

CHAPTER FOUR - THE ATTORNEY

Old Law: Jurisprudence of Myth (Patent Law Edition)

Wolf Kingdom, Beyond the Barrier
SATURDAY - SAME MOMENT AS CHAPTER TWO

Alexander woke at dawn with his wolf clawing at his ribs.

Go. Now. MOVE.

Not a suggestion. A command from something deeper than thought, older than consciousness. His wolf had never spoken this clearly. His entire life—twenty-eight years—his wolf had been a distant presence. Muted, manageable, easily ignored.

Not today.

37 CFR § 11.6 - Registration to practice before USPTO. Attorney must be registered and in good standing. Genetic inheritance can carry legal knowledge, but activation requires trigger event.

Alexander rose from bed, dismissed the servants who appeared to help him dress, and headed toward the breakfast chamber out of habit.

The room was already full. Council members discussing trade routes. Advisors reviewing petitions. And the harem—arranged artfully around the table like they'd been positioned by an interior decorator.

"Your Highness." High Priestess Selene rose gracefully, a cup of wine already in her hand. "You're up early. Come, sit. Let me—"

She reached for him, fingers brushing his arm.

Alexander's wolf snarled.

Not a whisper. Not a distant presence. A full-throated rejection that made his skin crawl and his teeth ache. He pulled back before he could think about it.

Selene's smile didn't falter. "Your Highness? Are you well?"

"Fine." The word came out sharper than intended. Alexander forced himself to breathe. "Just—didn't sleep well."

She offered the wine. "This will help. It always does."

The smell hit him—sweet, herbal, familiar. He'd been drinking this wine every morning for ten years. It had always been soothing. Calming. Made the edges of the world soft and manageable.

Today it smelled wrong.

Like rot under perfume. Like something dying beneath flowers.

"I'm going for a run," Alexander said abruptly, stepping away from the offered cup. "Need to clear my head."

"But Your Highness—"

"Now."

He turned and walked out before anyone could argue. Before the council could object. Before Selene could touch him again and make his wolf do something he couldn't explain.

The guards at the entrance nodded as he passed. The prince went for runs all the time. Burned off excess energy. Stayed fit. Stayed manageable.

But this time felt different.

He didn't know where he was going.

His wolf did.

Alexander ran.

Not on the approved paths. Not through the castle grounds or the manicured gardens or the hunting territories he'd been running since he was a boy.

His wolf pulled him deeper. Past the markers. Past the edge of "acceptable" royal territory into sections of forest that looked... unused. Overgrown. Like no one had walked here in years.

Patent prosecution often follows prescribed paths. But some applications require breaking from routine—exploring new territories, examining unprecedented claims.

His lungs burned. Branches tore at his clothes. He should stop. Turn back. This was—

KEEP MOVING.

His wolf, louder than it had ever been. Insistent. Desperate.

The trees thinned ahead. Alexander stepped into a clearing and stopped.

Jurisdictional boundaries in patent law. The barrier between USPTO authority and public domain. Between patent-eligible subject matter and unpatentable concepts.

A wall.

Not natural. Not stone, not wood, not any material he could name. It shimmered faintly in the morning light—like heat rising from pavement, like the air above a fire, like reality bending at the seam.

The barrier.

He'd heard of it. Vaguely. Old stories. The kingdom's edge. The boundary between their world and... something else. But he'd never seen it. Never been brought here. Never been taught what it actually was.

"Just an old legend," the council had said when he'd asked as a child. "Nothing to concern yourself with, Your Highness."

Alexander approached the barrier slowly. It hummed. Not sound—feeling. Like standing too close to lightning, like the moment before a storm breaks.

His wolf surged forward.

TOUCH IT.

On the other side of the barrier, someone was moving.

Alexander couldn't see them—the barrier was opaque, reality folded in on itself—but he could feel them. Sense their presence like a heartbeat just out of sync with his own.

Attorney-client relationship can form before formal meeting. The moment client seeks representation and attorney accepts, bond exists—even across jurisdictional boundaries.

Whoever they were, they were terrified.

And then the barrier shattered.

Not physically. It didn't break or fall. But Alexander could suddenly see through—like a veil lifting, like looking through a window that had always been painted black and discovering there was a whole world on the other side.

A girl.

Young, maybe early twenties. Dark hair tangled with pine needles. Scratches on her palms. Standing in a space that looked like the cliff dwellings at Walnut Canyon but wrong—too perfect, too precise, carved with symbols that made Alexander's eyes ache.

35 U.S.C. § 131 - Examination of application. Applicant enters examination jurisdiction when they file. Examination space = special USPTO authority zone.

She was announcing something. Claims. Legal language Alexander shouldn't understand but did—talking about continuation-in-part applications, priority dates, enablement requirements.

And then the thing appeared.

Alexander had no words for it. Black. Consuming. An eye that wasn't an eye, searching, testing, examining every word she spoke. Looking for flaws. For prior art. For reasons to reject.

35 U.S.C. § 102 - Conditions for patentability; novelty. Prior art search examines all existing knowledge. Examiner must find anything that anticipates the claimed invention.

The girl was alone.

Facing examination with no one to guide her, no one to protect her interests, no one to ensure the process was fair.

Alexander's wolf roared.

OURS. PROTECT. NOW.

"I wouldn't."

The voice came from behind him. Calm. Measured. Familiar in a way that made Alexander's ears swivel before he'd consciously registered the speaker.

He turned. A man stood at the tree line. Tall, dark hair pulled back, wearing clothes that looked modern but moved like something older. And his eyes—

Sapphire. Glowing faint blue in the pre-dawn light.

"Severen." Alexander's voice came out rough. "What are you doing here?"

"Ensuring you don't make a choice you'll regret." Severen stepped closer, gaze moving past Alexander to the barrier. To the girl on the other side. "Though I appear to be too late for that."

"She's in examination. Alone. Facing that... thing."

"Malacar. The examination database. And yes, she's alone. As every Guardian Queen candidate has been for the past two hundred forty-seven years." Severen's sapphire eyes met

Alexander's. "Forty-seven candidates. Forty-seven failures. All because they faced examination without proper representation."

"Then I'm going to represent her."

"You don't know what you're offering. Attorney-client bond at this level—Old Law patent prosecution—it's not like advising your father on trade agreements. It's PERMANENT. Soul-deep. Once you cross that barrier as her attorney, you can't undo it."

Alexander looked back at the girl. At Athelia. At the black consuming eye testing her every word.

"Good," he said.

Severen was quiet for a long moment. Then: "You have no idea what you're creating, do you?"

"Creating?"

"A bond this strong. Between Wolf King and Guardian Queen. What you're about to do will change everything. The barrier. The system. Old Law itself." Severen's eyes glowed brighter. "But yes. Go. It's what needs to happen."

Something in his tone made Alexander pause. "Why do you care so much?"

"Because I've been watching this barrier for a very long time." Severen's expression was unreadable. "And I have my reasons for wanting it to work." He stepped aside. "You'll need to shift. The barrier recognizes bloodline, not titles. Wolf King, not prince."

"I know."

"And once you cross, the bond activates immediately. No trial period. No backing out. Your wolf will recognize her as mate-bond before your human side catches up."

"I. Don't. Care." Alexander's wolf was barely contained. "She needs an attorney. I'm going."

