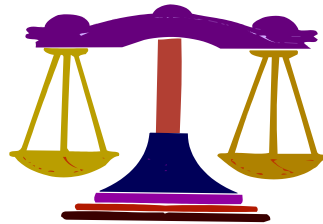


# UNITED EXPLORERS CLUB

SEPT.18, 2005

## How to Start a New Venture and the Role of Intellectual Property



THE LAW OFFICES OF  
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# STARTING YOUR BUSINESS

1. IDENTIFYING A MARKET NEED: Your products and services should be defined and shaped in response to real customers
2. PRODUCT DEFINITION: Determine the competitive edge that will make your product / services preferable to others
3. MARKET EVALUATION: Types of Customers – individuals, small business, Fortune 500 companies, government or by foreign customers



***New products must be market driven.***

# FORMING A FOUNDING TEAM

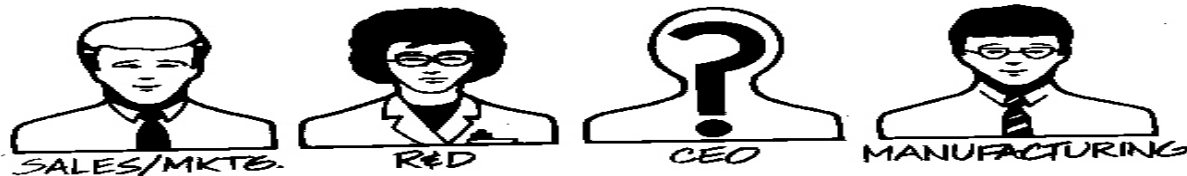
COMPOSITION OF THE TEAM: 1. CEO, 2. VP OF RESEARCH AND DEVELOPMENT, 3. VP OF SALES AND MARKETING, AND 4. CFO

QUALITY LEADERSHIP:

THE PERCENTAGE OF THE COMPANY THAT THE FOUNDERS WILL BE ABLE TO RETAIN IS A DIRECT FUNCTION OF THEIR ABILITY TO HANDLE KEY MANAGEMENT ROLES.

A STRONG FOUNDING TEAM CAN RETAIN A HIGH PERCENT OF THE COMPANY'S STOCK AT THE IPO BECAUSE IT WOULD NEED LESS OUTSIDE CAPITAL.

A WEAKER TEAM WOULD REQUIRE LARGER CAPITAL AND RESULTING IN SMALLER FOUNDERS' EQUITY



***Get the best people, with skills to complement your own.***

# LEGAL STRUCTURE



*Choosing the right structure is easy.*

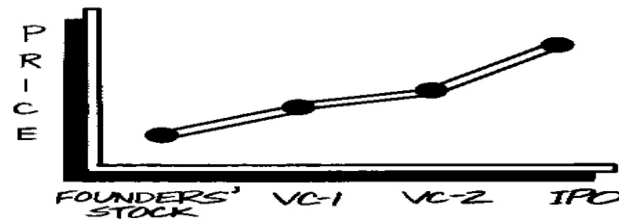
1. SOLE PROPRIETORSHIP: YOU OWN THE BUSINESS
2. PARTNERSHIP: TWO OR MORE PEOPLE OPERATE A BUSINESS TOGETHER AND DIVIDE THE PROFITS AND LOSSES
3. CORPORATION: SHAREHOLDERS OWN THE CORPORATION AND ELECT A BOARD OF DIRECTORS. THE BOARD OF DIRECTORS GOVERNS THE CORPORATION AND APPOINTS OFFICERS WHO MANAGE ITS DAY-TO-DAY BUSINESS.

