

# Patent Law

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Fundamentals of  
Doctrine and Policy



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**Fundamentals of  
Doctrine and Policy**

SECOND EDITION

**Daniel Brean**

**Ned Snow**



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# Preface to the First Edition

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Patent law is the foundational course for all future patent professionals. Yet it is also a course that many law students find exceptionally difficult. While the subject is vital to many students' career goals, the doctrine too often comes across as opaque and bewildering. The legal principles themselves can seem complicated, and the facts of patent cases are rife with science and technology that can impede student understanding of basic concepts. This is the challenge that every teacher of patent law faces. And this is the reason for our casebook. We sought to write a text that would be straightforward and accessible for law students, without compromising the detailed coverage of doctrine and policy that is so crucial to a successful practice.

With this in mind, we began our project. We gave priority to explaining the doctrine in ways that students would understand. Of course, “explaining the doctrine” means more than merely reciting the statutes or the “black letter” rules (although that is certainly important). It means describing the doctrine in layman's terms, providing examples with step-by-step analyses, depicting concepts with visual illustrations, asking follow-up questions that test and validate comprehension, and offering both simple and complex practice problems to assess mastery. Cases should be tools to teach rather than traps for the unwary. Notes that follow should emphasize and enlighten — not muddy and obscure. The focus should be on the fundamentals rather than the esoteric. Nuance and subtlety should be addressed, but only after full comprehension of the basics. In short, the text should be an instrument finely tuned for learning the law and understanding its practical application.

This was our goal, and this casebook represents our best effort to achieve that goal. The book covers all the core statutes and doctrines. Novelty, nonobviousness, subject matter, infringement, defenses, and remedies all receive thorough attention. Additionally, we've included chapters that provide contextual backdrops for many aspects of patent law and practice, including the history of patent law, patent application drafting and prosecution, patent litigation, and design patents. Taken together, the topics offer a robust and thorough introduction to the laws, institutions, and policies that comprise the United States patent system.

We hope that our casebook facilitates a productive and enriching study of patent law.

— Dan and Ned



# Preface to the Second Edition

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In the first edition of *Patent Law: Fundamentals of Doctrine and Policy*, we set out to make patent law approachable, its nuanced complexities digestible, and its policy objectives familiar and transparent. We are delighted and humbled to have heard from so many students and professors around the United States, who reached out to tell us about their experiences using and learning from the book. That a student feels pride for their mastery of this challenging subject, or that they now see new and exciting possibilities for their careers, is the highest praise we could hope for.

Patent law's development remains as fast paced as ever, with streams of court decisions, legislative debates, and administrative politicking filling our news feeds. We committed in this second edition to capture the important changes without getting lost in the weeds, and without losing the straightforward, streamlined style that pervades the text. There are dozens of instances where we have updated or replaced cases to provide better illustrations of concepts and to tee up discussions of the most consequential and ongoing developments in the law.

We have also attempted to improve the flow and readability of text. We reordered several sections and revised them to facilitate smooth transitions between concepts and to highlight logical relationships between successive topics. To reinforce student comprehension, we revisited all of the case notes with an eye to referencing related discussion points throughout the book. And as we reread cases, we identified those that might be more comprehensible with further editing or editorializing.

Most notably, we have revamped our presentation of pre-AIA material. As pre-AIA patents continue to expire and make room for the new generation of AIA patents, the relevance of pre-AIA § 102 and its rules for prior art decreases. Hence, for the second edition, we have de-emphasized pre-AIA law by consolidating and reorganizing the novelty and prior art-focused chapters (formerly chapters 5A and 5B) into one chapter 5. Chapter 5 leads with the AIA rules and then presents the pre-AIA rules as a sort of “exception” to the current AIA structure. This approach will help students more quickly gain confidence in parsing through § 102 and its associated doctrines, while also better preparing them for what modern patent practice entails.

We hope you find the following chapters to be an illuminating and engaging guide through the law of patents.

— Dan and Ned