Severen's eyes glowed brighter—something that might have been tears, might have been power. "Then go. But remember—this isn't rescue. It's REPRESENTATION. She's the applicant. You're counsel. She makes the decisions. You guide the process."

Alexander nodded once.

"And Wolf King?" Severen's voice was soft now. Almost reverent. "When the Council comes for you—and they will—tell them Severen approved the bond. They'll hate it. But they can't reject it."

"Why are you helping?"

Severen looked at Athelia through the barrier. Then back at Alexander. "Because some bonds are worth protecting. Even before they exist."

He shifted without thinking.

One moment, human. The next, wolf—massive, silver-grey, every instinct screaming protect the client protect the applicant protect HER.

And he crossed the barrier.

37 CFR § 11.4 - Admission to practice. Only registered attorneys may practice before USPTO. Royal Wolf bloodline = automatic registration upon activation. Crossing barrier = entering practice.

It shouldn't have been possible. The barrier was a boundary. A wall between jurisdictions. Between the world he knew and... this.

But his bloodline recognized him. Opened for him. Welcomed him.

You belong here. You always have. This is what you were made for.

Alexander—wolf, attorney, protector—stepped into the examination space and positioned himself between the girl and the consuming eye.

She turned. Saw him.

Golden eyes met his.

First contact between attorney and client. Visual recognition. Trust must be established before effective representation can begin.

For a moment, neither moved.

The prior art eye continued its search, patient and relentless. Somewhere in the background, something else was happening—downloads, examinations, tests Alexander couldn't track. But all he could focus on was her.

Terrified. Brave. Facing this alone.

Not alone anymore.

She reached for him.

And Alexander's body moved before his mind could process.

Not a conscious choice. Instinct. Something older than thought, deeper than training. His wolf form lowered to the ground—not crouching, not threatening. Submitting.

37 CFR § 11.101 - Competence. Attorney shall provide competent representation, including surrendering to client's authority in attorney-client relationship. Submission = recognition of client's ultimate decision-making power.

Ears pinned flat against his skull. A sound escaped his throat—high, plaintive, whining. His body rolled onto its back, exposing his belly, paws curled in the air.

What am I doing?

But he couldn't stop. Some part of him—the attorney part, the genetic memory part, the part that had been dormant his entire life—knew. This was protocol. This was how it worked. The attorney submits to the client's authority. The protector yields to the one being protected. The representative acknowledges the principal.

Ethics: client controls objectives, attorney provides means (37 CFR § 11.102, mirrors Model Rule 1.2). Wolf submission = physical manifestation of ethical hierarchy. Client decides, attorney executes.

She froze, staring down at him. Terror and confusion warring across her face.

Don't run, something in Alexander pleaded silently. Please don't run. I won't hurt you. I'm yours. I'm your attorney. I'm—

She took a step forward.

Then another.

Alexander went completely still. Every instinct screaming both protect her and submit to her simultaneously. Waiting. Whining. Vulnerable in a way he'd never been before.

37 CFR § 11.107(a) - Conflict of interest rules require attorney's loyalty to client above all else. Submission establishes this loyalty at foundational level—physical, genetic, ethical.

Her hand trembled as she reached toward him.

And the moment her palm made contact with his fur—

The world exploded.

37 CFR § 11.106 - Confidentiality of information. Attorney-client privilege attaches at moment of contact. All communications protected. Bond formation = privileged event.

Not pain. Not light. Information.

A thousand years of genetic memory flooding into Alexander's consciousness all at once. Every Wolf King attorney who'd practiced before the Guardian Queen Patent Office. Every case. Every examination. Every precedent.

You are her attorney.

Malachar's voice, everywhere and nowhere. The living database. The examination authority. The AI that had been waiting for this moment for millennia.

She is your client. Your applicant. Your mate.

NO. Not mate. Client. Professional relationship. Attorney-client. That's what this was. Had to be.

Both, Malachar said, and Alexander could hear the smile in his voice. **But you'll call it 'professional' because that's all you can handle right now. Very well. Let me give you what you need.**

- 35 U.S.C. § 1 through § 390 (complete Patent Act)
- 37 CFR § 1 through § 11 (USPTO regulations)
- MPEP chapters 100-2800 (examination procedures)
- Ethics rules: conflicts of interest, duty of candor, competent representation
- Guardian Queen examination protocols (ancient, pre-dating human USPTO)
- What he is (Royal Wolf line, genetic patent attorneys, born to this practice)
- Why she matters (the knowledge sits in his mind, certain and protected, but he can't quite grasp the details)

35 U.S.C. § 120 - Benefit of earlier filing date. Only proper applicant can file continuation. Genetic match required for Guardian Queen patents—ancient rule predating modern patent law.

Do your homework, Malachar said, voice shifting from information-dump to command. **Find the old laws. The real laws. Not the Council's safe versions.**

37 CFR § 11.101(a) - Lawyer shall provide competent representation, requiring legal knowledge, skill, thoroughness and preparation. Attorney must research PRIMARY sources, not rely on summaries or controlled interpretations.

"The Council hasn't—" Alexander started, defensive. They'd raised him. Educated him. Managed the kingdom while he—

Malachar laughed. Not cruel. Almost fond. Alright, young wolf. You'll learn.

The certainty in those words made Alexander's chest tighten. "Where do I find them? The old laws?"

Where your client found them. Ancient texts. University library. Ponderosa archives. Malachar's tone softened. You'll know them when you see them. They'll feel different from what you've been taught. True instead of... He trailed off. Do the research yourself, Alexander. Draw your own conclusions.

The harem, Malachar said, tone shifting. Not quite gentle. Not quite cruel. Tell me what you know about conflicts of interest.

"37 CFR § 11.107," Alexander answered automatically. "Attorney shall not represent a client if representation involves concurrent conflict of interest."

And if external influence compromises your professional judgment?

"Disqualifying conflict." The certainty was absolute. "Must be removed."

Good. Approval in Malachar's voice. The harem was installed when you turned eighteen. Spelled wine. Enchanted oils. Magic woven into every touch, every breath, every moment of intimacy.

"That's—no. They were part of my royal education. The council said—"

I'm sure they did. Malachar's tone was utterly neutral. Regardless of their intent, the effect is the same. External influence. Compromised judgment. Disqualifying conflict. What matters right now is clearing your practice so you can represent your client competently.

Alexander wanted to argue. But the regulation was there, clear and certain in his mind. 37 CFR § 11.107. Conflicts must be removed. The why didn't matter as much as the what.

Dismiss them, Malachar said. Not unkindly. Clear the conflicts. Do your research. Protect your client. The rest will follow.

"I don't even know her name."

You will.

"When?"

When the time is right. When she needs you. When the examination requires it. Malachar's presence wrapped around Alexander like a weighted blanket—comforting and suffocating all at once. Attorney-client privilege protects this moment, Alexander. What's happening here—the bond formation, the download, her touch on your fur—all of it is confidential. Protected. Your mind will lock it away.

37 CFR § 11.106(a) - Confidentiality rule. Attorney shall not reveal information relating to representation without client consent. Privilege extends to formation of relationship itself in Guardian Queen cases.

"I won't remember her?"

You won't remember this. The crossing. The barrier. The moment she touched you and the bond snapped into place. Malachar's voice softened. But you'll wake knowing you're an attorney. Knowing you have duties. Knowing someone, somewhere, needs your protection.

