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LEGAL ISSUES IN THE ARTS

- An Overview -

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DISCLAIMER!

- This may be boring
- You may not learn anything
- If you learn something, it'll probably be enough to make you dangerous
- This is **NOT** legal advice


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IDEAS AND CONCEPTS

- Are **not protectable** in and of themselves
- Legal protection extends to the **tangible expression** of ideas and concepts
- This tangible expression is known as **Intellectual Property** ("IP")

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INTELLECTUAL PROPERTY

- **What?**
 - **Tangible Expression** of creative human endeavor
 - **Protected by**
 - **Patents**
 - **Trademarks**
 - **Copyrights**
 - **Trade Secrets**


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Intellectual Property...

- **Transportation Analogy**
 - Cars drive on land 
 - Ships sail on water 
 - Planes fly in air 
 - Hydroplanes travel on water and in air 

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Intellectual Property...

- **Patents** → Inventions or Discoveries
- **Trademarks** → Indicators of Source
- **Copyrights** → Original Works
- **Trade Secrets** → Confidential Information

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Intellectual Property...

- **Rights?**
 - **Limited term monopoly** in exchange for promotion of the useful arts and sciences

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Intellectual Property...

- **How Long?**
 - Until becomes **Public Domain**
 - Available for all to use
 - **Caveat:**
 - Public Availability \neq Public Domain

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PATENTS

- **What?**
 - **Inventions or Discoveries**
 - Three Types
 - **Utility**
 - **Design**
 - **Plant**

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Utility Patent

Any **new, useful** and **nonobvious**

- **Process** (*making a mosaic collage*)
- **Machine** (*giclée print maker*)
- **Manufacture** (*paint tube*)
- **Composition of Matter** (*acrylic paint*)
- **Improvement thereof** (*easel with hand rest*)

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United States Patent

Patent No. US 6,560,059 B1

Date of Patent: May 26, 2003

INVENTOR: JAMES R. HARRIS, JR.

ATTORNEY: BRANDO L. SPEAR, JR.

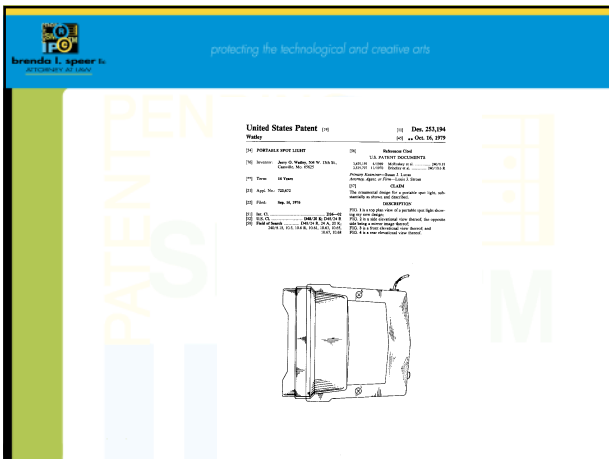
ABSTRACT: A portable spotlight is disclosed. The spotlight includes a housing, a lens, and a reflector. The housing is configured to be mounted on a stand. The lens is positioned to project light from the reflector. The reflector is configured to reflect light from the lens. The housing is configured to be rotated about a vertical axis. The lens is configured to be rotated about a horizontal axis. The reflector is configured to be rotated about a horizontal axis. The housing is configured to be rotated about a vertical axis. The lens is configured to be rotated about a horizontal axis. The reflector is configured to be rotated about a horizontal axis.

FIG. 1

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Design Patent

Any **new, original** and **ornamental design** for an article of manufacture
(portable spotlight)



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Patents...

- **Rights?**
 - **Exclusive** right to
 - **Make**
 - **Use** and
 - **Sell**

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Patents...

- **Where?**
 - **National Border**

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Patents...

- **How Long?**
 - **Utility:** **20** years from filing date
 - **Design:** **14** years from grant date

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Patents...

- **Public Domain?**
 - **Expiration** of grant

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Patents...

- **Marking?**
 - U.S. Patent No. 6,565,059 (**utility**)
 - U.S. Patent No. D253,194 (**design**)
 - U.S. Pat. Pend. (**pending application**)

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Patents...