ADVANTAGES: LIABILITY SHIELD – LIMITED TO SHAREHOLDERS' INVESTMENT IN THEIR SHARES; DIFFERENT STOCK CLASSES;

DISADVANTAGES: DOUBLE TAX

S CORPORATION – 1 CLASS OF STOCK, SHAREHOLDERS MUST BE U.S. RESIDENTS

4. LIMITED LIABILITY COMPANY – CAN HAVE DISPROPORTIONATE EQUITY OWNERSHIP PERCENTAGE ALLOCATION OF PROFITS AND LOSSES



*Issue founders' stock early.*

## INITIAL STOCK ISSUANCES TO FOUNDERS

**FACTORS TO CONSIDER:** 1. STOCK VALUATION, 2. INCOME TAX, 3. VESTING AND BUY-BACK RIGHTS, 4. AVAILABILITY OF SEED FINANCING, AND 5. SECURITIES LAWS COMPLIANCE.

1. HOW TO VALUE FOUNDERS' STOCK? No Readily ascertainable value so usually issued at a nominal price such as \$0.01 per share. If property is contributed in exchange for stock, i.e. technology, then that will be the basis for the stock.
2. HOW DO FOUNDERS AVOID INCOME TAX LIABILITY?
  - (A) Time gap between founders shares issuance and issuance to investors;
  - (B) Create value in company – patents, business plan, product prototype, agreements with key customers



***Vesting protects the founders who remain.***

### **(C) CREATE A TWO-TIERED CAPITAL STRUCTURE**

#### **3. VESTING SCHEDULES AND BUY-BACK RIGHTS:**

- (A) Most original founders do not remain with the company
- (B) Vesting of founders shares over a 4 or 5 year period
- (C) Company has right to buy back – termination and first right of refusal
- (D) 83(b) Election: If company reserves right to buy back stock at original price on employment termination, and taxed immediately on the difference between FMV and the purchased price.



***Common sources of seed money are friends, relatives and second mortgages.***

4. SEED FINANCING: initial money used to support the fledging company while a business plan is written or a prototype is being developed.

Sources: friends, relatives, credit card, and 2<sup>nd</sup> mortgages

## 5. COMPLIANCE WITH SECURITIES LAWS

- A. Non-compliance will give investors rescission rights
- B. Criminal liability
- C. Finding the appropriate exemptions from the costly process of registration with the S.E.C.

# INTELLECTUAL PROPERTY

Intangible assets associated with a company's "brainpower" and goodwill.



***Intellectual property laws  
are the weapons used to  
protect your technology.***

**PATENTS**: a patent grants its owner the right to exclude others from making, using or selling the claimed invention in the U.S.

Patent protection lasts up to 20 years from the date of filing for utility patents. Design patents last up to 14 years.

Page B3.

## MARKETPLACE

Page B8.

Technology: SRC plans to sell 3,000 wireless towers to SpectraSite

Page B10.

Health: Investors fight with ICN's chairman over restructuring plan

Page B12.

## A Billion-Dollar Patent?

Software Developer Is Seeking To Protect Process Using Internet for Foreign Trade

By WILLIAM M. BULKLEY

STAFF REPORTER OF THE WALL STREET JOURNAL

UNION HALL, VA.—If the U.S. Patent Office does what it has said it will do, companies using the Internet for computer-to-computer international trade will have to pay a royalty fee to Ed Pool.

Mr. Pool, 45 years old, hails from this tiny lakeside hamlet. In the early 1990s, during a brief fling at importing goods from Russia, he commissioned a software program to help with logistical problems. He later applied for a patent based on the software, covering the computerization of the entire trade process, including the creation of customs declarations and shipping documents, along with services such as insurance and letters of credit.

## E-BUSINESS

Page B4

In May, the patent office notified Mr. Pool that it would soon issue him a broad patent covering "a process for carrying out an international transaction using computer-to-computer communication." A spokeswoman for the patent office said a patent could still be denied, if an examiner concluded that someone else had invented a process similar to the patent application was filed. However, outside patent attorneys say that issuing a patent after such a letter is virtually automatic.

When and if Mr. Pool's patent becomes final, lawyers hired by his company, DE Technologies LLC, say anyone conducting computer-to-computer international trades over the Internet without the permission of DE Technology will infringe on the company's intellectual property. As Mr. Pool puts it, "if you can do [computer-to-computer] currency conversions, file customs electronically, or calculate air, sea or truck freight, then you must obtain a license from us.... We were the first people to reduce it all to computer to computer. We're a small company, and we're a classic example of why the patent system is important."

