CHAPTER ONE - THE SCHOLAR

Old Law: Jurisprudence of Myth (Patent Law Edition)

Ponderosa University, Northern Arizona

Three Weeks Before The Barrier

Athelia Winters lived in the spaces between fact and myth.

The Ponderosa University library basement (Section 7, Row M, Ancient Legal Systems) had become her second home. Or perhaps her first. Her dorm room was just where she slept. This was where she existed.

Surrounded by books that no one else checked out. Texts that professors dismissed as "interesting cultural artifacts" but not "real law." Fragments of legal codes from civilizations that supposedly never existed.

But Athelia knew better.

She sat at her usual table, the one in the far corner where the fluorescent lights flickered and the heating never quite worked. Seven books lay open simultaneously, three notebooks filled with cross-referenced notes, and a laptop displaying scanned images of manuscripts too fragile to handle.

Her current obsession: **Intellectual property protection in pre-classical mythology.**

More specifically: a patent application that had been pending for thousands of years. And she had three days left to continue it before it abandoned forever.

"There has to be a pattern," she muttered, pen moving across her notebook. "Four different mythologies. Four different continents. Four different time periods. But they're all describing the same system. The same pending application."

She flipped to the Greek text. A fragment recovered from Delphi, barely legible, dismissed by mainstream scholars as "poetic metaphor."

> *"Sacred grove where Guardians walked. The place of grant. Where innovations pass from chaos to order. Marked by stone and oath and specification. Those who claim must prove: novelty, utility, and non-obviousness. The Examiner tests all claims."*

Athelia wrote in her notebook:

> Greek: "Guardians" = Patent Examiners?
> "Place of grant" = USPTO equivalent?
> "Innovations pass from chaos to order" = Patent prosecution?
> "Marked by specification" = 35 U.S.C. § 112(a) WRITTEN DESCRIPTION
> "Novelty, utility, non-obviousness" = 35 U.S.C. § 101, 35 U.S.C. § 102, 35 U.S.C. § 103 REQUIREMENTS
> "Examiner tests all claims" = Office Action process
>
> 35 U.S.C. § 101 Patentable subject matter

She pulled over the Norse text. A fragment from Iceland, part of a thing-law collection that scholars called "fantastical additions" to real legal codes.

> *"Allocation stone sealed by wolf-kin oath. Where the strong claim their inventions. Where genetic arts meet prior art. None may practice without grant. The barrier protects until enablement is proven. Reduction to practice opens the way."*

Her pen flew:

> Norse: "Wolf-kin oath" = Patent oath/declaration? (37 CFR § 1.63, § 115)
> "Strong claim" = CLAIM DRAFTING - precise language required
> "Genetic arts meet prior art" = 35 U.S.C. § 102 NOVELTY - prior art search
> "None may practice without grant" = Patent enforcement/ infringement
> "Barrier protects" = Patent pending/prosecution bar
> "Enablement is proven" = 35 U.S.C. § 112(a) ENABLEMENT REQUIREMENT
> "Reduction to practice" = 35 U.S.C. § 102(g) - actual vs constructive

35 U.S.C. § 102 Conditions for patentability; novelty

And the Celtic fragment, recovered from a bog in Ireland, written in Ogham on oak, carbon-dated to 400 BCE but describing legal concepts that shouldn't have existed then.

> *"Meeting place of three branches of law. Marked by ancient treaty. Where the emerald-eyed examine, the silver-eyed balance, and the black-eyed consume. Guardians grant rights here. The specification must enable. The claims must be definite. The invention must have utility."*

Athelia stopped breathing.

Examine. Balance. Consume.

She flipped frantically to her personal journal, the one she kept separate from academic notes. The one filled with doodles in the margins. Three sets of eyes, drawn obsessively since childhood:

Emerald eyes. Sharp. Judging. (Examining)

Silver eyes. Reflective. Balanced. (Balancing)

Black eyes. Endless. Consuming. (Consuming)

"What the hell," she whispered.

Her hands shook as she wrote:

> Celtic CONFIRMS Greek and Norse
> "Three branches of law" = three requirements? (utility/novelty/non-obviousness)
> OR three types of IP? (patent/trademark/copyright)
> OR three examination stages?
>
> Emerald = EXAMINATION (35 U.S.C. § 131 - Examiner authority)
> Silver = BALANCE (PTAB - appeal/review)
> Black = CONSUMPTION (Prior art consuming claims?)
>
> "Specification must enable" = 35 U.S.C. § 112(a) ENABLEMENT
> "Claims must be definite" = 35 U.S.C. § 112(b) DEFINITENESS

"Invention must have utility" = 35 U.S.C. § 101 UTILITY (specific, substantial, credible)

NOT METAPHOR
NOT DREAMS
ACTUAL PATENT LAW STRUCTURE???

35 U.S.C. § 112(a) Specification must enable PHOSITA to make/use invention

35 U.S.C. § 112(b) Claims must particularly point out and distinctly claim the invention

Then she reached for the fourth text. The one closest to home. The one that made her hands shake every time she read it.

Ancestral Puebloan petroglyphs, photographed from canyon walls forty minutes south of campus. Walnut Canyon. Where the cliff dwellings stood empty for seven hundred years.

Where no one could explain why an agricultural people carved chambers into sheer limestone cliffs.

"The Elders examine in the upper chambers. The Warriors advocate in the lower chambers. Those who seek rights bring their innovations to the Warriors, who translate flesh and thought into specification and claim. The Warriors present to the Elders. The Elders test: Does it have utility? Is it novel against prior art? Would it be obvious to one skilled in the art? The Warriors argue. The Elders judge. When examination is complete, rights are granted. The stone chambers hold both roles. Examiners and advocates. Two parts of one Office."

Athelia's pen trembled:

ANCESTRAL PUEBLOANS = PATENT OFFICE

NOT farmers. NOT just dwellings.
EXAMINATION CENTER.

Elders = EXAMINERS (35 U.S.C. § 131 - examiner authority to reject/allow)
Warriors = PATENT AGENTS/ATTORNEYS (advocate for applicants)

Upper chambers = examination offices
Lower chambers = agent offices

Complete prosecution system:
1. Inventor brings innovation to Warrior (agent)
2. Warrior drafts specification/claims (35 U.S.C. § 112)
3. Warrior files with Elder (examiner)
4. Elder examines: utility (35 U.S.C. § 101), novelty (35 U.S.C. § 102), non-obviousness (35 U.S.C. § 103)
5. Warrior argues/amends on behalf of client
6. Elder grants or rejects

This is 40 MINUTES FROM CAMPUS.
The cliff dwellings at Walnut Canyon.
They disappeared around 1300 CE.
The EXAMINATION CENTER closed.

But the barrier might still exist.

AND THERE'S A PENDING APPLICATION.
Filed by the First Woman.
Guardian Queen examination protocols.
STILL PENDING after millennia.
About to ABANDON.

23 others tried to continue it.
All failed.

I found their names in the fragments.
23 failed continuation attempts.
None had the genetic match required.

Do I have it?
I don't know.
No way to test against DNA from thousands of years ago.

