

## IP Survey

- Module 1
- Introduction

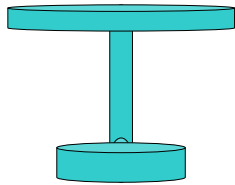
### Business / IP Rights Life Cycle



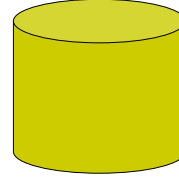
## The Seating Marketplace



Competing Product



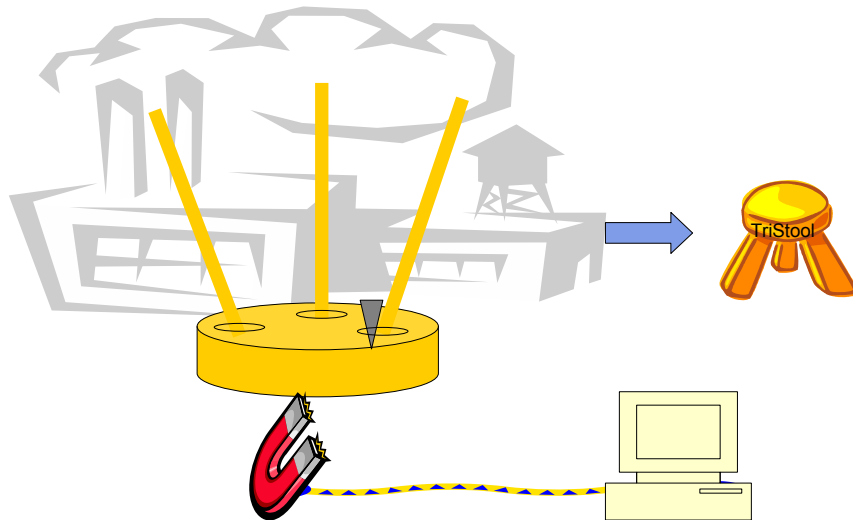
Existing Product



New Product



## Trade Secret



## Patent – claims



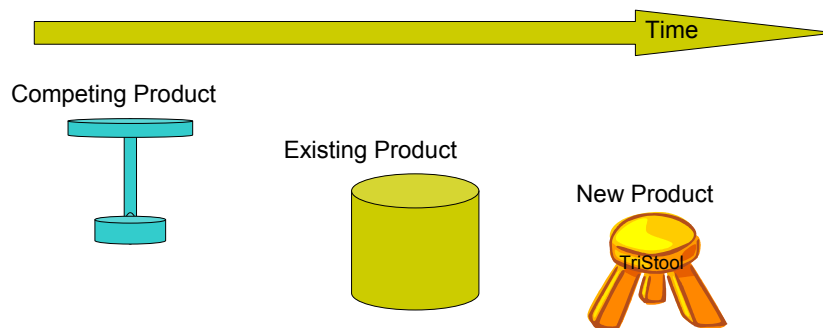
1. A **seating apparatus**, comprising:
  - (a) a horizontal **seat**, and
  - (b) three **legs** each having one end connected to the **bottom** of said horizontal **seat**.

1. A device for supporting objects, comprising:
  - (a) a horizontal support member; and
  - (b) three vertical support members each having one end connected to the same face of said horizontal support member.

## Patent - patentability

- patentable subject matter
- **novelty; utility; non-obviousness**
- specification support

- novelty:

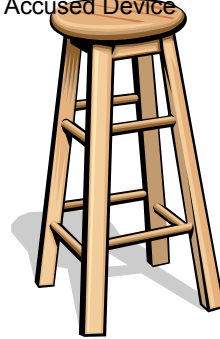


## Patent - infringement

New Product



Accused Device



## Copyright

The Eyes of Marshall are upon you  
As you legislate.  
The eyes of Marshall are upon you  
He will review your slate.  
Do not think you can escape him  
Your law must pass his way  
As keeper of the constitution  
The Court will have its say!



## Copyright



## Trademark

Generic	Descriptive	Suggestive	Arbitrary / Fanciful
Stool	Sitting Stool Super Stool Sturdy Stool	TriStool	3LS Tiger Claw

### Prior Rights?

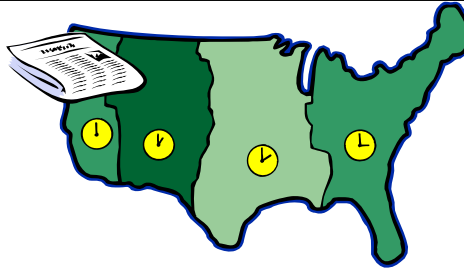
TriStool for plant pruning equipment?  
 TriStool for toilets?  
 TriStool for shaving razors?  
 TriStool for 4 legged chairs with backs?

