

Lawrence S. Pinsky

With permission of Prof. Greg R. Vetter

Intellectual Property Survey, Fall 2017

Course Description

This course covers domestic intellectual property laws - patent, copyright, trademark, and trade secret - through statutes and cases. It is designed to afford the student who intends to practice in other areas an acquaintance with key IP issues, principles and doctrine, and to provide the intellectual property and information law specialist an introduction to the overall subject. The course will provide roughly equal treatment of patent, copyright and trademark law, approximately four weeks for each, with the remaining two weeks applied to the law of trade secrets, introduction, and/or review.

Generally Applicable Syllabus Information

Please read carefully the Generally Applicable Syllabus Information. This document sets forth course policy for attendance, preparation and participation, use of computers, examination and grading, and other items. A complete understanding of this document is necessary to take full meaning from the Class Schedule and Other Information set forth immediately below.

Class Schedule and Other Information

Name:	Intellectual Property Survey
Course # / Section #:	5201
Place:	{ forthcoming }
Time:	Monday, 7:30 p.m. to 9:30 p.m. (1 class session per week, 120 minutes per session, 2 credit hours is 100 minutes, so we will gain 20 minutes per week, allowing the class to accrue an additional class period every 5 weeks, in order to provide for ~ 3 cancellations as needed, rather than having make-up classes).
UHLC Listing:	http://www.law.uh.edu/schedule/class_information.asp?cid=20026
Required Text:	John T. Cross, Doris Estelle Long, Greg R. Vetter, and Peter K. Yu, Intellectual Property Law (Lexis Nexis, 2015)
Supplement?:	There is no requirement to purchase a statutory supplement.
Prerequisites	None.
Grading:	The course grade will be based on an open-materials final exam.
Brief Description of Coverage:	This class will meet in one 2.0 credit-hour period each week. The coverage goal is approximately 60-65 pages per period. Assignments will be detailed in the table below as the semester progresses.

Absences Limit:	Assuming one class meetings per week, <i>two or less absences constitutes attendance meeting the eighty percent requirement.</i> More than three absences means that the eighty percent requirement is not met. Attendance will be taken via a roll sheet passed out during each class session.
"Pick your seat" seating chart date:	The second class session during the second week of class: - Monday, August 29, 2016
Final Exam Date/Time:	<i>Monday, December 2, 2017; 9-11 a.m.</i> , { room forthcoming }
Final Exam Information:	{ forthcoming Prior to the Final}.
First day/week's assignment:	Read this course web page, and the assignments detailed in the table below for the first day/week of class.
Class Evaluation Day	{ forthcoming }
Audio Recording of Class Sessions	{ forthcoming if desired by the class after a poll on the First Day of Class }.
Cancellation Day(s)	{ No Class Monday, Sept. 4 th – Labor Day, and No Class on Sep 25, plus one additional TBD }
Scheduling Note:	{ forthcoming, if any }
Makeup for Cancelled Day:	{ Cancelled Classes will be made up by extending the class periods each week by 20 minutes, -i.e 5:30 – 7:30 instead of ending at 7:10}

Contact Information and Office Hours

My UH office is in the Science and Research (SR) building across campus from the Law Center, and my office hours are from 10-11 am MWF. My office phone is 713 743 3552.

Course Materials Links by Category

The links below will be added and are for general reference and may be used for some class assignments.

Patent Law

- United States Patent and Trademark Office (PTO) Patent Page
- Selected patent law sections from 35 U.S.C. xxx extracted from the U.S. PTO consolidated laws

Copyright Law

- United States Copyright Office
- U.S. Copyright Office web page for the U.S. Copyright Statute
- Chap. 1: Subject Matter and Scope of Copyright (selected sections)
- Chap. 2: Copyright Ownership and Transfer
- Chap. 4: Copyright Notice, Deposit, and Registration
- Chap. 5: Copyright Infringement and Remedies

Trademark Law

- United States PTO Trademarks Page
- Lanham Act

Course Coverage Table

The tables immediately below provide the detailed assignments for this course. It also may provide links to materials for each class and other items related to the course. In order to allow flexibility in the class, assignments beyond those posted for the next week are subject to change; therefore, students who may wish to read ahead are urged to contact the professor before doing so. The rate of progress through the modules depends on the class dynamics.