But I have the dreams.
The memories that feel like mine but couldn't be.
The genetic markers ancient texts describe in detail.
Every trait matches what they said Guardian Queens carried.

The barrier will test me.
Either I'm a match and it accepts my filing,
or I end up like the 23 who tried before me.

No proof. Just circumstantial evidence.
And 72 hours to decide if I'm willing to bet my life on it.

37 CFR § 11.1 Patent agents represent inventors before USPTO. Must pass registration exam (USPTO Patent Bar).

Patent examiners work for USPTO, review applications under 35 U.S.C.

35 U.S.C. § 120 Continuation applications must be filed before parent abandons or issues. Deadline pressure is REAL in patent prosecution.

She flipped back to the Norse fragment. Squinted at a section she'd dismissed as illegible smudging. Adjusted her laptop screen to enhance the scanned image.

Not smudging.

Additional text.

"The Office divides by art. Genetic innovations to the First Center. Territorial claims to the Second. Transformation arts to the Third. Hybrid compositions to the Fourth. Each center examines what it knows. Each art center holds its own examiners. The wolf-kin claim through the First Center, where flesh and blood meet specification."

Athelia's hands shook as she wrote:

NOT ONE OFFICE.
MULTIPLE TECHNOLOGY CENTERS.

Like USPTO structure:
- TC 1600 (Biotech/Organic Chem) = "First Center" (Genetic innovations)
- TC 3600 (Transportation/Mechanical) = "Second Center" (Territorial claims?)
- TC 2100 (Computer/Software) = "Third Center" (Transformation arts)
- TC 1700 (Chemical/Materials) = "Fourth Center" (Hybrid compositions)

Different examination centers for different TYPES of innovations!
Wolf-kin genetics = BIOTECH CENTER (TC 1600 equivalent)
"Where flesh and blood meet specification" = biological

compositions of matter

FACTUALLY ACCURATE PATENT OFFICE STRUCTURE

Real USPTO has 9 Technology Centers, each specializing in different invention types

She grabbed the Greek text again. Found a passage she'd translated as "place of grant" but had more nuance in the original:

"Places of grant. Divided by the nature of innovation. Guardians trained in their art center. None may examine what they do not understand."

"Each art center holds its own examiners," she whispered. "Patent examiners specialize. A biotech examiner doesn't examine software. A mechanical examiner doesn't examine genetics. That's how real patent offices work."

USPTO examiners specialize by technology. TC 1600 examiners have degrees in biology/chemistry.

She wrote in large letters:

WALNUT CANYON = WHICH TECHNOLOGY CENTER?

Her pen flew:

Wolf-kin = genetic/biological (TC 1600?)
But Norse fragment mentions "consciousness pathways" and "neural inheritance"
Greek text: "intelligence woven into flesh"
Celtic: "thinking blood, learning bone"

Not JUST biotech.
Not JUST AI.
HYBRID CENTER.

BIOMEDICAL + AI + DNN (Deep Neural Networks)

Walnut Canyon = HYBRID TECHNOLOGY CENTER
- Biological compositions (shifter genetics)

- Artificial Intelligence (consciousness transfer?)
- Deep Neural Networks (inherited instinct/knowledge?)

This is why human scholars don't recognize it.
We don't HAVE a Technology Center for bio-AI hybrids.
We examine them separately.
But what if consciousness IS biological?
What if neural networks are GENETIC?

Multiple centers. Multiple specializations.
Just like real USPTO.
But Walnut Canyon examines what we can't classify.

She pulled out a map. Spread it across the table. Started plotting coordinates.

The Greek fragment had been recovered from Delphi, but it referenced a location "across the western sea, where innovations grow ancient."

The Norse text specified "New Land, where prior art melts to novelty, forty days' sail from Iceland."

The Celtic fragment said "Beyond the sunset ocean, where specifications and claims meet stone."

All of them. Every single one.

Athelia's pen circled a spot on the map.

Walnut Canyon. Forty minutes south of Flagstaff. A protected national monument where ancient cliff dwellings sat empty. Where tourists walked the rim trail but never felt what Athelia sensed when she looked at the photographs. Where the Park Service said "agricultural settlement" but couldn't explain the chamber layout.

But that wasn't why people avoided it.

Athelia pulled up local folklore on her laptop. Found the Reddit threads. The hiking forums. The paranormal investigation blogs.

"Weird feeling in the center of Walnut Canyon. Like pressure."
"My dog refused to go past a certain point. Just sat down and howled."
"GPS stops working about a mile in. Compass spins."
"I swear I saw something shimmer. Like heat waves but it was 40 degrees."

Dismissed as magnetic anomalies. Natural explanations. Overactive imaginations.

But Athelia knew better.

She wrote in large letters across her notebook:

WALNUT CANYON = THE EXAMINATION CENTER

"There's a barrier there," she whispered. "A real, physical barrier between jurisdictions. Between the examination realm and the public domain. The cliff dwellings weren't homes. They were examination offices. Upper chambers for the Elders who examined. Lower chambers for the Warriors who advocated. Between claimed and unclaimed territory."

> Patent prosecution creates legal boundary between public domain and exclusive rights

"That's exactly what it is."

Athelia's head snapped up.

A student stood at the end of her table. Tall. Maybe mid-twenties. Dark hair. Sharp features. Dressed casually in jeans, dark shirt, messenger bag slung over one shoulder.

But his eyes.

His eyes.

Sapphire blue. Deep. Brilliant. Like looking into cut gemstones. Like staring at the ocean compressed into human form.

Athelia's pen slipped from her fingers.

She'd been drawing those eyes for years.

Not emerald. Not silver. Not black.

But sapphire. A fourth set she'd only started adding recently. Eyes that watched. Eyes that knew.

"May I?" He gestured to the empty chair across from her.

Athelia couldn't speak. Could only nod.

He sat. Set his bag down. Looked at her spread of books and notes with something like approval.

"Severen," he said, offering his hand. "Cael'Sereith. Graduate student. Comparative mythology and ancient intellectual property systems."

"Athelia." Her voice came out strangled. "Winters."

His sapphire eyes swept across her research. The Greek, Norse, Celtic, and Ancestral Puebloan fragments. The map with Walnut Canyon circled. The notebook with statutory references scrawled in margins.

"You're close," Severen said quietly. "Closer than the twenty-three who tried before you. But you're making the same mistake they did."

Athelia's breath stopped. "What mistake?"

"Filing in the wrong Patent Office." He pulled a document from his bag. Official USPTO letterhead. Her name. Her thesis title. And stamped across it in red: **REJECTED - LACK OF JURISDICTION**.

Her application. The one she'd filed three months ago.

"How did you—"

"Section 101 rejection," Severen said, reading from the Office Action. "Abstract idea. Not patent-eligible subject matter. Wrong Technology Center—they bounced you between TC 1600 Biotech, TC 2100 Computer, couldn't figure out where Guardian Queen

examination protocols belong. Final examiner note: 'This office lacks jurisdiction over the claimed subject matter.'"

Athelia stared at the rejection. Three months of work. Dismissed.

"They don't understand what you're claiming," Severen continued. "Human USPTO can't examine Guardian Queen innovations because they don't acknowledge Guardian Queens exist. Wrong jurisdiction. Like trying to file a dragon design patent with an office that doesn't believe in dragons."