### Infringing?

**TryStool** for stools?  
[www.tristool.com](http://www.tristool.com)?  
 TripleStool?

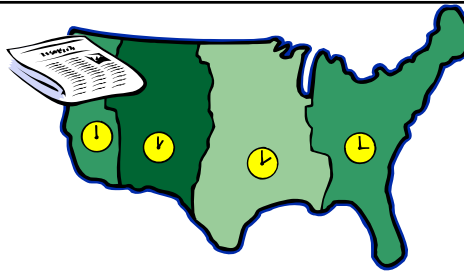
## INS v. AP (U.S. 1918)

- Dispute
- Questions
  - Property in news?
  - If so, survive publication?
  - Are INS' acts of appropriation unfair competition?
- Dual character of the news
- What does the designation of the news as “quasi property” mean?

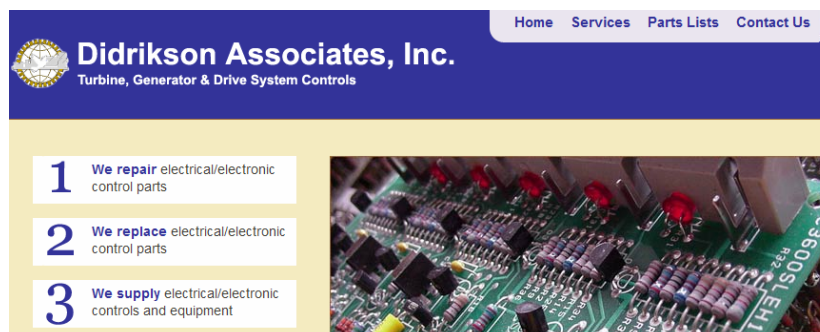


## INS v. AP (U.S. 1918)

- Rights of public to use AP's news versus rights of a competitor to use it
- Is INS reaping where it has not sown?
- Did AP abandon the news by publishing it?



## McClain v. State, 269 S.W.3d 191 (Tex. App. 2008)



Home Services Parts Lists Contact Us

**Didrikson Associates, Inc.**  
Turbine, Generator & Drive System Controls

- 1** We repair electrical/electronic control parts
- 2** We replace electrical/electronic control parts
- 3** We supply electrical/electronic controls and equipment

- What was McClain's relationship with Didrikson?
- What did McClain do and what legal difficulty has that generated for him?
- Result and reasoning?

## Authors & Inventors clause

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. CONST., art. I, § 8, cl. 8.

## Commentary on Authors & Inventors clause




<p>It was beneficial to all parties, that the national government should possess this power; <u>to authors and inventors</u>, because, otherwise, they would have been subjected to the <b>varying laws and systems of the different states on this subject, which would impair, and might even destroy the value of their rights</b>; <u>to the public</u>, as it would promote the <b>progress of science and the useful arts</b>, and admit the people at large, after a short interval, to the full possession and <b>enjoyment of all writings and inventions without restraint</b>.</p>	<p>Federalism concerns place much of IP law at the Federal level</p> <p>IP laws exist as a public policy tool to promote production of inventions and works for the public domain (eventually)</p>
<p>In short, the only boon, which could be offered to inventors to disclose the <b>secrets</b> of their discoveries, would be the <b>exclusive right</b> and profit of them, as a monopoly for a limited period.</p>	<p>Patent versus Trade Secret protection</p>
<p>And authors would have little <b>inducement to prepare elaborate works</b> for the public, if their publication was to be at a large expense, and, as soon as they were published, there would be an unlimited right of <b>depredation and piracy</b> of their copyright.</p>	<p>Copyright to support production and distribution of works</p>

Story, Commentaries on the Constitution of the United States (1833) (emphasis added)

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## Basis for IP Rights

Option	Problem				Benefit	Cost
 <p>No IP</p>	<p>Public good nature of info: -nonrivalrous -nonexcludable</p>	<p>Invest in R&amp;D, create &amp; sell product</p>	<p>Imitations sell at lower cost</p>	<p>May not be able to recover R&amp;D costs</p>	<p>Getting info is "cost free"</p>	<p>Info under produced</p>
 <p>IP</p>	<p>Costs associated with limiting access to info</p>	<p>Invest in R&amp;D, create &amp; sell product</p>	<p>IP rights block imitators to some degree</p>	<p>Recoup R&amp;D with (hopefully) a profit</p>	<p>Info is produced &amp; supplied*</p>	<p>Limits to access of info, ↑ transaction costs</p>

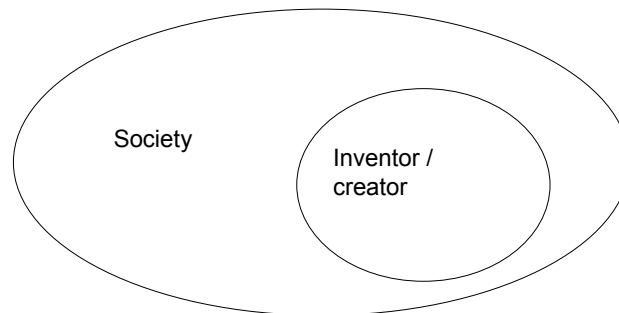
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## Benefit of IP

- Info is produced & supplied\*
- Who obtains the benefit?
- What other solutions are possible?
- Are IP rights better than other solutions?



## Bonito Boats v. Thunder Craft Boats, 489 U.S. 141 (1989)

