***Wednesday Evening (6:25 p.m. through 8:15 p.m.)***

**Background.** This IP decision-making workshop will teach students advanced techniques for dealing with some of the most difficult legal challenges of our time: improving intellectual property outcomes in litigation, transactional, and policy contexts. From the rise of patent monetization entities, to IP-driven corporate transactions, as well as global IP and cyber policy, attorneys are increasingly called upon to combine empirical evidence, technical understanding, and policy savvy with traditional legal acumen. This course will teach and hone those practical skills. Following a deep theoretical overview, students will grapple with IP litigation, corporate risk management, and national policy scenarios while engaging with corporate leaders and national policy makers.

However nettlesome and complex, the United States IP system is currently the most respected IP system in the world. This class aims to help advance the state of IP practice by educating and empowering law students to thrive in a rich new professional ecosystem.

**Prerequisites.** Introduction to Intellectual Property.

**Readings.**

* Weekly course readings (select IP decisions & corporate texts; national level publications; see below)
* Martin Davis, “The Universal Computer: The Road from Leibniz to Turing” (2011)

**Participation & Readings.** Communication and engagement constitute a core element of successful IP and all other legal practices. Therefore, meaningful class participation, including presentations, will comprise 25% of the overall grade. Readings will generally run 35-50 pages per class,, and be tightly integrated with class discussion and training.

**Assignments.** There are three assignments. First, students will write a one page response paper for each of three major decision scenarios. Second, each student will make a short presentation on a material IP decision (litigation, transactional, or policy, at her or his option). Third, students will write a longer paper covering and defending the same IP decision. Thus, the paper and presentation are based upon the same subject matter, the former incorporating and building upon the latter. (No final exam will be administered in this course.) The total aggregate writing requirement is 15-20 pages.

