

**PATENT LAW 1(284-002)**  
GMU SCHOOL OF LAW  
COURSE SYLLABUS  
INSTRUCTOR: STEPHEN G. KUNIN  
(Michael Fleming: SUBSTITUTE)  
FALL 2006

**ADMINISTRATIVE**

Classes will be held on Tuesdays from 8:00 pm to 9:50 pm in Room 224, with a short break around 9:00 pm. The final exam will be held Saturday, December 9 at 12 pm.

**The Exam**

There will be an examination in this course. The exam will cover the reading materials and the class discussions. I will expect you to demonstrate knowledge of the statutes and common law as well as the policies behind them. The open-book exam will include multiple-choice. The exam will include material covered in class that is not included in the textbook, so attendance at class is essential to perform adequately on the final exam. Attendance will be taken at each class. Students are expected to read assigned materials prior to class.

Textbooks: Patent Law: Cases and Materials, 2d ed. (Martin J. Adelman, et al.), Thomson/West (2004). Unfair Competition, Trademark, Copyright and Patent, Selected Statutes and International Agreements 2006 ed. By: Foundation Press.

You can reach instructor Stephen Kunin at [SKunin@Oblon.com](mailto:SKunin@Oblon.com) or 703-412-6011 and instructor Michael Fleming at [Michael.Fleming@uspto.gov](mailto:Michael.Fleming@uspto.gov). The detailed syllabus is set forth below, subject to revision and additional materials to be handed out in class.

**EXPECTATIONS**

Your grade may be adjusted upward or downward based on class participation. Unexcused repeated absences will lead to a downward adjustment. It is not just the quantity of participation but the professor's assessment of the quality of the student's contribution to the class. Therefore, a student who speaks every class, but does not say anything particularly thoughtful may not get any added points for participation.

Being able to concisely articulate a position is essential to good lawyering; accordingly, I will assign cases to teams of three students for report out at the next class. You are expected to have done the reading and prepare any assigned problems for each class.

**Secondary Materials**

Although I do not believe that resort to secondary materials is necessary to master the material in this class, there are a number of excellent sources that could be of assistance to you during practice. I recommend:

1. Chisum, D., Patents (Matthew Bender). This treatise is the leading reference source.
2. Landis, J., The Mechanics of Claim Drafting (Practicing Law Institute). This is the leading reference for claim drafting.
3. Manual of Patent Examining Procedure. The PTO's official manual of procedure for patent examination.
4. Moore, Michel & Lupo, Patent Litigation and Strategy Second Edition. This is a casebook/treatise on patent litigation.

THERE IS NO CLASS OCTOBER 9; THE SCHOOL OBSERVES MONDAY CLASSES ON TUESDAY, OCTOBER 10.

## Reading Assignments

### August 22 (Class #1)

topics: Introduction (including intellectual property protection generally); structure and term of a patent; legal process of obtaining a patent; different types of patents (utility; design; plant).

text: 1-56

statute: 35 U.S.C. §§ 111, 122, 154.

Also read: The Vessel Design Protection Act (P.L. 105-303)

(<http://www.copyright.gov/title17/92chap13.html>) and Eldred v. Ashcroft

(<http://www.supremecourtus.gov/opinions/02pdf/01-618.pdf>)

### August 29 (Class #2)

topics: Patentable subject matter; natural substances and living things; plant patents.

text: 100-119

statute: 35 U.S.C. § 101.

Also read: Labcorp. v. Metabolite (<http://www.supremecourtus.gov/opinions/05pdf/04-607.pdf>)

### September 5 (Class #3)

topics: Patentable subject matter (continued); software inventions; business methods; medical procedures; sports methods.

text: 57-100; 119-132

statute: 35 U.S.C. § 287(c).

Also read: "Business Method Patents: Are There Any Limits?" 2 J. Marshall Rev. Intell. Prop. Law 30 (2002), available at <http://www.jmls.edu/ripl/vol2/issuel/wright.pdf>

### September 12 (Class #4)

topics: Utility; disclosure; enablement.

text: 133-158; 438-469.

statute: 35 U.S.C. § 112.

Also read: In re Fisher (<http://fedcir.gov/opinions/04-1465.pdf>)

September 19 (Class #5)

topics: Enablement (continued); written description; definiteness; best mode.

text: 470-524

statute: 35 U.S.C. §§ 112, 120, 132.

Also read: <http://www.law.northwestern.edu/journals/njtip/v3/n2/1/>

September 26 (Class #6)

topics: Best mode (continued); novelty.

text: 159-178

statute: 35 U.S.C. § 102.

October 3 (Class #7)

topics: Novelty (continued); section 102(a); section 102(e).

text: 248-254; 295-299

Also read: Scherin Co. v. Geneva Pharm, 339 F.3d 1373 (Fed. Cir. 2003).

Also read: Cooper Cameron Corp. v. Kvaerner Oilfield Prods., 291 F.3d 1317 (Fed. Cir. 2002).

**October 10 – No Class**

October 17 (Class #8)

topics: Section 102(f); section 102(g).

text: 255-294; 300-307

October 24 (Class #9)

topics: Section 102(g) (continued); diligence; reduction to practice; foreign priority; Hilmer doctrine; Patent Cooperation Treaty (PCT).

text: 255-294; 300-307

statute: 35 U.S.C. §§ 104; 119.

October 31 (Class #10)

topics: Statutory bars; section 102(b); public use; on-sale bar; experimental use doctrine.

text: 179-247.

Also read: In re Elsner (<http://www.fedcir.gov/opinions/03-1569.doc>)

November 7 (Class #11)

topics: Absolute novelty in foreign countries; section 102(c); section 102(d); nonobviousness.

text: 243-247; 308-410

statute: 35 U.S.C. § 103.

November 14 (Class #12)

topics: Nonobviousness (continued).

text: 411-437

November 21 (Class #13)

topics: Nonobviousness (continued); secondary factors of nonobviousness.

text: 411-437

Also read: In re Kahn (<http://fedcir.gov/opinions/04-1616.pdf>). And read KSR v. Teleflex materials at ([http://www.patentlyo.com/patent/supreme\\_court/index.html](http://www.patentlyo.com/patent/supreme_court/index.html))

November 28 (Class #14)

topics: Claims.

text: 525-593

Final course review & wrap-up.

December 9 - Saturday

Final exam: Saturday, December 9<sup>th</sup> 12 noon to 2:00 pm