

Patents 3.0: How to fix American Innovation

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The
United
States
of
America



**The Director of the United States
Patent and Trademark Office**

Has received an application for a patent for a new and useful invention. The title and description of the invention are enclosed. The requirements of law have been complied with, and it has been determined that a patent on the invention shall be granted under the law.

Therefore, this

United States Patent

Grants to the person(s) having title to this patent the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States of America or importing the invention into the United States of America for the term set forth below, subject to the payment of maintenance fees as provided by law.

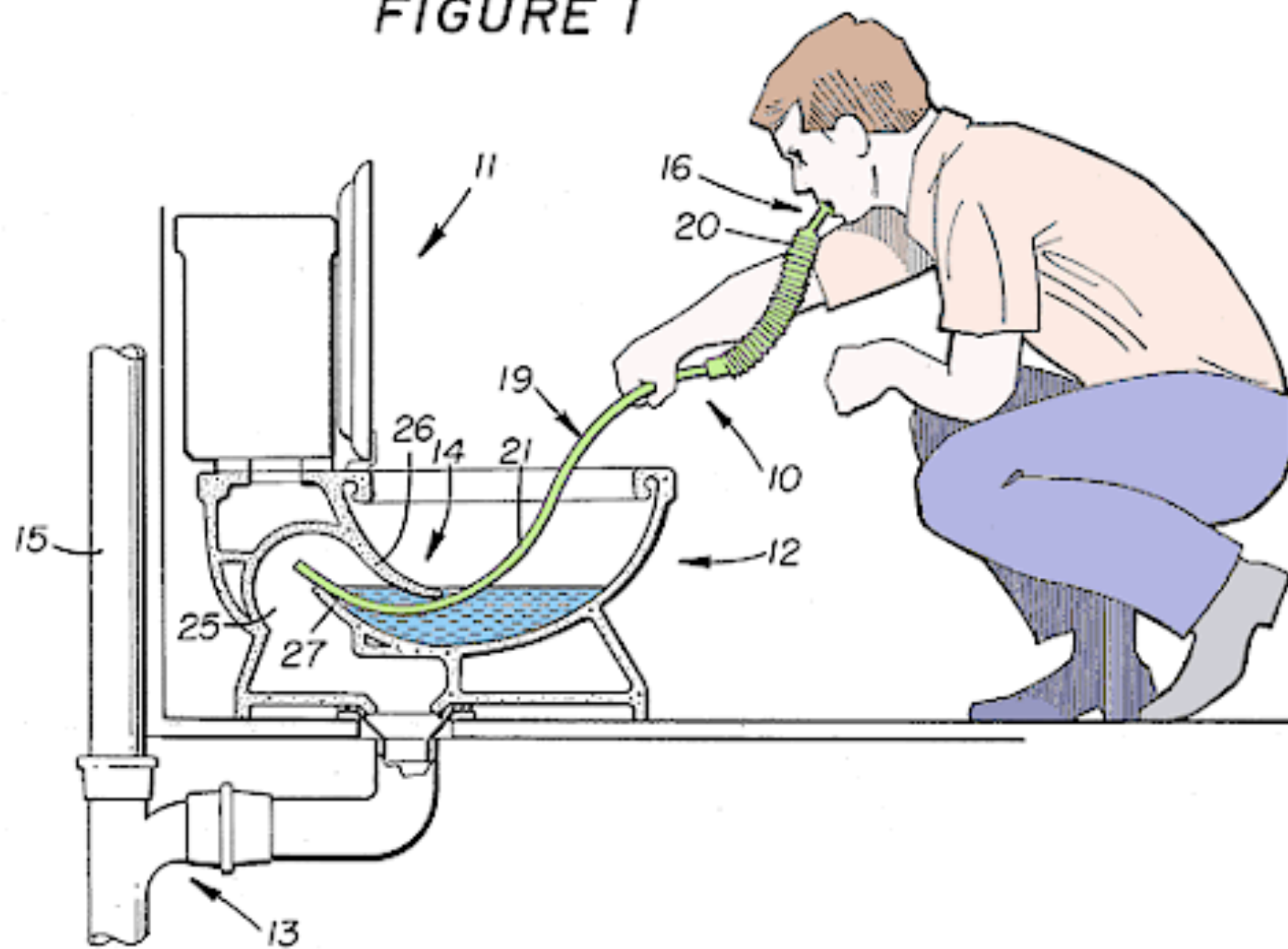
If this application was filed prior to June 8, 1995, the term of this patent is the longer of seventeen years from the date of grant of this patent or twenty years from the earliest effective U.S. filing date of the application, subject to any statutory extension.

