

Law 275.3

INTRODUCTION TO INTELLECTUAL PROPERTY

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Course Website: http://www.law.berkeley.edu/institutes/bclt/students/2007_spring_intro_ip.htm

This course is intended both for students who are interested in a general overview of intellectual property and as a gateway to Boalt's Law and Technology program. The course begins with an analysis of the competing policies underlying the intellectual property laws. It covers the basics of patent, copyright, trademark, and trade secrets (and other state IP-related areas of) law, as well as some of the salient controversies in intellectual property law, including patent protection for software and business methods, the challenges to copyright law posed by filesharing technology, the role and difficulties of protecting trademarks on the Internet, and the application of common law doctrines to the Internet.

Class Meeting Times: The class will meet on Mondays, Tuesdays, and Wednesdays from 8:35 am - 9:50 am in room 105.

Free Lunches: Leading practitioners discuss cutting edge issues and what it is like to work in technology and IP-oriented law practices.

Office Hours: Sign-up sheet outside 686; typically from 10:15 am - 12:15 pm on Fridays; or by appointment

Required Reading:

- Merges, Menell & Lemley, Intellectual Property in the New Technological Age (4th Edition, Aspen 2006) (IPNTA).
- Merges, Menell & Lemley, Intellectual Property in the New Technological Age: 2005 Case and Statutory Supplement (Aspen 2006) (Supp).
- Syllabus and Course Reader (CR) (available at bookstore)
- Powerpoint Slide Handouts (available at bookstore) – will be distributed in four booklets (Patent, Copyright, Trademark, and State IP Law Protections)
- ASP Problems – will be distributed periodically by Tom Fletcher

Course Web-Site: http://www.law.berkeley.edu/institutes/bclt/students/2007_spring_intro_ip.htm

- Updated Syllabus
- links to additional materials related to the course

- link to Casebook website, which contains summaries of recent developments in intellectual property law:
<http://www.law.berkeley.edu/institutes/bclt/pubs/ipnta/index.html>

Grading: Grading is based primarily on an in-class open book examination. The exam will be divided into three sections: Part I will comprise a series of multiple choice and/or short answer questions where you will be asked to fill in your answer on the examination form; Part II will present a conventional fact pattern and questions for which you will be required to prepare a concise memo explaining your analysis; Part III will be a policy-oriented question. Examples of the types of questions for which you will be responsible are contained throughout the casebook in the form of problems. Class participation will be used as a factor in determining grades for students who are near the P/H and H/HH borderlines. In addition to the casebook, supplement (Supp.), and course reader (CR) assignments, students should be sure to review the relevant statute sections and carefully work through the problems listed for each class session.

SYLLABUS		
date	Topic	Materials; Statute; Problems
M 1/8	Course Introduction Overview	Casebook pages 1-31
PATENT LAW		
T 1/9	Patent Overview	117-28
W 1/10	Subject Matter	§101, 128-39, Problem 3-1 139-42, 1043-56
M 1/15	Martin Luther King Day	
T 1/16	Subject Matter Utility	Problem 3-3 144-59
W 1/17	Novelty	185-92, §102(a) 192-207, §102(b), Problem 3-6 (p. 154)
F 1/19 12:30 pm	Novelty continued	207-12, §102(b)-(g)

date	Topic	Materials; Statute; Problems
M 1/22	Non-Obviousness	§103, 214-38, Problem 3-10, 1063-72; In re Kahn (CR)
T 1/23	Disclosure	§112, 159-85
W 1/24	Class Postponed	
M 1/29	Infringement Analysis Claim Construction	§271, 239-63
T 1/30	Infringement Analysis <ul style="list-style-type: none"> • Doctrine of Equivalents • Prosecution History Estoppel 	263-80 Problem 3-9 (pp. 201-03); 289-92
W 1/31	Failure to Claim and Dedication to the Public	280-89
	Reverse Doctrine of Equivalents	293-96
	Means+Function Claims Equivalents	296-99
	Contributory Infringement	300-03, Problem 3-11 (p.292)
M 2/5	Infringement Involving Foreign Activity	303-08
	Defenses	308-30, §§273, 282, Problem 3-12 (p.325)
T 2/6	Remedies	335-56, §§283-87 eBay v. MercExchange (CR)
	Design and Plant Patents	356-66
W 2/7	Patent Policy and Patent Reform	National Academy of Sciences, A Patent System for the 21st Century (2004) (CR)

