

Introduction to Intellectual Property
Fall 2006

Paul Ohm

Syllabus

Course Description

This course provides an overview of the United States' system of intellectual property protection. The class is a survey course, which will cover the three main branches of federal intellectual property law—Patent, Trademark, and Copyright—as well as some state laws that regulate intellectual property—trade secret, the right of publicity, and appropriation. This course thus serves as an introduction to this area of the law and as a complement to the other intellectual property courses offered at CU, not as a substitute for them. For students seeking merely a broad exposure to intellectual property issues, this class will provide a solid overview of the topic, but the aim of the class is to encourage students to pursue additional offerings in the field.

Although many of the cases in this class involve technology, with a particular emphasis on computer and Internet technology, no prior technical background or knowledge is required. Any technology that needs to be understood will be explained in class, and students should not hesitate to ask for other technical explanations.

Class Times and Office Hours

The class will meet every Monday and Wednesday from 1:00pm – 2:15pm in Room 206. I will generally be available for office hours immediately after class, on Monday and Wednesday afternoons from 2:30pm – 3:30pm in Room 433 or at any other time by appointment. I can also be reached via e-mail at paul.ohm@colorado.edu.

Course Expectations

Grades for the course will be based on a final exam and class participation. I highly value class participation and will count it toward your final grade. Grades can be increased or decreased up to three points to reflect participation.

I expect you to be prepared to talk every class and will call on you without prior notice. If, however, you are unable to prepare for class on a particular day for whatever reason, please attend anyway. Send me an e-mail at least one hour before we begin, or leave me a note on the podium at the front of the room before class starts and I will not call on you during that day. You may not use this "pass" more than three times during the semester unless you come talk to me about your situation. If you do not leave me a note but are completely unprepared when I call on you, your grade will be negatively affected.

In addition to the call system, voluntary participation is encouraged. Your grade will be positively affected by consistent, insightful contributions.

I will pass around a seating chart on Wednesday, September 6th.

Course Materials

Our primary source will be a casebook: Merges, Menell, and Lemley's Intellectual Property in the New Technological Age (4th ed. 2006). In addition, a number of supplemental materials will be available on The Westlaw Educational Network (TWEN). Some of these supplemental materials are noted in the syllabus, below; others will be added to assignments during the semester, in which case they will be made available and announced at least two classes prior.

A note on casebook notes and problems: Assume that all "Comments and Questions" that fall within the assigned pages listed below **are to be read and considered**, unless the assignment specifically instructs skipping the Notes. Assume that any "Problems" that fall within the assigned pages listed below **may be skipped** unless they are specifically assigned to be read. Some unassigned problems will nevertheless be discussed in class.

Assigned Topics and Reading

Course Overview

Mon, Aug 28 Substantive Overview and Right of Publicity

Overview of Intellectual Property (24-30) and The Right of Publicity (883-99; Skip Note 4 on 898-99).

Wed, Aug 30 Theoretical and Economic Underpinnings

"Philosophical Perspectives" (1-24) and Problem 1-2.
Please sign up for the class on TWEN.

Mon, Sep 4 Labor Day: No Class

Trade Secrets

Wed, Sep 6 Trade Secrets Defined and Misappropriation

"Introduction" (33-39); Rockwell Graphic Sys. v. DEV Indus. (49-57); duPont v. Christopher (62-66).

Mon, Sep 11 Reverse Engineering; Employees and Agreements to Keep Secrets

Reverse Engineering (74-79); "The Special Case of Departing Employees": Employee Trade Secrets (80-86), Non-Competition Agreements (89-94), and "Agreements to Keep Secrets" (101-04).

Patents

Wed, Sep 13 Introduction and Subject Matter

Historical Background (117-24, skim); Overview and Theories (124-27); Patentable Subject Matter (128-139); Note on “Abstract Ideas” (139-141); Section 101; Also, visit [patentlysilly.com](http://www.patentlysilly.com) or <http://www.ipwatchdog.com/patentmuseum.html> and read through a couple of patents (the entire things, including the claims) that catch your eye.

Mon, Sep 18 Software Patents and Novelty

Software Patentability Introduction (1043-44); State Street Bank (1047-56); Novelty Introduction (185-86); Publication (192-95); Public Use (196-203); 35 U.S.C. § 102(a) and (b).

Wed, Sep 20 Non-Obviousness

Non-Obviousness (214-236); Read facts only of *Amazon.com v. Barnesandnoble.com* (1063-64); *KSR v. Teleflex* (Handouts).

Mon, Sep 25 Claim Construction; Literal Infringement

Claim Interpretation (239-57); Literal Infringement (257-263).

Wed, Sep 27 Doctrine of Equivalents and Prosecution History Estoppel

Doctrine of Equivalents: Basic Issues and Prosecution History Estoppel (263-80).

Trademarks

Mon, Oct 2 Intro and What can be protected as a Trademark

Introduction (617-24); What Can Be Protected (624-32; 634; SKIP “Certification and Collective Marks”).

Wed, Oct 4 Establishment of Rights; Trade Dress

Distinctiveness: *Zatarain's* (634-48); *Two Pesos* (648-52; skip notes following) and *Samara Bros.* (653-58 and Note 1 following); Note on Geographic Limitations (670-71).

Mon, Oct 9 Infringement: Trademark Use and Likelihood of Confusion

Trademark Use (699-708); *AMF Inc. v. Sleekcraft Boats* (709-16).

Wed, Oct 11 More Infringement and Dilution

Note on Other Types of Confusion (716-21); Problems 5-7 and 5-8 (721); Dilution (721-36); Franchising and Merchandising (736-740).

Mon, Oct 16 Defenses (Genericness and Functionality)

Genericness (769-77); Nominative Use, Parody, and the First Amendment (803-13).

Copyright

Wed, Oct 18 Introduction and Requirements

Introduction (367-76); Originality (376-78); Feist (378-86); Fixation (386-89).

Mon, Oct 23 Idea-Expression

Copyrightable Subject Matter: Idea-Expression (394-405) Problems 4-3 to 4-5 (401-02; 405).

Wed, Oct 25 Subject Matter, Ownership and Duration

Subject Matter (420-27); Ownership: for Hire (430-38); Duration (449-52).

Mon, Oct 30 Right to Copy

Infringement: Right to Copy (458-84).

Wed, Nov 1 Other Copyrights

Infringement: Other Rights (484-506).

Mon, Nov 6 Fair Use I

Fair Use (506-519); Sony (520-25).

Wed, Nov 8 Fair Use II

American Geophysical (525-39); Campbell (539-50).

Mon, Nov 13 Contributory and Vicarious Infringement

Indirect Liability (553-63); Grokster (576-91).

Wed, Nov 15 Is Google a serial copyright infringer?

Arriba Soft (593-98, skip notes following); Perfect 10 (Handout); Google Books (Handout). Also, acquaint yourself with the service offered at books.google.com.

Mon, Nov 20 and Wed, Nov 22

Fall Break: NO CLASS

Cross-IP Themes and Other Forms of Protection

Mon, Nov 27 Comparing Copyright and Trademark: Useful Articles and Functionality

Useful Articles (405-15); Problems 4-6, 4-7, 4-8 (415); Functional Trademarks (780-89).

Wed, Nov 29 Comparing Patent and Copyright: Remedies

Patent Remedies (335-38); Injunctions (338-42); Willfulness (350-56); Copyright Remedies (609-616); Mercexchange v. eBay (Handout).

Mon, Dec 4 Misappropriation; Contract.

INS (836-48); Contract (848-64).

Review

Wed, Dec 6 Review

No Reading.