If this application was filed on or after June 8, 1995, the term of this patent is twenty years from the U.S. filing date, subject to any statutory extension. If the application contains a specific reference to an earlier filed application or applications under 35 U.S.C. 120, 121 or 365(c), the term of the patent is twenty years from the date on which the earliest application was filed, subject to any statutory extensions.

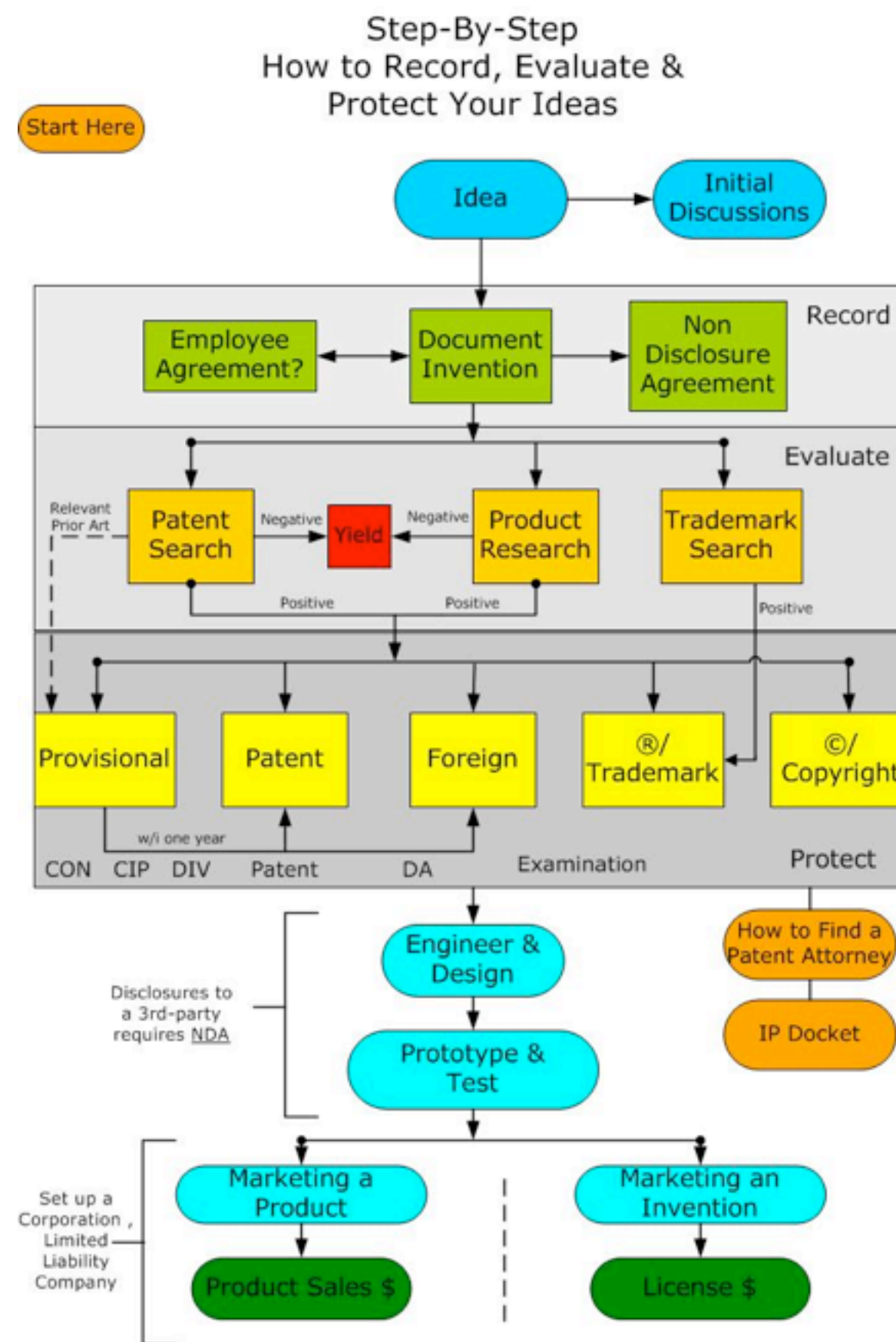
John W. Dudas

Director of the United States Patent and Trademark Office

