

## **INTELLECTUAL PROPERTY (Law 367)**

**Spring 2023**

**GMU School of Law**

### **COURSE SYLLABUS**

**Professors:**

**Kevin Amer ([kevinamer@gmail.com](mailto:kevinamer@gmail.com))**

**Chris Hannon ([channon@gmail.com](mailto:channon@gmail.com))**

### **COURSE OBJECTIVE**

This is an introductory course. It will provide an overview of basic principles of patent, trademark, copyright, and trade secret law as well as pertinent statutes, cases, and policies.

### **LEARNING OUTCOMES**

At the end of the course, students will be able to:

- demonstrate knowledge of basic information about the covered IP rights (each of patents, copyrights, trademarks, and trade secrets);
- recite the policy rationales behind each of the rights and the interrelations between them; and,
- cite leading court cases relevant to each right.

### **ADMINISTRATIVE**

Classes will be held on Tuesdays and Thursdays from 8:10 pm to 9:35 pm. The 3-hour final exam will be held May 2, 2023 at 6:00PM.

### **READING MATERIALS**

Students are expected to read assigned materials, including cases, prior to class.

Required textbook: Understanding Intellectual Property Law ("UIP"), Fourth Edition, Tyler T. Ochoa, Shubha Ghosh, Mary LaFrance. ISBN-13: 978-1531015671

Assigned cases and statutes are available online.

The detailed syllabus is set forth below, subject to revision and additional materials to be handed out in class.

### **FINAL EXAMINATION**

The final examination will be in an essay format and will cover the reading materials and the class discussions. You will be expected to demonstrate knowledge of the statutes and common law applicable to patents, trademarks, copyrights and trade secrets as well as the policies behind them. The exam might include material covered in class that is not included in the textbook, so class attendance is essential to perform adequately on the final exam.

## GRADE

Your grade is based primarily on the final exam (90%). Since class discussion is important to the learning process, class participation will be taken into account (10%).

## ATTENDANCE AND CLASS PREPARATION

Students are responsible for complying with the law school's academic regulations regarding attendance and class preparation: <http://www.law.gmu.edu/academics/regulations>

## COURSE CALENDAR AND READING ASSIGNMENTS

### 1. **January 17 – Introductory class, no reading assignment**

#### *Introduction to Patent Law*

### 2. **January 19 – Introduction & historical development**

- UIP: §2B, pp.43-54
- U.S. Const. art. I, § 8

### 3. **January 24 – Patent Eligibility I: Life Science Inventions**

- UIP: §§ 2C[1][a]-[d], pp. 54-59
- Cases: *Mayo v. Prometheus*, 566 U.S. 66 (2012); *Ass'n for Molecular Pathology v. Myriad Genetics*, 569 U.S. 576 (2013)

### 4. **January 26 – Patent Eligibility II: Computer Implemented Inventions**

- UIP: §§ 2C[e],[f], pp.59-67
- 35 U.S.C. § 101
- Cases: *Alice v. CLS Bank*, 573 U.S. 208 (2014); 2019 Revised Patent Subject Matter Eligibility Guidance (available at: <https://www.govinfo.gov/content/pkg/FR-2019-01-07/pdf/2018-28282.pdf>)

### 5. **January 31– Patentability Requirements: Novelty**

- UIP: § 2C[3], pp. 69-70
- 35 U.S.C. § 102
- Cases: *In re Robertson*, 169 F.3d 743 (Fed. Cir. 1999)

### 6. **February 2 – Patentability Requirements: Obviousness**

- UIP: § 2C[4], pp. 70-81
- 35 U.S.C. § 103
- Cases: *Graham v. John Deere*, 383 U.S. 1 (1966); *KSR v. Teleflex*, 550 US 398 (2007)

### 7. **February 7 – Patentability Requirements: Disclosure**

- UIP: §§2D[1], [2], [3], pp. 98-106, 112-115, 117-118
- 35 U.S.C. § 112

- Cases: *Williamson v. Citrix Online, LLC* 792 F.3d 1339 [I. A & II.C.1. Only]

8. **February 9 – Proceedings before the USPTO: pre- & post-grant**

- UIP: § 2D[6], pp. 131-139
- Cases: *Oil States Energy Services, LLC v. Greene’s Energy Group, LLC*, 584 U.S. \_\_\_\_ (2018) [138 S.Ct. 1365]; *Regents of the Univ. of Minn. v. LSI Corp.*, 926 F.3d 1327 (2019)

9. **February 14 – Patent infringement & defenses**

- UIP: §§ 2F, 2G, pp. 152-180
- 35 U.S.C. § 271
- Cases: *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996); *Phillips v. AWH Corp.*, 415 F.3d 1303 (2005)

***Introduction to Trade Secrets***

10. **February 16 – Introduction and historical development**

- UIP: §§ 3A, 3B, pp. 197-205
- 18 U.S.C. §§ 1831-1839

11. **February 21 – Trade Secret misappropriation & defenses**

- UIP: § 3C, pp. 206-235
- Cases: *U.S. v. Williams*, 526 F.3d 1312 (11<sup>th</sup> Cir. 2008) [I. Only]; *Dalmatia Import Group v. Foodmatch* [complaint sections “Nature of the Action”; “Factual Background” §§ I., III.; “COUNT I”; “COUNT X”]