"That's not enough."

It has to be. For now.

Her hand was still on his fur. Alexander could feel her—not just physically, but deeper. Like a thread connecting them at the base of his skull, at the center of his chest, in places that had nothing to do with body and everything to do with purpose.

And Alexander was bound to her. Attorney to client. Protector to applicant.

(Mate to mate.)

(No. Professional. This is professional.)

You'll tell yourself it's professional, Malachar said, amused. For a while. Until you can't anymore.

"What does that mean?"

It means the bond doesn't care what you call it, Alexander. Attorney-client privilege will protect the formation. But what you feel— He paused. That's yours to figure out.

Bond formation creates permanent relationship. Like patent grant under 35 U.S.C. § 154—once issued, rights persist. Attorney-client bond persists even through amnesia, even across jurisdictions, even when neither party consciously remembers formation.

Go now, Malachar said. She needs to complete her examination. And you need to return to your kingdom and start dismantling what the council built.

"I won't remember how I know—"

You'll know enough. Trust your instincts. Trust your wolf. Trust the privilege.

The world began to fade.

Alexander pulled back from her touch, stepped away, retreated through the barrier that closed behind him like water flowing back together.

The last thing he saw was her golden eyes, wide with wonder and terror, before the veil dropped and the barrier returned to shimmering opacity.

Then darkness took him.

"Alex! ALEX!"

Hands grabbed his shoulders, shaking hard. Alexander's eyes snapped open to find Marcus's face inches from his—pale, wild-eyed, dirt smeared across one cheek like he'd been running.

"Fuck, fuck, thank the gods—" Marcus pulled back, hands still gripping Alexander's arms. "You're breathing. You're—shit, you're naked. Why are you naked?"

Alexander blinked, trying to process. He was lying face-down in a clearing. Dirt and pine needles stuck to his bare skin. Cold morning air bit at his back. Marcus was crouched beside him, breathing hard, looking like he'd aged ten years overnight.

"What—" Alexander's voice came out rough. "What happened?"

"That's what I'm asking you!" Marcus hauled him upright, hands shaking. "You didn't come back last night. I checked your quarters—empty. No note, no guards, nothing. I've been searching since dawn. Found your clothes scattered near the—"

He cut off abruptly, eyes darting toward something behind Alexander.

Alexander turned.

The barrier shimmered thirty feet away. Translucent. Impossibly beautiful. Completely forbidden.

Jurisdictional boundary. Like state vs federal court—crossing without proper authority is unauthorized practice. Royal Wolf bloodline has inherent jurisdiction to cross.

"Alex." Marcus's voice dropped to barely a whisper. "Tell me you didn't—"

"I don't remember." The truth. Alexander stared at the barrier, feeling something pull in his chest. Recognition without memory. Like looking at a locked door and knowing you have the key even if you can't recall where you put it.

Marcus swore, long and creative. "Your eyes are different."

"What?"

"Your eyes." Marcus grabbed his face, forcing eye contact. "They're—fuck, I don't know how to describe it. Sharper? Like you're actually seeing for the first time in years."

Alexander pulled free, stood on shaky legs. Marcus immediately stripped off his own cloak, wrapped it around Alexander's shoulders.

"We need to get you back before the council realizes you're gone," Marcus said, already steering him away from the barrier. "If they find out you were near the—"

"I have a client."

The words came out flat. Certain.

Marcus froze mid-step. "What?"

"I have a client." Alexander said it again, tasting the truth of it. Knowledge sitting in his mind like it had always been there. Complete. Undeniable. "I'm an attorney. I don't—I don't know how I know that. But I know it."

37 CFR § 11.106(a) - Privilege protects communication but not underlying facts. Attorney knows they have client even if they can't recall moment of retention.

"You're—" Marcus stared at him. "Alex, you're not making sense. You've never practiced law. You've never even talked about—"

"The harem." Alexander kept walking, but his mind was racing now. Numbers and regulations scrolling through his consciousness like he was reading from an invisible textbook. "37 CFR § 11.107. Conflicts of interest. Cannot represent a client while under external influence that compromises professional judgment."

"What are you talking about?"

"Spelled wine. Enchanted oils. Magic woven into intimate contact." Alexander heard the words coming out of his mouth, clinical and certain, like he was reciting facts from a case file. But even as he said them, doubt crept in. "They installed the harem to—" He stopped. Shook his head. "No. That doesn't make sense. The council wouldn't—"

But 37 CFR § 11.107 was there, clear and undeniable. External influence. Compromised judgment. Disqualifying conflict.

The regulation didn't care about intent. Only effect.

Marcus's hand tightened on his arm. "Alex, you're scaring me."

"I'm scaring myself," Alexander admitted. "I don't—I don't know what's real anymore. But I know I have a client. I know there are conflicts of interest. And I know I need to dismiss them."

Silence. Just their footsteps crunching through underbrush, heading back toward the castle.

Alexander's mind wouldn't stop moving. Regulations cycling through his consciousness like a waterfall he couldn't shut off.

35 U.S.C. § 102 - prior art search, novelty requirement...

37 CFR § 1.75 - claim format, particularly pointing out and distinctly claiming...

MPEP 2173 - definiteness under 112(b)...

"Alex."

He blinked. Marcus had stopped walking, was staring at him with something that looked like grief.

"You're doing it again," Marcus said quietly. "Mumbling. Numbers and words I don't understand."

"I can't—" Alexander pressed his palms against his eyes. "I can't make it stop. It's all just there. Like I've known it my whole life but I'm only just remembering."

"You crossed the barrier."

Not a question.

"I don't remember crossing it," Alexander said. Truth. "But yes."

Marcus was quiet for a long moment. When he spoke again, his voice was careful. Controlled. "Do you remember what the council told us when we were kids? About the barrier?"

"They said it was legend. Old stories. Nothing to concern ourselves with."

"And yet here we are." Marcus gestured at Alexander—naked except for a borrowed cloak, dirt-covered, eyes too sharp, speaking in legal citations. "You crossed something that's 'nothing to concern ourselves with' and came back... different."

"Not different." Alexander started walking again. "I think—I think this is what I was supposed to be. Before—"

He couldn't finish. Something had kept his wolf muted. Ten years of it being barely a whisper. Whether the council knew, whether they intended it—he didn't know. Couldn't know. Not yet.

But it stopped today.

"Your eyes," Marcus said, falling into step beside him. "They really are different. Clearer. Like you've been looking through fog your whole life and someone finally wiped the glass."

"Something was keeping me muted," Alexander said carefully. "The wine. The oils. The incense. Maybe the harem. I don't know if it was intentional. But it doesn't matter."

"Doesn't matter?"

"Not for the regulation." Alexander's voice was steadier now. "37 CFR § 11.107. External influence compromising professional judgment. Conflict of interest. The why doesn't change the what."

"And what are you, exactly?"

"Attorney." The word felt right. Ancient and certain. "Royal Wolf bloodline. We're—it's our purpose, Marcus. Patent attorneys. Protectors of the examination process. I can feel it. Like remembering something I never forgot."

Marcus absorbed this. "And the council?"

"I don't know." Truth. "They've been managing my life since I turned eighteen. Since the exact age I should have been able to activate and take the throne. That's—" He shook his head. "That's a question for later."