Class presentation slides are provided as links below in association with each module title. I will generally have the slides available a day or two before a class session. If students want hardcopy of the slides for use during class, please download and print the linked slides file.

Case names are listed in the table below as assignments. HOWEVER, the supporting material in the text for each Module is also tacitly assumed even if not specifically cited

The PROBLEMS at the end of sections and cases should be read if the pages are included, but only the problems specifically noted may be the subject of discussion in class.

I will not use call groups, but will call on class members to volunteer to review the cases. Generally, a class member will not be expected to volunteer for more than one case per class period. In the absence of any volunteers, I WILL randomly call on one of the class members who has not already volunteered during that session. Class participation can affect your grade positively or negatively with a 1/3 course grade “bump.”

Module 1: Introduction and Overview (slides)		Start Page
Assignment		
Introduction		
Copying - INS v. AP, 248 U.S. 215 (1918)		
The Public Domain		
An Overview of Intellectual Property		
The General Tort of Misappropriation		14-23
U.S. SPORTING PRODUCTS, INC. v. JOHNNY STEWART GAME CALLS, INC 865 S.W. 2d 214 (Tex. App. 1993)		
ALEVIZOS v. JOHN D. AND CATHERINE R. MacARTHUR FOUNDATION 764 So. 2d 8 (Fla. App. 1999)		
Federalism Issues in US Intellectual Property Law		23-35
...Allocating Legislative Power		
BONITO BOATS , INC. V. THUNDERCRAFT BOATS,INC, 489 US 141 (1989)		
...Allocating Judicial Authority in Intellectual Property Cases		

Module 2: Trade Secrets (slides)			
Assignment	Start Page	Comment/Notes {resv}	Date

Module 2: Trade Secrets (slides)

Assignment	Start Page	Comment/Notes	{resv}	Date
Information that Qualifies as a TS - Stenstrom Petroleum Svs. Grp, Inc. v. Mesch, 874 N.E.2d 959 (Ill. App. 2007)	37-47	Texas enacts the UTSA		Aug. 28
Secrecy & Reasonable Efforts to Preserve It	47-48			
Ownership of TS Information - SI Handling Systems, Inc. v. Heisley, 753 F.2d 1244 (3rd Cir. 1985)	52-55			
UTSA Scenarios; Problem	55-56			
Misappropriation	56-58			
Ed Nowogroski Insurance, Inc. v. Rucker, 971 P.2d 936 (Wash. 1999)	58-62		-	?
Misappropriation - Improper Means - BondPro Corp. v. Siemens Pwr Gen., Inc., 463 F.3d 702 (7th Cir. 2006)	62-64			
Misappropriation - Improper Means - Dupont v. Christopher 431 F.2d 1012 (5th Cir. 1970)	64-69			
Misappropriation Problem	70-71			
Remedies	73-75			

Module 3: Patent Law (slides)

Assignment	Start Page	Comment/Notes	{resv}	Date	Call Group
NOTE: as of 3/30/2016, the page numbers below are not correct; they will be adjusted nearer the start of the course. The cases to be covered and the other listed topics are correct.					
Introduction	101-104				
Diamond v. Chakrabarty, 447 U.S. 303 (1980)	105-113				
Madey v. Duke Univ., 307 F.3d 1351 (Fed. Cir. 2002)	115-121				
Problem	123				
eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388 (2006)	124-128				
Other Types of Patents	129-132				
Claims & Claim Scope	136-143				
Example Patent	143-148				
Claim Interpretation - Phillips v. AWH Corp., 415 F.3d 1303 (Fed. Cir. 2005) (en banc)	151-164				
Problem	165-166				
Chapter 6 Introduction	167-170			Sep. 18	