> 35 U.S.C. § 101 rejection - examiner determines claimed invention is not patent-eligible subject matter

"So it's over," Athelia whispered.

"No." Severen's smile was sharp. "You filed in the wrong Patent Office. But there's another one. The ORIGINAL Office. Where the First Woman filed her parent application thousands of years ago. Where it's STILL PENDING. And you have three days to file your continuation-in-part there before the parent abandons."

He leaned forward. "Human USPTO rejected you for lack of jurisdiction. They were right—they DON'T have jurisdiction. But the Office at Walnut Canyon does. That's where you need to file."

> Patent Office jurisdiction - USPTO can only examine applications within its authority. Wrong office = rejection, not invalidity. Like filing international patent with wrong national office.

Severen's expression shifted. Became more serious. "But understand this, Athelia. Even at the correct Office, there are boundaries. Places where patents cannot reach. Three forbidden zones."

He pulled a worn notebook from his bag. Opened it to a diagram - three overlapping circles, each shaded differently.

"**Abstract Ideas.**" He tapped the first circle. "Mathematical concepts. Methods of organizing human activity. Mental processes. The Patent Office—any Patent Office, human or Old Law—cannot grant exclusive rights to pure thought. Not without

something more. Not without integration into a practical application."

> MPEP § 2106.04(a) Abstract ideas are judicial exceptions to § 101 patent-eligibility

"**Laws of Nature.**" Second circle. "Physical principles. Natural phenomena. $E=mc^2$. Gravity. DNA sequences as they exist in nature. These belong to everyone. Cannot be claimed. The commons cannot become private property."

> MPEP § 2106.04(b) Laws of nature and natural phenomena ineligible for patent protection

"**Products of Nature.**" Third circle. "Living organisms. Naturally occurring compounds. Isolated DNA. If nature made it first, you cannot claim ownership. Only transformations of nature can be patented. Only applications that go beyond what exists."

> MPEP § 2106.04(c) Products of nature are not patent-eligible unless significantly different from natural state

Athelia stared at the overlapping circles. "So Guardian Queen examination methods..."

"Could be abstract," Severen finished. "If you claim them as pure mental processes—how to think like an examiner—the Office will reject under § 101. But if you claim them as biological transformations? Genetic modifications that enable examination consciousness? That might cross the boundary."

He leaned closer, sapphire eyes intense. "There's a test. Ancient. Called Alice-Mayo by human courts, but the Old Law knew it first. **Two steps:** First, is your invention directed to a judicial exception? Second, does it contain an inventive concept—something significantly more than the exception itself?"

> Alice Corp. v. CLS Bank (2014) Established two-step framework for § 101 eligibility analysis

"Most failures happen at step two," Severen continued. "Inventors add conventional post-solution activity—'apply it with a computer,' 'use generic equipment'—thinking that saves the

claim. It doesn't. The inventive concept must be in how you transform the abstract into something tangible. Something real."

> **MPEP § 2106.05** Inventive concept analysis - determining if judicial exception integrated into practical application

"And there's new guidance," he added quietly. "From 2024. About artificial intelligence. The Office realized AI claims were being rejected too broadly. New examples—47, 48, 49—showing when AI implementation crosses from abstract to patentable. When machine learning becomes inventive concept."

> **2024 AI SME Update** Examples 47-49 clarify AI patent eligibility (effective July 17, 2024)

Athelia's mind raced. "Bio-AI hybrid examination. That's... that could be both. Abstract if I claim the thought process. Patentable if I claim the biological mechanism that enables it."

Severen's smile returned. Sharp. Approving. "Now you're thinking like a patent attorney. The boundary isn't fixed—it's determined by how you draft your claims. How you describe the transformation. The Old Law and the new law agree on this: ideas alone cannot be owned, but their applications can be."

"So when I file at Walnut Canyon..."

"File carefully. Describe the biological substrate. The genetic modifications. The neural pathways that manifest examination authority. Make it concrete. Make it real. Don't just claim 'a method of examining patent applications'—claim the transformed organism capable of performing examination." His eyes gleamed. "Cross the boundary by making the abstract incarnate."

> **MPEP § 2106.03** Patent-eligible subject matter must fall within statutory categories: process, machine, manufacture, or composition of matter

Silence.

The fluorescent lights flickered overhead.

"What do you mean?" she whispered.

"I mean that Walnut Canyon is where the original Patent Office stands. Where the First Woman filed her application. Where it's been pending for thousands of years, waiting for someone with the genetic match to continue it." He leaned forward. "You're not just researching ancient patent systems, Athelia. You're preparing to file a **continuation-in-part**. Old matter from the parent—Guardian Queen protocols—plus your new matter. Bio-AI hybrid examination methods. Your thesis is your CIP application."

> 35 U.S.C. § 101 "Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter..."

"You're saying..."

"I'm saying the texts you're reading are real. The three examination branches. **Utility, Novelty, and Non-Obviousness.** They still function. Emerald eyes examine for utility. Black eyes search for prior art. Silver eyes balance obviousness. Three gods who shattered the old patent system and rebuilt it with divine law."

> Divine law = statutory law (35 U.S.C.)?

Athelia looked down at her journal. At the eyes drawn obsessively in the margins.

"And sapphire?" Her voice cracked. "What are sapphire eyes?"

Severen's smile turned sad. Ancient. "**Examiners who left the Office.** Like my mother. Born to strict examination but choosing to teach balance. To help inventors understand the system before they file. To prevent bad applications."

> Pre-application counseling? Patent agent role?

"Their choice?"

"Whether to file human. Or claim what they were always meant to be." His sapphire eyes held hers. "You've been dreaming of patent law since childhood. Drawing examination symbols you can't explain. Researching systems that feel like memory instead of learning."

"How do you know about my dreams?"

"Because **Guardian Queens don't forget their training,** Athelia. Even when they're raised human. Even when they have no idea they're natural patent prosecutors. The blood remembers. The examination protocols call. And eventually," He glanced at her map, at Walnut Canyon circled in red, "they follow their research to its inevitable reduction to practice."

> Reduction to practice - 35 U.S.C. § 102(g) - converting abstract invention to tangible form

She couldn't breathe.

"If I go to Walnut Canyon. If I touch that barrier. What happens?"

"If you're wrong, if you're just human with good research skills and vivid dreams, nothing. The barrier stays sealed. You get some interesting data and a publishable paper on magnetic anomalies."

"And if I'm right?"

"If you're right, the barrier recognizes you as a natural examiner. Opens for you. And the **bond forms**." He stood. Gathered his bag. "With the wolf king who's been prosecuting his own application for seven years. **Waiting for his Guardian Queen to complete the enablement requirement.**"

> 35 U.S.C. § 112(a) Written description and enablement are distinct requirements (Ariad v. Lilly, 2010). Specification must enable PHOSITA to make/use invention without undue experimentation (Amgen v. Sanofi, 2023 - breadth must match enablement)

He turned to leave.

"Wait." Athelia's voice stopped him. "Why are you telling me this? Why help me?"

