Patent Law (1):
Introduction

by M. E. Kabay, PhD, CISSP
Associate Professor, Computer Information Systems
Norwich University, Northfield VT

This is the first article in a short series looking at recent developments in patents affecting e-commerce techniques. Before looking at how patent law is being used to make companies pay license fees for commonly-used techniques, I want to start with a brief, non-technical overview of patent law in the USA. As always, I am required to notify you that I am not a lawyer and this is not legal advice. For legal advice, consult an attorney with appropriate expertise in this area of the law who is licensed to practice in your jurisdiction. [Note: People should use this formulation when discussing legal matters because it is against the law as defined in all states in the USA to give legal advice or to appear to be giving legal advice if one is not an attorney licensed for practice in a particular state by the appropriate state bar. For 81 pages of mind-boggling detail about this issue, see the American Bar Association Report listed in the reference section of this article.]

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In what follows, I am summarizing information mostly from the textbook by Roy J. Girasa (see below), an excellent work that I use for the “CJ341 Cyberlaw and Cybercrime” course in the Department of Criminal Justice at Norwich University.

Patents were established in the US Constitution to support the progress of science and the useful arts. Patents (the word means “open”) provide a limited time (currently 20 years in most cases) for exclusive right to use writings and discoveries by the owner of the patent; after expiration of the patent, the techniques are available to everyone without interference. The first Patent Act was passed in 1790; another in 1793; and an important revision (U.S. Code Title 35, abbreviated “35 USC”) was passed in 1952 with changes added in 1995.

Section 101 of the Patent Act (35 USC §101) stipulates that patents may be granted only for new, useful and non-obvious processes, machines, manufacturing techniques, composition of materials or improvements. “New” is defined in 35 USC §102, which explicitly excludes patents if the subject of the patents is

* Previously known or used in US
* Patented or described in printed publication before filing
* In public use or for sale in US more than one year before filing
* Abandoned
* Not invented by the applicant
* Also invented by someone else at the same time
* Already patented by someone else.

In addition, a patent may be rejected if it is obvious to a person with ordinary skill in the art concerned. In this context, “art” means science, technology or technique. “Ordinary skill” is defined by the complex interplay of a hypothetical competent expert’s awareness of all pertinent
prior art, the types of problems encountered, prior art solutions, the speed of technology change
and the educational level of such experts.

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In the next article in this series, I’ll introduce a company that is using patents to generate revenue
in an alarming way.

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For further reading:

American Bar Association (2002). Client Representation In The 21st Century: Report Of The


0-387-94832-5. xiv + 362. Index.

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M. E. Kabay, PhD, CISSP is Associate Professor in the Department of Computer Information
Systems at Norwich University in Northfield, VT. Mich can be reached by e-mail at <mkabay@norwich.edu>; Web site at <http://www.mekabay.com/index.htm>.

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