Mr. Pool's goal is to collect a fee equal to 0.3% of each computerized trade deal across borders. That could add up quickly. Forrester Research, an e-commerce research firm, expects about \$6.8 trillion in e-commerce in 2004. If even 10% of that is cross-border, DE Technologies' fee demands could amount to \$2.4 billion in that year alone.

Working from his one-room office in a prefabricated building here, Mr. Pool has notified "every company you can think of" in international trade of the pending patent. So far, none of these companies, which include giants like International Business Machines Corp. and DHL International, have signed license agreements, Mr. Pool says. Many decline to talk to him at all, although he says DE Technologies has tracked visits to its Web site by employees of many of these companies.

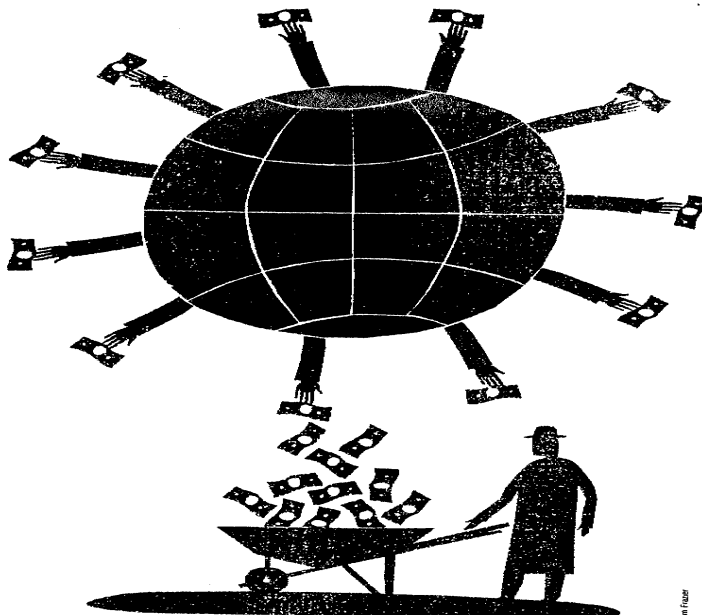
IBM and DHL decline to comment on Mr. Pool's patent claim, citing policies against discussing intellectual-property issues. Not so from Z.com Inc., a Miami-based company that provides online shipping services to overseas destinations. Leon Falco, chief executive of Z.com, says his lawyers believe the patent is invalid, calling the notion that Mr. Pool will successfully defend himself "ridiculous."

Mr. Pool also is sure to face resistance from a number of small companies that are marketing international e-commerce systems and services, including Vastara Inc. of Dulles, Va.,

which is 28% owned by Ford Motor Co., and ClearCross Inc. of New York. A Vastara spokesman says he hasn't studied DE Technologies' claims. ClearCross declines to comment.

Defending DE Technologies' claims is Paul Sullivan & Worcester. Mr. Gupta, co-chairman of an American Bar Association intellectual-property subcommittee, says he was so impressed by the patent that he took the unusual step of taking the client on a contingency-fee basis. He won't collect any money unless he is able to negotiate patent royalties.

Whatever the outcome, Mr. Pool's case is a dramatic example of a controversial new type of patent involving "business methods." Such patents, which cover a business process rather than a physical invention or a software program, leaped in popularity after a 1998 federal appeals-court ruling upheld their validity. The fastest-growing category of these patents involves the Internet, as companies race to get a lock on nearly every type of supposed



Ed Pool

innovation. Amazon.com Inc., for example, has patented "one-click" shopping, and has successfully sued to keep archival Barnes & Noble.com Inc. from using it.