Definiteness - Nautilus v Biosig (2014)	170-176		
Enablement - CFMT, Inc. v. YieldUp Int'l Corp., 349 F.3d 1333 (2003)	177-182		
Written Description - Atlantic Research Marketing Systems v. Troy, 659 F.3d 1345 (Fed. Cir. 2011)	n/a	7 pages omitted - not assigned	
Problems 1 and 2	194		
Chapter 7 Introduction	195-196		
"Product" claims - Assn. of Molecular Pathology v. Myriad Genetics --- U.S. --- (2013)	196-204		
Process claims - Alice Corp. Pty. Ltd. v. CLS Bank, ___ S. Ct. ____ (2014)	205-215		
Utility - Juicy Whip, Inc. v. Orange Bang, Inc., 185 F.3d 1364 (Fed. Cir. 1999)	216-223		
Problems 1 and 2	224		
Chapter 8 Introduction - Prior Art	227-232		
Anticipation by a Printed Publication - In re Hall, 781 F.2d 897 (Fed. Cir. 1986)	232-235	Note 5 on page 236-237 is not assigned.	Oct.. 2
Novelty Defeating Disclosures and Priority	237-242		
Public Use - Egbert v. Lippmann, 104 U.S. 333 (1881)	242-247	An article of possible interest relating to this case.	
Experimental Use Negation of Public Use - City of Elizabeth v. Am. Nicholson Pavement Co., 97 U.S. 126 (1877)	249-253		
On Sale Bar - Pfaff v. Wells Elecs, 525 U.S. 55 (1998)	n/a	4 pages omitted - not assigned	
Problems	258-260	omit problems 8 and 9	
preAIA section 102	n/a	6 pages omitted - not assigned	
Obviousness - use of multiple references	267-268		
Graham v. John Deere Co. of Kansas City, 383 U.S. 1 (1966)	269-276		
KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398 (2007)	277-291		
"Secondary" Considerations	291-291		
Analagous Arts - In re Bigio, 381 F.3d 1320 (Fed. Cir. 2004)	292-295		
Problems	295-299		
Literal Infringement - Larami	299-303		Oct. 9

Corp. v. Amron (E.D. Pa. 1993)
 DOE - Warner-Jenkinson Co. v.
 Hilton Davis Chem. Co., 520 304-312
 U.S. 17 (1997)
 Dedication - Johnson &
 Johnston Assocs. v. R.E. Serv. 314-319
 Co., 285 F.3d 1046 (Fed. Cir.
 2002) (en banc)
 PHE - Festo Corp. v. Shoketsu
 Kinzoku Kogyo Kabushiki Co., 320-328
 535 U.S. 722 (2002)
 Problems 1 - 4 328-330 Here is a site with [patent statistics](#).

Module 4: Copyright Law (slides)

Assignment	Start Page	Comment/Notes	{resv}	Date	Call Group
Introduction - The Copyright Divide	341- 346				
Justifications - Mazer v. Stein, 347 U.S. 201 (1954)	346- 351				
Technological Challenges - A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004 (9th Cir. 2001)	353- 360				
Duration - Eldred v. Ashcroft, 537 U.S. 186 (2003)	362- 372			Oct. 16	
Statutory Subject Matter - Burrow-Giles Lithographic Co. v. Sarony, 111 U.S. 53 (1884)	373- 379				
Bleistein v. Donaldson Lithographing Co., 188 U.S. 239 (1903)	380- 383				
Feist Publications, Inc. v. Rural Telephone Service Co., Inc., 499 U.S. 340 (1991)	384- 394				
Baker v. Selden, 101 U.S. 99 (1879)	395- 400				
Authorship - James D.A. Boyle, The Search for an Author: Shakespeare and the Framers, 37 AM. U. L. REV. 625 (1988)	401- 406				
Joint Works - Thomson v. Larson, 147 F.3d 195 (2d Cir. 1998)	407- 414				
Works made for Hire - Hays v. Sony Corp. of America, 847 F.2d 412 (7th Cir. 1988)	415- 420				
Collective Works - New York Times Co. v. Tasini, 533 U.S. 483 (2001)	421- 434				
Fixation & Formalities	435- 436				
Hasbro v. Sparkle (2d. 1985)	438-	4 pages omitted - not assigned			
Publication	-- 444	2 page omitted - not assigned			