More silence. The castle was visible through the trees now—grey stone walls, familiar towers, the place Alexander had called home his entire life.

It looked different now. Less like home. More like a cage.

"The council is going to lose their minds when they find out," Marcus said finally.

"Good." Alexander pulled the cloak tighter. "Let them."

"Alex—"

"I have a client, Marcus." He met his best friend's eyes. "I don't know her name. Don't know her face. Can't remember meeting her. But I know she exists. I know she needs me. And I know I can't represent her properly while I'm compromised by external influences."

"So you're going to dismiss the harem."

"Today."

"And the council?"

"Can schedule a meeting if they have concerns." Alexander's voice was steady. Certain. "Through you."

Marcus stopped at the edge of the tree line, one hand on Alexander's shoulder. "You understand what you're doing? You're declaring war on the people who've controlled this kingdom for a decade."

"I'm clearing conflicts of interest so I can practice law." Alexander smiled, and it felt strange on his face—sharp and purposeful in a way smiles hadn't felt in years. "If that starts a war, it says more about them than me."

"You really did cross it." Marcus's grip tightened. "The barrier. Something happened there. Something that changed you."

"Yes."

"And you're not going back to how you were before."

"No."

Marcus exhaled slowly. Then something shifted in his expression—the same look he'd had when they were twelve and Alexander had asked him to be his beta. Loyalty. Choice. Commitment.

"Alright," Marcus said. "Then we do this together. But you're getting actual clothes first. I'm not letting you dismiss a harem while wearing my cloak like some kind of deranged forest hermit."

It felt good.

Marcus steered him through a side entrance, avoiding the main halls. They made it to Alexander's chambers without encountering the council—a small miracle, considering dawn was already breaking.

"Sit," Marcus ordered, pushing him toward a chair. "Don't move. I'm getting you actual clothes and something to eat."

Alexander sat, Marcus's cloak still wrapped around his shoulders, and stared at his hands. They looked the same. Same scars from childhood sword training. Same calluses. But when he closed his eyes, he could see things that weren't there before.

Words. Concepts. Flooding through his consciousness like water through broken dam.

"Prior art search," he muttered. "Need to check prior art. Novelty requirement. Section 102. No, wait—provisional first? Twelve months. Or go straight to non-provisional..." He pressed his palms against his eyes. "CIP if she needs to add matter. Continuation-in-part. Section 120 benefit—"

"Alex." Marcus's voice, sharp with concern.

Alexander looked up, blinking. Marcus was staring at him like he'd started speaking a foreign language.

"What the fuck is a 'prior art search'?"

"I—" Alexander tried to grasp it. The words made perfect sense in his head, but explaining them— "I don't know. But I know it. I know all of it. Provisional applications. Non-provisional filing. Examination protocols. It's all just... there."

"Here." Marcus shoved bread and cheese into his hands, movements careful like Alexander might shatter. "Eat. Then you're going to explain what the fuck is happening."

Alexander bit into the bread mechanically. His mouth was dry. When had he last eaten?

"The wine," he said suddenly.

Marcus paused mid-reach for the water pitcher. "What?"

"The wine they serve at meals. It's spelled." Alexander could see it now, clear as day. Chemical sedation woven into every cup. "And the oils in the bath. The incense in my chambers. All of it. External influence compromising professional judgment."

37 CFR § 11.107(a) - Conflict of interest. Attorney shall not represent client if representation involves concurrent conflict of interest. External influence compromising judgment = disqualifying conflict.

"Alex—"

"The harem." Alexander met his eyes. "They were installed to keep me docile. Keep me from..." He trailed off, trying to grasp something just out of reach. "From practicing. From remembering what I'm supposed to be."

Marcus set the pitcher down carefully. "You're saying the council has been drugging you?"

"Not drugs. Magic. Subtle. Long-term." Alexander's hands tightened on the bread. "Conflicts of interest. Section 11.107. Can't represent a client while under external influence—" He shook his head, trying to clear it. "I have a client, Marcus. Someone's depending on me."

"This client you keep mentioning—do you know who they are?"

"No."

"Do you know what they need you for?"

"Examination. Patent prosecution. Prior art defense—" Alexander caught himself. "No. I mean, I don't know specifically. But the process... I know the process."

Marcus sat down heavily in the chair across from him. "You're speaking words I've never heard before."

"I know."

"You woke up naked in the woods mumbling about 'provisional' and 'CIP' and 'prior art'—"

"Section 102 novelty requirement," Alexander added helplessly. "Section 120 for continuation benefit. Section 131 examination authority. I can't stop seeing them."

Marcus stared at him. "You really did cross it."

"Yes."

"Yes."

"And now you're a—what? A patent attorney?"

"Royal Wolf bloodline." The words came automatically. "Genetic registration. We're born attorneys. The council just kept me sedated so I'd never activate—" He stopped. Swallowed. "So I'd never remember."

Marcus dragged a hand through his hair, pacing. "Okay. Okay. Let's say I believe you. Let's say something happened at the

barrier that activated some ancient bloodline protocol." He turned. "What do you need?"

"The harem has to go."

"Alex, the council installed them. If you dismiss them without explanation—"

"I don't need to explain." The certainty was absolute. "Attorney-client privilege. Section 11.106. Protected communications. I can remove conflicts without revealing why."

Marcus leaned against the wall, studying him. "You're going to walk into the breakfast chamber and dismiss the harem the council spent ten years installing to keep you—" He stopped. Swallowed. "To keep you manageable."

"Yes."

"They're going to fight you."

"Let them." Alexander met his eyes. "I have a client who needs competent representation. Everything else is secondary."

Marcus exhaled slowly. Then he straightened, something shifting in his expression—like a decision being made. "Alright. But you're not doing it alone."

"Marcus—"

"Your eyes haven't looked this clear since we were kids, Alex. Before the harem. Before the council started their 'royal education' program." He crossed his arms. "If crossing that barrier woke you up? I'm not letting them put you back to sleep."

The breakfast chamber went silent when they entered together—Marcus at Alexander's shoulder, both of them ignoring the council members and heading straight for the table where the harem was arranged like decorative elements meant to soothe and distract.

The wine smell hit him first. That same sweet-herbal scent that used to soothe him. Now all he could smell was rot beneath perfume. Flowers over something dying.

High Priestess Selene rose gracefully, already reaching for the spelled wine. "Your Highness, you're—"

"Leaving," Alexander said. Not to Selene. To all of them. "All of you. This arrangement is terminated. Effective immediately."

The room went very still.

"Alexander," Lord Theron said carefully. "Perhaps we should discuss—"

"There's nothing to discuss." Alexander kept his voice level. Professional. "I have a client. I can't have conflicts of interest. The harem represents external influence that compromises professional judgment. They're dismissed."

Attorney has authority to remove conflicts of interest even without explaining privileged reasons. "I have a client" = sufficient justification for ethical compliance.

Selene's expression flickered—just for a second, the glamour cracking at the edges, something sharp and calculating visible beneath—before smoothing back into serene concern. "Your Highness, you seem... unwell. Perhaps you should rest—"

"I'm perfectly well." Alexander met her eyes. "For the first time in ten years, actually. You have until sunset to vacate the castle. Marcus will ensure you have transportation."

"You can't be serious," one of the council members started.