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| Class | Description |
| JAN 09 | **Introduction.** This session will introduce students to the evolution of modern intellectual property practice over the last twenty years, including elite litigation, transactional, and analytic practices.   * Reading: Davis Chapter 1. |
| JAN 16 | **Scenario I.** ***Part A.*** *Patent Infringement Litigation: Patent Monetization Entities (“PMEs”).*  Up to 40% of all patent infringement lawsuits are filed by PMEs, and the number is rising. Following a deep historical background, this class will introduce students to advanced concepts in patent litigation/licensing defense vis-à-vis patent monetization entities. It will ask students to confront and make choices regarding resolving and/or fighting such lawsuits. The session will then cover historical results of similar decisions, as actually made.   * Reading: Joshua Walker et al., Report to United States Comptroller General Regarding Patent Infringement Plaintiff Composition (America Invents Act Mandate) (provided at Class 1) |
| JAN 23 | **Scenario I. *Part B.*** *Patent Infringement Litigation: Operating Companies.*In March of 2008, the world changed. While there had been many previous instances of technology companies suing each other for patent infringement, it was still generally considered taboo. But in that one month, 24 such lawsuits were filed, marking the beginning of the mobile wars and a general acceleration of the phenomenon. Where such remedial action was previously considered a truly last resort, today it is sometimes considered “business by other means”. Today, to some extent, the future of mobile computing is tied up in the grind of litigation reality. This class will provide salient historical background and then present realistic corporate decision making scenarios to students.   * Reading: Opinion at <http://allthingsd.com/20120622/judge-dismisses-apple-v-motorola/>. |
| JAN 30 | **Scenario I. *Part C.*** *Analytics.* Analogous to bio-informatics, legal informatics is an emerging field at the conflux of law, computer science, and modern economics. By applying advanced computer science techniques to complex legal problems, attorneys can drive new efficiencies in practice, provide outlier client benefits, and create systemic procedural efficiencies. Such efficiencies and benefits are being generated today, by real projects, affiliated with Berkeley, and other global Universities. And the Bay Area is, in other respects, “ground zero” for this emerging field.[[1]](#footnote-1) Legal informatics is being driven not only by Silicon Valley innovators; it is “do or die” for a legal profession under increasing economic pressure.  This class will cover the history and future of IP analytics as applied to IP litigation decision-making.   * Reading: Davis, Chapter 9, Epilogue |
| FEB 06 | **Scenario II. *Part A.*** *An Introduction to IP Transactions.* The flip side of litigation, transactional scenarios force attorneys to make rapid business decisions, in limited time, with incomplete evidence. This class will help train students to do precisely that, through a combination of guest panel participants, real life problems, and IP diligence training. The class will focus on patent portfolio evaluation and related transactional decisions.   * Reading: Transactional Package A (provided at prior session). |
| FEB 13 | **Scenario II. *Part B.*** *Collaboration.* This class will introduce students to IP collaboration platforms in both the so-called “soft IP” and patent contexts. It will also introduce students to antitrust constraints on patent aggregators, and similar constructs. The session will then delve into developing real life legal architectures for IP collaboration that conform to relevant legal (e.g., antitrust, contractual) and business constraints.   * Reading: Akamai Opinion at <http://www.cafc.uscourts.gov/images/stories/opinions-orders/09-1372-1380-1416-141710-1291.pdf> . |
| FEB 20 | **Scenario II. *Part C.*** *The Future of IP Deals.* Starting with an introduction of blockbuster, patent-driven (Nortel, Motorola) and soft IP transactions (public elements of Getty Images transaction, etc.), this class will chart the increasing importance of IP to finance, risk management, and other industries. It will then turn to the practical and foundational legal problems this ascendancy creates.   * Reading: Transactional Package C (provided at prior session). |
| FEB 27 | **Scenario III. Part A.** *IP Policy Making: Judicial*. This session will be lead by an active (or retired) federal judge, covering the process of judicial decision-making in the IP context.   * Reading: [TBD] |
| MAR 06 | **Scenario III. *Part B.*** *IP Policy Making: Legislative & Executive.* This session will be lead by US government officials involved in IP policy making, as well as those impacted most immediately by such policies.   * Reading: [TBD] |
| MAR 13 | **Scenario III. *Part C.*** *The Chief Intellectual Property Officer of the United States.* No one—neither policy makers, nor innovators, nor corporate counsel—really knows whether the U.S. and other major IP systems actually drive innovation, particularly in the software and technology markets. Whether such systems actually help innovators, or merely reward follow-on monetization (at the expense of fundamental innovation and jobs) is unclear. In a practical thought experiment, this session puts students in the role of a [presently] fictional national IP decisor. National and corporate trade secrets are leaking into cyberspace. IP systems are opaque, expensive, and far from optimized. And there are material schisms between (i) big pharma and technology companies (regarding patent policy), (ii) consumers and advertisers (regarding privacy), and (iii) Internet policy (SOPA, PIPA, etc.). This class will address such national IP dilemmas in sequence. Output from this session, and other sessions, may be shared with appropriate national policy makers.   * Reading: Article at <http://www.vanityfair.com/culture/2012/05/internet-regulation-war-sopa-pipa-defcon-hacking> |
| MAR 20 | Wrap-Up, Guest Lectures, Final Paper Advice. |
| APR 03 | Student Presentations. |
| APR 10 | Student Presentations. |
| APR 17 | Student Presentations. |

**Core Teaching Staff & Office Hours.** This course is taught by Joshua H. Walker and Jeffrey E. Ostrow. Ostrow chairs both IP litigation and transactional practices (West Coast) for Simpson Thacher & Bartlett LLP, an elite global law firm. Ostrow has litigated and tried IP cases for myriad technologies companies, including Intel, Cisco, HP, CSR, Apple, Seagate, and Avistar Communications. Ostrow was recently named as one of the "Daily Journal’s" Top 100 IP Lawyers in California, amongst other accolades. Walker is IP Counsel at Simpson Thacher, where he leads IP analysis. He regularly collaborates with technology and financial clients, IP policy-makers, judges, and leading academics to help advance the state of the art in IP practice. Walker was the Founding CEO of Lex Machina, Inc. and the Founding Executive Director of Stanford University's CodeX, the first law and computer science lab in the United States. Both Ostrow and Walker have lectured at Stanford Law School. Office hours will follow class, unless individually/otherwise scheduled.

1. See, e.g., New & Emerging Legal Infrastructures Conference, Berkeley Law School, April 15, 2011 (listing Bay Area and outside legal informatics research and start-up companies) (agenda and video: http://www.robotandhwang.com/conference/) [↑](#footnote-ref-1)