type in, Monte Vista Street, Fort Myers, FL

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TREASURER'S REPORT

As of 2/28/10
General Account \$3,903.98 + \$4,592.30 in CD's
Bernard A. Cousino
Memorial Fund \$4,597.51

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All articles and paid ads must be submitted by the third
Wednesday of the month to be included in the
following month's e-letter. All information will be
reviewed prior to publication and may appear as time
and space permit. Reprints must be accompanied by
proper credits to be considered for this e-letter.

Submit articles/ads to:
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NEW

A one line complementary listing is being provided to
all member service providers in good standing, as a
service to our members.

Message from the President:

Greetings Fellow Inventors, Will it ever warm up? If some of you are looking for an idea for an invention, why not look into something that can be used to keep warm on these cold southern nights? I hope you all enjoyed last month's meeting. I am striving to make sure every meeting, is useful to all of you, and that it will help you on your invention, and new product development journey. I am very excited about this month's main program, it is going to be a discussion about Patents and Patent Law, but more importantly, it will discuss what you can do if you have received your patent, and then you find out someone is infringing on your patent. We have some EIA members who are going through this nightmare. Next month we have marketing wiz, Pam McGregor, as our main speaker. March is membership renewal time. To ensure that we have your current contact information, please fill out a member information update form when you renew, available at the front desk. Remember: America's greatness has always come from American Innovation. Keep it up! **Joe Gross**

Share your thoughts with the President,
Email: grossrdlab@yahoo.com
Please put EIA in the Subject box

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NEW * COMPLEMENTARY * NEW

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Links to Websites Important to Inventors

www.Inventors.about.com - One of my favorites, check it out, the editor!!!

inventorseye - www.usptogov/inventorseys - The USPTO's bimonthly publication for the independent inventor community

To do a Patent Search, these are very good websites:

www.uspto.gov/
www.freepatentsonline.com/
www.google.com/patents

Links to other inventor groups of interest

Inventor's Society of South Florida, Ft. Lauderdale, FL <http://www.inventorssociety.net/>

Inventors Council of Central Florida, Orlando, FL Website coming soon drdavidflinchbaugh@bellsouth.net

Space Coast Inventors Guild, Melbourne, FL Website coming soon angelsnr@cfl.rr.com

Tampa Bay Inventors Council, Largo, FL www.tbic.us

Other useful Links

FGCU Regional Economic Indicators <http://www.fgcu.edu/cob/eri/indicators/indicators200808.pdf>

United Inventors Association - Upcoming event list

Invention & Idea Show 2010 - Minnesota Inventors Congress, June 11-12, MN

National Lawn & Garden Show 2010, June 15-June 17 Colorado Springs CO

National Hardware Show, May 4-6, Las Vegas Convention Center

2010 Collegiate Alt-Energy Challenge: Saving Our World One Kilowatt at a Time



SBDC (Small Business Development Council) at FGCU

Looking for our upcoming seminars and workshops in your community? What are you waiting for? Start/Grow your biz today!

www.sbdseminars.org 12:49 PM Jan 21st from web

1. REAL Series (Rural Entrepreneurship through action Learning)
2. Small Business Resource Network
3. Overview of Doing Business with the Government
4. How do I get certified as a Minority, Woman or Service Disabled Veteran Enterprise?
5. Market Pulse: Present by New-Press, Bonita Chamber, SBDC
6. Pricing for Success
7. Hispanic Marketing - A Cultural Approach
8. Reading, Restoring, and Reusing Your Personal Credit
9. Brown Bag Lunch Start-up: Marketing Your Business

How to Apply for a Provisional Patent

Background

A provisional patent application allows filing without any formal patent claims, oath or declaration, or any information disclosure statement. It provides the means to establish an early effective filing date in a non-provisional patent application. It also allows the term "Patent Pending" to be applied. A provisional patent lasts 12 months from the date the provisional application is filed. Therefore, an applicant who files a provisional application must file a corresponding non-provisional application for patent within 12-months of the provisional application. The corresponding non-provisional application must contain a specific reference to the provisional application.

A provisional patent application can be filed up to one year following the date of first sale, offer for sale, public use, or publication of the invention. These pre-filing disclosures, although protected in the United States, may preclude patenting in foreign countries.

What must be provided for in an application for a provisional patent is the written description of the invention, and any drawings necessary to understand the invention, plus the fee transmittal form and payment?

If any of these three items are missing or incomplete, your application will be rejected and no filing date will be given for your provisional application.

