



BRIEFS

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LEGUS AND MVS

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MVS has been a member of LEGUS for 14 years. LEGUS is an international network of high quality, small to mid-sized law firms from around the world. Most member firms have a broad, general practice. LEGUS members meet two or three times per year at different cities across the globe where members firms are located.

LEGUS was founded in 1995 as a Michigan not-for-profit organization to assist law firms in better serving their clients as their needs for worldwide expertise expanded. For over 20 years, LEGUS members have developed trusted, valuable and respected relationships with each other. When client's needs go beyond their law firm's borders or practice areas, a LEGUS member can contact almost 2,500 trusted lawyers in the desired state or country, and with the needed expertise, to help meet those needs. LEGUS reflects a vibrant worldwide range of work and client referrals between member firms. We build close relationships between our members through referrals, the legal and educational programming held at our meetings, and an exchange of information focusing on member law firm business operations. Together these create true and lasting friendships within an environment of trust and confidence, which enhances our members as people, and thus improves the quality of their legal performance and their ability to service their clients' business needs.

Currently, LEGUS has 69 member firms, with 36 located in the United States (32 states + Washington DC), and 33 located in foreign countries, including 4 in Africa, 3 in Asia, 2 in Canada, 17 in Europe, 3 in Latin America, 1 in the Middle East, and 3 in South America. LEGUS continues to recruit new members in additional states and countries.

LEGUS is governed by an Advisory Board. In June, MVS partner Kirk Hartung will become the chair of the Advisory Board for a two-year term. The President, Sandra Boyer, is a founder of the organization, and manages the operation from their headquarters in Ann Arbor, Michigan. She has been a law firm consultant for over 25 years, with expertise in general management; succession planning (leadership and client); strategic marketing and development of marketing tools; strategic planning; associate development; retreat facilitation; lawyer compensation; firm evaluation; and personnel management including the recruitment of the law firm professional and administrative team. Our events and member services coordinator is Stacey McIntyre, who has been with LEGUS since 2011.

MVS clients benefit from our LEGUS membership because we can refer you to other lawyers whom we know, trust, and recommend, for any legal matters beyond our intellectual property specialty, in other states or countries. Our relationships with these other law firms provides value added services for our clients because of the confidence we have in how you and your matters will be handled when we refer you to these friends.



YOUR GLOBAL IP IS OUR SPECIALTY

PATENTS · COPYRIGHTS · TRADEMARKS · TRADE SECRETS
ENTERTAINMENT LAW · LITIGATION · LICENSING

PATENT APPLICATIONS - WHAT HAPPENS AFTER THEY ARE FILED?

Author: [Luke T. Mohrhauser](#)

You have worked with an MVS attorney to get your invention covered by a patent application, and the application has been filed. *Great!* Have you ever wondered what happens to the application at the US Patent Office? Part of it depends on if you have filed a provisional application or a utility application. If you filed a provisional application, the application gets assigned a serial number and filing date, and gets put into the USPTO's database. Other than that, no one will look at the contents or make the filed documents accessible. You then have the 1-year wait to determine if you would like to file the utility application.

However, if and when you file a utility application, the fun begins. First, the contents and documents of the application and associated paperwork will be evaluated to meet procedural and formal requirements. Assuming this is met, the application will be given a serial number and assigned to a patent examiner.

The USPTO is divided into technology centers, with examiners placed in the centers that are most associated with their educational background. For example, Technological Center 3600 includes, in part, agricultural applications and an examiner looking at agricultural implement applications may have a background in Mechanical Engineering, Ag Engineering, or the like.

A broad list of the Technology Centers are as follows:

- 1600 - Biotechnology and Organic Chemistry
- 1700 - Chemical and Materials Engineering
- 2100 - Computer Architecture, Software, and Information Security
- 2400 - Computer Networks, Multiplex communication, Video Distribution, and Security
- 2600 - Communications
- 2800 - Semiconductors, Electrical and Optical Systems and Components
- 2900 - Designs
- 3600 - Transportation, Construction, Electronic Commerce, Agriculture, National Security and License & Review
- 3700 - Mechanical Engineering, Manufacturing, Products

Within each of these, there are art units covering specific categories. For example, while 3600 may include the agricultural implement application, it could also include other various subject matters. Therefore, an art unit such as 3641 is more specified, and covers applications for such inventions related to planting apparatuses.

Once an examiner with a technical background fit to examine the subject matter covered in the application has been assigned, it is a bit of a waiting game. The standard practice of applications is first in, first examined. Therefore, the pendency of the actual examination may be subject to the amount of applications assigned to a particular art unit and/or examiner within the unit. There are approximately 546,766 unexamined applications at the Patent Office, and approximately 8,900 examiners, which averages out to about 61 unexamined applications per examiner. This explains, at least partially, the long wait from filing to receiving a first action. According to data provided by the USPTO, as of March 2017, the average pendency from filing a new application to receiving correspondence from an examiner is currently 16.1 months. This covers all art units, and may vary according to the particular technology of the applications. For example, Technology Center 1600 currently has the shortest pendency, at 12.4 months, while Center 2100 has the longest, at 20.1 months.