Reproduction Right - Grand Upright Music Ltd. v. Warner Bros. Records, Inc., 780 F. Supp. 182 (1991)	445-448		Oct. 23
Derivative Work Right - Castle Rock Entertainment, Inc. v. Carol Pub. Group, Inc., 150 F.3d 132 (2d Cir. 1998)	449-455		
Distribution Right - Bobbs-Merrill Co. v. Straus, 210 U.S. 339 (1908)	456-458		
Public Performance Right - Twentieth Century Music Corp. v. Aiken, 422 U.S. 151 (1975)	459-465		
Public Display Right / Digital Transmission Right	466-467		
Moral Rights - Gilliam v. ABC, 538 F.2d. 14 (2d. 1976)	467-478		
Fair Use	479-480		
Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417 (1984)	480-490		
Harper & Row Publishers, Inc. v. Nation Enterprises, 471 U.S. 539 (1985)	491-502		
Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994)	503-512	Campbell on YouTube	Oct. 30
Direct Infringement - Sid & Marty Krofft Television Productions, Inc. v. McDonald's Corp., 562 F.2d 1157 (9th Cir. 1977)	513-520		
Three Boys Music Corp. v. Bolton, 212 F.3d 477 (9th Cir. 2000)	520-526	George Harrison case on YouTube Arnstein v. Porter cases - USC resource	
Contributory and Vicarious Infringement - Fonovisa, Inc. v. Cherry Auction, Inc., 76 F.3d 259 (9th Cir. 1996)		omitted, along with all material in Copyright after this case	

Module 5: Trademark Law (slides)

Assignment	Start Page	Comment/Notes	{resv}	Date	Call Group
Introduction	591-594				
Mishawaka Rubber & Woolen Mfg. Co. v. S. S. Kresge Co. 316 US 203 (1942)	594-598				
Beating Global Monopolists at Their Own Marketing Game	599-601				
David B. Findlay, Inc. v. Findlay, 218 NE2d 531 (NY Ct App. 1966)	602-605				
Mattel Inc. v. Walking Mountain Productions, 353 F.3d 792 (9th Cir. 2003)	606-609				
In re Morton Norwich Products, Inc., 671 F.2d 1332 (CCPA 1982)	610-615			Nov. 6	

Additional Trademark Law Background	616-626		
Abercrombie & Fitch Co. v. Hunting World, Inc., 537 F.2d 4 (2d Cir. 1976)	629-638		
Rock and Roll Hall of Fame v. Gentile Productions, 134 F.3d 749 (6th Cir. 1998)	639-547	8 pages omitted - not assigned	
Acquired Distinctiveness	648-651		
A.J. Canfield Company v. Honickman, 808 F.2d 291 (3rd Cir. 1986)	652-664		
In re Budge Manufacturing Co. 857 F.2d 773 (Fed. Cir. 1988)	665-669		
In re Old Glory Condom Corp., 26 USPQ.2d 1216 (TTAB 1993)	669-673		
Harjo v. Pro-Football, Inc., 50 USPQ2d 1705 (TTAB 1999) But See <i>In Re Tam</i>	674-681	8 pages omitted- not assigned	
notes	681-685		
Geography— See also <i>UHLC v. Houston College of Law</i>	685-687		Nov. 13
In re California Innovations, Inc., 329 F3d 1334 (Fed. Cir. 2003)	688-694	6 pages omitted - not assigned	
Surnames, Confusion and Other Grounds for Refusal	695-698		
Maryland Stadium Authority v. Becker, 806 F.Supp. 1236 (D. Md. 1992)	699-705		
Thrifty Rent-A-Car System, Inc. v. Thrift Cars, Inc., 831 F.2d 1177 (1st Cir. 1987)	705-713		
Exxon Corporation v. Humble Exploration Company, Inc., 695 F2d 96 (5th Cir. 1983)	713-720	Omit pages 714-729	
Infringement - Confusion	730-733		
McGregor-Doniger Inc. v. Drizzle Inc., 599 F.2d 1126 (2d Cir. 1979)	733-739	AccessUH for course evaluation	
Harlem Wizards Entertainment Basketball, Inc v. NBA Properties, Inc., 952 F. Supp. 1084 (DNJ 1997)	740-754	Omit pages 755-761	Nov. 27
Dilution - Visa Int'l Service Assn. v. JSL Corp., 590 F.Supp.2d 1306 (D. Nev. 2008)	762-770	Omit pages 771-781	
Remedies remarks	782-783	Omit pages 784-790	
Limitations - Classic Fair Use - KP Permanent Make-Up, 543 US 111 (2004)	791-797	AccessUH for course evaluation	
Limitations - Nominative Fair Use - New Kids on the Block v. News America Pub., Inc., 971 F2d 302 (9th Cir. 1992)	798-804		
Gray Market and Parallel Goods – Lever Bros. Co. V. United States	805-808		
Review for FINAL EXAM...		{ end of class	

assignments }

Last modified on *October 25, 2016*, by *L. Pinsky*