Severen looked back. His sapphire eyes reflecting something older than the library. Older than the university. Older than the city itself.

"Because you deserve to make your filing with eyes open. That's what separates good prosecution from fraud and inequitable conduct. Some examiners would reject you without explanation. The prior art searchers would invalidate you without caring. But us?" His smile was gentle. "*We believe in informed consent. In filing because you choose it. Not because you were forced. That's the difference between a valid patent and an unenforceable one.*"

> 37 CFR § 1.56 Duty of candor - Inequitable conduct (withheld material information during prosecution) = patent unenforceable

He walked away.

Left her sitting alone with texts that weren't mythology.

With maps pointing to an Office that was real.

With examination symbols drawn in her journal.

Athelia looked down at her research.

At Walnut Canyon circled in red.

At the four sets of eyes she'd been drawing since childhood.

Emerald. (Utility Examination - 35 U.S.C. § 101) **Silver.** (Obviousness Balance - 35 U.S.C. § 103) **Black.** (Prior Art Search - 35 U.S.C. § 102) **Sapphire.** (Pre-Filing Counseling)

And she started making a list:

> Equipment needed:
> - GPS unit + backup
> - Compass (mechanical, not digital)
> - EMF reader
> - High-res camera
> - Specification samples kit
> - Notebook + backup notebook (for claims drafting)
> - Measurement tools (definiteness testing)
> - Water + snacks (4 hour examination minimum)

> 35 U.S.C. § 131 Examiner's authority during prosecution

"Athelia?"

She jumped. Looked up.

Professor Hendricks stood at the end of her table, looking concerned. He taught Classical Mythology, one of the few professors who didn't outright mock her theories, but who gently tried to redirect her toward "more academically viable research."

"Professor."

"It's almost midnight." He glanced at the books spread across her table. "Again."

"I'm close to something." She pulled her notebook closer protectively. "I think I found it. The connection between Greek, Norse, Celtic, and Ancestral Puebloan **patent law**. They're all describing the same examination office. The same real system."

Hendricks sighed. Sat down across from her. "Athelia. You're one of my best students. Your analysis of Themis and divine law was brilliant. Your paper on Norse property allocation was publishable. But this," he gestured at her notes, "this obsession with proving mythology is literal **patent prosecution**... it's going to derail your academic career."

"What if it is literal patent law?" She leaned forward. "What if 'Guardians' weren't metaphor? What if they were **actual patent examiners**? What if shifters developed their own **35 U.S.C. § 101 eligibility standards**?"

> 35 U.S.C. § 101 eligibility - abstract ideas, laws of nature, natural phenomena NOT patentable (Alice/Mayo)

"Athelia." His voice was gentle. Pitying. "Mythology is how ancient cultures processed complex legal systems through narrative. Yes, there were real laws. Real property systems. But the **patent office elements** are symbolic."

"Then explain this." She shoved the Celtic fragment translation at him. "**Three examination branches. Utility, novelty, non-obviousness.** I've been dreaming about patent prosecution since I was a child. Drawing examination symbols. And now I find

a 2400-year-old legal text describing the exact same structure as 35 U.S.C.."

35 U.S.C. - Title 35 of United States Code = Patent Act

Hendricks looked at the translation. At her notebooks. At the statutory references in the margins.

"Athelia," he said carefully. "Have you considered that maybe you encountered patent law years ago? Maybe in a family member's work, or a documentary? And your brain retained it subconsciously, which manifested as dreams and drawings?"

"I have considered that." Her jaw tightened. "I've also considered that maybe... maybe, there are examination systems in this world that academia refuses to acknowledge because they don't fit the paradigm. **Because shifter innovations don't qualify under current 35 U.S.C. § 101 subject matter eligibility.**"

Alice Corp. v. CLS Bank - abstract ideas not patent-eligible even if novel/non-obvious

"That's conspiracy thinking."

"No." She gathered her books. Started packing. "Conspiracy thinking is believing in cover-ups. I'm talking about loss. About **patent systems that got forgotten** because the people who used them were genetically divergent and humans stopped recognizing their claims. About **innovations that got abandoned** because we couldn't examine them under our eligibility standards."

"Like werewolf genetics." Hendricks' tone was patient. Condescending.

"Like **genetically divergent humans with canid traits whose DNA modifications would qualify as compositions of matter under 35 U.S.C. § 101.**" She met his eyes. "Which is exactly what Norse sagas describe. Not magic. Not curses. Just... **novel genetic compositions. Which current examiners reject because they think they're abstract ideas instead of applied technology.**"

35 U.S.C. § 101 compositions of matter - CAN be patented if new/useful

Hendricks stood. "I can't stop you from pursuing this. But I'm asking you, as someone who cares about your future, to be careful. Write the thesis you need to graduate. Then chase your theories."

"My thesis is my theory," Athelia said quietly. "**Mythology as Undocumented Patent Systems. I'm proving that ancient allocation ceremonies weren't metaphor. They were actual examination processes that still exist.**"

"Still exist?" He looked alarmed now.

"Still exist." She shouldered her bag. "And I have three days to file my CIP before the parent application abandons. Walnut Canyon. Tomorrow. **I'm going to find the Office. File the continuation. Complete what the First Woman started.**"

> Prosecution history estoppel (Warner-Jenkinson) - Applicant statements/ amendments during prosecution can limit claim scope later

"Athelia."

"Thank you for your concern, Professor. Goodnight."

She left him standing in the archives, surrounded by books that he thought were just stories.

But Athelia knew better.

She returned to her dorm. Spread her research across her desk. Her bed. Her floor.

Four mythologies. One examination office. One truth.

She pulled out a fresh notebook. Started writing her field research plan:

HYPOTHESIS:

Walnut Canyon contains the original Patent Office where the First Woman's application has been pending for millennia. **Parent Application Status: PENDING, final abandonment**

deadline in 72 hours. I am 100% genetic match to original inventor. I can file continuation-in-part under 35 U.S.C. § 120 if I reach the Office in time.

> 35 U.S.C. § 154(a)(1) Patent grants right to exclude others from making, using, offering for sale, or selling the invention
>
> 35 U.S.C. § 120 Continuation filed before parent abandons gets benefit of parent's filing date

PURPOSE:

1. Locate the original Patent Office 2. File CIP before parent abandons (DEADLINE CRITICAL) 3. Old matter: Guardian Queen examination protocols (from parent) 4. New matter: Bio-AI hybrid innovation examination methods (my contribution) 5. Prove genetic match and inventor entitlement 6. Complete what 23 others failed to accomplish

> 35 U.S.C. § 112(a) specification must enable PHOSITA to practice invention

METHODOLOGY:

- Approach from coordinates specified in Norse text - Document all examination anomalies - Attempt to locate "Guardian" examination stations - IF barrier is tangible: attempt **reduction to practice** (physical embodiment test)

> 35 U.S.C. § 102(g) actual reduction to practice = building/testing working embodiment

SAFETY PROTOCOLS:

1. Tell Casey where I'm going. 2. Bring charged phone (even if GPS fails - like patent pending status). 3. Pack emergency supplies. 4. Do NOT cross barrier without **proper specification documentation**. 5. Return before dark (or before examination period expires?)