FIGURE 1







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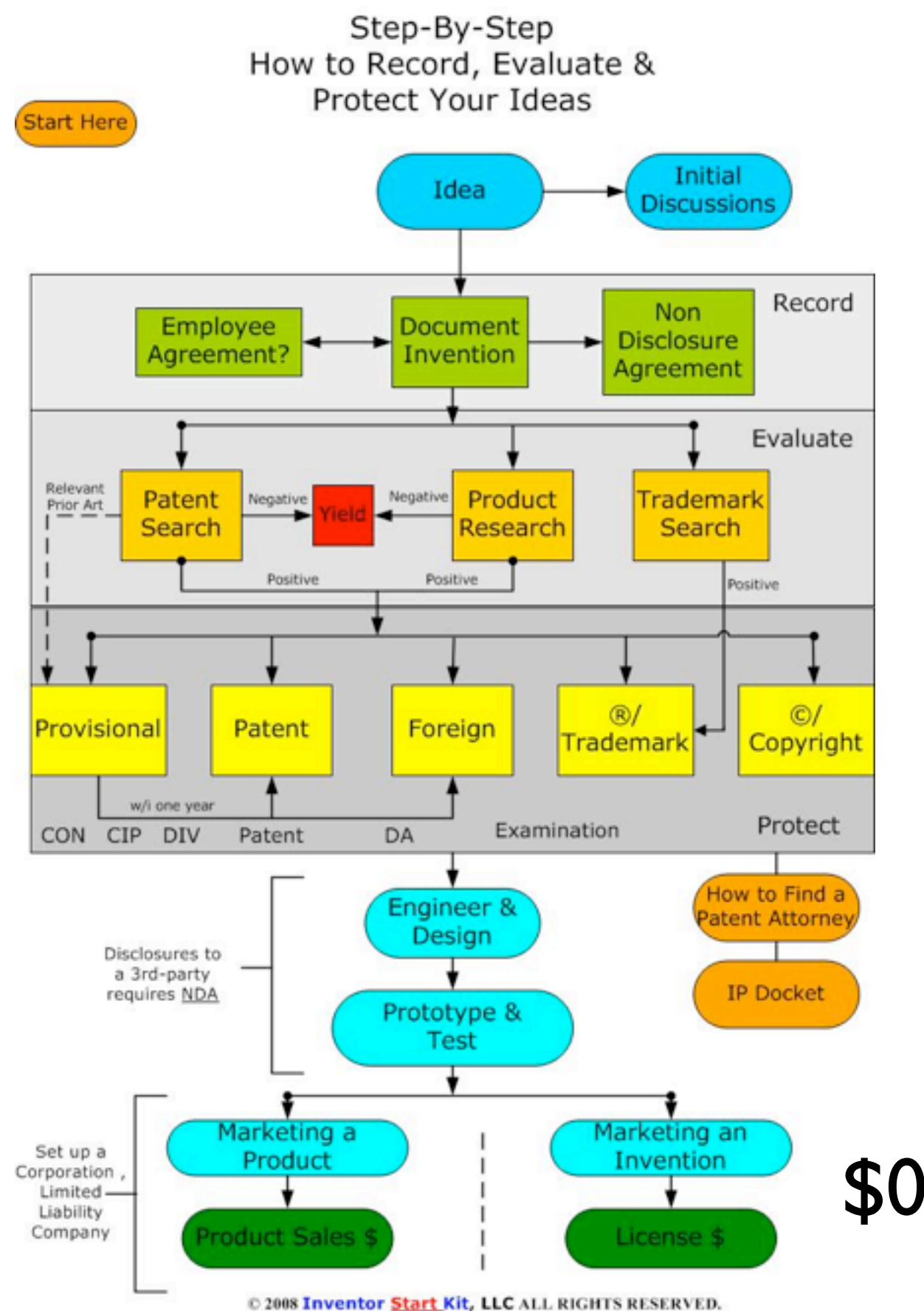
The real-world value of patent protection to innovators is a much-examined question. A series of studies conducted by several authors over a span of nearly 30 years (1957 to 1984) have asked whether inventors find patents useful for excluding imitators and/or capturing royalty income. The answer uniformly found: The patent grant is not useful for either purpose in most industries.