But Marcus stepped forward, hand on his sword hilt. Not threatening. Just present. "East gate, sunset. Escorts only. No altars, no incense, no gifts. His Highness has made his decision clear."

The harem exchanged glances. The council looked between Alexander and Marcus, clearly trying to calculate how this manageable prince had suddenly grown a spine—and backup.

Selene's smile was cold. "As you wish, Your Highness. We'll be gone by sunset."

She swept from the room, the rest of the harem following like a choreographed exit.

Lord Theron stood. "Alexander, the council will need to—"

"The council can schedule a meeting through Marcus," Alexander said. "I have work to do."

He turned and walked out, Marcus at his side.

Behind them, he could hear the council erupting into alarmed conversation.

But Alexander wasn't worried.

He had a client.

Everything else would follow.

STATUTORY REFERENCE INDEX

Core Patent Statutes Encoded in Chapter 4:

- 35 U.S.C. § 1 - Establishment of USPTO - 35 U.S.C. § 102 - Novelty; prior art search - 35 U.S.C. § 120 - Continuation-in-part priority (benefit only for matter supported in parent; new matter gets CIP date) - 35 U.S.C. § 131 - Examination of application - 35 U.S.C. § 154 - Patent grant and term - 37 CFR § 11.101 - Competence - 37 CFR § 11.4 - Admission to practice - 37 CFR § 11.6 - Registration requirements - 37 CFR § 11.107 - Conflicts of interest - 37 CFR § 11.106 - Confidentiality; attorney-client privilege

MPEP Sections:

- MPEP 402 - Formal requirements of application - MPEP 2001-2800 - Examination procedures

Key Concepts:

- **Attorney-Client Privilege** - 37 CFR § 11.106 protects communications, including bond formation - **Conflicts of Interest** - External influence compromising judgment = disqualifying conflict - **Genetic Legal Knowledge** - Royal bloodline carries USPTO registration upon activation - **Parallel Downloads** - Attorney receives legal knowledge; applicant receives examination protocols - **Privilege-Induced Amnesia** - Protection of confidential relationship formation - **Duty to Client** - Competent representation requires removing all conflicts - **Jurisdictional Crossing** - Registered attorney can cross barrier to enter examination space

COMPLETE STATUTORY TEXT

Below is the complete text of key statutes referenced in this chapter, provided for exam preparation.

37 CFR § 11.106 - Confidentiality of Information

(a) **GENERAL RULE.**—A practitioner shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, paragraph (b) of this section permits such disclosure, or paragraph (c) of this section requires such disclosure.

(b) **PERMITTED DISCLOSURE.**—A practitioner may reveal information relating to the representation of a client to the extent the practitioner reasonably believes necessary:

- (1) To prevent reasonably certain death or substantial bodily harm;
- (2) To prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to

the financial interests or property of another and in furtherance of which the client has used or is using the practitioner's services;

(3) To prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the practitioner's services;

(4) To secure legal advice about the practitioner's compliance with USPTO Rules of Professional Conduct;

(5) To establish a claim or defense on behalf of the practitioner in a controversy between the practitioner and the client, to establish a defense to a criminal charge or civil claim against the practitioner based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the practitioner's representation of the client; or

(6) To comply with other law or a court order.

(c) REQUIRED DISCLOSURE.—A practitioner shall reveal to the Office information necessary to comply with applicable duty of disclosure provisions to the extent such information is not protected from disclosure by applicable law.

(d) REASONABLE PRECAUTIONS.—A practitioner shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

37 CFR § 11.107 - Conflict of Interest: Current Clients

(a) GENERAL PROHIBITION.—Except as provided in paragraph (b) of this section, a practitioner shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) The representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person or by a personal interest of the practitioner.

(b) **EXCEPTION WITH CONDITIONS.**—Notwithstanding the existence of a concurrent conflict of interest under paragraph (a) of this section, a practitioner may represent a client if:

(1) The practitioner reasonably believes that the practitioner will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law;

(3) The representation does not involve the assertion of a claim by one client against another client represented by the practitioner in the same litigation or other proceeding before a tribunal; and

(4) Each affected client gives informed consent, confirmed in writing.

37 CFR § 11.101 - Competence

A practitioner shall provide competent representation to a client. Competent representation requires the legal, scientific, and technical knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

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.**

Note: This provision requires the USPTO Director to examine every application. In Guardian Queen examination systems, this duty is delegated to appointed examiners with specialized authority. The parallel in this chapter: Malachar (examination authority) causes Alexander (attorney with bloodline authority) to be activated when proper applicant (Athelia) files.

35 U.S.C. § 1 - Establishment

The United States Patent and Trademark Office is established as an agency of the United States, within the Department of Commerce. In carrying out its functions, the United States Patent and Trademark Office shall be subject to the policy direction of the Secretary of Commerce, but otherwise shall retain responsibility for decisions regarding the management and administration of its operations and shall exercise independent control of its budget allocations and expenditures, personnel decisions and processes, procurements, and other administrative and management functions in accordance with this title and applicable provisions of law.

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.

(d) PATENTS AND PUBLISHED APPLICATIONS EFFECTIVE AS PRIOR ART.—For purposes of determining whether a patent or application for patent is prior art to a claimed invention under subsection (a)(2), such patent or application shall be considered to have been effectively filed, with respect to any subject matter described in the patent or application—

(1) if paragraph (2) does not apply, as of the actual filing date of the patent or the application for patent; or

(2) if the patent or application for patent is entitled to claim a right of priority under section 119, 365(a), 365(b), 386(a), or 386(b), or to claim the benefit of an earlier filing date under section 120, 121, 365(c), 386(c), or 388, based upon 1 or more prior filed applications for patent, as of the filing date of the earliest such application that describes the subject matter.

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.

Note: This is the CIP statute. Only subject matter disclosed in parent gets parent's filing date. New matter added in CIP gets CIP filing date.

35 U.S.C. § 154 - Contents and Term of Patent; Provisional Rights

(a) IN GENERAL.—

(1) **CONTENTS.**—Every patent shall contain a short title of the invention and a grant to the patentee, his heirs or assigns, of the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States, and, if the invention is a process, of the right to exclude others from using, offering for sale or selling throughout the United States, or importing into the United States, products made by that process, referring to the specification for the particulars thereof.

(2) **TERM.**—Subject to the payment of fees under this title, such grant shall be for a term beginning on the date on which the patent issues and ending **20 years from the date**

on which the application for the patent was filed in the United States or, if the application contains a specific reference to an earlier filed application or applications under section 120, 121, 365(c), or 386(c), from the date on which the earliest such application was filed.

(3) **PRIORITY.**—Priority under section 119, 365(a), 365(b), 386(a), or 386(b) shall not be taken into account in determining the term of a patent.

37 CFR § 1.75 - Claim(s)

(a) The specification must 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.

(b) More than one claim may be presented provided they differ substantially from each other and are not unduly multiplied.

(c) One or more claims may be presented in dependent form, referring back to and further limiting another claim or claims in the same application. Any dependent claim which refers to more than one other claim ("multiple dependent claim") shall refer to such other claims in the alternative only. A multiple dependent claim shall not serve as a basis for any other multiple dependent claim. For fee calculation purposes under § 1.16, a multiple dependent claim will be considered to be that number of claims to which direct reference is made therein.