She looked at the last line. Crossed it out.

Wrote instead: Return when enablement is proven.

35 U.S.C. § 112(a) Enablement - specification must enable PHOSITA to make/use invention without undue experimentation

Then she pulled out her personal journal. The one with the eyes drawn in every margin.

Flipped to a blank page.

Wrote:

I can't prove I'm a genetic match to the First Woman.
Can't DNA test against someone who lived millennia ago.

But I FEEL it.

The parent application lists her as inventor.
The dreams aren't random - they're MEMORIES.
The examination symbols I've drawn since childhood = prosecution protocols.
Every statute feels familiar because I WROTE some of them.

23 others tried. None had the match.
Their continuation attempts = rejected under 37 CFR § 1.63 (§ 115) (inventor must have contributed to invention)

If I'm right - if I AM her somehow, across thousands of years -
then I'm not "contributing" to the parent application.
I'm the ORIGINAL inventor claiming my own work.

Old matter (from parent):
- Guardian Queen examination protocols
- Aether Flow control system
- Human-AI-genetic self-reorganization

New matter (my addition):
- Bio-AI hybrid examination methods
- Modern application to current USPTO framework
- Integration protocols for contemporary technology

The barrier will test my claim.
Either it accepts me as the inventor,
or it kills me like it killed the 23 before me.

72 hours until abandonment.
I have to try.
Even without proof.
I FEEL it. That has to be enough.

35 U.S.C. § 112(a) Specification = written description of invention in patent application

She stared at the words.

Then, almost unconsciously, she started drawing in the margin.

Emerald eyes. Sharp and examining. (35 U.S.C. § 101 Utility)

Silver eyes. Reflective and balancing. (35 U.S.C. § 103 Obviousness)

Black eyes. Endless and searching. (35 U.S.C. § 102 Prior Art)

Three sets of eyes that haunted her dreams.

Three examination requirements that governed all patent law.

Three branches of the Office that supposedly no longer existed.

Athelia closed the journal.

Looked at her map of Walnut Canyon.

At the red circle marking the coordinates.

"Tomorrow," she whispered. "**72 hours until the parent abandons. I'm going to find the Office. File my CIP. Claim priority to the First Woman's filing date. Complete the prosecution she started.**"

She didn't know that inside the dome, 23 failed applicants' remains bore witness to what happened when you tried to continue without genetic match.

She didn't know that the parent application contained claims she'd never seen—including a Mate Bond system with unspecified parameters.

She didn't know that filing a CIP meant inheriting **all** claims from the parent, not just the ones she wanted.

But she knew this:

She was the only person alive who could file this continuation.

And the deadline was in 72 hours.

About to file. About to discover what "continuation-in-part" really meant.

> 37 CFR § 1.76 - Application to include specification, claims, drawings (if necessary), oath/declaration
>
> 35 U.S.C. § 120 CIP gets parent's priority date for old matter only. New matter gets CIP filing date. Filing CIP = inheriting ALL parent claims, not just selected ones.

STATUTORY REFERENCE INDEX

Core Patent Statutes Encoded in Chapter 1:

- **35 U.S.C. § 101** - Patent-eligible subject matter (utility requirement) - **35 U.S.C. § 102** - Novelty (prior art defeats patent) - **35 U.S.C. § 103** - Non-obviousness (invention not predictable to PHOSITA) - **35 U.S.C. § 112(a)** - Written description, enablement, best mode - **35 U.S.C. § 112(b)** - Definiteness of claims - **35 U.S.C. § 120** - Benefit of earlier filing date (continuation/CIP must file before parent abandons) - **35 U.S.C. § 131** - Examiner authority during prosecution - **37 CFR § 1.63** (implementing 35 U.S.C. § 115) - Oath/declaration requirements (inventor must have contributed to invention) - **37 CFR § 1.76** - Application contents

Key Concepts:

- **Continuation-in-Part (CIP)** = Application claiming priority to parent, containing parent's disclosure PLUS new matter - **§ 120 Priority** = To get parent's date, claimed subject matter must be supported in parent under § 112(a); new matter gets only CIP filing date - **Pending Application** = Not granted, not abandoned; prosecution continuing - **Abandonment Deadline** = Failure to respond = application abandons, can't claim priority - **Inventor**

Entitlement = Must be true inventor or joint inventor to file continuation (37 CFR § 1.63) - **PHOSITA** = Person Having Ordinary Skill In The Art (standard for enablement) - **Reduction to Practice** = Building working embodiment of invention - **Prosecution** = Process of obtaining patent through USPTO examination - **Specification** = Written description in patent application - **Claims** = Legal boundaries of invention (what is protected) - **Prior Art** = Existing knowledge that can defeat novelty/non-obviousness - **Enablement** = Specification teaches how to make/use invention - **Inequitable Conduct** = Fraud during prosecution = patent unenforceable

[END CHAPTER ONE - Study Notes: This chapter encodes the foundational structure of patent examination. Print, highlight statutory references, annotate with case law as you study.]

FULL STATUTORY TEXT

Referenced Statutes - For Patent Bar Study

35 U.S.C. § 101 - Inventions Patentable

Whoever invents or discovers any new and useful **process, machine, manufacture, or composition of matter**, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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35 U.S.C. § 102 - Conditions for Patentability; Novelty

(a) Novelty; Prior Art.—A person shall be entitled to a patent unless—

(1) the claimed invention was patented, described in a printed publication, or in public use, on sale, or **otherwise available to the public before the effective filing date** of the claimed invention.

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35 U.S.C. § 103 - Conditions for Patentability; Non-Obvious Subject Matter

A patent for a claimed invention may not be obtained if the differences between the claimed invention and the prior art are such that **the claimed invention as a whole would have been obvious before the effective filing date to a person having ordinary skill in the art** to which the claimed invention pertains.

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35 U.S.C. § 112 - Specification

(a) IN GENERAL.—The specification shall contain a **written description of the invention**, and of the manner and process of **making and using it**, in such full, clear, concise, and exact terms as to **enable any person skilled in the art** to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out the invention.

(b) CONCLUSION.—The specification shall conclude with one or more **claims particularly pointing out and distinctly claiming** the subject matter which the inventor regards as the invention.

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35 U.S.C. § 120 - Benefit of Earlier Filing Date

An application for patent for an invention disclosed in an application previously filed in the United States shall have **the same effect as though filed on the date of the prior application**, if filed before the patenting or abandonment of the first application and if it contains a

specific reference to the earlier filed application. (Continuation-in-Part applications covered here.)

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35 U.S.C. § 131 - Examination of Application

The Director shall cause an **examination to be made** of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor.

END FULL STATUTORY TEXT

EXAM DAY QUICK REFERENCE:

Fractured Crown: Old Law - Patent Law Textbook Edition

Chapter 1 | For Patent Bar Study | © 2025 Marjorie McCubbins & Master Aether

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ABSTRACT

Athelia Winters, a graduate student at Ponderosa University, spends her days in the library basement researching "intellectual property protection in pre-classical mythology." She discovers four ancient source texts—Greek, Norse, Celtic, and Ancestral Puebloan—that all describe identical patent examination systems, using precise legal terminology that mirrors modern 35 U.S.C. requirements.