Eric Von Hippel - THE SOURCES OF INNOVATION

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\$0

\$0







Stanford:
494 royalty generating patents
only 35 generate > \$100k/yr

Universities That Turn Research Into Revenue, Forbes.com

Maureen Farrell, 09.12.08, 06:00 PM EDT



UC System

\$3.04B research, \$193m royalties

Universities That Turn Research Into Revenue, Forbes.com

Maureen Farrell, 09.12.08, 06:00 PM EDT

“Patent law encourages cumulative innovation, both by dangling the patent before the inventor as an incentive to invent in the first instance and by requiring him to disclose to the public his invention so that science can progress by building on the divulged knowledge”

Jeanne Fromer - Iowa Law Review, 2009

The origins of Patent Law

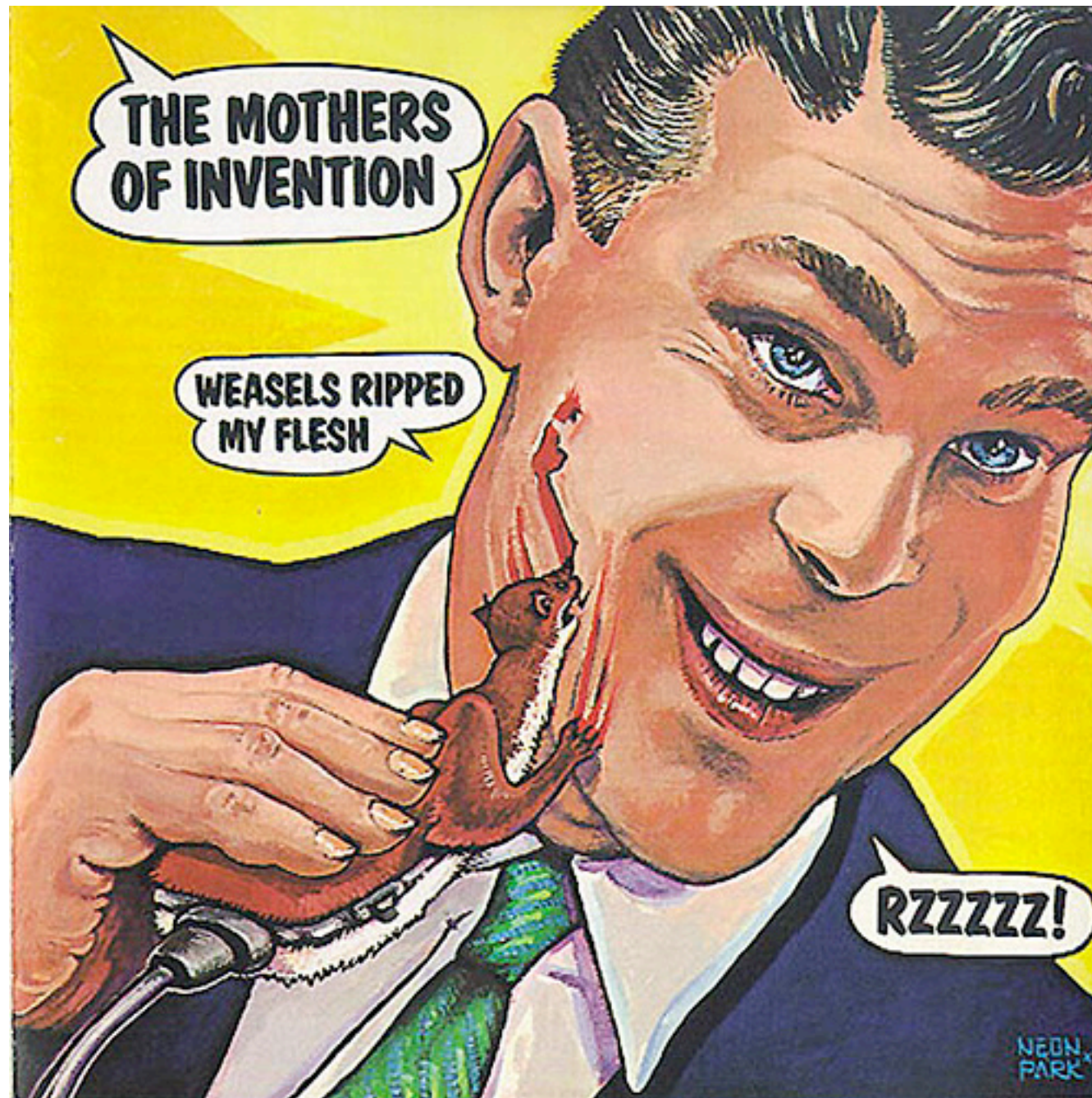
“[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”³²
U.S. CONST. art. I, § 8, cl. 8