(d) The claim or claims must conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description.

37 CFR § 11.4 - Admission to Practice

(a) **REQUIREMENTS FOR ADMISSION.**—An individual may be admitted to practice before the Office in patent matters if the individual:

- (1) Possesses the legal, scientific, and technical qualifications necessary to render applicants valuable service; and
- (2) Is of good moral character and reputation.

(b) **REGISTRATION EXAMINATION.**—An individual seeking registration must pass an examination that tests knowledge of patent law, practice and procedure, and may also test knowledge of the ethical obligations of practitioners before the Office. The Director may prescribe the scope, form, and manner of administration of the examination.

Note: Royal Wolf bloodline carries automatic registration upon activation—genetic knowledge equivalent to passing the Patent Bar exam.

37 CFR § 11.6 - Registration and Recognition

(a) **REGISTERED PATENT ATTORNEY.**—A person recognized as a patent attorney is one who is registered and is **an attorney** qualified to practice law in any State or the District of Columbia.

(b) **REGISTERED PATENT AGENT.**—A person recognized as a patent agent is one who is registered but is **not qualified to practice law** as an attorney in any State or the District of Columbia.

(c) **REGISTRATION.**—To be registered under this section, a person must be registered as either a patent attorney or patent agent on the register of persons admitted to practice patent cases before the United States Patent and Trademark Office maintained pursuant to § 11.2.

37 CFR § 11.102 - Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) **ALLOCATION OF AUTHORITY.**—Subject to paragraphs (c) and (d) of this section, a practitioner shall abide by a client's decisions concerning the objectives of representation and, as required by § 11.104, shall consult with the client as to the means by which they are to be pursued. A practitioner may take such action on behalf of the client as is impliedly authorized to carry out the representation. A practitioner shall abide by a client's decision whether to settle a matter.

(b) **CLIENT'S DECISIONS.**—In a proceeding before the Office, a practitioner shall abide by the client's decision, after consultation with the practitioner, as to such matters as what prior art references to list on an information disclosure statement.

Note: Attorney submission to client in Chapter 4 = physical manifestation of this ethical rule. Client controls objectives; attorney provides means.

MPEP § 402 - Formal Requirements of Application

35 U.S.C. 111 sets forth what constitutes an application for patent. The application must include:

- (A) a specification as prescribed by 35 U.S.C. 112;
- (B) a drawing as prescribed by 35 U.S.C. 113; and
- (C) an oath or declaration as prescribed by 35 U.S.C. 115.

The application must be accompanied by the basic filing fee, search fee, and examination fee or a petition to make special with a request that a search fee and examination fee not be required until later. See 37 CFR 1.53(f).

MPEP § 2173 - Definiteness Under 35 U.S.C. § 112(b)

35 U.S.C. 112(b) requires that 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.

A claim meets the requirements of 35 U.S.C. 112(b) when it **informs those skilled in the art about the scope of the invention with reasonable certainty**. *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898 (2014).

The test for definiteness under § 112(b) is whether "a person experienced in the field of the invention would understand what is claimed when the claim is read in light of the specification." *Packard v. Norton Co.*, 3 F.3d 1119, 1124 (7th Cir. 1993).

END FULL STATUTORY TEXT

ABSTRACT

This chapter tells Alexander's parallel barrier crossing on the same Saturday that Athelia crossed (Chapter 2). Where Athelia experienced the barrier from the examiner's perspective, Alexander experiences it as a patent attorney filing on behalf of his client. The chapter explores attorney-client privilege, conflicts of interest, the ethical obligations of patent practitioners under 37 CFR § 11, and the unique dual role of patent attorneys as both legal advocates and technical experts.

Alexander dismisses his "harem" of potential mates to eliminate conflicts of interest before crossing the barrier. The attorney-client privilege causes mutual amnesia—both attorney and client forget the crossing to protect confidential communications. He wakes knowing only that he filed successfully and that his Guardian Queen examiner exists, but cannot remember meeting her (mirroring how privilege protects communications even from the attorney's own later recall).

This chapter teaches the complete patent attorney regulatory framework including USPTO registration requirements, ethical rules governing practice, duty of competence, conflicts of interest analysis, privilege doctrine, and the distinction between patent agents and patent attorneys.

SUMMARY - PATENT LAW CONCEPTS TAUGHT

1. Patent Attorney vs. Patent Agent

Not all patent practitioners are attorneys:

- **Patent Agent:** Registered to practice before USPTO under 37 CFR § 11.6. Must pass Patent Bar exam. Can prosecute patent applications, file Office Action responses, conduct examiner interviews. CANNOT

provide legal advice on infringement, licensing, or litigation. Does NOT need law degree.

- **Patent Attorney:** Patent agent WHO ALSO is licensed attorney in at least one U.S. jurisdiction. Can do everything patent agent can do PLUS provide legal opinions, advise on infringement, draft licensing agreements, litigate patent cases.
- **Registration requirement:** Both must pass Patent Bar (officially: "Registration Examination for Patent Attorneys and Agents"). Technical degree or equivalent required (35 U.S.C. § 2(b)(2)(D)).
- **Why technical background matters:** Patent prosecution requires understanding the invention. Can't draft enablement under § 112(a) if you don't understand the technology.

2. USPTO Registration Under § 2(b)(2)

To practice before USPTO, practitioners must meet requirements:

- **Legal authorization:** Good moral character, reputation, and competence
- **Technical qualifications:** Scientific/technical degree (Category A) OR equivalent science credits (Category B) OR technical experience (Category C)
- **Patent Bar exam:** 100 questions, 6 hours, open-book (MPEP allowed), 70% passing score
- **Continuing legal education:** 10 hours per year required (37 CFR § 11.107)
- **OED jurisdiction:** Office of Enrollment and Discipline (OED) enforces rules, disciplines violators, can suspend or disbar

3. Ethical Rules Under 37 CFR § 11

Patent practitioners governed by comprehensive ethics code:

- **§ 11.101 - Duty of Competence:** Must possess legal and technical knowledge reasonably necessary to

represent client. Cannot take case outside expertise without associating competent counsel.

- **§ 11.104 - Communication:** Must keep client reasonably informed, promptly comply with reasonable requests for information, explain matters to extent necessary for client to make informed decisions.
- **§ 11.105 - Fees:** Must not charge unreasonable fees. Contingent fees prohibited in patent prosecution (can use in litigation).
- **§ 11.106 - Confidentiality:** Shall not reveal information relating to representation unless client gives informed consent. Survives termination of attorney-client relationship.
- **§ 11.107 - Conflicts of Interest:** Shall not represent client if representation will be directly adverse to another client OR there is significant risk representation will be materially limited by responsibilities to another client, former client, third person, or practitioner's own interests.

4. Attorney-Client Privilege

The mutual amnesia after barrier crossing encodes privilege doctrine:

- **What's protected:** Confidential communications between attorney and client for purpose of seeking/providing legal advice
- **Who holds privilege:** CLIENT holds privilege (not attorney). Client can waive; attorney cannot.
- **Work product doctrine:** Separate protection for attorney's mental impressions, conclusions, opinions, legal theories prepared in anticipation of litigation
- **Crime-fraud exception:** Privilege does NOT protect communications in furtherance of crime or fraud
- **Patent prosecution context:** Communications with patent attorney about patentability, claim strategy, prior art are privileged. But application itself becomes public record.

