



## **National Paralegal College**

717 East Maryland Avenue

Phoenix, AZ 85014-1561

Tel: 800 - 371 - 6105

Fax: 866-347-2744

e-mail: [info@nationalparalegal.edu](mailto:info@nationalparalegal.edu)

Website: <http://nationalparalegal.edu>

## **Patents, Trademarks and Copyrights**

### **PLG-112-2109**

#### **Syllabus and Course Guide**

The NPC Patents, Trademarks and Copyrights course meets 15 times over the course of the 8-week term in the NPC interactive classroom. Each session consists of about 60 minutes of online lecture by the course instructor. After the lecture, students may ask questions and make comments on the material being studied.

Classes for this course occur at 8:00 PM Eastern time on Mondays and Wednesdays in accordance with the lecture scheduled on this syllabus. The first class is on Wednesday, September 8, 2021.

Attendance at class will satisfy the weekly interaction requirement. All class sessions are recorded and may be viewed by students at any time.

To successfully complete the course, each student must satisfactorily complete:

- 5 written assignments
- 3 examinations

Unless an extension has been taken pursuant to the NPC Extensions Policy (see the end of this syllabus), all assignments and exams must be submitted by the course deadline which appears later in this syllabus. No extensions may be taken or granted unless the student has submitted one or more assignments or exams in advance of the original deadline. In addition, extensions are subject to grade penalties and are limited to no more than 30 days from the date of the original deadline.

Please note that students are strongly encouraged to do their work as the course progresses rather than waiting for the days or weeks before the deadline to do all of their work. It is also critically important that students realize that:

1. A grade of "Incomplete" is the same as an "F" and is a failing grade.
2. A grade of "Incomplete" will result in a reduction in the student's grade point average.
3. Student may have to pay to re-take or replace a course for which a grade of Incomplete is assigned.

4. Two consecutive Incompletes may subject the student to dismissal from the college under NPC's chronic incomplete policy.
5. Students with a GPA of under 2.0 are not eligible to receive federal financial aid and cannot graduate until their GPA is at or above 2.0.

If a student is having trouble completing the course, the student is strongly encouraged to contact his or her student mentor or teacher as early as possible.

Please note also that:

- A student who receives an incomplete on his or her first course may be dismissed from NPC.
- A student who fails to complete at least one weekly interaction during the first 14 days of the course will automatically be withdrawn from the course per NPC policy. The student may re-join the class by prompt notification to NPC and by prompt completion of an interaction shortly thereafter.

## **INSTRUCTORS:**

### **Lecturer:**

Robert Greenberg ([robert.greenberg@gmail.com](mailto:robert.greenberg@gmail.com))

### **Grader:**

Shannon Southard ([shannon@nationalparalegal.edu](mailto:shannon@nationalparalegal.edu))

## **COURSE DESCRIPTION:**

Intellectual property ("IP") allows people to own their creativity and innovation in the same way that they can own physical property. The owner of IP can control and be rewarded for its use, and this encourages further innovation and creativity.

The ever increasing level of piracy and counterfeiting costs U.S. businesses substantial revenue annually. As such, a business has to be as vigilant in protecting its intangible assets as it would be in protecting its tangible property. Intellectual property law is a means to combat the widespread theft of a company's most important assets.

Often it is not possible to protect IP and gain IP rights (or IPRs) unless they have been applied for and granted, but some IP protection, such as copyright, arises automatically, without any registration, as soon as there is a record in some form of what has been created.

This course is designed to provide our students with a basic understanding of the various types of intellectual property, namely:

- Patent - a grant made by a government that confers upon the creator of an invention the sole right to make, use, and sell that invention for a set period of time.
- Trademark - a mark that is used by a manufacturer or merchant to identify the origin or ownership of goods and to distinguish them from others.
- Copyright - a person's exclusive right to reproduce, publish, or sell his or her original work of authorship (as a literary, musical, dramatic, artistic, or architectural work.)

Specifically, this course covers the basic requirements for protecting each type of intangible, highlights the sources of authority that govern intellectual property law, explains what types of rights are available, introduces what constitutes infringement, discusses the defenses available for infringement and lists the types of remedies used to compensate an owner for infringement. Given the production and export from foreign countries of products that violate U.S. patents, trademarks and copyrights, there will also be a comparison of protection methods available abroad.

