

Introduction to Intellectual Property
Fall 2007
Final Version 1.0

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Syllabus

Course Description

This course provides an overview of the United States' system of intellectual property protection. This is a survey course, which will cover the three main branches of federal intellectual property law—Patent, Trademark, and Copyright—as well as some state laws that regulate intellectual property—trade secret, the right of publicity, and appropriation. This course thus serves as an introduction to this area of the law and as a complement to the other intellectual property courses offered at CU, not as a substitute for them. For students seeking merely a broad exposure to intellectual property issues, this class will provide a solid overview of the topic, but the aim of the class is to encourage students to pursue additional offerings in the field.

Although many of the cases in this class involve technology, with a particular emphasis on biotechnology and computer and Internet technology, no prior technical background or knowledge is required. Any technology that needs to be understood will be explained in class, and students should not hesitate to ask for other technical explanations.

Class Times and Office Hours

The class will meet every Monday and Wednesday from 1:00 pm – 2:20 pm in Room 301. I will generally be available for office hours immediately after class, on Monday and Wednesday afternoons from 2:30pm – 3:30pm in Room 433 or at any other time by appointment. I can also be reached via e-mail at paul.ohm@colorado.edu.

Course Expectations

Grades for the course will be based on a final exam and class participation. I value class participation very much, and I may increase or decrease your grade up to three points to reflect your participation.

I expect you to be prepared to talk every class and will call on you without prior notice. If, however, you are unable to prepare for class on a particular day for whatever reason, please attend anyway. Send me an e-mail at least one hour before we begin, or leave me a note on the podium at the front of the room before class starts and I will not call on you during that day. You may not use this "pass" more than three times during the semester unless you come talk to me about your situation. If you do not leave me a note but are completely unprepared when I call on you, your grade will be negatively affected.

In addition to the call system, voluntary participation is encouraged. Your grade will be positively affected by consistent, insightful contributions.

I will pass around a seating chart on Wednesday, September 5th. Please be sure you can see the text on the MindManager mind maps from your chosen seat.

I do not use chalk and chalkboard in my class. Instead, I project a computer's display onto the screen and use a technology known as mind mapping software. In particular, I use a product called MindManager made by a company called MindJet. This product provides many of the advantages of PowerPoint with few of PowerPoint's weaknesses. For each class, I will start with a skeleton mindmap which I will fill in during the class with student contributions. At the end of each class (usually on the same day), I will upload a pdf version of the mindmap to the course website.

Course Materials

Our primary source will be a casebook: Merges, Menell, and Lemley's Intellectual Property in the New Technological Age (4th ed. 2006). The publisher has recently released a "Revised 4th Edition" which we are not using, so please be sure you have the right book. In addition, a number of supplemental materials will be available at the course website at paulohm.com. Some of these supplemental materials are noted in the syllabus, below; others will be added to assignments during the semester, in which case they will be made available and announced at least two classes prior.

A note on casebook notes and problems: Assume that all "Comments and Questions" that fall within the assigned pages listed below **are to be read and considered**, unless the assignment specifically instructs skipping the Notes. Any "Problems" can be skipped unless they are specifically assigned. Some unassigned problems will nevertheless be discussed in class.

Our course website is at paulohm.com/classes/ip07. Here, you will find class mind maps, important announcements, supplemental readings (most of which are mentioned in the day-by-day syllabus, below), changes to the reading, and links to other resources. Supplemental readings will be made available at least two classes prior to the assigned date. The top part of the website will list "Latest Changes to the Site" which can be scanned to see what is important and new. Students are advised to consult the website before every class, particularly when a class is missed. I dislike TWEN and will use it sparingly if at all.

Assigned Topics and Reading

Course Overview

1: Mon, Aug 27 Substantive Overview and the Right of Publicity

Overview of Intellectual Property (24-30) and The Right of Publicity (883-98; Stop reading after Note 2 on 898). [24]

2: Wed, Aug 29 Theoretical and Economic Underpinnings

"Philosophical Perspectives" (1-24) (skip Problem 1-2).
Please be sure you can view the course website and download and view the course mind maps. [24]

Mon, Sep 3 Labor Day: No Class

Trade Secrets

3: Wed, Sep 5 Trade Secrets Defined and Misappropriation

"Introduction" (33-39); *Rockwell Graphic Sys. v. DEV Indus.* (49-57); *duPont v. Christopher* (62-66). [21]

4: Mon, Sep 10 Reverse Engineering; Employees and Agreements to Keep Secrets

Reverse Engineering (74-79); "The Special Case of Departing Employees":
Employee Trade Secrets (80-86), Non-Competition Agreements (89-94) [20]