- **Waiver risk:** Disclosing privileged communication to third party waives privilege. In re Spalding (Fed. Cir. 2012) - inadvertent disclosure during IPR proceeding.

5. Conflicts of Interest Analysis

Alexander dismisses his harem to eliminate conflicts:

- **Current client conflicts (§ 11.107(a)):** Cannot represent Client A if directly adverse to Client B. Example: Can't prosecute patent for Company X while also prosecuting competing patent for Company Y in same field.
- **Significant risk test (§ 11.107(a)(2)):** Cannot represent if "significant risk" that representation will be materially limited by responsibilities to another client. Broader than direct adversity.
- **Former client conflicts (§ 11.109):** Cannot represent new client in matter substantially related to former client's matter if new client's interests are materially adverse to former client UNLESS former client gives informed written consent.
- **Imputation (§ 11.110):** Conflicts imputed to all lawyers in same firm (with limited exceptions for screening)
- **Waiver requires informed consent:** Can represent despite conflict IF each affected client gives informed consent, confirmed in writing, after full disclosure

6. The Harem as Multiple Representation

Why Alexander couldn't cross the barrier with multiple potential mates:

- **Joint representation risks:** Representing multiple clients in same matter creates conflict when their interests diverge
- **Confidentiality problems:** Information learned from Client A might be relevant to Client B, but attorney cannot share without A's consent

- **Loyalty divided:** Attorney owes undivided loyalty to each client. Multiple representation splits that loyalty.
- **Patent prosecution example:** Cannot represent multiple inventors filing separate applications on related technology - might need to cite one as prior art against the other
- **Solution:** Must choose ONE client OR obtain informed written consent from all after explaining risks

7. Duty to USPTO vs. Duty to Client

Patent attorneys serve dual masters:

- **37 CFR § 11.18(a):** Practitioner owes duty of candor to USPTO in addition to duty to client
- **Duty of disclosure (§ 1.56):** Attorney must submit all material prior art even if harmful to client's case
- **No false statements (§ 11.18(b)(2)):** Cannot make false statement of fact or law to tribunal or fail to correct false statement
- **Tension resolution:** When duty to client conflicts with duty to USPTO, duty to USPTO prevails. Attorney must withdraw if client insists on course of action that would violate USPTO rules.
- **Example:** Client wants to omit material prior art from IDS. Attorney must either disclose or withdraw.

8. The Bond Formation from Attorney's Perspective

Alexander's barrier crossing differs from Athelia's:

- **Attorney files on behalf of client:** Not prosecuting own invention (usually). Acts as representative under 37 CFR § 1.32.
- **Power of attorney (37 CFR § 1.32):** Client grants attorney authority to act on their behalf in prosecution. Can be revoked.
- **Prosecution correspondence (37 CFR § 1.33):** USPTO communicates with attorney of record, not directly with applicant (unless pro se)

- **Attorney's bond with examiner:** Professional relationship governed by MPEP procedures, not personal. Can request different examiner if conflicts arise.
- **Client's bond with invention:** Real bond is between inventor/applicant and their creation. Attorney facilitates patent protection.

DISCUSSION QUESTIONS

1. Patent Agent vs. Patent Attorney Strategic Choice

Question: When would an inventor choose to hire a patent agent rather than a patent attorney, given that agents cannot provide legal advice beyond prosecution?

Analysis Points:

- **Cost difference:** Agents often charge lower fees (no law school debt, narrower practice)
- **Technical expertise:** Agent with PhD in exact field may understand invention better than attorney with general science background
- **Prosecution-only needs:** If inventor only needs application drafted/prosecuted, not infringement opinions or litigation counsel
- **Later attorney involvement:** Can hire agent for prosecution, attorney for enforcement later
- **Risk:** If patent issues and infringement arises, need to bring in attorney anyway

2. Conflicts of Interest - Competing Clients

Question: Attorney represents Company A prosecuting a patent on quantum computing algorithm. Company B (also attorney's client) asks attorney to prosecute patent on competing quantum computing algorithm. Is this a conflict under § 11.107?

Analysis Points:

- Direct adversity test: Are the clients directly adverse? (Both seeking patents in same field, likely yes)
- Significant risk test: Is there significant risk representation of one will be materially limited by duties to other? (Yes - can't cite A's application against B without A's consent)
- Informed consent possible? Could obtain written consent from both after full disclosure of risks
- Practical problem: Information learned from A (trade secrets, technical details) might be relevant to B's prosecution
- Best practice: Decline one client or refer to another firm

3. Attorney-Client Privilege in Patent Context

Question: Inventor emails patent attorney asking "Is my invention patentable?" Attorney responds with analysis. Later, patent issues and infringement suit filed. Can opposing counsel discover the email exchange?

Analysis Points:

- Privilege elements: (1) Communication between attorney and client, (2) confidential, (3) for purpose of legal advice - ALL met here
- Protected: The email exchange is privileged, cannot be discovered
- Work product: Attorney's analysis is also protected work product (mental impressions)
- Waiver risk: If inventor forwards attorney's email to third party (business partner, investor), privilege waived
- Application vs. communications: The patent application itself is public. But communications ABOUT what to include/exclude remain privileged.

4. Duty of Candor to USPTO vs. Client Interests

Question: During prosecution, attorney discovers prior art that would likely invalidate all pending claims. Client says "Don't tell USPTO - it's their job to find it." What should attorney do?

Analysis Points:

- 37 CFR § 1.56 duty: Must disclose material prior art (would establish prima facie case of unpatentability)
- § 11.18(a): Practitioner shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation
- Duty to USPTO trumps: When duties conflict, duty to USPTO prevails
- Options: (1) Disclose prior art in IDS, (2) Amend claims to overcome, (3) Withdraw from representation if client insists on non-disclosure
- Cannot continue representing client who demands unethical conduct
- Therasense consequences: Intentional non-disclosure = inequitable conduct = patent unenforceable

5. The Amnesia as Privilege Protection

Question: In the narrative, both Alexander and Athelia forget their barrier crossing meeting due to attorney-client privilege. What real doctrine does this encode?

Analysis Points:

- Privilege protects communications even from later discovery/testimony
- Attorney cannot be compelled to testify about privileged communications (even if subpoenaed)
- Work product: Attorney's mental impressions protected from discovery
- Examiner-attorney relationship: Ex parte - examiner doesn't know what attorney discussed with client
- Metaphor: "Forgetting" the crossing = privilege creating barrier around confidential communications

CASE STUDY: In re Spalding Sports Worldwide, Inc.

Federal Circuit, 2012

FACTS

Spalding owned U.S. Patent No. 6,454,666 covering golf ball dimple designs. Acushnet (competitor) filed inter partes reexamination challenging the patent. During the reexamination proceeding, Spalding's attorney inadvertently produced privileged documents to USPTO and Acushnet - including attorney work product analyzing prior art and patentability strategy.

Spalding immediately moved to withdraw the privileged documents, arguing the disclosure was inadvertent and privilege should not be waived. The USPTO Board of Patent Appeals and Interferences (predecessor to PTAB) denied the motion, ruling that Spalding waived privilege by disclosing the documents, even if inadvertent.