### **COURSE OBJECTIVES:**

At the completion of this course, the student should be able to:

- Differentiate between copyrights, patents and trademarks.
- Explain the basic requirements for protection and apply those standards to the determination as to whether a particular bit of intellectual property is eligible for protection.
- Delineate and define the categories of works that are protected.
- Determine the types of rights given to a copyright, patent or trademark holder.
- Research statutory and case law in the intellectual property field.
- Distinguish between the types of authority relevant to intellectual property law.
- Determine the duration of intellectual property interests, based on applicable statutory law.
- Recognize the various types of infringement.
- Determine whether defenses to infringement are available based on a particular fact pattern.
- Recognize the available remedies that may be available regarding a particular case of infringement.

### **READING ASSIGNMENTS:**

All reading assignments refer to the NPC courseware, including the interactions attached to each subchapter. Cases and/or statutes that are specifically mentioned in the syllabus are required reading. The texts of these cases and/or statutes may be accessed directly from the courseware. In addition to the assigned courseware and cases, students should familiarize themselves with the various legal documents listed for each lecture. These documents can be found on the “Documents

and Slides” page on the NPC student website. Some, but not all, of these documents will be discussed in class. Reading assignments for each class should be completed prior to the class.

**In addition to the courseware’s electronic form, you may also order a book version of the courseware that includes:**

- 1) The courseware**
- 2) All lectures slides**

**You may order this book at: [www.freewebstore.org/npc-courseware-books](http://www.freewebstore.org/npc-courseware-books)**

### **School Virtual Library**

All NPC students are encouraged to take advantage of the NPC virtual library, which can be accessed from the “course materials” page on the student menu or directly through this link: <http://nationalparalegal.edu/Students/VirtualLibrary.aspx>.

The NPC virtual library gives students access to Lexis Advance, which is one of the premier online legal databases in the world. It is expected that most legal research can and should be done through Lexis Advance. Online tutorials in the use of Lexis Advance are available on the lower right portion of the default login screen for Lexis Advance.

NPC also subscribes to the Library Information Resources Network (LIRN), which allows our students access to scores of databases containing hundreds of thousands of academic articles and publications. For research that is not legal in nature (for example, for business and general education courses), it is anticipated that students will use LIRN to access reliable academic sources for research papers. Online training in the use of LIRN resources is available here: [Library Information Resources Network](#).

NPC students also have access to Computer Assisted Legal Instruction (CALI) lessons. Unless assigned in the course syllabus, these are optional, but can be very helpful.

## **WRITTEN ASSIGNMENTS:**

At the outset of the course, five assignments will be posted on the “Assignments and Exams” page. The 5 assignments will cumulatively count for 40% of the student’s grade for the course.

Please compose your answers to assignments on your own computer, remembering to save your work frequently. Once your assignment is complete, please submit by uploading it pursuant to the directions on the “Assignments and Exams” page within the NPC student site. Assignments may be submitted as PDF files, Microsoft Word documents, Open Office documents or PowerPoint presentations.

Each submitted assignment will be graded on the following scale:

4 - Excellent

3 - Good

2 – Satisfactory

1 – Poor

0 – Not acceptable (must resubmit)

(Half-points may also be awarded in assignment grading.)

Please see the “Assignment Grading Rubric” (the next page of this syllabus) for more detailed information about how assignments are graded and the key elements of assignments that instructors look for when grading assignments.

In addition to a grade, students will receive written feedback from the instructor on their assignments, where appropriate.

For more information on assignments, please see the *NPC Student Handbook*.

