

INTELLECTUAL PROPERTY

FALL 2010

Prof. Kara Swanson

Class: Tues./Thurs. 12 – 1:30
Location: TBD
Office Hours: TBD, and by appointment, 37 Cargill
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Course Materials:

Merges, Menell and Lemley, **Intellectual Property in the New Technological Age**, 5th ed., 2010

Handouts, as passed out in class, and posted on TWEN.

Statutes, as assigned. Rather than assign a statutory supplement (there are several you can buy if so moved), I expect you to look up the relevant statutes on-line or in the library.

Attendance: Attendance is expected; please notify me in advance of the reason for any absence. Arriving at class on time is a matter of common courtesy, and both your classmates and I would appreciate your remaining seated for the duration of the class except in unusual circumstances.

Expectations: All students are required to register on TWEN and add this course to their account – periodic updates to this syllabus, additional resources, all PowerPoints shown in class, and other handouts will be posted on TWEN, and class emails will be sent through TWEN. I also invite you to share with me and with each other materials you find relevant to the class through the TWEN site, and to post comments on such materials or on classroom topics as you are so moved, and within the parameters of professional behavior.

You are expected to have completed the required reading and to have done any problems assigned for each class in advance, and come to class ready and willing to participate every day. This class is interactive – your classroom time is a chance for oral analysis of the material, a necessary skill of lawyering. I will call on students to participate, and I expect each of you to contribute multiple times throughout the quarter. Your course evaluation will be based upon the final exam, which will be graded blindly, but will also reflect your class participation and professionalism. The final exam will most likely be an 8-hour take-home open book test, with some flexibility in your scheduling of the 8-hour block.

Your behavior in class should be equivalent to your behavior in a courtroom. All cell phones and other similar devices should be TURNED OFF during class, as should your wireless internet access. Computers are valuable note-taking tools, but when used for

non-class-related purposes during classtime, not only drag down your own performance, but inexcusably detract from the learning experience of your fellow students. It is disrespectful to your fellow students and to me to use your computer inappropriately during class. Any student who cannot use their computer appropriately may lose the privilege of using their laptop in the classroom.

Assignments:

The following schedule of assignments by topic is preliminary and subject to changes that may be announced in class and/or via TWEN. Each topic roughly correlates to one class; if we do not cover all of the reading for one topic in one class, be prepared to discuss the remainder of that topic in the next class as well as the readings for the next topic. If there are significant changes in the reading, an updated syllabus will be posted via TWEN.

In addition to discussing the following topics, we will have one mid-quarter class devoted to catch-up/review, and a wrap-up/final review on the last class period.

I. INTRODUCTION

1. What is IP?/Philosophical Perspectives, pp. 1-31

II. TRADE SECRETS

2. History and Theory; Subject Matter, pp. 33-57, 60-65 (skip problems)
 Uniform Trade Secrets Act, p. 35
 Metallurgical Industries, Inc. v. Fourtek, Inc.
 Rockwell Graphic Systems, Inc. v. DEV Industries, Inc.
3. Misappropriation, Departing Employees and Remedies, pp. 66-75, 85-89, 111-18, Problem 2-14
 E.I. DuPont deNemours & Co. v. Rolfe
 Smith v. Dravo Corp.
 Winston Research Corp. v. 3M Corp.

III. PATENTS

4. Introduction; Patentable Subject Matter, pp. 125-133, 133-46, 163-66, *Bilski* handout
 35 U.S.C. §§ 100, 101
 Diamond v. Chakrabarty
 Parke-Davis & Co. v. H.K. Mulford Co.
 In re Bilski

5. Utility; Description and Enablement, pp. 166-80; 180-204; 207-09
35 U.S.C. §§ 112, 120, 132
Brenner v. Mason
In re Fisher
Juicy Whip, Inc. v. Orange Bang, Inc.
The Incandescent Lamp Patent
The Gentry Gallery, Inc. v. The Berkline Corp.
Problem
6. Novelty; Statutory Bars, pp. 209-219 (skip problem); 220-235
35 U.S.C. § 102
Rosaire v. National Lead Co.
In re Hall
Egbert v. Lippmann
City of Elizabeth v. Pavement Company
[Griffith v. Kanamaru]
7. Nonobviousness, pp. 235-67
35 U.S.C. Sec. 103
Graham v. John Deere Co.
KSR International Co. v. Teleflex, Inc.
In re Kubin
8. Infringement; Doctrine of Equivalents, pp. 267-294, 300-05
35 U.S.C. § 271
Phillips v. AWH Corporation

[Mid-quarter review]

IV. COPYRIGHT

9. Introduction; Requirements, pp. 411-20, 420-439
17 U.S.C. §§101, 102
Feist Publications v. Rural Telephone Service
10. Copyrightable Subject Matter, pp. 441-73
17 U.S.C. §§ 102, 103, 106, 120
Baker v. Selden
Lotus Development Corp. v. Borland International
Morrissey v. Proctor & Gamble
Brandir International, Inc. v. Cascade Pacific Lumber Co.
11. Domain and Scope; Ownership and Duration, pp. 478-87, 488-512
17 U.S.C. § 113, § 201 and skim §§ 203, 204, 302-305
Community for Creative Non-violence et al. v. Reid
Aalmuhammed v. Lee

12. Rights of Owners, pp. 518-27, 539-553, 556-66, 571-72
17 U.S.C. §§ 106, 103, 109(a,c), 110, 106A
Arnstein v. Porter
Computer Associates International v. Altai, Inc.
Anderson v. Stallone
13. Fair Use, pp. 592-634; 702-713
17 U.S.C. §107
Harper & Row, Publishers, Inc. v. National Enterprises
Sony Corp. v. University City Studios, Inc.
American Geophysical Union v. Texaco, Inc.
Campbell v. Acuff-Rose Music, Inc.
Perfect 10, Inc. v. Amazon.com, Inc.

V. TRADEMARK

14. Introduction, Trademarkable Subject Matter; Distinctiveness, pp. 733-739, 740-50, 751-76
Qualitex Co. v. Jacobson Products Co., Inc.
Zatarain's, Inc. v. Oak Grove Smokehouse, Inc.
Two Pesos, Inc. v. Taco Cabana, Inc.
Wal-Mart Stores, Inc. v. Samara Brothers, Inc.
15. Priority; Office procedures; Incontestability, pp. 777-815
Zazu Designs v. L'Oreal, S.A.
In re Nantucket, Inc.
Park 'N Fly, Inc. v. Dollar Park and Fly, Inc.
16. Infringement, pp. 816-52
Rescuecom Corp. v. Google, Inc.
AMF Inc. v. Sleekcraft Boats
Louis Vuitton Malletier S.A. v. Haute Diggity Dog, LLC
17. Defenses, pp. 890-919, 925-41
The Murphy Door Bed Co., Inc. v. Interior Sleep Systems, Inc.
TrafFix Devices, Inc. v. Marketing Displays, Inc.
Major League Baseball Properties, Inc. v. Sed Non Olet Denarius, Ltd.
KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.
Mattel, Inc. v. MCA Records

VI. ANCILLARY (STATE) IP PROTECTION

18. Right of Publicity, pp. 1020-36
Midler v. Ford Motor Co.
White v. Samsung Electronics America, Inc.

[End of quarter review]