

INTELLECTUAL PROPERTY (367-001)
GMU SCHOOL OF LAW
COURSE SYLLABUS
INSTRUCTOR: STEPHEN G. KUNIN
(CHIEF APJ MICHAEL FLEMING WILL CO-INSTRUCT)
SPRING 2009

ADMINISTRATIVE

Classes will be held on Mondays and Wednesdays from 6:30 pm to 7:45 pm in Room 332. The 3 hour final exam will be held on Friday, May 8 at 6:00 pm.

The Exam

There will be a single examination in this course. The final examination will cover the reading materials and the class discussions. I will expect you to demonstrate knowledge of the statutes and common law applicable to Patents, Trademarks, Copyrights and Trade Secrets as well as the policies behind them. The open-book, open-notes exam will include four essay-type questions. Laptop computers will be permitted when taking the final exam. 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. According to law school regulations each student will be required to self-certify his or her attendance with the Records Office. Students are expected to read assigned materials prior to class. Cases will be assigned to students in teams of three at the end of each class for report-outs for the next class.

Textbooks: Intellectual Property: Cases and Materials on Trademark, Copyright and Patent Law, 2d ed. (Rochelle C. Dreyfuss et al), Foundation Press (2004) and the 2007 Supplement. It is recommended that you have Unfair Competition, Trademark, Copyright and Patent, Selected Statutes and International Agreements. You can reach Professor Stephen Kunin at SKunin@Oblon.com or skunin@aipla.org or 703-412-4348 and Professor Michael Fleming at 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 assign cases to students to ensure equal participation. You are expected to have done the reading and prepare any assigned cases 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. Miller, Arthur R. et al, Intellectual Property: Patents, Trademarks, and Copyright in a nut shell, 3rd Ed. (West Group).

THERE IS NO CLASS JANUARY 19; THE SCHOOL IS CLOSED FOR MARTIN LUTHER KING BIRTHDAY. SPRING RECESS IS MARCH 9 – MARCH 15. CLASSES END Wednesday, APRIL 20.

Reading Assignments

January 7 (Class #1)

text: pages 1-25

topics: Trademark protection: introduction; Federal trademark protection; the application process and the international stage.

statute: 15 U.S.C. §§ 1111, 1051-52, 1057-59, 1062-64, 1066-68, 1070-72, 1091 and 1126; Paris Convention, Arts. 2, 4, 6, 9 and 10; TRIPS Agreement Arts. 15-24.

January 12 (Class #2)

text: pages 25-52

topics: Requirements for trademark protection; physical use, cognitive use (distinctiveness) and requirements for Federal registration.

statute: 15 U.S.C. §§ 1051, 1052-54, 1056, 1064-65, 1091, and 1127.

January 14 (Class #3)

text: pages 52-82

topics: Continuation of class #2 topics.

statute: 15 U.S.C. §§ 1051, 1052-54, 1056, 1064-65, 1091, and 1127.

January 19 – No Class

January 21 (Class #4)

text: pages 82-97

topics: The scope of the Trademark holder's rights: infringement and contributory infringement.

statute: 15 U.S.C. §§ 1114, 1121, and 1125.

January 26 (Class #5)

text: pages 97-139; supplement pages 1-6 (KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.); supplement pages 7-11

topics: Continuation of class #4 topics.

statute: 15 U.S.C. §§ 1114, 1121, and 1125.

January 28 (Class #6)

text: pages 139 -178

topics: The interest in public access.

statute: 15 U.S.C. §§ 1057, 1060, 1064-1065, 1072, 1114-1115, 1125 (c)(4) and 1126-1127.

February 2 (Class #7)

text: pages 178-212; supplement page 12

topics: Remedies.

statute: 15 U.S.C. §§ 1114, 1116, 1117, 1118, 1119, 1120, 1122, 1124, 1125(b) and 18 U.S.C. § 2320.

February 4 (Class #8)

text: pages 212-223; supplement page 13

topics: Copyright protection: introduction.

statute: 17 U.S.C. §§ 104A, 401-412 and 701-710.