***To the extent possible, it is recommended that students complete the assignments as the course proceeds rather than waiting until after the course ends.***

## Assignment Grading Rubric

Factor	4 (Excellent)	3 (Good)	2 (Satisfactory)	1 (Poor)	0 (no credit)
<b>Thoroughness</b>	Answers all questions in the exercise completely and in the appropriate order.	Answers all questions in the exercise but not completely and/or not in the appropriate order.	Answers most of the questions in the exercise but not completely and/or not in the appropriate order.	Does not answer many of the questions in the exercise but does make some reasonable effort to do so.	Makes little or no reasonable effort to answer the questions posed in the assignment.
<b>Demonstrates Understanding of the Assignment and has come to an appropriate conclusion</b>	Response demonstrates a thorough understanding of the exercise and the student has justified and enunciated an appropriate conclusion.	Response demonstrates an understanding of the exercise and comes to a conclusion.	Response demonstrates some understanding of the exercise. The conclusion that the student comes to may not be appropriately justified by the rest of the essay.	Response demonstrates some understanding of the exercise but shows a high level of confusion on the part of the student. The student's conclusion, if any, is not supported by the rest of the essay.	Response demonstrates a very poor understanding of the subject matter presented by the assignment.
<b>Documentation/ Legal research (note: For assignments, sources should be those obtained through legal research; for exam essays, legal principles learned in class or the courseware is sufficient.)</b>	Student has cited at least two excellent sources and has applied them appropriately. Appropriate sources are documented and well cited and well integrated.	Student has cited one excellent source or two or more good sources but has missed at least one excellent source. Sources are integrated well in the assignment.	Student has cited appropriate sources but has missed the best available OR student has cited good sources but has done a poor job of integrating them.	Student has cited poor or inappropriate authorities or has failed to establish the relevance of the sources that he or she has cited.	Student has not cited any legal authorities or has cited authorities that are irrelevant.
<b>Organization</b>	Essay is organized very well; the reader can clearly understand where the essay is going at all points and a cohesive easy-to-follow argument is made in the essay. Separate paragraphs are used for separate ideas.	Essay is well organized. The essay is coherent, though may not flow freely. Different components of the essay are broken up appropriately.	Essay shows some level of organization, but is difficult to follow. The essay is not as focused as it should be. Essay may go back and forth between points without using new paragraphs.	Essay is poorly organized and is very difficult to follow. The student did not appropriately separate thoughts and did not properly organize the essay.	Student's essay is in chaos. There is no reasonable attempt to organize the essay coherently.
<b>Critical Thinking and Analysis</b>	Shows excellent critical thinking and analysis. The student is able to apply the cited law to the facts of the given case in a clear and convincing manner.	Shows good critical thinking and analysis. The student's points are well argued and well supported.	Shows adequate critical thinking and analysis. The student's points are supported by logic, but are not exceptionally convincing.	Shows minimal critical thinking and analysis. The student's arguments are weak and unconvincing.	Shows no effort at critical thinking or analysis. The student's points make no sense.

Credit may also be taken off for poor spelling or grammar.

## EXAMINATIONS:

Examinations will be posted on the NPC website when indicated on the syllabus of the course. The examinations consist entirely of “short essay” questions. The 3 examinations will cumulatively count for 60% of the student’s course grade.

Examinations are non-cumulative; they cover only the material that has been covered since the previous examination. The instructor will provide specific information regarding the content of each examination as the examination time approaches.

All examinations are timed. A student may begin the examination any time after it is posted to the NPC website. Once begun, the examination must be completed within 4 hours.

Examinations will be graded on a conventional 0-100 scale. The number of points each question is worth is equal to 100 divided by the number of questions on the examination.

For each examination question, full credit will be awarded if the student:

- 1) Correctly identifies the legal issue(s) presented by the question
- 2) Applies the correct law to the legal issue(s) presented (note: full credit may also be awarded if the student’s answer comes to an “incorrect” conclusion if the student bases his or her analysis on correct law and supports his or her position in a convincing manner)
- 3) Presents his or her answer in a clear and understandable manner

The amount of partial credit to be awarded, if any, for an answer that is not complete and correct is at the discretion of the instructor. Instructors are instructed to award partial credit that is proportional to the level of knowledge and legal skill displayed by the student in answering the question.

*Please note that, even if not directly stated in the question, you must give reasons for your answers to open ended questions. One word answers such as “yes” or “no” or answers that merely restate the question without explaining the answer given will not be credited.*

The following factors are generally NOT taken into account in grading examinations:

Legal research; Although research is a key component of assignments, examinations are graded on the student’s knowledge of the legal concepts taught and do not require independent research.

