

LAW 277.2 PATENT LITIGATION

COURSE SYLLABUS

BOALT HALL — SPRING 2013

Edward R. Reines
Jared B. Bobrow
Sonal N. Mehta

COURSE OVERVIEW

This course will be a hands-on introduction to patent litigation. The class will be taught around a hypothetical patent litigation. Through this hypothetical, the students will explore the practical application of key patent law and procedural law concepts. The students will not only discuss relevant Federal Circuit and Supreme Court decisions, but will also argue on behalf of the hypothetical plaintiff's and defendant's positions.

COURSE STRUCTURE

Except for the first week, each class will normally begin with 2 hours of oral arguments concerning the assignments handed out the prior week. Following a short break, the instructors will discuss practical and legal topics pertaining to patent litigation, typically assisting in preparation of the next week's assignments.

In the second week, the class will be divided into two groups. Assignments to each group will be for the duration of the semester. One group will represent the plaintiff; the other will represent the defendant. Over the course of the semester, students will follow the litigation from start to finish (complaint through appeal) as counsel for the plaintiff or defendant. Approximately every other week, students will be asked to produce written work (e.g., pleadings, motion papers, deposition outlines, etc.), approximately 5 to 10 pages in length; every week several students will be chosen to argue motions in an oral hearing.

Each week students will be provided with additional facts in the case. These facts will be presented in the form of discovery, as in a normal case. For example, over the course of the semester students may receive: documents in response to document requests; responses to interrogatories; excerpts of deposition testimony; expert reports; responses to requests for admission or disclosures pursuant to the Patent Local Rules. The students will be responsible for synthesizing the facts as they are disclosed over the course of the semester; the facts provided, taken cumulatively, will form the basis for all written assignments.

In class, students from both groups will oppose each other in making oral arguments on the motions drafted by the parties. Because there will not be time for all students to argue each week, the instructors will call on some students from each group to argue each week. There will not be advance notice, therefore *all* students should be prepared to argue the motion every week.

ENROLLMENT AND ATTENDANCE

The nature of the class requires consistent class attendance. As such, attendance is mandatory, and students will be required to sign a statement acknowledging that the class may not be dropped after Monday, January 14. If you drop the class after that date, you will receive a grade of No Credit.

ACADEMIC HONOR CODE

All students are expected to conform with Boalt's Honor Code. Plagiarism is strictly prohibited.

SERVICE OF WRITTEN ASSIGNMENTS

Written assignments must be served via e-mail to Zac Cox (zac.cox@weil.com) and opposing counsel for the week. Service must take place no later than ******5pm Saturday****** unless otherwise noted.

GRADING

There will be no final exam. Your grade will be calculated as follows:

- 50% written work
- 50% oral arguments and participation in discussion

The class will not be blind-graded.

COURSE MATERIALS

There are no materials to purchase. Each week, the instructors will pass out the materials, assignment and a reading list designed to highlight the issues covered by the assignment. Additional research is permitted and encouraged. You will need to obtain a copy of the Federal Judicial Center's *Patent Case Management Judicial Guide* (2009), which can be downloaded at [http://www.fjc.gov/public/pdf.nsf/lookup/patent01.pdf/\\$file/patent01.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/patent01.pdf/$file/patent01.pdf). Other helpful secondary sources available at Boalt are:

- DONALD S. CHISUM, PATENT LAW DIGEST.
- DONALD S. CHISUM, CHISUM ON PATENTS: A TREATISE ON THE LAW OF PATENTABILITY, VALIDITY, AND INFRINGEMENT
- ROBERT L. HARMON, PATENTS AND THE FEDERAL CIRCUIT.

PREREQUISITES

Completion of *Intro to IP* is a requirement for enrollment in this course. Although completion of, or concurrent enrollment in, *Patent Law* will help prepare you to address the complex issues raised in this course, it is not required.

OFFICE HOURS AND CONTACT INFORMATION

Though the instructors are not scheduling regular office hours at this time, they welcome questions via e-mail at the addresses listed below. In addition, should a face-to-face meeting be desired, the instructors are happy to make arrangements for such a meeting, preferably before class.