February 9 (Class #9)

text: pages 223-262; supplement page 14

topics: The requirements of originality and authorship.

statute: 17 U.S.C. §§ 101-103.

February 11 (Class #10)

text: pages 262 - 292

topics: Useful articles and protection for characters.

statute: 17 U.S.C. §§ 102-105, 113(a)-(c) and 120.

February 16 (Class #11)

text: pages 292 - 333

topics: Ownership, work for hire doctrine, renewal and termination rights and moral rights.

statute: 17 U.S.C. §§ 101, 106, 106A, 201-205, 301(f), and 302-305.

February 18 (Class #12)

text: pages 333- 359

topics: Continuation of class #11.

statute: 17 U.S.C. §§ 101, 106, 106A, 201-205, 301(f), and 302-305.

February 23 (Class #13)

text: pages 359 - 389

topics: Infringement.

statute: 17 U.S.C. § 501(a) and (b).

February 25 (Class #14)

text: pages 389 - 411
topics: Continuation of class #13.
statute: 17 U.S.C. §§ 501(a) and (b).

March 2 (Class #15)

text: pages 411 – 430; supplement pages 15-32 (Metro-Goldwyn-Mayer Studios Inc., v. Grokster, Ltd.)
topics: Public access considerations and fair use doctrine.
statute: 17 U.S.C. §§ 107-119, 512(a), 602(a), and 1201-1202.

March 4 (class #16)

text: pages 430 – 492; supplement pages 33-52 (Perfect 10, Inc., v. Amazon.com Inc.)
topics: Continuation of class #15
statute: 17 U.S.C. §§ 107-119, 512(a), 602(a), and 1201-1202.

March 9-15 Spring Recess

March 16 (class #17)

text: pages 492 – 523; supplement page 53
topics: Remedies.
statute: 17 U.S.C. §§ 412 and 501-511.

March 18 (class #18)

text: pages 523 - 564
topics: The right of publicity and misappropriation.
statute: 17 U.S.C. §§ 106, 301, and 1101.

March 23 (class #19)

text: pages 564 – 589; supplement pages 54-59
topics: Patent protection: introduction.
statute: 35 U.S.C. §§ 111-113, 116, 122, 131-135, 141, 104, 119, 351-376, Paris Convention Arts. 2 and 4, TRIPS Agreement, Arts. 27-34

March 25 (class #20)

text: pages 589 – 620; supplement pages 60-62
topics: Subject matter.
statute: 35 U.S.C. § 101.

March 30 (class #21)

text: pages 602 – 635; supplement pages 63-64
topics: Utility
statute: 35 U.S.C. § 101.

April 1 (class #22)

text: pages 635 – 666; supplement pages 65-66
topics: Novelty

statute: 35 U.S.C. §§ 102(a), (e), (g) and 104.

April 6 (class #23)

text: pages 666 – 679

topics: Non-obviousness and originality.

statute: 35 U.S.C. §§ 103 and 102(f).

April 8 (class #24)

text: pages 679 – 714; supplement pages 67-96 (KSR International Co., v. Teleflex Inc.)

topics: Continuation of class #22.

statute: 35 U.S.C. §§ 103 and 102(f).

April 13 (class #25)

text: pages 714 - 741

topics: Statutory bars.

statute: 35 U.S.C. §§ 102(b), (c) and (d).

April 15 (class #26)

text: pages 882 - 900

topics: Trade secrets, Covenants Not to Compete, and Economic Espionage.

statute: Uniform Trade Secrets Act, Restatement of Unfair Competition § 38-45; § 301 of the Copyright Act; Economic Espionage Act, 18 U.S.C. §1831-39.

April 20 (class #27)

text: pages 900 - 927

topics: Continuation of class #25.

statute: Uniform Trade Secrets Act, Restatement of Unfair Competition § 38-45; § 301 of the Copyright Act; Economic Espionage Act, 18 U.S.C. §1831-39.

April 22 – NO CLASS UNLESS NEEDED FOR MAKE-UP CAUSED BY CLASS CANCELANON DUE TO WEATHER RELATED SCHOOL CLOSING

MAY 8 – FRIDAY – FINAL EXAM – 6:00 PM