Description of Invention

Under patent law "the written description of the invention and of the manner and process of making and using the same invention must be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention pertains to make and use the invention."

Drawings

Drawings are the same for provisional patents as they are for non-provisional patents.

Cover Sheet

The cover sheet is USPTO form PTO/SB/16, <http://uspto.gov/forms/index.jsp>. You place your "Description of Invention" in this form along with your contact information.

Filing Fee

A small entity (an independent inventor, collaboration of independent inventors, a nonprofit organization, or a company with under 500 employees), receives a discount. The small entity filing fee is \$110. Payment by check or money order must be made payable to "Director of the U.S. Patent and Trademark Office". Use the USPTO fee transmittal form <http://www.uspto.gov/web/forms/sb0017.pdf>, to submit the filing fee.

Mail the provisional application, drawings, fee transmittal form and check to:

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

References:

http://inventors.about.com/od/provisionalpatent/a/Provisional_Pat.htm

<http://uspto.gov/>



THE EVER-CHANGING LANDSCAPE OF PATENT LAW

At one time the case law in the area of patents was one of the most stable of all areas of law, but in recent years the case law has been changing the landscape of patent law in major ways. Although many of the changes are of particular interest to patent attorneys or those who practice intellectual property law, general practitioners, their clients, entrepreneurs and lay persons should have some knowledge of these changes to avoid pitfalls, render proper advice and make sound business decisions.

As we await the decision from the United States Supreme Court in the *Bilski* case (*In re Bilski*, 545 F.3d 943, 88 U.S.P.Q.2d 1385 (Fed. Cir. 2008)) on the patentability of business methods, a decision that could change the face of patent law forever, two other recent decisions have resulted in changes that all practitioners and their clients should be aware of. One change concerns the false marking of products and the second concerns the scope of design patents.

We often see clients who desire to mark their products and associated advertising with the designation "patent pending" or "patent applied for" before a patent application has been filed. Many times people desire to mark their products with the word "patented" before a patent has issued. The motivation behind this desire is usually to deter competitors from copying their product.

Such false marking, if done with the intent to deceive, has always been a violation of federal statute, specifically 35 U.S.C. 292, which provides a penalty of \$500 for each offense. In the past, the penalty was applied on a one-time basis, regardless of how many falsely-marked items were sold. However, the recent case of *The Forest Group, Inc. v. Bon Tool Company*, 2009 WL 5064353 (C.A.Fed. (Tex.)) Changed all that and now the \$500 penalty is calculated on a per article basis. This change has and will result in more suits brought by members of the public and competitors, especially against companies who sell thousands or millions of articles that are falsely marked. Such suits may result in large monetary awards, with one-half going to the party suing and the other to the United States government. The next major recent change in patent law came in the area of design patents. Unlike utility patents which cover apparatuses, devices and processes that have usefulness, design patents cover the ornamental appearance of an object separate and apart from whatever utility the object may have. The test for infringement of a design patent under the prior long-standing case law was based on whether a design had the same point of novelty (i.e., feature) as a patented design. Similarly, the test for validity of a design patent was whether a patented design had a point of novelty not found in the prior art. Thus, design patents were construed rather narrowly and not accorded much value as it was always easy to find a prior patent or other reference that contained a particular point of novelty.

Now, however, the "point of novelty" test for both infringement and validity of design patents has been thrown out, first by the case of *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665 (Fed. Cir. 2008) as to infringement, and second by case of *International Seaway Trading Corporation v. Walgreens Corporation*, 2009 WL 482608 (C.A. Fed. (Fla.)) As to validity. The sole test now for both infringement and validity is the "ordinary observer" test. In other words, are the designs substantially similar in the eyes of an ordinary observer? If yes, there could be infringement or a design patent could be invalidated. As a result of this change to the "ordinary observer" test design patents will now be construed more broadly and should now be considered more valuable to inventors and businesses in protecting the appearance of their products.

In light of the recent case law, clients should be warned to not mark their products with false designations of "patented" or "patent pending" and inventors should strongly consider the use of design patents in protecting their intellectual property.

Thank you for taking the time to read this edition of Protecting Your Creativity. If you are in need of our services then please contact us to schedule an appointment.

Edward M. Livingston, Esq., U.S. Registered Patent Attorney, Board Certified in Intellectual Property Law
Erica L. Loeffler, Esq.

Bryan L. Loeffler, Esq., U.S. Registered Patent Attorney

The information contained in this newsletter is intended to convey general information. It should not be construed as legal advice or opinion. It is not an offer to represent you, nor is it intended to create an attorney-client relationship.

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