The origins of Patent Law

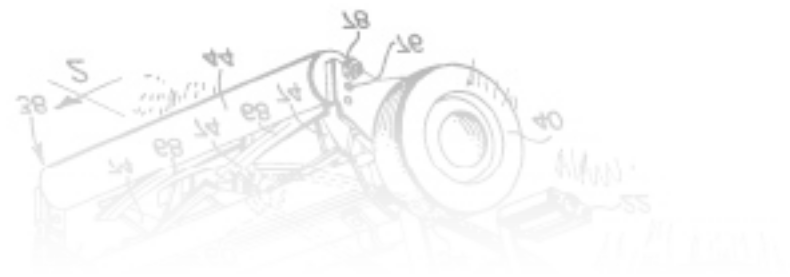
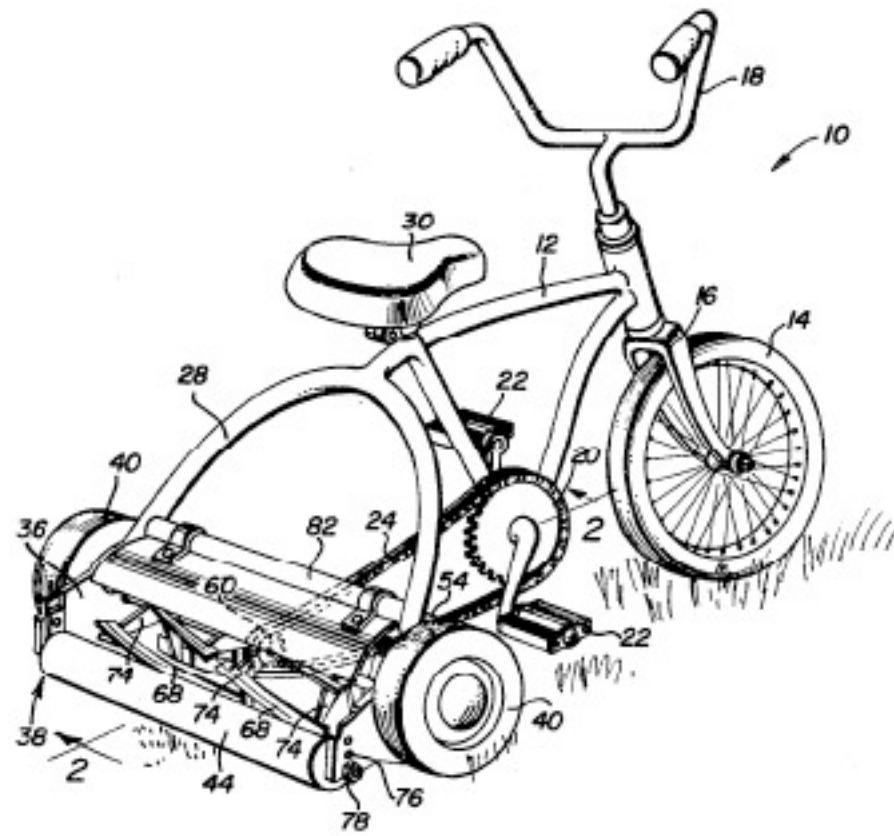
Disclosure of information about inventions stimulates productivity in at least two ways. First, it permits society at large to apply the information by freely making or using the patented invention after the expiration of the patent. Second, the disclosure can stimulate others to design around the invention or conceive of new inventions.