But critics say many of these patents should never have been granted because they either cover obvious processes or are simply electronic forms of traditional activities. Henry B. Gutman, a prominent patent litigator for Simpson Thacher & Bartlett in New York, blames an overburdened patent office that has been "forced to make judgments regarding entire areas of experience they haven't previously had to deal with."

Stacie Kilgore, an analyst with Forrester Research, says it is "ridiculous" that the patent office might give Mr. Pool a patent on his process. Freight forwarders have used computers to calculate rates for years, she says, and several companies sell software to do the work. "We're talking about basic processes here. There are a lot of people already doing this," she says.

Officials at the patent office decline to comment specifically on Mr. Pool's application. But a spokeswoman says business-method patents are examined with extra care. About 60% of such patents are granted, she says, compared with 70% for other types of patents.

Please Turn to Page B6, Column 4

## Silicon Valley Gets Revved Up For the Election

Is Silicon Valley — a place known for its obsession with work and little else — going political? People here, after all, don't like to be identified by rigid labels, preferring instead to reinvent themselves constantly, as in "yesterday" was an e-commerce company, today I am a business-to-business exchange and tomorrow I will be a wireless, peer-to-peer network.

The current presidential election, however, is exploding the myth that no one here cares about politics. Just about anywhere you go in the Valley, these days you will trip over some politician campaigning for money or advice or just a little look-see at the current engine of economic growth — like the dozens of Democratic members of Congress who recently took a "technology tour" sponsored by California Rep. Nancy Pelosi just before their party's convention in Los Angeles.

The growing interest in politics is bipartisan. In June, Cisco Chief Executive Officer John Chambers held a fund-raiser at his home for the people that took in upwards of \$4 million for the Republican nominee, Texas Gov. George W. Bush.

Recently, a new group of Democratic-leaning young Internet execs formed Pac.com, which has been touting the decidedly controversial idea of giving politicians stock options as donors (no that you would want any of those these days).

This is not to say that people here are becoming polarized. Political foes tend to live peacefully and in close proximity. They save their fights for more important matters, such as Palm vs. Windows CE.

But most realize that politics is becoming a much more serious game. Concerns used to be limited to such important but dull issues as increased funding for research and development and more visas for skilled foreign workers (both Mr. Bush's and Democratic nominee Al Gore's positions on these issues are almost identical). Now, the range of policies that have to be addressed is expanding as quickly as the Internet itself.

The result is a complex stew of issues that do not fall neatly into party lines. They include, in part, how to adjust intellectual property laws in a digital world that has embraced the Napster; what open-access policies for online content and services make sense as media companies, telecom giants and online concerns mutually vie to shape the future of the Internet; how to protect the privacy (including from itself) of the increasingly wired citizenry. Add to that: Internet taxation, cheaper access, cyberterrorism, the digital divide between the rich and poor, changes in accounting rules affecting stock options, and mergers and acquisitions.

"You now have to anticipate government action as part of your business plan in a way you never had to," says Quincy Smith, who works in a venture-capital firm created by former Netscape head Jim Barksdale. "And I think the effect on government is going to be more infinite than most people here think."

For that reason, Valley executive Kim Polese thinks whoever is in the White House has to "get it." That's why she has been a strong backer of Mr. Gore, whom she credits with longtime leadership in the tech arena. "This is not a time for people who have just arrived on the scene," she says. "The chairman of Marimba, a maker of Internet software, 'Al Gore has a New Economy perspective because he has been here for a long time.'"

Others agree — and Mr. Gore has netted relationships with many prominent figures in the Valley, including top venture capitalist John Do

## BOOM TOWN

By Kara Swisher

# THE BLACKBERRY PATENT LITIGATION

The New York Times > Technology > Patents: Contest Over BlackBerry Patent

The New York Times

## Technology

### PATENTS

## Contest Over BlackBerry Patent



Bloomberg News

BlackBerry communications devices were checked before being sent from the factory in Waterloo, Ont.

By **TERESA RIORDAN**

Published: June 7, 2004

### **C**orrection Appended

IS it really possible that Bill Gates, Pamela Anderson and phalanxes of stockbrokers, lawyers and Congressional staff members will have to give up one of their most treasured possessions: their BlackBerries?

