

INTELLECTUAL PROPERTY (Law 367)

Spring 2024

GMU School of Law

COURSE SYLLABUS

Professors:

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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 6, 2024 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 16 – Introductory class

- UIP: §§1A-1B, pp. 3-9

Introduction to Patent Law

2. January 18 – Introduction & historical development

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

3. January 23 – 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 25 – 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 30– Patentability Requirements: Utility & Novelty

- UIP: § 2C[3], pp. 69-70
- 35 U.S.C. § 102
- Cases: *In re Robertson*, 169 F.3d 743 (Fed. Cir. 1999), *Juicy Whip, Inc. v. Orange Bang, Inc.*, 185 F.3d 1364 (Fed. Cir. 1999)

6. February 1 – 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 6 – Patentability Requirements: Disclosure**

- UIP: §§2D[2], [3], pp. 102-106, 112-115, 117-118
- 35 U.S.C. § 112
- Cases: *In re Wands*, 858 F.2d 731 (Fed. Cir. 1988), *Williamson v. Citrix Online, LLC* 792 F.3d 1339 [I. A & II.C.1. Only]

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

- UIP: § 2D[1], [6], pp. 98-102, 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 (Fed. Cir. 2019)

9. **February 13 – 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 (Fed. Cir. 2005)

Introduction to Trade Secrets

10. **February 15 – Introduction and historical development**

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

11. **February 20 – Trade Secret misappropriation & defenses**

- UIP: § 3C, pp. 206-235
- Cases: *U.S. v. Williams*, 526 F.3d 1312 (11th 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 22 – 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 27 – 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. **February 29 - Scope of rights; infringement; dilution**
- UIP: §§ 5F[1]-[3][b] (pp. 537-555), 5G[1]-[3][e] (pp. 583-592)
 - Cases: *Dawn Donut Co. v. Hart's Food Stores, Inc.*; *McGregor-Doniger Inc. v. Drizzle Inc.*; *Starbucks v. Wolfe's Borough Coffee*
- [2024 Spring Break March 4-10]
15. **March 12 – Limitations on rights; secondary liability**
- UIP: §§5I (pp.606-611), 5J[1]-[5] (pp. 611-630)
 - Cases: *New Kids on the Block v. News America Publishing, Inc.*; *Louis Vuitton Malletier S.A. v. Haute Diggity Dog, LLC*; *VIP Products LLC v. Jack Daniel's Properties, Inc.*; *Tiffany (NJ) Inc. v. eBay Inc.*
16. **March 14 – Lanham Act § 43(a); trade dress; unfair competition**
- 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***
17. **March 19 – Subject matter of copyright; originality; fixation; idea/expression dichotomy**
- UIP: §§4B-4C[3] (pp. 248-265)
 - 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 21 – Issues of copyrightability; useful articles; edicts of government**
- UIP: § 4[C][4] (pp. 266-287)
 - Cases: *Star Athletica v. Varsity Brands*; *Georgia v. Public.Resource.org*; *Veeck v. So. Bldg. Code Cong. Int'l*
19. **March 26 – Ownership of copyright; works made for hire; joint works; collective works; transfer**
- UIP: § 4F (pp. 307-329)

- 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 28 – Duration of copyright; formalities; moral rights**
- UIP: §§ 4D-4E (pp. 287-307), 4G[8] (357-360)
 - Cases: *Eldred v. Ashcroft*; *Dastar Corp. v. Twentieth Century Fox Film Corp.*; *Castillo v. G&M Realty LP*
 - Berne Convention art. 5(2), available at http://www.wipo.int/treaties/en/text.jsp?file_id=283698
21. **April 2 – Exclusive rights of the copyright owner (reproduction, derivative works, distribution)**
- UIP: § 4G[1]-[3] (pp. 329-345)
 - 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 4 – Exclusive rights of the copyright owner (public performance, public display)**
- UIP: § 4G[4]-[10] (pp. 345-356, 361-362)
 - Cases: *American Broadcasting Companies, Inc. v. Aereo, Inc.*; *Perfect 10, Inc. v. Amazon.com, Inc.*; *Goldman v. Breitbart News Network*
 - 17 U.S.C. § 107
23. **April 9 – Fair use**
- UIP: § 4J[1] (pp. 415-434)
 - Cases: *Sony Corp. of America v. Universal City Studios, Inc.*; *Harper & Row, Publishers, Inc. v. Nation Enterprises*; *Campbell v. Acuff-Rose Music, Inc.*; *Andy Warhol Foundation v. Goldsmith*
24. **April 11 – Other exceptions and limitations; secondary liability**
- UIP: § 4I[1]-[3] (pp. 384-406)
 - Cases: *Hachette Book Group v. Internet Archive*; *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*
25. **April 16 – Service provider liability; technological protection measures; copyright management information**
- UIP: § 4[I][4] (pp. 406-414)
 - Cases: *Viacom International, Inc. v. YouTube, Inc.*; *MDY Industries, LLC v. Blizzard Entertainment, Inc.*
 - 17 U.S.C. § 512 (skim)
26. **April 18 – Review Class**