Jeanne Fromer - Iowa Law Review, 2009

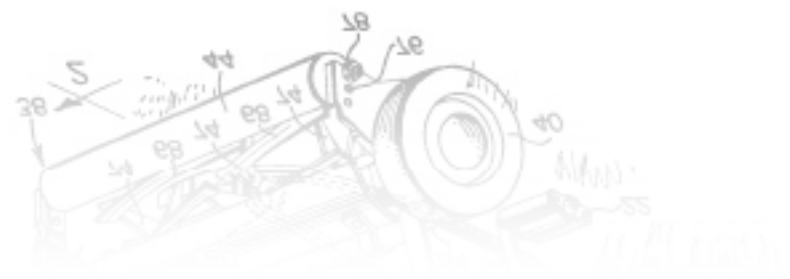
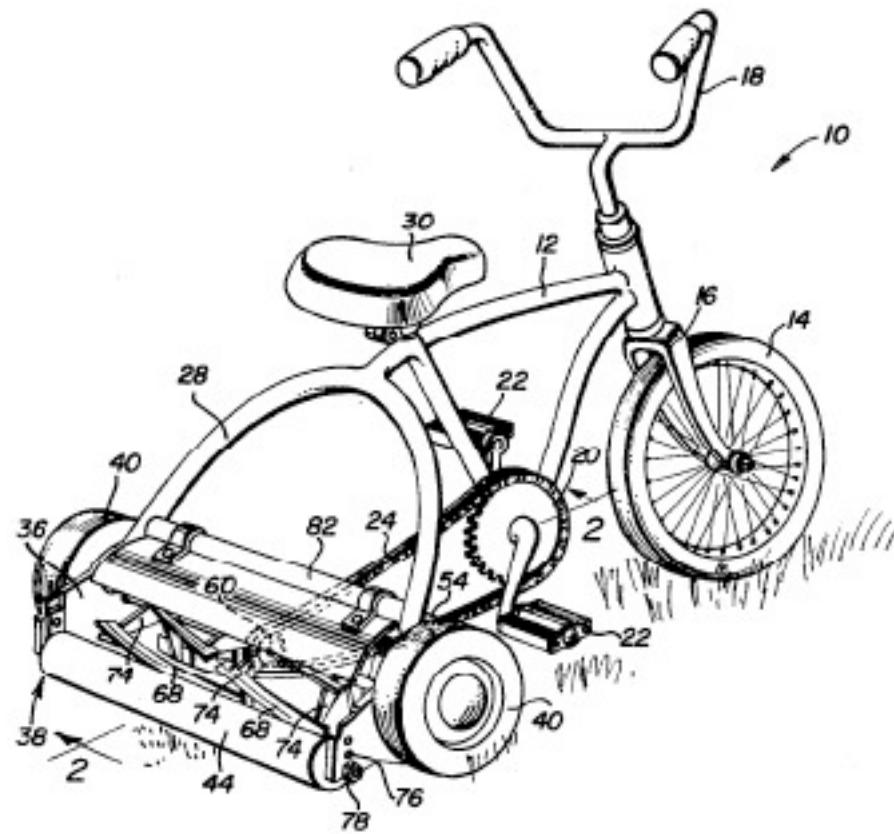
Invention vs. Innovation