Grammar and spelling (unless they impact the ability of the graded to understand the student’s answer); Although these are essential skills for a paralegal, examinations test legal knowledge and ability to apply the skills learned, not necessarily the ability to write professional legal memoranda (assignments test this skill). In addition, because exams are taken under time constraints, we would rather see the students spend their time spotting

legal issues and applying applicable law than on proofreading answers for typos and grammar mistakes.

For more information on examinations, please see the *NPC Student Handbook*.

***To the extent possible, it is recommended that students complete the exams as the course proceeds rather than waiting until after the course ends.***

### **Early Assignment Submission Incentive Policy**

NPC encourages students to submit their assignments as early as possible. In order to facilitate early submissions, students are advised that in exchange for submitting assignments in the first six weeks of the course, they will be awarded the opportunity to re-do or fix up an assignment after it is graded in order to increase the grade.

The following limitations apply:

1. When resubmitting an assignment, a student will only be able to increase his or her grade to a maximum of 3 or by one full point, whichever is greater. For example, if a student submits an assignment within the first six weeks of the course and receives a 1.5 or a 2.0, the student may make corrections suggested by the instructor and can potentially raise the grade to a maximum of 3. A student who initially receives a grade of 2.5 may raise the grade as high as 3.5 with a resubmission.
2. A student may exercise this option up to two (2) times per course.
3. Students are not guaranteed the maximum increase if their corrections do not merit such a change. The grader has the discretion to award a smaller or no increase if the student does not follow the grader's feedback.

To resubmit an assignment under this policy, please contact the course grader.

**The early assignment submission deadline is Sunday, October 24, 2021 at 11:59 PM EASTERN TIME; that's EASTERN time. That means 8:59 PM Pacific time, 9:59 PM Mountain time, 10:59 PM Central time, etc.**

### **NPC STUDENT MENTOR**

Each NPC student is assigned a student mentor upon enrollment. Your student mentor is a resource that can and should be drawn on if you need academic assistance. This includes advice on studying, help with assignments, general academic questions, etc. You should have received an email from your student mentor upon enrollment. If you have not received such an email or do not know who your student mentor is, please contact Anne Lewis at [anne@nationalparalegal.edu](mailto:anne@nationalparalegal.edu).



## NPC PLAGIARISM POLICY

All work done by NPC students on assignments, examinations and research projects is expected to be their own work. Quoting other sources as part of analyzing a subject is desirable and necessary in many cases. However, when other sources are quoted or used, they must be properly attributed to the original sources. This applies to direct quotes of sources and to paraphrasing other sources or using ideas obtained from other sources even if the exact text is not used.

Plagiarism means using the materials of others without appropriately citing the source and is an academic offense.

Under the NPC plagiarism policy, a student may not, as part of any assignment or exam submission:

- 1) Quote any text from any other source without:
  - a) putting quotation marks around the quoted material;
  - AND
  - b) appropriately citing the source of the quote.
- 2) Pass off the work of another as his or her own, even if the student does not directly quote from the other source.

Please note that the NPC plagiarism policy does not mean that you cannot quote language from the courseware, textbook or slides as part of an answer to a question on an exam. These are resources that are meant to be used on an exam when applied in an appropriate manner. However, quoting any source *without attribution* is plagiarism.

In addition, NPC students may not share their completed work, answer keys, or sample answers which they have obtained by any method with any other student. Students may NOT upload any sample answer (whether written by themselves or any other person) to any publicly available website or database. **Any student who uploads a sample assignment or exam answer to a publicly available website or database shall be disciplined in a manner to be determined by the school Dean, up to and including expulsion from the college.**

For more information regarding the NPC Plagiarism Policy, penalties and due process rights where plagiarism is alleged, please see the NPC Plagiarism Policy at:

<http://nationalparalegal.edu/pages/PlagiarismPolicy.pdf>

## NPC COURSE MESSAGE BOARDS

All students are encouraged to post and participate in course message board discussions. The message boards are an excellent way to "meet" and communicate with other students and the instructors, graders and mentors. To find the course message boards, click on message boards and scroll to the bottom.

