Syllabus for Patent Law II

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I. COURSE MATERIALS.


Additional cases and materials will be posted on TWEN.

Copy of Title 35 of the U.S. Code (can be obtained from many different sources, but importantly should have both new and old versions).

II. OFFICE HOURS.

My office hours are Mondays from 4-6pm; and you should be able to find me in my office at those times. You can also email me for an appointment. In general, email is a more reliable method of finding me than telephone.

III. GRADES.

Your grade will be based on the final exam, which is graded blindly. The knowledge from Patent Law I is integrated into this class, and will be part of the final exam. I will provide more information about the final exam towards the end of the semester.

I may adjust the final grade by one-third of a letter, *e.g.*, a B+ would become an A- or B, for class participation. Quality and quantity are both considered in assessing class participation. In general, voluntary participation is given more credit than induced participation when making this assessment.

IV. ELECTRONIC DEVICES

Please remember to turn off your cell phone before class.

Those who wish to their laptops to take notes may do so. Please refrain from surfing the internet, email, instant messaging, etc. during class.

V. ASSIGNMENTS

Generally, we will cover one topic per class. These assignments are subject to change depending on our progress in class. The page references after the case citation are to the pages in the casebook. The assigned pages include both the excerpted cases and the casebook authors’ notes about them. I recommend reading the notes, even though we will focus mainly on the cases in class.
Please ensure that you read the materials from TWEN for class. These are as important as the casebook materials.

Finally, you should obtain a copy of the patent statute, Title 35 of the U.S. Code, including the provisions that existed before the enactment of the America Invents Act. You should be regularly consulting the statute for relevant provisions (usually, but not always, expressly mentioned in cases or the casebook) when preparing for class.

1. The Ideological Divide about Patents
M. Craig Tyler, Patent Pirates Search for Texas Treasure, TEX. LAWYER (Sept. 20, 2004) (TWEN)
Mark A. Lemley, Ignoring Patents, 2008 MICH. ST. L. REV. 19 (TWEN)
In re TS Tech USA Corp., 551 F.3d 1315 (Fed. Cir. 2008) (TWEN)

2. Infringement I: The Basic Framework
Winans v. Denmead, 56 U.S. 330 (1854) (pp. 865-871)
Merrill v. Yeomans, 94 U.S. 568 (1877) (pp. 797-804)
Markman v. Westview Instruments, 817 U.S. 370 (1996) (pp. 852-865)
Phillips v. AWH Corp., 415 F.3d 1303 (Fed. Cir. 2005) (pp. 804-829)

3. Infringement II: Claim Construction and Patent Scope
Liebel-Flarsheim Co. v. Medrad, Inc., 481 F.3d 1371 (Fed. Cir. 2007) (TWEN)

4. Infringement III: The Doctrine of Equivalents

5. Infringement IV: Secondary Infringement; Divided Infringement
Aro Mfg. Co. v. Convertible Top Replacement Co., 377 U.S. 476 (1964) (pp. 914-923)

6. Divided Infringement (cont.); Transnational Infringement
NTP, Inc. v. Research in Motion, Ltd., 418 F.3d 1282 (Fed. Cir. 2005) (TWEN)
Microsoft Corp. v. AT&T, 550 U.S. 437 (2007) (pp. 934-939)

7. Inventorship and Ownership
Burroughs Wellcome Co. v. Barr Labs., Inc., 40 F.3d 1223 (Fed. Cir. 1994) (pp. 1147-1155)
United States v. Dubilier Condenser Corp., 289 U.S. 178 (1933) (pp. 1200-1208)
Stanford University v. Roche Molecular Sys., 583 F.3d 832 (Fed. Cir. 2009) (TWEN), aff’d, 131 S. Ct. 2188 (2011) (TWEN)

8. Inequitable Conduct
Therasense, Inc. v. Becton, Dickinson & Co., 649 F.3d 1276 (Fed. Cir. 2011) (TWEN)

Please look at these regulatory sections (available online) before class:
37 C.F.R. §§ 1.56, 1.105.

9. Other Defenses
Madey v. Duke University, 307 F.3d 1351 (Fed. Cir. 2002) (pp. 901-909)
Quanta Computer, Inc. v. LG Elec., Inc., 128 S. Ct. 2109 (2008) (pp. 1268-1281)

10. Remedies I: Damages
Rite-Hite Corp. v. Kelley Co., 56 F.3d 1538 (Fed. Cir. 1995) (pp. 987-1002)
Panduit Corp. v. Stahlin Bros. Fibre Works, 575 F.2d 1152 (6th Cir. 1978) (TWEN)
Monsanto Co. v. McFarling, 488 F.3d 973 (Fed. Cir. 2007) (TWEN)

11. Remedies II: Damages (cont.); Willfulness.
Lucent Techs., Inc. v. Gateway, Inc., 580 F.3d 1301 (Fed. Cir. 2009) (pp. 966-986)
In re Seagate Tech., LLC, 497 F.3d 1360 (Fed. Cir. 2007) (1027-1037)

12. Remedies III: Injunctions
Paice LLC v. Toyota Motor Corp., 504 F.3d 1293 (Fed. Cir. 2007) (TWEN)

13. Post-Grant Procedures and Ex Post Claiming
Crown Cork & Seal Co. v. Ferdinand Gutmann Co., 304 U.S. 159 (1938) (TWEN)

14. Catch-up and Revision

No new reading.