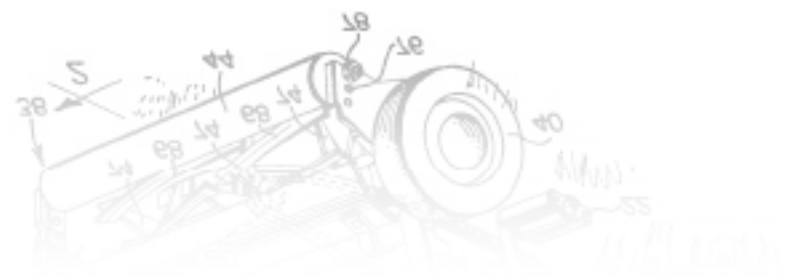
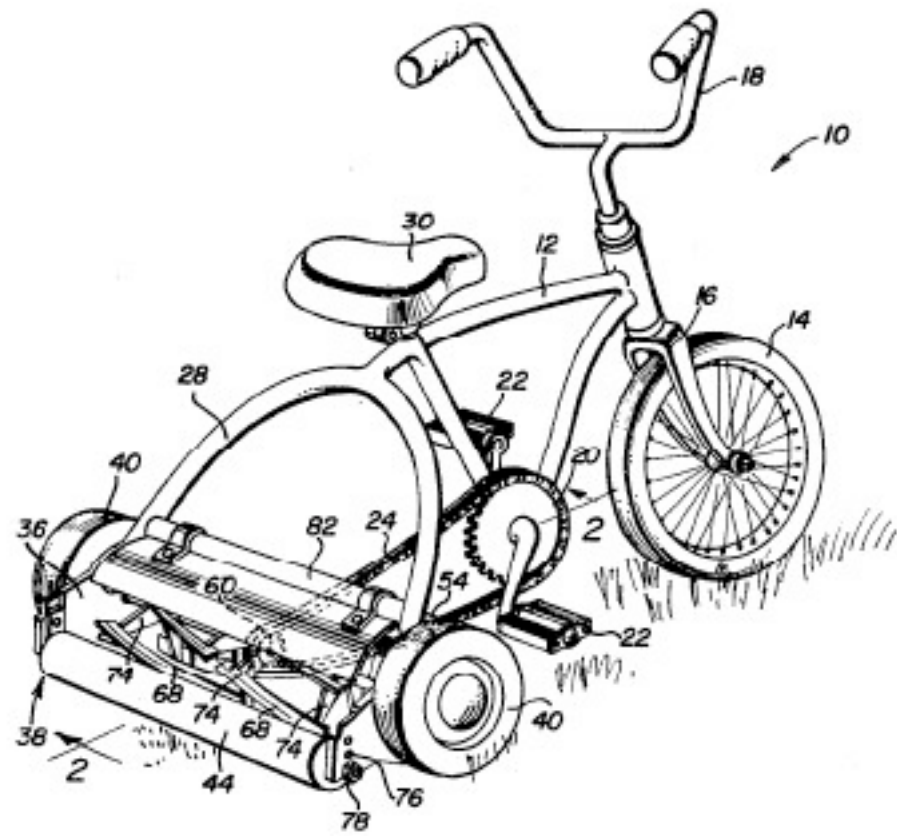
What is the difference?



What drives the economy?



What should we reward?



Patent System Rewards:

- 20 Year Monopoly
- Royalties taxed at Capital Gains Rate

“History has shown that most technological change . . . comes through the small contributions of ordinary, anonymous workers and tinkers”

Jeanne Fromer - Iowa Law Review, 2009

Patent System 1.0:

- 20 Year Monopoly
- Royalties taxed at Capital Gains Rate

Patent System 2.0: Fixing Existing Patent System?

- 20 Year Monopoly
- Royalties taxed at Capital Gains Rate
- New: Let's Require "Source Code" for all Inventions:
 - Mechanical Cad Files
 - Computer Code
 - Circuit Board files, etc

Patent System 3.0:
Open **S**ource **H**ardware **I**nnovation
Taxcredit

- Open Source Projects Qualify
- Innovation Income Tax Credit

Patent System 3.0:
Open Source Innovation Reward
(**O-Sir!** - family friendly name)

- Open Source Projects Qualify
- Innovation Income Tax Credit