Today in Washington, judges at the Court of Appeals for the Federal Circuit are scheduled to ponder whether Research in Motion, the Canadian maker of the much-coveted BlackBerry hand-held wireless e-mail device, should be barred from doing business in the United States. At issue is who has the patent for the BlackBerry's technology.

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<http://www.nytimes.com/2004/06/07/technology/07patent.html?ei=5007&en=583181007...> 1



## **Microsoft ordered to pay \$521 million**

By Michael Kanellos

[http://news.com.com/Microsoft+ordered+to+pay+521+million/2100-1012\\_3-5062409.html](http://news.com.com/Microsoft+ordered+to+pay+521+million/2100-1012_3-5062409.html)

Story last modified Mon Aug 11 17:29:00 PDT 2003

**A federal court in Chicago has ruled that Microsoft must pay \$521 million to a Web technology company and the University of California after finding that the software giant's Internet Explorer infringed one of their patents.**

The company, called Eolas Technologies, originally filed suit against Microsoft in 1999, alleging that the Redmond, Wash., giant infringed on one of its patents when enabling Internet Explorer to use plug-ins and applets in the software. The company's technology was first outlined in a patent application in the early 1990s.

Martin Lueck, an attorney with Robins Kaplan Miller & Ciresi who represented Eolas, said the jury likely was swayed by internal documents from Microsoft. The specific patent from Eolas was not mentioned in the documents, but Microsoft executives had described the necessity for technology that conformed to the outlines of the patent.

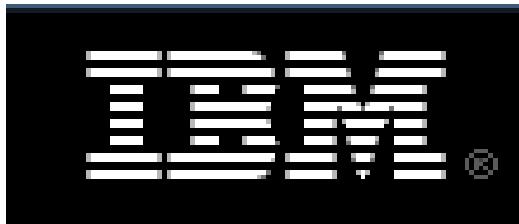
"Microsoft executives talked about the need to have a browser that would serve as an application delivery platform," Lueck said.



# INTELLECTUAL PROPERTY

TRADEMARKS: trademark law protects names, words, phrases, designs and the like that indicate the source or origin of a product or service.

We are surrounded by trademarks everywhere.



Mercedes-Benz



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OVERLAND PARK, Kan., and RESTON, Va. — 08/12/2005

Sprint (NYSE: FON) and Nextel Communications Inc. (NASDAQ: NXTL) today announced that they have completed a transaction, forming Sprint Nextel Corporation. Sprint Nextel common stock will begin trading on the New York Stock Exchange Monday, Aug. 15, 2005, under the symbol "S."

Gary Forsee, chief executive officer and president of Sprint Nextel, said, "This is a great day for our investors, employees and partners. Through a broad portfolio of product and service offerings and a passion for meeting the needs of our customers, Sprint Nextel expects to win in the market. As we look to the future, Sprint Nextel will provide customers with wireless data services with media and entertainment content augmented by a global IP network that provides our business and government customers compelling integrated communications solutions."

Tim Donahue, executive chairman of Sprint Nextel, commented, "Communication is changing, and we are not only adapting, we will lead it. In solid, tangible, measurable ways Sprint Nextel will put points on the scoreboard as we drive growth and profitability in a wireless world. The leadership team has worked tirelessly over the past several months to position the combined company for a seamless integration and Sprint Nextel is ready to hit the ground running to deliver on the needs of all of its customers."

## CASE STUDY: THE K-MART – SEARS MERGER

PERFECT EXAMPLE OF A DUAL BRANDING  
MARKETING STRATEGY



## Sears, Kmart merger unites struggling icons

Some wonder whether the larger business can overcome brand-strategy obstacles.

By GRETA GUEST  
KNIGHT RIDDER NEWSPAPERS

While Kmart executives touted Wednesday's historic combination with Sears as a story of one plus one equals two, some experts in the retail world wondered if two wrongs can make a right.

