

Law 275.3

INTRODUCTION TO INTELLECTUAL PROPERTY

Professor Robert Merges

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428 (643-5005), Course Website: <http://www.law.berkeley.edu/12684.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 Thursdays from 2:15 pm – 3:15 pm in Room 140.

Office Hours: Thursdays, 1 – 2:15 pm; and by appointment

Required Reading:

- Merges, Menell & Lemley, Intellectual Property in the New Technological Age (5th edition, Aspen 2010) (IPNTA).
- Merges, Menell & Lemley, Intellectual Property in the New Technological Age: 2011 Case and Note Supplement (Aspen 2011) (2011 Supp).
- Supplementary Course Reader (CR) ([available here](#))

Course Web-Site:

- Updated Syllabus
- Course Reader
- Link to Casebook website, which contains summaries of recent developments in intellectual property law:

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 and in the ASP materials. 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.

No class: Mon 1/16; Mon 2/20; Mar 26-30; end 4/24

SYLLABUS		
Date	Topic	Materials; Statute; Problems
M 1/9	Course Introduction Overview	Casebook pages 1-31
PATENT LAW		
Tu 1/10	Patent Overview Subject Matter	125-34 §101, 134-46
Th 1/12	Subject Matter	§101, Bilski, 2011 Supp. pp. 3-27; Note, 163-165.
M 1/16	Martin Luther King Jr. Holiday	
Tu 1/17	Utility	166-180

Th 1/19	Enablement & Written Description	§112; 180-191; Ariad v. Eli Lilly, 2011 Supp. pp. 28-48.
M 1/23	Novelty and Statutory Bars	§ 102; 209-216; 216-224
Tu 1/24	Priority Non-Obviousness	230-235; Notes, 2011 Supp. p. 49. §103; 235-247
Th 1/26	Non-Obviousness (cont'd)	247-256
M 1/30	Infringement Analysis · Claim Construction, Literal Infringement	§271, 267-294 295-299
Tu 1/31	Doctrine of Equivalents Indirect Infringement: Inducement	300-318 Note, 2011 Supp. pp. 49-51.
Th 2/2	Defenses Remedies	343-362; 2011 Supp. pp. 51-52. §§283-87; pp. 377-399
	COPYRIGHT LAW	
M 2/6	Overview Requirements - originality	411-420 420-431, 442-46, §§101 (definition of “created”) §102(a)

Tu 2/7	<p>Requirements continued - fixation, formalities</p> <p>Limiting Doctrines (idea-expression)</p>	<p>431-441, §101 (definitions of “created,” “fixed,” “compilation,” “copies,” “phonorecords,” “literary works,” “motion pictures,” “audiovisual work,” “sound recording,” “pictorial, graphic, and sculptural works”); §§401 - 12 (skim)</p> <p>441-448; 460-463, Problems 4-4, 4-5</p>
Th 2/9	<p>Limiting Doctrines continued (useful article)</p> <p>Government Works</p> <p>Ownership</p> <ul style="list-style-type: none"> · Initial Ownership · Work Made for Hire 	<p>464-478, §§101 (“useful article,” “pictorial, graphic, and sculptural works,”), 102(b), 120, Problems 4-6, 4-7, 4-8</p> <p>§105</p> <p>487-497; §§ 101 (“work made for hire”), 201, 202</p>
M 2/13	Joint Works and Collective Works	497-508
Tu 2/14	<p>Ownership</p> <ul style="list-style-type: none"> · Duration; Division, Transfer, and Termination of Transfers <p>Infringement</p> <ul style="list-style-type: none"> · Right to Copy 	<p>508-518, §101 (“joint work”), (“collective work”), §201(c)</p> <p>519-526, §§302-05</p>

Th 2/16	Infringement · Right to Copy and Limits	527-557, §§201(d), 203, 204, 205
M 2/20	No class – President’s Day	
Tu 2/21	Infringement continued Derivative Work Right Other Exclusive Rights	557-566 567-581
Th 2/23	No class.	
M 2/27	Indirect Infringement Defenses: Fair Use	581-592 592-606
Tu 2/28	Defenses: Fair Use (cont’d)	606-634
Th 3/1	Digital Copyright I	652-664; 666-684
M 3/5	Digital Copyright II	684-702; 702-713 Copyright Act §101 (“computer program”)

Tu 3/6	International Issues; Remedies	713-722; 722-732
	TRADEMARK LAW	
Th 3/8	Introduction Establishing TM Protection	733-740; 740-764
M 3/12	Establishing Protection (cont'd)	764-777 Lanham Act §§ 45 ("commerce," "use in commerce," "trade name," trademark," "service mark," "certification mark," "collective mark"), 43(a),
Tu 3/13	Priority	777-793
Th 3/15	Trademark Office Procedures Incontestability	796-810 810-816
M 3/19	Infringement	816-837
Tu 3/20	Dilution	838-853
Th 3/22	Extension by Contract Domain Names and Cybersquatting Indirect Infringement; False Advertising	855-859; 859-878 Tiffany v. eBay, 2011 Supp. pp. 53-66; IPNTA pp. 878-890

	3/26 – 3/30 No Class: Spring Break	
M 4/2	Defenses Remedies	890-900; 900-911; 919-925; 929-942 947-953.
State Law: Trade Secret, Contract, Misappropriation, Right of Publicity		
Tu 4/3	Trade Secret – Overview Trade Secret -- Requirements	33-39 39-49
Th 4/5	Trade Secret -- Requirements continued Misappropriation of Trade Secrets	49-58 58-84
M 4/9	Departing Employees	85-111
Tu 4/10	Remedies, Criminal Liability	111-123
Th 4/12	Introduction, Misappropriation Clickwrap Agreements	963-976 977-985
M 4/16	Clickwrap Agreements (cont'd); Idea Submissions	985-1001 1001-1012
Tu 4/17	Idea Submissions (cont'd); Right of Publicity	1012-1020

		1020-1026
Th 4/19	Right of Publicity (cont'd)	1026-1051
M 4/23	Federal Preemption	1064-1073
Tu 4/24	Preemption (cont'd)	Montz v. Pilgrim, CR; Barclay's Capital v. Theflyonthewall.com, CR
Th 4/26	Review	