At this point, the back and forth begins in an attempt to place the claims in form for allowance to issuance. For reference, the total pendency from filing to issuance is currently an average of 25.7 months. This is actually pretty similar across the Technology Centers.

Thus, there is at least some explanation as to the timing of a patent application. It should also be noted that this is not the case with every application, and it is completely okay to reach out to an attorney to see if they can check on the status of an application or to look into an expected time to first action, which we can access through the USPTO's website. In addition, if you would like to look at any of the data related to applications, pendency, etc. provided by the USPTO, you can do so via the [Patents Dashboard](#).

As always, if you have any questions or if you would like to learn more about the process or options to speed up the examination process, please contact an [MVS attorney](#).

Author: [Brandon W. Clark](#)

In the most general sense, copyright infringement is copying, or using, a work protected by copyright without permission from the copyright owner. Almost inevitably, soon after you hear the words “copyright infringement”, you will also hear the words “fair use”. Fair use is one of the most frequently discussed defenses to copyright infringement but it is also one of the least understood. This article is intended to help you understand what fair use is and what factors are used when determining if fair use is an applicable defense to copyright infringement.

Fair use is a term that comes up daily in our office and we frequently hear the term being used both correctly and incorrectly. The fair use defense has recently been raised in a number of high profile copyright disputes involving [Abbott and Costello](#), [Star Trek](#), and [Dr. Seuss](#). As our society becomes more dependent on digital communication and social media, the potential to infringe upon copyrighted works increases. At its core, social media is all about sharing content but to many people’s dismay, stating “it’s just on my blog/Facebook/Twitter/Instagram” is not a viable legal defense to copyright infringement. Understanding what is and what isn’t considered a fair use may help you or your company avoid potential headaches in the future.

What Is Fair Use?

Again, in very general terms, a fair use is any copying of copyrighted material done for a limited and “transformative” purpose, such as to comment upon, criticize, or parody a copyrighted work.

Fair use is a legal doctrine that is intended to promote freedom of expression and balance the scope of copyright protection by permitting the unlicensed use of copyright protected works in certain situations. Section 107 of the Copyright Act provides the statutory framework for determining whether something is a fair use and identifies certain types of uses including *criticism, comment, news reporting, teaching, scholarship, and research* as examples of activities that may qualify as fair use. Fair use is not, however, limited to those examples listed in Section 107. Courts examine the facts surrounding each particular case and balance them against four factors to determine whether or not something should be considered a fair use. The four fair use factors are:

- **Purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes:** Courts look at how the party claiming fair use is using the original copyrighted work. “Transformative” uses are more likely to be considered fair use. Transformative uses are those uses that add something new, change the meaning or “message” of a work, and do not substitute for the original use of the work. A parody of a work is often deemed transformative because it alters the expression or meaning of the original work. Additionally, Courts are more likely to find that non-profit educational and non-

commercial uses are fair. This does not mean, however, that all non-profit education and non-commercial uses are fair and all commercial uses are not fair; rather, courts will balance the purpose and character of the use against the other factors below.

- **Nature of the copyrighted work:** This factor analyzes the degree to which the work that was used relates to copyright’s purpose of encouraging creative expression. Because the circulation of facts or information benefits the public, Courts generally give more leeway to copy from factual works such as biographies than they would fictional works. The more creative a work is, the more protection it is likely to receive.
- **Amount and substantiality of the portion used in relation to the copyrighted work as a whole:** Under this factor, courts look at both the quantity and quality of the copyrighted material that was used. The less you take, the more likely the use will be considered a fair use. That said, some courts have found use of an entire work to be a fair use under certain circumstances. And in other situations, using even a small amount of a copyrighted work was determined not to be a fair use because the selection was a very important part, or the “heart”, of the work.
- **Effect of the use upon the potential market for or value of the copyrighted work:** Another important factor is whether the use deprives the copyright owner of income or the unlicensed use harms the existing or future market for the copyright owner’s original work. In analyzing this factor, courts consider whether the use is hurting or replacing the current market for the original work and/or whether the use could cause substantial harm if it were to become widespread.

In addition to the factors listed above, Courts may consider other factors as well. No one factor is dispositive. They are each analyzed individually and then balanced with the others. Because the analysis is done on a case-by-case basis and the outcome of any given situation depends on a fact specific inquiry, there is no formula or bright line rule to ensure that a certain percentage or amount of work may be used without permission. If you find yourself on the wrong end of a copyright infringement claim or want to know if your fair use defense is viable you can use the above factors in making an initial analysis or decision. Upon doing so, if you still have questions or need additional information, we recommend contacting someone with experience in copyright law and fair use.