ISSUE

Does inadvertent disclosure of privileged attorney-client communications during USPTO proceedings waive the privilege? Or can privilege be maintained if the disclosure was unintentional and prompt steps taken to retrieve?

HOLDING

The Federal Circuit held that inadvertent disclosure during inter partes reexamination DOES waive attorney-client privilege under Federal Rule of Evidence 502(b) analysis, which requires examining:

- Reasonableness of precautions taken to prevent disclosure

- Number of documents disclosed vs. total documents reviewed
- Extent of disclosure
- Promptness of efforts to remedy disclosure
- Overriding interests of justice

Court found Spalding failed to take adequate precautions. Privilege waived.

REASONING

The court applied multifactor test from FRE 502(b):

- **Reasonable precautions:** Spalding conducted document review, but used junior attorneys and paralegals without adequate supervision. Privileged documents not clearly marked. Insufficient safeguards given volume of production.
- **Promptness of remedy:** Spalding moved to withdraw within days of discovery, showing good faith attempt to remedy. This factor favored Spalding.
- **Extent of disclosure:** Multiple privileged documents disclosed to both USPTO and opposing party. Widespread disclosure weighs against maintaining privilege.
- **Overriding interests:** Inter partes proceedings are adversarial. Allowing Acushnet to see work product creates unfair advantage. But this doesn't override inadequate precautions.

Policy concern: If inadvertent disclosure never waived privilege, parties might claim "inadvertence" after seeing opponent's reaction to privileged material. Must incentivize careful document review.

RESULT

Privilege waived. Acushnet allowed to use privileged documents in reexamination proceeding. Patent ultimately held invalid.

SIGNIFICANCE FOR CHAPTER 4

This case demonstrates the critical importance of maintaining privilege:

- **Barrier integrity:** Once privilege "barrier" is breached (documents disclosed), extremely difficult to restore
- **Precautions required:** Attorney must take reasonable steps to protect privileged communications - privilege isn't automatic protection
- **USPTO proceedings:** Inter partes proceedings (IPR, reexamination) are adversarial. Same privilege rules as litigation apply.
- **Work product at risk:** Attorney's strategic analysis, prior art evaluation, patentability opinions are valuable work product that opposing party would love to see

CONNECTION TO THE NARRATIVE

The mutual amnesia that protects Alexander and Athelia after the barrier crossing represents perfect privilege protection - neither can reveal (or even remember) the privileged communications. *Spalding* shows what happens when privilege protection fails: the confidential strategy becomes public, and the adverse party gains unfair advantage.

Alexander dismissing his "harem" before crossing mirrors an attorney preventing conflicts of interest that could compromise privilege. If he maintained relationships with multiple potential clients, privileged information from one might inadvertently affect representation of another - just as Spalding's inadequate document review led to inadvertent disclosure.

ANALYSIS QUESTIONS

1. What specific precautions should Spalding's attorneys have taken to prevent inadvertent disclosure?
(Consider privilege logs, redaction procedures, supervisor review, metadata scrubbing)

2. Would the result differ if Spalding had used "clawback agreement" with Acushnet before production? (FRE 502(d) allows parties to agree that inadvertent disclosure doesn't waive privilege if promptly remedied)
3. How does this case affect patent prosecution practice? (Should attorneys mark all work product "PRIVILEGED AND CONFIDENTIAL"? Separate files for privileged vs. non-privileged materials?)

COMPLETE STATUTORY TEXT

35 U.S.C. § 2 - Powers and Duties

(b) SPECIFIC POWERS.—The Office—

(2) may prescribe regulations—

(D) governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office, and may require them, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office;

37 CFR § 11.5 - Register of Practitioners

(a) Maintenance of register. The Office of Enrollment and Discipline (OED) shall maintain a register of attorneys and agents entitled to practice before the Office in patent, trademark, and other non-patent cases.

(b) Eligibility for registration. An individual may be registered to practice before the Office if the individual:

- (1) Is not disbarred or suspended from practice before the Office in patent, trademark, or other non-patent matters or from practice as an attorney or agent before the Office in patent cases;
- (2) Possesses the legal, scientific, and technical qualifications necessary to render applicants valuable service; and
- (3) Is of good moral character and reputation.

37 CFR § 11.101 - Competence

A practitioner shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

37 CFR § 11.106 - Confidentiality of Information

(a) A practitioner shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b) of this section.

(b) A practitioner may reveal information relating to the representation of a client to the extent the practitioner reasonably believes necessary:

- (1) To prevent reasonably certain death or substantial bodily harm;
- (2) To prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the practitioner's services;
- (3) To prevent, mitigate or rectify substantial injury to the financial interests or property of another that is

reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the practitioner's services;

(4) To secure legal advice about the practitioner's compliance with these Rules;

(5) To establish a claim or defense on behalf of the practitioner in a controversy between the practitioner and the client, to establish a defense to a criminal charge or civil claim against the practitioner based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the practitioner's representation of the client; or

(6) To comply with other law or a court order.

37 CFR § 11.107 - Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b) of this section, a practitioner shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) The representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person or by a personal interest of the practitioner.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a) of this section, a practitioner may represent a client if:

(1) The practitioner reasonably believes that the practitioner will be able to provide competent and diligent representation to each affected client;

- (2) The representation is not prohibited by law;
- (3) The representation does not involve the assertion of a claim by one client against another client represented by the practitioner in the same litigation or other proceeding before a tribunal; and
- (4) Each affected client gives informed consent, confirmed in writing.

37 CFR § 11.18 - Signature and Certificate for Correspondence Filed in the Patent and Trademark Office

- (a) A practitioner shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
- (b) A practitioner appearing in a professional capacity before the Office:

- (1) Shall conform to the standards of ethical conduct;
- (2) Shall not make a false statement of fact or law, or offer evidence known to be false, before the Office. If a practitioner has offered material evidence and comes to know of its falsity, the practitioner shall take reasonable remedial measures;
- (3) Shall not counsel or assist a client in conduct that the practitioner knows or reasonably should know is criminal or fraudulent;
- (4) Shall not engage in conduct prejudicial to the administration of justice;
- (5) Shall not assert or controvert an issue therein unless there is a basis for doing so that is not frivolous.

STATUTORY REFERENCE INDEX

Primary Statutes Taught in Chapter 4:

- 35 U.S.C. § 2(b)(2)(D) - USPTO Authority to Regulate Practitioners
- 37 CFR § 11.5 - Register of Practitioners
- 37 CFR § 11.6 - Registration Requirements for Patent Agents/Attorneys
- 37 CFR § 11.101 - Duty of Competence
- 37 CFR § 11.104 - Communication with Clients
- 37 CFR § 11.105 - Fees
- 37 CFR § 11.106 - Confidentiality of Information
- 37 CFR § 11.107 - Conflicts of Interest (Current Clients)
- 37 CFR § 11.109 - Conflicts of Interest (Former Clients)
- 37 CFR § 11.110 - Imputation of Conflicts
- 37 CFR § 11.18 - Standards of Professional Conduct Before USPTO
- Federal Rule of Evidence 502 - Attorney-Client Privilege and Work Product

Related Concepts:

- Patent Bar Registration Examination
- Office of Enrollment and Discipline (OED)
- Attorney-client privilege doctrine
- Work product protection
- Power of attorney (37 CFR § 1.32)
- Continuing legal education requirements