The Teaching Assistant for this course will be Zac Cox. Zac is also available to answer any questions you may have, and should be the primary contact for administrative questions.

Ed Reines	edward.reines@weil.com
Jared Bobrow	jared.bobrow@weil.com
Sonal Mehta	sonal.mehta@weil.com
Zac Cox	zac.cox@weil.com

TENTATIVE CLASS SCHEDULE

Week 1 (January 7): Introduction / Standing

Lecture: general course overview, written and oral advocacy, licensee standing

Assignment: due 5pm, January 12 [Pi Corp.]

Draft opposition to Delta Optics' Motion to Dismiss

Week 2 (January 14): Standing / Venue

Students will be permanently assigned to represent either Pi Corp. or Delta Optics, Inc. Students sign no-drop agreement.

Argument: Pi Corp.: oppose motion to dismiss
Delta Optics: support motion to dismiss

Lecture: proper venue, transfer

Assignment: due 5pm, January 26 [Delta Optics]

Draft motion to transfer

Note: No class on January 21, Martin Luther King, Jr. Day

Week 3 (January 28): Venue / Inequitable Conduct

Argument: Pi Corp.: oppose motion to transfer
Delta Optics: support motion to transfer

Lecture: amending pleadings, pleading standards, inequitable conduct

Assignment: due 5pm, February 2 [Pi Corp.]

Draft opposition to Delta Optics' Motion for Leave to Amend Complaint

Week 4 (February 4): Inequitable Conduct / Discovery Dispute

Argument: Pi Corp.: oppose motion for leave to amend
Delta Optics: support motion for leave to amend

Lecture: discovery issues

Assignment: due 5pm, February 9 [Delta Optics]
Draft opposition to Pi Corp.'s Motion to Compel

Week 5 (February 11): Discovery Dispute / Claim Construction

Argument: Pi Corp.: support motion to compel
Delta Optics: oppose motion to compel

Lecture: claim construction

Assignment: due 5pm, February 23 [both sides]
Draft claim construction brief

Note: No class on February 18, Presidents' Day

Week 6 (February 25): Claim Construction 1

Argument: both sides: argue claim construction positions

Assignment: no written assignment; prepare for argument

Week 7 (March 4): Claim Construction 2 / Depositions and Protective Orders

Argument: both sides: continue claim construction argument

Lecture: Rules 30(b)(1) and 30(b)(6), protective orders

Assignment: due 5pm, March 9 [Delta Optics]
Draft motion for protective order

Week 8 (March 11): Depositions and Protective Orders / Depositions

Argument: Pi Corp.: oppose motion for protective order
Delta Optics: support motion for protective order

Lecture: expert testimony, damages, depositions

Assignment: due 5pm, March 16 [both sides acting as counsel for Delta Optics]

Draft deposition outline

All students will act as counsel for Delta Optics in preparation for the deposition of the damages expert on Week 9.

Week 9 (March 18): Depositions / Summary Judgment

Argument: both sides: take deposition of Pi Corp.'s damages expert

Lecture: on-sale bar and printed publication

Assignment: due 5pm, March 30 [Pi Corp.]

Draft motion for summary judgment

Note: No class on March 25, Spring Recess

Week 10 (April 1): Summary Judgment / Experts

Argument: Pi Corp.: support motion for summary judgment
Delta Optics: oppose motion for summary judgment

Lecture: damages, experts, motion *in limine*

Assignment: due 5pm, April 6, 2012 [Delta Optics]

Draft motion *in limine*

Week 11 (April 8): Experts / Appeals

Argument: Pi Corp: oppose motion *in limine*
Delta Optics: support motion *in limine*

Lecture: appellate practice, remedies

Assignment: due 5pm, April 13, 2012 [both sides]
Draft appeal brief

Week 12 (April 15): Appeals 1

Argument: Oral argument before the Federal Circuit

Week 13 (April 22): Appeals 2

Argument: Oral argument before the Federal Circuit

Note: Tentatively, no class is scheduled for April 23 (a scheduled makeup day). To make up this class time, a technology tutorial session will be scheduled earlier in the semester, prior to claim construction.