An \$11 billion deal announced Wednesday would create the nation's third-largest retailer and underscores the question of whether the combined company can fix years of problems within both of the retailing icons.

Kmart's newly minted chief executive, Aylwin Lewis, said in a news conference that the retailer has made "great progress" over the past 18 months to improve profits and merchandise. But on Wednesday it

reported a 13 percent drop in sales for the third quarter ended Oct. 27, indicating that Kmart has not fixed its core retail problems.

Kmart fell into Chapter 11 bankruptcy in January 2002

### MORE ON NEWS 3

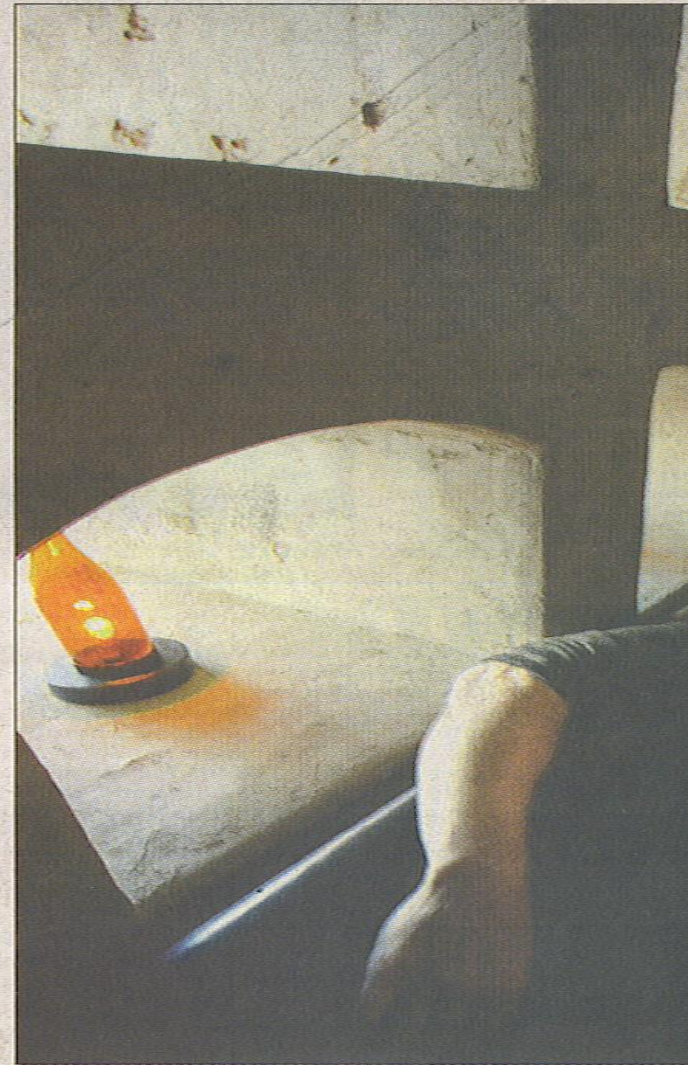
**COUNTY:** Merger could create changes for landlords, mall operators.

after a failed effort to compete with Wal-Mart. It has since rebuilt its finances after reorganizing in May 2003, but sales have continued to decline.

And Sears has had its own share of problems competing against other retailers such as Wal-Mart, Target, Home Depot and Lowe's. The majority of its 870 stores are in America's malls, where foot traffic has been dropping for the past 10 years.

The combination under

SEE DEAL • PAGE 10



**HARD WORK:** Silvia and Javier Sosa met when she... They stand in the main dining room of their new re...



# INTELLECTUAL PROPERTY

**COPYRIGHTS:** Federal copyright law protects writing and other forms of express. Copyright comes into existence when the work is “fixed in a tangible medium of expression” capable of being discerned by someone directly or through the use of a machine.