## WEEKLY INTERACTION REQUIREMENT

To ensure that all students are involved and participating in the course as the course moves forward, each student enrolled in this course must, at least once during each week, either:

- 1) Attend a live lecture and take and pass a short quiz given during class (where applicable)  
OR
- 2) Submit at least one assignment  
OR
- 3) Take at least one examination  
OR
- 4) Answer a weekly “interaction” question or questions that will be posted on the “Assignments and Exams” page.

The weekly “interaction” question(s) will be straightforward and will cover material covered in class each week. Answers to these questions should be short (typically 1-3 sentences) and to the point.

The student’s response (which is necessary only if the student does not attend a live lecture or take an exam or submit an assignment in the given week) will be graded on a pass/fail basis. The interaction questions will be posted no later than Monday of each week and must be answered on or before the following Sunday.

Any student who does not fulfill this requirement during a given week may receive a reduction in his or her over-all grade of 2 percentage points (10 raw points).

Please also note that a student who does not fulfill an interaction during the first two weeks of a course will be automatically withdrawn from that course, as it will be assumed that the student who does not interact during the first two weeks has no intention of attending the course. The student may re-join the class by prompt notification to NPC and by prompt completion of an interaction shortly thereafter.

If an emergency prevents attendance in this period, please email Academic Support ([academicsupport@nationalparalegal.edu](mailto:academicsupport@nationalparalegal.edu)) as soon as possible.

***Fulfilling the weekly interaction requirement is particularly important for students receiving financial aid. Federal regulations require the school to withdraw students from financial aid who go 14 consecutive days without fulfilling an interaction requirement and to return any outstanding financial aid money to the government unless the student interacts with the school prior to the time that the withdrawal is completed. If you are unable to fulfill a weekly interaction requirement, it is critical that you stay in contact with the school so that other arrangements can be made.***

## COURSE GRADES

The following formula will be used to calculate final grades

$$\text{Cumulative exam scores} + (\text{assignment points} \times 10) = \text{raw score}$$

Because exams are worth up to 100 points and assignments up to 4 points each, the maximum raw score is 500. 10 raw points (2% of the raw point total) may be deducted for each missed weekly interaction.

Extra credit may be available for certain in class activities, high class participation and high message board participation, as may be announced by the instructor. Penalties for missed weekly interactions and/or for extensions are applied at the discretion of the instructor and/or the administration of NPC.

The following conversion chart is then applied based on the total raw points you have earned:

>474	=	A+
445-474	=	A
420-444	=	A-
395-419	=	B+
365-394	=	B
340-364	=	B-
315-339	=	C+
285-314	=	C
260-284	=	C-
230-259	=	D
<230	=	F

## OPTIONAL STUDY SESSIONS

In addition to the 15 classes listed below, instructors and/or graders will run 1 or 2 additional study sessions to discuss assignments and/or the course materials. Attendance at and participation in these sessions is optional and they will be recorded for those who cannot make it to the live sessions.

Please keep an eye on the course message boards for details as to when these will be held.

**All examinations and assignments are due no later than Sunday, December 5, 2021 at 11:59 PM EASTERN TIME; That's EASTERN time. That means 8:59 PM Pacific time, 9:59 PM Mountain time, 10:59 PM Central time, etc.**

**Please see the end of this syllabus for a note on NPC course extensions policy!**

## **Lecture and reading assignments schedule**

### **Class 1**

**Thursday, September 9, 2021**

We will begin this course by covering the basics of intellectual property law. We will discuss the differences between real property, chattel, and intellectual property. In addition to exploring the type and scope of intellectual property protection, we will delve a little into the history of intellectual property law. We will also focus on some of the goals of intellectual property law. In addition, we will discuss the various sources of intellectual property, including (mostly) federal statutes, federal cases and some supporting state and even international law.

### **Courseware Reading:**

Chapter 1: Introduction to Intellectual Property

- What is IP
- Scope of Protection Under IP Law
- History of IP & Sources of Law

**Cases and Statutes:** (browse the table of contents of these acts)

#### United States Code, Title 17

This section of the Code governs copyright law and establishes the United States Copyright Office. Changes to Title 17 are common, and frequent, as technology continues to change. Because, for quite some time now, copyright has concerned itself with far more than words written on paper, this portion of the code contains numerous provisions governing the various types of works which are protected by copyright law, including literary works, musical works, audio-visual works, etc.

