

Introduction to Intellectual Property
Fall 2008
Final Version 1.0

Paul Ohm

Syllabus

Course Description

This course provides an overview of the United States' system of intellectual property protection. This survey course covers 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 Tuesday and Thursday from 9:15 am – 10:30 am in Room 206. I will generally be available for office hours on Tuesday and Thursday mornings from 10:30 – 11:30 am 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 five points to reflect your participation.

The final exam is a traditional, three-hour, in-class final with a mix of issue spotting and policy questions. Students may bring and consult any written materials during the exam.

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.

If you find yourself especially prepared for class after finishing the reading, you can put yourself on call by using what I call a “catch.” Just like with a pass, 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 do my best to call on you at some point during the class.

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

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.

I will pass around a seating chart on Tuesday, September 2nd. Please be sure you can see the text on the MindManager mind maps from your chosen seat.

Course Materials

Our primary source will be a casebook: Merges, Menell, and Lemley's Intellectual Property in the New Technological Age (Revised 4th ed. 2006). Please be sure you are using the REVISED 4th Edition. 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/ip08. 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 do not use TWEN.

Assigned Topics and Reading

Course Overview

1: Tues, Aug 26 Substantive Overview and the Right of Publicity

Overview of Intellectual Property (24-30) and The Right of Publicity (901-16; Stop reading after Note 2 on 916). [23]

Play one game of Scrabulous (spend no more than fifteen minutes trying to figure out how to get this running in fifteen minutes; spend as much time as you'd like actually playing the game!)

2: Thur, Aug 28 Theoretical and Economic Underpinnings

“Philosophical Perspectives” (1-24) (skip Problem 1-2); “Trade Secrets Introduction” (33-39); Please be sure you can view the course website and download and view the course mind maps. [31]

Trade Secrets

3: Tues, Sep 2 Trade Secrets Defined and Misappropriation

Metallurgical Indus v. Fourtek (39-47); Rockwell Graphic Sys. v. DEV Indus. (49-57); duPont v. Christopher (62-66). [23]

4: Thurs, Sep 4 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) [19]

Patents

5: Tues, Sep 9 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* (1065-74); 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: Thurs, Sep 11 Enablement and Written Description

Skim Procedures for Obtaining a Patent (skim 158-163); Enablement (163-69); Written Description and Best Mode (173-83). [skim 6; read 18]

7: Tues, Sep 16 Utility and Novelty

Note on Different Types of Utility (154-58); Novelty Introduction (185-86);
Publication (192-95); Public Use (196-200); 35 U.S.C. § 102(a) and (b). [16+]

8: Thurs, Sep 18 Non-Obviousness

Non-Obviousness (212-237); Dembiczak (240-244, skip Comments and Questions);
read facts and claim language only of Amazon.com v. barnesandnoble.com (1081-
83). [24]

Tues, Sep 23: No Class

9: Thurs, Sep 25 Infringement: Claim Construction; Literal Infringement and the
Doctrines of Equivalents

*Guest Lecturer: Wayne Stacy, Partner, Cooley Godward Kronish LLP and
Adjunct Professor Copyright Law, Spring 2009.*

Claim Interpretation, Literal Infringement, and the Doctrine of Equivalents (250-
279). [25]

Copyright

10: Tues, Sept 30 Introduction and Requirements

Introduction, Originality, and Feist (383-402) [20]

11: Thurs, Oct 2 Fixation and Idea-Expression

Fixation (402-05); Copyrightable Subject Matter: Idea-Expression (411-421)
Problems 4-3 to 4-5 (417-18; 421). [18]

12: Tues, Oct 7 Useful Articles; Subject Matter

Useful Articles (421-31) Problems 4-6, 4-7, 4-8 (431); Skim Subject Matter (skim
436-43, stop before Roth Greeting Cards). [skim 8, read 11]

13: Thurs, Oct 9 Ownership

Ownership: For Hire and Joint Works (446-61). [16]

14: Tues, Oct 14 Right to Copy

Infringement: Right to Copy (474-500). [27]

15: Thurs, Oct 16 Other Copyrights; Duration

Infringement: Other Rights (500-01; 507-22) (In other words, 500-22 but skip Anderson v. Stallone and Notes 1 and 2 following); Duration (465-68). [22]

16: Tues, Oct 21 Fair Use I

Fair Use and Sony (522-541). [20]

17: Thurs, Oct 23 Fair Use II

American Geophysical and Campbell (541-66). [26]

18: Tues, Oct 28 Contributory and Vicarious Infringement

Indirect Liability (569-79); Search Engines, Services, and Software and Grokster (592-607). [27]

Trademarks

19: Thurs, Oct 30 Intro and What can be protected as a Trademark; Establishment of Rights; Distinctiveness

Introduction (633-40); What Can Be Protected: Trademarks, Trade Names, and Service Marks (640-42); Distinctiveness: Zatarain's (650-64) Genericness (skip Murphy Door Bed Co. v. Interior Sleep Sys.) (787-88; 790-795). [33]

20: Tues, Nov 4 Trade Dress

Trade Dress and Product Configuration (650); Two Pesos (664-68; skip notes following) and Samara Bros. (669-76). [14]

21: Thurs, Nov 6 Infringement: Trademark Use and Likelihood of Confusion

Note on Geographic Limitations on Trademark Use (686-87); Rescuecom v. Google (handout); AMF Inc. v. Sleekcraft Boats (725-32). [9+]

22: Tues, Nov 11 More Infringement and Dilution

Franchising and Merchandising (755-758); Dilution (including note on "Search Theory") (737-54). [22]

Cross-IP Themes

23: Thurs, Nov 13 Comparing Copyright and Trademarks: Useful/Functional Items and the First Amendment

Functional Trademarks (798-807) (compare to earlier Useful Articles discussion); Nominative Use, Parody, and the First Amendment (821-31) (compare to earlier discussion of Acuff-Rose v. Campbell). [21]

24: Tues, Nov 18 Comparing Patent and Copyright: Remedies

Patent Remedies (348-51); Injunctions (351-56); Willfulness (364-70); Copyright Remedies (625-32). [24]

25: Thurs, Nov 27 Contract as a Form of IP

Contract (866-882). [17]

Tues, Nov 25 and Thurs, Nov 28

Fall Break: NO CLASS

26: Tues, Dec 2 Class Choice

A few weeks before this last substantive class, I will present a menu of topics to cover. We will discuss the topic that receives the most support from the students in the class.

Review

27: Thurs, Dec 4 Review Session #1

No Reading.