Patents

5: Wed, Sep 12 Introduction and Subject Matter

Historical Background (117-24, skim); Overview and Theories (124-27); Patentable Subject Matter (128-139); *State Street Bank v. Signature Trust* (1047-56); Section 101; Also, visit patentlysilly.com and find patents that catch your eye or search for patents at www.google.com/patents. Read through at least two patents, front to back, including the claims. [skim 8, read 26+]

6: Mon, Sep 17 Enablement and Written Description

Enablement and Written Description (164-184). [21]

7: Wed, Sep 19 Utility and Novelty

Utility (144-52); Novelty Introduction (185-86); Publication (192-95); Public Use (196-201); 35 U.S.C. § 102(a) and (b). [24+]

8: Mon, Sep 24 Non-Obviousness

Non-Obviousness (214-225; 235-238); Read facts only of Amazon.com v. Barnesandnoble.com (1063-64); Dembiczak (229-233); KSR v. Teleflex (Handouts). [23+]

9: Wed, Sep 26 Claim Construction; Literal Infringement

Claim Interpretation (239-57); Literal Infringement (257-263). [26]

10: Mon, Oct 1 Doctrine of Equivalents and Prosecution History Estoppel

Skim Procedures for Obtaining a Patent (skim 159-164); Doctrine of Equivalents: Basic Issues and Prosecution History Estoppel (263-80). [skim 6, read 18]

Copyright

11: Wed, Oct 3 Introduction and Requirements

Introduction (367-76); Originality (376-78); Feist (378-86) [23]

12: Mon, Oct 8 Fixation and Idea-Expression

Fixation (386-89); Copyrightable Subject Matter: Idea-Expression (395-405) Problems 4-3 to 4-5 (401-02; 405). [18]

13: Wed, Oct 10 Useful Articles; Subject Matter

Useful Articles (405-15); Problems 4-6, 4-7, 4-8 (415); Skim Subject Matter (skim 420-27, stop before Roth Greeting Cards). [skim 8, read 11]

14: Mon, Oct 15 Ownership

Ownership: For Hire (430-38); Joint Works (439-445). [16]

15: Wed, Oct 17 Right to Copy

Infringement: Right to Copy (458-84). [27]

16: Mon, Oct 22 Other Copyrights; Duration

Infringement: Other Rights (484-85; 491-506) (In other words, 484-506 but skip Anderson v. Stallone and Notes 1 and 2 following); Duration (449-52). [22]

17: Wed, Oct 24 Fair Use I (**Guest Lecturer TBA**)

Fair Use (506-519); Sony (520-25). [20]

18: Mon, Oct 29 Fair Use II

American Geophysical (525-39); Campbell (539-50). [27]

19: Wed, Oct 31 Contributory and Vicarious Infringement

Indirect Liability (553-63); Grokster (576-91). [27]

Trademarks

20: Mon, Nov 5 Intro and What can be protected as a Trademark; Establishment of Rights; Distinctiveness

Introduction (617-24); What Can Be Protected (624-26); Zatarain's (634-48)
Genericness (skip Murphy Door Bed Co. v. Interior Sleep Sys.) (769-70; 772-777).
[34]

21: Wed, Nov 7 Trade Dress

Trade Dress (634); Two Pesos (648-52; skip notes following) and Samara Bros. (653-60). [14]

22: Mon, Nov 12 Infringement: Trademark Use and Likelihood of Confusion

Note on Geographic Limitations on Trademark Use (670-71); Rescucom v. Google (handout); AMF Inc. v. Sleekcraft Boats (709-16). [9+]

23: Wed, Nov 14 More Infringement and Dilution

Franchising and Merchandising (736-740); Dilution (721-36); Handout on Trademark Dilution Act. [26+]

Mon, Nov 19 and Wed, Nov 21

Fall Break: NO CLASS

Cross-IP Themes

24: Mon, Nov 26 Comparing Copyright and Trademarks: Useful/Functional Items and the First Amendment

Functional Trademarks (780-89) (compare to earlier Useful Articles discussion); Nominative Use, Parody, and the First Amendment (803-13) (compare to earlier discussion of Acuff-Rose v. Campbell). [21]

25: Wed, Nov 28 Comparing Patent and Copyright: Remedies

Patent Remedies (335-38); Injunctions (338-42) (skip note 3); Willfulness (350-56);
Copyright Remedies (609-616); Mercexchange v. eBay (Handout). [24+]

26: Mon, Dec 3 Contract as a Form of IP

Contract (848-64); Handout on Douglas v. Talk America. [17+]

Review

27: Wed, Dec 5 Review

No Reading.