- **Acquisition of Rights?**
 - Upon **grant**
 - US **Patent & Trademark Office**
 - **Registration required**

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TRADEMARKS

- **What?**
 - **Trademark:** Indicator of source or origin of a good or service
 - Trademarks may consist of:

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Words

Coca-Cola



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Phrases




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Designs



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Combinations Thereof



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Scents, Sounds & Colors

- **Scent**
 - Smead
 - Vanilla and others for office supplies
- **Sound**
 - NBC
 - Chimes for broadcasting services
- **Color**
 - Owens Corning
 - Pink for insulation

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Trademarks

- **Proper Format**
 - **Always** use as an **ADJECTIVE**
 - Trademark brand noun
 - **Big Chief**[®] brand writing tablet
 - **Not** as a **noun**
 - Please make a Xerox of this document.
 - **Not** as a **verb**
 - Let's go rollerblading in the park.

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Trademarks...

- **Art Applications**
 - **Goods** (pottery)
 - **Services** (ceramic classes)
 - **Characters** (Mickey Mouse)

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Trademarks...

- **What?**
 - **Exclusive right** to use trademark with **particular** goods and services.

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Trademarks...

- **Where?**
 - **Common Law Usage:** Demonstrated territory
 - **State Registration:** State border
 - **Federal Registration:** National border

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Trademarks...

- **How Long?**
 - **Common Law Usage:** As long as continuously used
 - **State Registration:** Usually 10 years (subject to renewal and continuous use)
 - **Federal Registration:** 10 years (subject to renewal and continuous use)

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Trademarks...

- **Public Domain?**
 - *No longer* in *continual use*
 - At least 3 years of non-use

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Trademarks...

- **Marking?**
 - MARK® (*Federal* Registration)
 - MARK™ (*State* Registration and/or *Common Law* Usage)

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Trademarks...

- **Acquisition of Rights?**
 - Upon *use* of the mark in *commerce*
 - US Patent & Trademark Office
 - Secretary of State

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Trademarks...

- **Acquisition of Rights...**
 - *Registration not required, but*
 - Proof of *rights*
 - Proof of *ownership*
 - Public *record*



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COPYRIGHTS

- **What?**
 - *Original works of authorship* fixed in any *tangible* medium of expression

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Copyrights...

- **Works?**
 - *Literary* works 
 - *Musical* works  (including any accompanying words)
 - *Dramatic* works  (including any accompanying music)

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Copyrights...

- **Works...**
 - **Pictorial, Graphic**    
 - **Motion Pictures**  
 - **Sound Recordings**  

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Copyrights...

- **Rights?**
 - Exclusive **RightS**
 - **Reproduce** the work
 - **Prepare** derivative works
 - **Distribute** copies
 - **Perform** publicly
 - **Display** publicly

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Copyrights...

- **Where?**
 - **National** Border
 - **International** Reciprocity

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Copyrights...

- **How Long?**
 - **Individual Work:** Life of author plus 70 years
 - **Joint Work:** Life of last-surviving author plus 70 years
 - **Anonymous Work, Pseudonymous Work, Work for Hire:** Earlier of
 - 95 years from publication
 - 120 years from creation

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Copyrights...

- **Public Domain?**
 - **Expiration** of term

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Copyrights...

- **Marking?**
 - **Copyright**
 - Symbol (©)
 - Word (Copyright)
 - Abbreviation (Copr.)
 - **Year** of Creation or Publication
 - **Author** Name

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Copyrights...

- **Marking...**
 - **Visually Perceptible Copies**
 - © 2007 Author Name
 - Copyright 2007 Author Name
 - Copr. 2007 Author Name

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Copyrights...

- **Marking...**
 - **Sound Recordings**
 - © 2007 Author Name

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Copyrights...

- **Acquisition of Rights?**
 - Upon **creation**
 - US **Copyright Office**

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Copyrights...

- **Acquisition of Rights...**
 - **Registration** *not* required, *but* provides
 - Proof of **ownership**
 - Public **record**
 - Required to bring **suit**
 - File within 3 months of *Publication*
 - Damages
 - Attorneys Fees

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Copyrights...

- **Infringement?**
 - **Legal Test**
 - **Access** to original work and
 - **Substantial similarity** to original work
 - **Myth**
 - Not infringement if change by X%

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Copyrights...

- **Infringement Exceptions?**
 - **Express Permission**
 - **Fair Use Defense**
 - *Purpose and character of use*
 - *Nature of the copyrighted work*
 - *Amount and substantiality*
 - *Effect on the potential market*

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TRADE SECRETS

- **What?**
 - **Business information** that has
 - **Commercial value**
 - Provides an actual or potential **economic advantage** over others
 - Is **maintained in confidence**

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Trade Secrets...

- **Rights?**
 - **Exclusive** right to **use**

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Trade Secrets...

- **Where?**
 - **State by State**
 - Other areas of legal recognition

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Trade Secrets...

- **How Long?**
 - As long as maintained in **confidence**



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Trade Secrets...