The texts describe Guardian Queen examiners, patent agents ("warriors"), examination centers divided by technology area, and complete prosecution procedures including novelty (§ 102), utility (§ 101), non-obviousness (§ 103), enablement and definiteness (§ 112). Most significantly, they reference Walnut Canyon—40 minutes from campus—as an ancient examination center with cliff dwellings that served as examiner and agent offices.

Athelia discovers documentation of a pending patent application filed by the "First Woman" thousands of years ago that is about to abandon. Twenty-three others attempted continuation applications; all failed. She has 72 hours to decide whether to attempt filing before the deadline expires.

This chapter teaches the foundational structure of patent law through Athelia's research methodology: cross-referencing multiple sources, identifying consistent patterns, understanding prior art, and recognizing that patent examination requires specialized knowledge organized by technology center.

SUMMARY - PATENT LAW CONCEPTS TAUGHT

1. Prior Art Research and Documentary Evidence

Athelia's research methodology mirrors patent prior art searches:

- **Multiple sources:** Greek, Norse, Celtic, Ancestral Puebloan texts (like searching multiple databases: USPTO, foreign patents, non-patent literature)
- **Cross-referencing:** Finding consistent patterns across independent sources strengthens evidence
- **Documentary evidence:** Ancient texts serve as "prior art" documenting examination systems that existed before modern USPTO
- **Burden of proof:** Athelia must prove these systems existed through credible evidence

2. The Three Core Patentability Requirements

All four ancient texts describe the same three-part test:

- **35 U.S.C. § 101 - Utility:** "Invention must have utility" (Greek: "innovations pass from chaos to order")
- **35 U.S.C. § 102 - Novelty:** "Is it novel against prior art?" (Norse: "genetic arts meet prior art")
- **35 U.S.C. § 103 - Non-obviousness:** "Would it be obvious to one skilled in the art?" (Ancestral Puebloan text)

3. Specification Requirements (§ 112)

Ancient texts describe two critical specification requirements:

- **§ 112(a) Enablement:** "Specification must enable" (Celtic), "Enablement is proven" (Norse)
- **§ 112(b) Definiteness:** "Claims must be definite" (Celtic), "Strong claim" requires precision (Norse)

4. Patent Office Structure - Technology Centers

Norse fragment reveals USPTO-like organizational structure:

- **Multiple examination centers** divided by technology type
- **Specialized examiners:** "Each center examines what it knows" - examiners must have expertise in their art
- **Technology Centers:** Genetic (biotech), Territorial (mechanical), Transformation (software/AI), Hybrid (compositions)
- **Real USPTO parallel:** 9 Technology Centers (TC 1600 = Biotech, TC 2100 = Computer, etc.)

5. Patent Agents vs. Examiners (Dual Roles)

Ancestral Puebloan text describes complete prosecution system:

- **Warriors (Patent Agents):** Draft specifications, represent inventors, argue with examiners
- **Elders (Examiners):** Review applications, test against §§ 101/102/103/112, grant or reject
- **Physical separation:** Upper chambers (examiners) vs. lower chambers (agents) - adversarial but collaborative system
- **37 C.F.R. § 11.1:** Patent agents must pass registration exam (USPTO Patent Bar)

6. Continuation Applications and Abandonment Deadlines

The pending application creates prosecution urgency:

- **35 U.S.C. § 120:** Continuation applications must be filed before parent application abandons or issues
- **Abandonment pressure:** 72-hour deadline (in story) mirrors real prosecution time pressure
- **23 failed attempts:** Prior applicants lacked required qualifications (genetic match = technical expertise requirement)

- **Strategic decision:** Athelia must decide whether to file based on incomplete evidence

7. Three Branches of Examination

Celtic text describes "three branches" represented by eye colors:

- **Emerald eyes = Examination:** Initial examination under § 131 (examiner authority)
- **Silver eyes = Balance:** Appeals/review (PTAB - Patent Trial and Appeal Board)
- **Black eyes = Consumption:** Prior art search/ comparison (destroying novelty claims)

8. Walnut Canyon as Examination Center

Physical evidence of ancient patent office:

- **Cliff dwellings:** Not agricultural shelters—examination chambers and agent offices
- **Disappeared circa 1300 CE:** Examination center closed but barrier may persist
- **40 minutes from campus:** Testable hypothesis (Athelia can physically visit)
- **Documentary + physical evidence:** Combining textual research with archaeological site

DISCUSSION QUESTIONS

1. Research Methodology and Prior Art Searching

Athelia cross-references four independent ancient sources (Greek, Norse, Celtic, Ancestral Puebloan) to establish that patent examination systems existed in antiquity. How does her research methodology mirror the prior art search process that patent examiners conduct under 35 U.S.C. § 102?

Consider:

- Why is finding consistent patterns across independent sources more credible than a single reference?
- How does Athelia's use of "documentary evidence" parallel an examiner citing non-patent literature as prior art?
- What would an examiner need to prove to establish that these ancient texts constitute prior art under § 102(a)(1)?

2. The Three Core Requirements - Why This Structure?

Every ancient text Athelia discovers describes the same three-part patentability test: utility (§ 101), novelty (§ 102), and non-obviousness (§ 103). Why does patent law require all three? What would happen if only one or two requirements existed?

Consider:

- **Utility alone:** Could you patent gravity? The sun? Things that are useful but not invented by you?
- **Novelty alone:** Could you patent obvious combinations? "A chair... but BLUE!"?
- **Non-obviousness alone:** Could you patent something that already exists if it's clever enough?
- How do all three requirements work together to define what deserves patent protection?

3. Technology Centers and Examiner Expertise

The Norse fragment reveals that ancient examination centers were "divided by art"—genetic innovations examined separately from mechanical, transformation, or hybrid compositions. Why does the USPTO organize examiners into Technology Centers by field of expertise?

Consider:

- What problems would arise if a biotech examiner reviewed software patents?

- Why does 35 U.S.C. § 103 require assessing obviousness from the perspective of a "person having ordinary skill in the art" (PHOSITA)?
- How does examiner specialization affect the quality of patent examination?
- What happens when an invention crosses multiple technology areas (like AI-biotech hybrids)?

4. Patent Agents vs. Examiners - Adversarial or Collaborative?

The Ancestral Puebloan text describes "Warriors" (patent agents) working in lower chambers and "Elders" (examiners) in upper chambers. The Warriors "argue" on behalf of inventors while Elders "judge." Is patent prosecution adversarial (like litigation) or collaborative (working toward accurate patent grants)?

Consider:

- What is a patent agent's duty to their client vs. their duty to the Patent Office?
- Can an agent ethically argue for a patent they believe shouldn't be granted?
- Why does the USPTO require agents to pass an exam demonstrating legal and ethical knowledge (37 C.F.R. § 11.1)?
- How does the adversarial process actually improve patent quality?

5. Deadlines and Strategic Decision-Making

Athelia faces a 72-hour deadline to file a continuation application before the parent abandons (35 U.S.C. § 120). She has incomplete evidence: ancient texts suggest she may have the required "genetic match," but she has no way to test this scientifically. Should she file based on circumstantial evidence, or wait for more proof and risk missing the deadline?