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## press room

November 18, 2004

### Illegal File Sharing Targeted In Wave Of New Lawsuits

***Peer-to-Peer Network Users On Campuses In Massachusetts, Iowa, Virginia and the District of Columbia Sued***

WASHINGTON -- The music industry's campaign to deter online music theft and foster an environment where legitimate online services can flourish continued today with a new round of copyright infringement lawsuits against 761 illegal file sharers.

As before, illegal file sharing on college campuses was a focus. Twenty-five of the lawsuits brought by the Recording Industry Association of America (RIAA), on behalf of the major record companies, were against individuals using a university Internet connection to illegally distribute music files on unauthorized peer-to-peer services such as eDonkey, Limewire and Kazaa.

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# INTELLECTUAL PROPERTY

TRADE SECRETS: It is based on state trade secret law as the primary means of protecting their intellectual property. It requires no filing or registration, can be quite broad in scope, and may last indefinitely.

Example: the formula for the Coca Cola soft drink is a trade secret.

The owner of a trade secret is required to use “reasonable measures” to maintain the secrecy of the information.

Example: Use of a Non-Disclosure Agreement AKA NDA.



## DUE DILIGENCE (INTELLECTUAL PROPERTY AUDIT)

1. Customer / Licensee files
2. Employee and contractor files
3. Intellectual property acquisition files
4. Patent application files
5. Trademark registration files
6. Patent application files
7. Uniform Commercial Code (UCC) filings
8. Files regarding competitors
9. Research & Development files
10. User documentation files
11. Marketing files



# DUE DILIGENCE (INTELLECTUAL PROPERTY AUDIT)

INSPECTION OF THE TECHNOLOGY

END RESULT:

Better understanding of how the value of the intellectual property

**USPTO Releases List of Top 10 Universities Receiving Most Patents in 2004**

*University of California leads U.S. academic institutions for 11<sup>th</sup> consecutive year*

The Department of Commerce's United States Patent and Trademark Office (USPTO) today announced the top 10 U.S. universities receiving the most patents during calendar year 2004. Listed below are the 10 universities receiving the most patents for inventions in 2004, along with their 2003 ranking. The University of California tops the list for the 11th consecutive year.

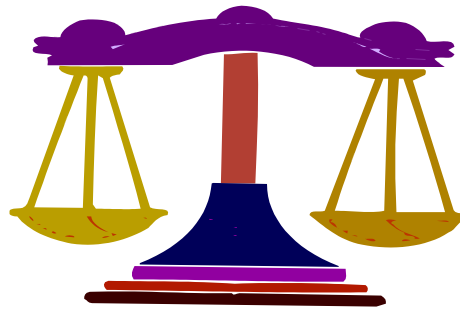
"The development and commercialization of technology are essential to a strong economy," said Jon Dudas, Under Secretary of Commerce for Intellectual Property and Director of the USPTO. "Academic institutions are generators of discovery and innovation, and their patented inventions benefit all Americans through new jobs and new products that improve our lives daily."

This report presents a preliminary list of the U.S. universities receiving the most patents for inventions (i.e., utility patents) during the 2004 calendar year. All campuses are included.

**PRELIMINARY LIST OF TOP PATENTING U.S. UNIVERSITIES**  
**Calendar Year 2004**

<b>Rank in 2004*</b>	<b>Number of Patents in 2004*</b>	<b>U.S. University*</b>	<b>(Rank in 2003)</b>	<b>(Number of Patents in 2003)</b>
1	424	University of California	(1)	(439)
2	135	California Institute of Technology	(2)	(139)
3	132	Massachusetts Institute of Technology	(3)	(127)
4	101	University of Texas	(4)	(96)
5	94	Johns Hopkins University	(7)	(70)
6	75	Stanford University	(5)	(85)
7	67	University of Michigan	(8)	(63)
8	64	University of Wisconsin	(6)	(84)
9	58	University of Illinois	(20)	(39)
10	52	Columbia University	(9)	(61)

\*The listed patent counts are preliminary counts that are subject to correction. The final listing of patent counts for U.S. universities in 2004 should be available in late December of 2005.



Charles C.H. Wu, Esq.

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