date	Topic	Materials; Statute; Problems
COPYRIGHT LAW		
M 2/12	Overview Requirements - originality	367-76 376-86, 426-30, §§101 (definition of “created”) §102(a) Problems 4-1, 4-12
T 2/13	Requirements continued - fixation, formalities Limiting Doctrines (idea-expression)	386-95, §101 (definitions of “created,” “fixed,” “compilation,” “copies,” “phonorecords,” “literary works,” “motion pictures,” “audiovisual work,” “sound recording,” “pictorial, graphic, and sculptural works”); §§401 - 12 (skim) 395-05, Problems 4-4, 4-5
W 2/14	Limiting Doctrines continued (useful article) Government Works Ownership <ul style="list-style-type: none"> • Initial Ownership • Work Made for Hire 	405-15, §§101 (“useful article,” “pictorial, graphic, and sculptural works”), 102(b), 120, Problems 4-6, 4-7, 4-8 415-19, §105, Problem 4-9 430-38 §§ 101 (“work made for hire”), 201, 202
M 2/19	President’s Day	

date	Topic	Materials; Statute; Problems
T 2/20	Ownership <ul style="list-style-type: none"> • Initial Ownership continued <ul style="list-style-type: none"> • Joint Works • Collective Works • Duration and Renewal 	439-45, §101 (“joint work”), Problem 4-14 445-46, §§101 (“collective work”), 201(c) 449-53, §§302-05 Problems 4-18, 4-19
W 2/21	Ownership <ul style="list-style-type: none"> • Division, Transfer, and Termination of Transfers Infringement <ul style="list-style-type: none"> • Right to Copy 	453-58, §§201(d), 203, 204, 205 458-74
F 2/23 12:30 pm	Infringement <ul style="list-style-type: none"> • Right to Copy • Derivative Work Right 	474-84, Problem 4-21, 4-22, 4-23 485-94 §§101 (“derivative work”), 103, 106
M 2/26	Infringement continued <ul style="list-style-type: none"> • Other Exclusive Rights Defenses (fair use)	494-506, Problem 4-26, §§106,106A, 501, 109, 110, 111, 114, 115, 116, 119, 1101 506-20, Problems 4-29, 4-31, Bill Graham Archives v. Dorling Kindersley (CR)
T 2/27	Defenses continued Indirect Infringement	520-53, Problems 4-32 553-64

date	Topic	Materials; Statute; Problems
W 2/28	Remedies Computer Software	609-16 968-1003, Copyright Act §101 (“computer program”), Problems 7-3, 7-4
M 3/5	Computer Software continued Open Source Licensing	1003-36 1036-43
T 3/6	Digital Copyright	564-93, §§512, 1001-10, 1201-03, Problem 4-37
W 3/7	Digital Copyright continued International	593-99, Problem 4-38 600-09
TRADEMARK LAW		
M 3/12	Introduction Establishing TM Protection	617-34 634-60, Lanham Act §§ 45 (“commerce,” “use in commerce,” “trade name,” “trademark,” “service mark,” “certification mark,” “collective mark”), 43(a), Problem 5-1
T 3/13	Priority Trademark Office Procedures	660-79, Problem 5-3 679-92, Problem 5-5
W 3/14	Incontestability Infringement	693-99 699-721, Problems 5-7
F 3/16	Dilution Extension by Contract	721-25, Dilution Revision Act of 2006 (CR) 736-40

date	Topic	Materials; Statute; Problems
M 3/19	Domain Names and Cybersquatting	741-59
	Indirect Infringement; False Advertising	759-69
T 3/20	Defenses	769-815, Problems 5-11, 5-12
W 3/21	Remedies	820-33
	Distribute review problems	
3/26-30	Spring Break	
M 4/2	no class	
T 4/3	no class	
W 4/4	Review Problem I	
M 4/9	no class	
T 4/10	no class	
W 4/11	Review Problem II	
STATE IP LAW: TRADE SECRET, MISAPPROPRIATION, CONTRACT, RIGHT OF PUBLICITY		
M 4/16	Trade Secret -- Overview	33-39
	Preemption	929-33
	Trade Secret -- Requirements	39-62, Problems 2-1, 2-2, 2-3, 2-5
T 4/17	Misappropriation of Trade Secrets	62-80, Problems 2-7, 2-8, 2-9, 2-11
	Employee Issues	80-100, Problems 2-13
W 4/18	Agreements to Keep Secrets	101-04
	Remedies	105-15
	Misappropriation	835-48

date	Topic	Materials; Statute; Problems
M 4/23	Ideas Submissions	864-83, Problem 6-1, 6-2
T 4/24	Right of Publicity	883-915
W 4/25	Review	
	Exam	

Supplemental Materials

In re Kahn, 441 F.3d 977 (Fed. Cir. 2006)

eBay Inc. v. MercExchange, L.L.C., 126 S.Ct. 1837 (2006)

National Academy of Sciences, A Patent System for the 21st Century (2004)

Bill Graham Archives v. Dorling Kindersley Ltd., 448 F.3d 605 (2d Cir. 2006)

Dilution Revision Act