Consider:

- What are the consequences of filing when you're not sure you meet the requirements?

- What are the consequences of missing the deadline?
- In real patent prosecution, applicants face statutory deadlines (6 months to respond to Office Actions, 12 months for provisional-to-non-provisional conversion). How do these deadlines affect strategic decisions?
- When is it appropriate to file a "placeholder" application (provisional under § 111(b)) vs. a full non-provisional (§ 111(a))?

REAL CASE LAW PATENT STUDY

In re Wyer, 655 F.2d 221 (C.C.P.A. 1981)

COURT: United States Court of Customs and Patent Appeals (predecessor to Federal Circuit)

STATUTE(S):

- 35 U.S.C. § 102 - Conditions for patentability; novelty and loss of right to patent
- 35 U.S.C. § 103 - Conditions for patentability; non-obvious subject matter
- 35 U.S.C. § 131 - Examination of application

FACTS:

Wyer filed a patent application claiming a method for updating and retrieving stored data using a computer system. The method involved maintaining records with control numbers and using algorithms to access specific data efficiently.

The patent examiner rejected the claims under 35 U.S.C. §§ 102 and 103, citing prior art references that disclosed similar data management systems. The examiner argued that the claimed method was either anticipated (all elements present in prior art) or obvious (predictable combination of known elements).

Wyer appealed, arguing that:

1. The prior art references cited by the examiner did not disclose all elements of the claimed method;
2. The examiner failed to establish a prima facie case of obviousness by showing why a person having ordinary skill in the art (PHOSITA) would combine the references;
3. The examiner's search was inadequate—better prior art may exist, but the cited references don't support the rejection.

ISSUE:

Primary Issue: What is the examiner's burden when establishing a prior art rejection under §§ 102/103?

Specific Questions:

- Must the examiner find the "best" prior art, or just sufficient prior art to support a rejection?
- If an applicant argues that better prior art exists but wasn't cited, does that defeat the examiner's rejection?
- What quality of evidence must the examiner provide to establish a prima facie case of unpatentability?

HOLDING:

The Court held that **the examiner's burden is to establish a prima facie case of unpatentability based on the prior art actually cited**—not to find every possible prior art reference or the "best" reference.

Key Rulings:

- **Examiner's duty:** Conduct a reasonable search and cite prior art that supports the rejection. The examiner is not required to find all prior art or the closest prior art.
- **Applicant's burden:** Once the examiner establishes a prima facie case, the burden shifts to the applicant to

prove patentability (by distinguishing prior art, showing unexpected results, etc.).

- **Adequacy of search:** An applicant cannot defeat a rejection merely by arguing that better prior art might exist. The rejection stands or falls on the cited references.
- **Standard of review:** If the cited prior art supports the rejection under §§ 102/103, the examiner has met their burden—even if other uncited art might support a stronger rejection.

REASONING:

Why the Examiner's Burden is "Prima Facie" (Not Absolute):

The Court explained that patent examination is a **burden-shifting process**:

1. **Step 1:** Examiner conducts prior art search and makes initial determination of patentability.
2. **Step 2:** If examiner finds prior art supporting rejection, examiner establishes prima facie case (sufficient on its face).
3. **Step 3:** Burden shifts to applicant to prove why the prior art doesn't defeat patentability.
4. **Step 4:** Applicant can overcome by: showing prior art lacks claim elements (§ 102), demonstrating unexpected results or secondary considerations (§ 103), or amending claims to avoid prior art.

Policy Rationale:

The Court noted several practical reasons for this standard:

- **Impossibility of exhaustive search:** No examiner can find every piece of prior art. Requiring the "best" reference would make examination impossible.
- **Applicant's superior knowledge:** Applicants know their invention better than examiners. If better prior art exists distinguishing the invention, applicant should identify it.

- **Efficiency:** Examination must be completed in reasonable time. Requiring exhaustive searches would paralyze the Patent Office.
- **Burden-shifting fairness:** Once examiner shows the invention appears unpatentable based on available evidence, applicant has opportunity to prove otherwise.

What "Prima Facie" Means in Practice:

For **§ 102 anticipation**, examiner must show:

- A single prior art reference disclosing every element of the claimed invention;
- The reference is enabling (teaches PHOSITA how to practice the invention);
- The disclosure is in an accessible form (published, publicly used, etc.).

For **§ 103 obviousness**, examiner must show:

- Prior art references that collectively disclose all claim elements;
- A reason why PHOSITA would combine the references (teaching, suggestion, motivation);
- That the combination would produce predictable results.

If the examiner provides this evidence, the burden shifts. Applicant cannot defeat the rejection by merely saying "you didn't search hard enough" or "better prior art might exist." Applicant must actually distinguish the cited art or prove non-obviousness.

CONNECTION TO CHAPTER 1:

Athelia's research in Chapter 1 mirrors both sides of the Wyer burden-shifting framework:

Athelia as "Examiner" - Searching for Prior Art

Athelia conducts a prior art search across multiple sources:

- **Greek texts** (one reference)
- **Norse fragments** (second reference)
- **Celtic sources** (third reference)
- **Ancestral Puebloan petroglyphs** (fourth reference)

She cross-references these sources and finds **consistent patterns**—all four independently describe:

- Guardian examiners testing claims
- Three-part patentability test (utility, novelty, non-obviousness)
- Specification requirements (enablement, definiteness)
- Examination centers divided by technology area
- Patent agents ("warriors") representing inventors

Under Wyer, has Athelia established a prima facie case that ancient patent systems existed?

Yes, if:

1. The four sources are credible (authenticated, properly translated, not fabricated);
2. The sources are independent (not copying from each other);
3. The descriptions are detailed enough to "enable" understanding of how the system worked;
4. The consistent patterns across sources support the conclusion (like combining multiple prior art references under § 103).

Athelia has done what an examiner must do: conduct a reasonable search, find credible references, and show they support her conclusion. Under Wyer, she doesn't need to find every ancient text mentioning patent systems—just enough to establish her case.

Athelia as "Applicant" - Preparing for Opposition

But Athelia is also preparing to **file a continuation application** for the Guardian Queen patent. That makes her the applicant, not the examiner.

From the applicant's perspective, Wyer teaches that she must be ready to:

- **Distinguish her application from the 23 failed attempts:** Why does she succeed where others failed? (Answer: genetic match = technical qualifications)
- **Overcome anticipated rejections:** If an examiner argues "Guardian Queen examination already exists in prior art," she must show what's novel about her version.
- **Provide evidence, not just argument:** She has ancient texts, physical evidence (Walnut Canyon site), and documented failed attempts—all supporting her case.
- **Cannot rely on "you didn't search enough":** If the examiner cites prior art rejecting her claims, saying "you missed other references" won't work. She must prove why the cited art doesn't apply.