Brandon W. Clark is the Chair of the Copyright, Entertainment, and Media Law Practice Group at McKee, Voorhees & Sease, PLC. For additional information please visit www.ipmvs.com or contact Brandon directly via email at brandon.clark@ipmvs.com.

LES IOWA

For more than 50 years, the [Licensing Executives Society \(LES\)](#) has been the leading association for intellectual property, technology, and business development professionals to achieve professional and personal success. LES is an independent, professional organization that facilitates global IP commerce through education, networking, standards development, and certification. Whether you are new to licensing or an experienced licensing executive, LES is a great organization to be a part of.



Licensing Executives Society
(U.S.A. and Canada), Inc.

MVS attorneys, [R. Scott Johnson](#) and [Jill N. Link, Pharm.D.](#) helped to form the LES Iowa Chapter and both serve on the Leadership Board. Scott is the Sponsorship Chair and Jill is the Communications Chair.

Scott and Jill encourage you to attend your local LES events, specifically those in Iowa if applicable. Iowa is one of over 35 LES Chapters in LES (USA & Canada), Inc. LES Chapters are located throughout the United States and Canada in regions with concentrations of LES members and licensing professionals.

The Iowa Chapter, under the direction of the Chapter Leadership, holds regular meetings throughout the state. LES members and other expert speakers present topics relevant to technology transfer and licensing.

The LES Iowa Chapter will be hosting an event on July 17, 2017 in Des Moines, Iowa. Scott and Jill invite you to attend whether you're an LES member or not. The luncheon and panel discussion will discuss best practices of valuation of IP technology and be held from 12:00 p.m. - 4:00 p.m. at the Drake University Law School Legal Clinic (2400 University Ave, Des Moines, IA 50311). The event is open to members and non-members. More details including how to register can be found soon by visiting the [LES Iowa Chapter website](#).

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WE'RE THERE

April 20, 2017

[R. Scott Johnson](#) presented the Top Growth Company of the Year award at the Technology Association of Iowa (TAI) Prometheus Awards. MVS was a sponsor of the Prometheus Awards and Scott is a Board Member of TAI.

April 27, 2017

[Heidi S. Nebel](#) attended the Colorado State University Demo Day in Fort Collins, Colorado. The premier event that inspired and enriched the entrepreneurial community of CSU and Northern Colorado. MVS was a sponsor of the event.

April 27, 2017

[Caitlin M. Andersen](#) attended and judged at this year's Invent Iowa Invention Convention hosted by the Belin-Blank Center in Iowa City, Iowa. Invent Iowa is a statewide program that promotes the invention process for kindergarten through high school students. MVS was a sponsor and presented the MVS Agriculture Award.

May 4, 2017

[Kirk M. Hartung](#) presented at the Des Moines School District, Central Campus, to the Engineering Design and Development class, on Patent Basics.

May 4 - 5, 2017

[Brandon W. Clark](#) and [Nicholas J. Krob](#) attended EntreFEST in Iowa City, Iowa. The event was geared toward startups and entrepreneurs. MVS was a sponsor of the event.

May 20 - 24, 2017

[Bruce McKee](#) attended the 139th International Trademark Association (INTA) conference in Barcelona, Spain. Bruce will be meeting with many foreign associates and discussing global IP topics.

June 2, 2017

[R. Scott Johnson](#) and [Christine Lebron-Dykeman](#) are presenting at the Iowa Association of Corporate Counsel (ACC) conference at Drake University in Des Moines, Iowa on "Protecting Your IP and the Implications of The Defend Trade Secrets Act of 2016".

June 21 - 24, 2017

[Patricia A. Sweeney](#), [Heidi S. Nebel](#), and [Jill N. Link, Pharm.D.](#) are attending the American Seed Trade Association (ASTA) 134th Voyage of Better Seed Conference in Minneapolis, Minnesota. The event gathers seed industry professionals to discuss policy development.

June 22 - 24, 2017

[Kirk M. Hartung](#) and [Jonathan L. Kennedy](#) are attending the LEGUS (international network of law firms) annual meeting in Chicago. The conference will be centered on motivational leadership.

June 22, 2017

[Brandon W. Clark](#) and [Caitlin M. Andersen](#) invite you to the Books and Bricks for Belize event in Des Moines, Iowa. MVS is a sponsor of the Books and Bricks for Belize fundraising event put on by The James Arthur Albert Foundation. The Foundation promotes education by providing scholarships to students & building classrooms in the Toledo District of Belize. Contact Brandon or Caitlin for more information at 515-288-3667.

July 17, 2017

[R. Scott Johnson](#) and [Jill N. Link, Pharm.D.](#) will be hosting the LES Iowa Chapter panel discussion regarding best practices of valuation of IP technology. Scott and Jill are on the Leadership Board for the LES Iowa Chapter. More details and registration information can be found soon on the [Iowa LES Chapter website](#).

If you're interested to learn about what our MVS attorneys attend and learn, please contact them through www.ipmvs.com or by calling 515-288-3667.