- **Public Domain?**
 - **Disclosure**
 - By **anyone**
 - With or without fault

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Trade Secrets...

- **Marking?**



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Trade Secrets...

- Acquisition of Rights?
 - Upon *creation*
 - Not Registered
 - Contractual Right

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CONTRACTS

- What?
 - *Grant of Rights* in property

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Contracts...

- Rights?
 - *Own and use* for yourself
 - *Own and someone else uses*
 - License
 - *Sell and no ownership or use*
 - Work for Hire
 - Commissioned Work

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Contracts...

- What?
 - *Licensing*
 - *Work for Hire*
 - *Commissioned Work*

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Contracts...

- How?
 - *Contract before* you start the transaction
 - Seek professional *guidance*
 - *Provisions*
 - Who, what, when, where, why & how

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Contracts...

- **Licensing?**
 - Parties
 - Property Rights
 - Term
 - Territory
 - Transferability
 - Exclusivity
 - Quantity
 - Quality
 - Royalty
 - Remedies
 - Other

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Contracts...

- **Work for Hire?**
 - **What?**
 - Term defined by statute
 - **Who?**
 - Parties
 - Employer and Employee
 - Employment relationship
 - Commissioner and Commissionee
 - In *writing beforehand*

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Contracts...

- **Works?**
 - *Contribution* to a Collective Work
 - Part of a *Motion Picture* or other *Audiovisual* Work
 - *Translation*
 - *Supplementary* Work
 - *Compilation*
 - *Instructional* Text
 - *Test*
 - *Answer* Material for a Test
 - *Atlas*

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Contracts...

- **Commissioned Work?**
 - *May* or *may not* fit within definition
 - *May* or *may not* transfer ownership
 - Effective ownership transfer
 - In writing
 - Before work is done, preferably
 - *May* or *may not* waive visual art rights

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VISUAL ART RIGHTS

- **What?**
 - Unique copyright protection (1990)
 - Also known as *Moral Rights*

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Visual Art Rights...

- **Who?**
 - *Author* only
 - *Not Transferable*
 - *Waiver* of rights in writing
- **How Long?**
 - *Life* of author

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Visual Art Rights...

- **Rights?**
 - *Attribution & Integrity*
 - *Claim authorship*

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Visual Art Rights...

- **Claim authorship...**
 - **Prevent use of name**
 - Not the creator
 - Distortion, mutilation, modification of work prejudicial to honor or reputation
 - **Prevent abuse of work**
 - Distortion, mutilation, modification of work prejudicial to honor or reputation
 - Destruction (intentional or negligent)

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Visual Art Rights...

- **Works?**
 - **Painting**
 - **Drawing**
 - **Print**
 - **Sculpture**
 - **Photograph**

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Visual Art Rights...

- **Painting, Drawing or Print**
 - **Single copy**, or
 - **Limited edition**
 - ≤ 200 copies
 - Signed
 - Consecutively numbered

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Visual Art Rights...

- **Sculpture**
 - **Multiple Cast**
 - **Carved**
 - **Fabricated**
- **Requirements**
 - ≤ 200 copies
 - **Signature** or identifying mark
 - Consecutively numbered

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Visual Art Rights...

- **Photograph**
 - **Still image**
- **Requirements**
 - **Single copy**
 - produced for **exhibition** purposes only
 - Signed
 - **Limited edition**
 - ≤ 200 copies
 - **Signature** or identifying mark
 - Consecutively numbered

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DESIGN COPYRIGHT

- **What?**
 - Unique copyright protection (1998)

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Design Copyright...

- **What?**
 - *Original design* of a *useful article* which makes the article *attractive or distinctive in appearance* to the purchasing or using public

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Design Copyright...

- **Rights?**
 - *Make, have made, or import*
 - *Sell* or *distribute*

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Design Copyright...

- **Where?**
 - *United States*
- **How Long?**
 - *10 years* from publication

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Design Copyright...

- **Marking?**
 - *Designator*
 - Symbol ("D" within a circle or *D*)
 - Words (Protected Design)
 - Abbreviation (Prot'd Des.)
 - *Year* of Protection
 - *Owner* Name

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Design Copyright...

- **Acquisition of Rights?**
 - Upon *publication*, provided
 - *Registration* within *2* years
 - US *Copyright Office*
 - Trumped by design patent

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QUESTIONS

- **ANSWERS**
 - The Answer to Life, the Universe and Everything is "42"
 - Douglas Adams, *Life, the Universe and Everything* (*Hitchhiker's Guide to the Galaxy* Trilogy)
 - "It Depends"
 - Universal legal answer