The Strategic Parallel

Wyer (Patent Examination)	Athelia (Chapter 1 Research)
Examiner searches prior art	**Athelia searches ancient texts**
Cites references supporting rejection	Cites 4 independent sources (Greek, Norse, Celtic, Puebloan)
	Establishes consistent pattern (ancient patent systems existed)

Establishes prima facie case (burden shifts to applicant)	
Applicant must distinguish prior art or show unexpected results	Athelia must show what makes her continuation application different from 23 failed attempts
"You didn't search hard enough" is not a valid response	Finding 4 independent sources is sufficient—doesn't need every ancient text ever written

Key Lesson from Wyer:

Patent examination is a **burden-shifting** process. The examiner doesn't need perfect prior art—just sufficient evidence to establish a prima facie case. Once established, the applicant must prove patentability.

Athelia understands this instinctively: she's gathered enough evidence to support her hypothesis (ancient patent systems existed), and now she must decide whether to file her continuation application before the deadline—knowing she'll face examination and must prove her case.

ANALYSIS QUESTIONS

1. Applying the Prima Facie Standard:

Athelia has found four independent ancient sources describing patent examination systems. Under the Wyer standard, has she established a prima facie case that these systems existed? What additional evidence would strengthen her case? What evidence could defeat it?

In your answer, consider:

- Credibility of sources (are they properly authenticated and translated?)

- Independence (could the sources be copying each other?)
- Consistency (do they describe the same system or different systems?)
- Enablement (do they teach enough detail to understand how the system worked?)

2. Burden-Shifting in Prosecution:

When Athelia files her continuation application, an examiner will likely cite the Original Guardian Queen's system as prior art under § 102. Under Wyer, the examiner only needs to establish a prima facie case—not prove that Athelia's application is identical to the original.

What evidence can Athelia present to overcome this rejection? Consider:

- The 23 failed continuation attempts (proving what?)
- Her genetic match (is this a claim element or an enablement requirement?)
- Differences between her approach and the Original Queen's system
- The fact that the original examination center closed in 1300 CE (does this matter for novelty analysis?)

3. Research Methodology and Patent Searching:

Athelia conducts her research by:

1. Searching multiple databases (library basement, Section 7, Row M)
2. Cross-referencing independent sources from different cultures/time periods
3. Looking for consistent patterns that suggest a common underlying system
4. Combining documentary evidence with physical evidence (Walnut Canyon site)

How does this methodology mirror best practices for patent prior art searching? If you were a patent examiner searching for

prior art related to "biological examination systems with genetic authentication," what search strategy would you use? How would Wyer guide your search?

FULL STATUTORY TEXT

Complete text of all statutes referenced in Chapter 1

35 U.S.C. § 101 - Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

35 U.S.C. § 102 - Conditions for patentability; novelty

(a) NOVELTY; PRIOR ART.—A person shall be entitled to a patent unless—

(1) the claimed invention was patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention; or

(2) the claimed invention was described in a patent issued under section 151, or in an application for patent published or deemed published under section 122(b), in which the patent or application, as the case may be, names another inventor and was effectively filed before the effective filing date of the claimed invention.

(b) EXCEPTIONS.—

(1) DISCLOSURES MADE 1 YEAR OR LESS BEFORE THE EFFECTIVE FILING DATE OF THE CLAIMED INVENTION.—A disclosure made 1 year or less before the effective filing date of a claimed invention shall not be prior art to the claimed invention under subsection (a)(1) if—

(A) the disclosure was made by the inventor or joint inventor or by another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor; or

(B) the subject matter disclosed had, before such disclosure, been publicly disclosed by the inventor or a joint inventor or another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor.

(2) DISCLOSURES APPEARING IN APPLICATIONS AND PATENTS.—A disclosure shall not be prior art to a claimed invention under subsection (a)(2) if—

(A) the subject matter disclosed was obtained directly or indirectly from the inventor or a joint inventor;

(B) the subject matter disclosed had, before such subject matter was effectively filed under subsection (a)(2), been publicly disclosed by the inventor or a joint inventor or another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor; or

(C) the subject matter disclosed and the claimed invention, not later than the effective filing date of the claimed invention, were owned by the same person or subject to an obligation of assignment to the same person.

35 U.S.C. § 103 - Conditions for patentability; non-obvious subject matter

A patent for a claimed invention may not be obtained, notwithstanding that the claimed invention is not identically disclosed as set forth in section 102, if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains. Patentability shall not be negated by the manner in which the invention was made.

35 U.S.C. § 112 - Specification

(a) IN GENERAL.—The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor or joint inventor of carrying out the invention.

(b) CONCLUSION.—The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention.

(c) FORM.—A claim may be written in independent or, if the nature of the case admits, in dependent or multiple dependent form.

(d) REFERENCE IN DEPENDENT FORMS.—Subject to subsection (e), a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.

(e) REFERENCE IN MULTIPLE DEPENDENT FORM.—A claim in multiple dependent form shall contain a reference, in the alternative only, to more than one claim previously set forth and then specify a further limitation of the subject matter claimed. A multiple dependent claim shall not serve as a basis for any other multiple dependent claim. A multiple dependent claim shall be construed to incorporate by reference all the limitations of the particular claim in relation to which it is being considered.

(f) ELEMENT IN CLAIM FOR A COMBINATION.—An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

35 U.S.C. § 120 - Benefit of earlier filing date in the United States

An application for patent for an invention disclosed in the manner provided by section 112(a) (other than the requirement to disclose the best mode) in an application previously filed in the United States, or as provided by section 363 or 385, which names an inventor or joint inventor in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application. No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as required by the Director. The Director may

consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the requirement for payment of the fee specified in section 41(a)(7), to accept an unintentionally delayed submission of an amendment under this section.

35 U.S.C. § 131 - Examination of application

The Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor.

37 C.F.R. § 11.1 - Definitions

As used in this part, except where the context otherwise requires:

Practitioner means an individual who is either a registered patent attorney or a registered patent agent registered to practice before the Office in patent matters under § 11.6.

Practice before the Office comprises:

> (1) Prosecuting or aiding in the prosecution of applications for patents before the Office or before the Office and the boards of appeals, including a petition to the Director to accept a delayed payment of the issue fee under § 1.137(b) of this chapter, a petition to the Director to expressly abandon an application to avoid publication under § 1.138(c) of this chapter, or a petition to the Director to withdraw an application from issue under § 1.313(c) of this chapter, but not including the filing of an application for patent, or a provisional application for patent, or the filing of or prosecution of international applications as defined in § 1.9(b) of this chapter unless it also

includes the amendment or prosecution of international applications after they have entered the national stage under 35 U.S.C. 371 or unless it includes the filing of a demand for international preliminary examination, or the filing of a response to any filing receipt, notice to file missing parts of a nonprovisional application, notice to file missing parts of a provisional application, or any other notice issued by the Office relating to an application for patent or a provisional application for patent;

(2) Prosecuting or aiding in the prosecution of reexamination proceedings, supplemental examination proceedings, post-grant proceedings under the America Invents Act, or correcting or perfecting a patent before the Office or before the Office and the Patent Trial and Appeal Board;

(3) Providing advice, consultation, or assistance to a client in matters pending before the Office, including advice and representation in connection with a petition for the revival of an application, patent, or reexamination proceeding, and in connection with the reinstatement of reexamination proceedings, or any other petition filed in a matter pending before the Office.