***Introduction to Trademarks***

12. **February 23 – Introduction; background and rationale; types of marks; statutory subject matter**

- UIP: §§ 5A, 5B, 5C[2], pp. 462-467, 476-490
- Cases: *William R. Warner & Co. v. Eli Lilly & Co.*; *Qualitex Co. v. Jacobson Prods. Co., Inc.*; *Security Center, Ltd. v. First National Security Centers*
- 15 U.S.C. § 1127 (definitions of trademark and service mark)

13. **February 28 – Requirements for protection**

- UIP: §§ 5D, pp. 491-501
- Cases: *King-Seeley Thermos Co. v. Aladdin Industries, Inc.*; *In re Budge Manufacturing Co.*; *In re California Innovations Inc.*
- 15 U.S.C. § 1052

14. **March 2 - Scope of rights; infringement; dilution**
- UIP pp. 578-584, 627-636
  - Cases: *Dawn Donut Co. v. Hart's Food Stores, Inc.*; *McGregor-Doniger Inc. v. Drizzle Inc.*; *Starbucks v. Wolfe's Borough Coffee*
15. **March 7 – Limitations on rights; secondary liability**
- UIP pp. 653-658, 673-684
  - Cases: *New Kids on the Block v. News America Publishing, Inc.*; *Louis Vuitton Malletier S.A. v. Haute Diggity Dog, LLC*; *Tiffany (NJ) Inc. v. eBay Inc.*
16. **March 9 – Lanham Act § 43(a); trade dress; unfair competition**
- UIP pp. 502-510, 525-527
  - Cases: *Two Pesos, Inc. v. Taco Cabana, Inc.*; *Wal-Mart v. Samara Brothers*; *TraFFix Devices, Inc. v. Marketing Displays, Inc.*
  - 15 U.S.C. § 1125(a)

***Introduction to Copyright***

[2023 Spring Break March 13-17]

17. **March 21 – Subject matter of copyright; originality; fixation; idea/expression dichotomy**
- UIP pp. 266-285
  - Cases: *Baker v. Selden*; *Bleistein v. Donaldson Lithographic Co.*; *Feist Publications, Inc. v. Rural Telephone Service Co.*
  - U.S. Const. art. I, § 8; 17 U.S.C. §§ 102-103
18. **March 23 – Issues of copyrightability; useful articles; edicts of government**
- UIP: TBD
  - Cases: *Star Athletica v. Varsity Brands*; *Georgia v. Public.Resource.org*; *Veeck v. So. Bldg. Code Cong. Int'l*
19. **March 28 – Ownership of copyright; works made for hire; joint works; collective works; transfer**
- UIP pp. 331-349
  - Cases: *Community for Creative Non-Violence v. Reid*; *Erickson v. Trinity Theatre, Inc.*; *New York Times Co., Inc. v. Tasini*
  - 17 U.S.C. §§ 201-202, 204
20. **March 30 – Duration of copyright; termination; formalities**
- UIP pp. 310-331, 349-355
  - Cases: *Eldred v. Ashcroft*; *Golan v. Holder*

- Berne Convention art. 5(2), available at [http://www.wipo.int/treaties/en/text.jsp?file\\_id=283698](http://www.wipo.int/treaties/en/text.jsp?file_id=283698)

21. **April 4 – Exclusive rights of the copyright owner (reproduction, derivative works, distribution)**

- UIP pp. 355-366
- Cases: *Cartoon Network LP, LLLP v. CSC Holdings, Inc.*; *London-Sire Records, Inc. v. Doe 1; Lee v. A.R.T. Co.*
- 17 U.S.C. § 106

22. **April 6 – Exclusive rights of the copyright owner (public performance, public display); intro to fair use**

- UIP pp. 371-383
- Cases: *American Broadcasting Companies, Inc. v. Aereo, Inc.*; *Perfect 10, Inc. v. Amazon.com, Inc.*
- 17 U.S.C. § 107

23. **April 11 – Fair use continued**

- UIP pp. 444-463
- Cases: *Sony Corp. of America v. Universal City Studios, Inc.*; *Harper & Row, Publishers, Inc. v. Nation Enterprises*; *Campbell v. Acuff-Rose Music, Inc.*

24. **April 13 – Other exceptions and limitations; secondary liability**

- UIP pp. 367-371, 411-426
- Cases: *Kirtsaeng v. John Wiley & Sons, Inc.*; *Capitol Records v. ReDigi*; *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*

25. **April 18 – Service provider liability; enforcement of copyright (remedies, technological protection measures, copyright management information)**

- UIP pp. 426-444
- Cases: *Viacom International, Inc. v. YouTube, Inc.*; *MDY Industries, LLC v. Blizzard Entertainment, Inc.*
- 17 U.S.C. § 512 (skim)

26. **April 20– Review Class**