#### United States Code, Title 15, Section 22

Title 15, Section 22 addresses trademark law. In addition to requirements for registering trademarks, this section dictates the protection given to unregistered trademarks. The Code details differences between the protection given to registered trademarks and that given to unregistered marks.

#### United States Code, Title 35

Title 35 covers the law of patents. In addition to setting forth requirements on obtaining patents, it lays out the working of the patent office and the appeal process. Penalties for patent infringement and details concerning the effective date of the patent term are also included here.

**Assignment # 1 can be completed at this point.**

**Class 2**  
**Monday, September 13, 2021**

In this class, we will continue to discuss governing law in intellectual property cases. We will also focus on the very important questions of jurisdiction that arise in all sorts of intellectual property cases. We will discuss which courts have the authority to decide which types of intellectual property cases.

**Courseware Reading:**

Chapter 1: Introduction to Intellectual Property

- Governing Law, Courts & Agencies
- Jurisdiction, Venue, & Remedies

**NOTE: THERE WILL BE NO CLASS WEDNESDAY, SEPTEMBER 15**

**Class 3:**  
**Monday, September 20, 2021**

This class will consist of a Lexis tutorial/ assignment walkthrough. The instructor will use a research assignment from a past or current course to demonstrate the manner in which an assignment should be researched and composed.

The instructor will walk the students through the various Lexis databases and explain to students how to most efficiently use the Lexis system to complete research assignments. Various general aspects of navigating Lexis, including Shepardizing, seeking and finding appropriate search databases, getting a document by citation, etc., may be explored.

The Instructor will also discuss how to most effectively plan, outline, organize and draft research assignments. Model answers and/or past student submissions may be used to illustrate what a “4” assignment looks like and how to compose one.

## **Class 4**

### **Wednesday, September 22, 2021**

Our first area of in-depth study is the law of copyrights. Long past are the days when copyright law protected only words on paper. Once we obtain a strong grasp of the principles underlying copyright protection we will move to the important issue of distinguishing copyrightable expressions from ideas, which cannot be copyrighted. While discussion of some forms of copyrightable work will be left for our next class, in Class Two the basic subject matter of copyright will be covered.

### **Courseware Reading:**

#### Chapter 2: Copyright Part I

- Concept & History of Copyright
- Distinguishing Copyrights from Rights in Other Property
- What Can be Copyrighted? (Title 17 §102)
  - Ideas vs. Expressions
  - Definitions §101
  - Subject Matter of Copyright (§102)
  - Pictorial, Graphic & Sculptural Works (§113)

### **Cases and Statutes:**

#### Baker v. Selden

Although well over 100 years old, this Supreme Court case from 1879 laid the groundwork for modern copyright analysis. This case concerns the difference between unprotected idea and protected expressions.

#### USC Title 17, Section 102

This section of Title 17 lays out the subject matter of copyright law and, along with §101, will be central in our discussion of what forms of work are protected under the law.

Suggested videos:

<https://lawshelf.com/videos/entry/copyright-protection-can-a-joke-be-copyrighted>

<https://lawshelf.com/videos/entry/copyright-protection-what-can-be-protected-and-what-cannot-be-protected>

**NOTE: THERE WILL BE NO CLASS MONDAY, SEPTEMBER 27**

**Class 5**  
**Wednesday, September 29, 2021**

Tonight we will continue our discussion of the subject matter of copyright protection. We will look at various types of creations and the extent to which they can be protected by copyrights. We will also include a discussion of the “initial ownership” rules and how copyright law affects works for hire and joint works.

**Courseware Reading:**

Chapter 1: Copyright Part I

- What Can be Copyrighted? (Title 17 §102)
  - Characters
  - Compilations & Derivative Works (§103)
  - Government Works & Public Policy Issues (§105)
- Initial Ownership and Section 201

**Cases and Statutes**

Adrien v. Southern Ocean County Chamber of Commerce

Understanding IP law sometimes means ridding ourselves of our common notions of what words mean. In copyright law, the “author” of a work is not necessarily the person whose hand moves the pen. This case serves as a jumping off point for our discussion of who owns newly created works.

**Assignment # 2 can be completed at this point.**

**Class 6**  
**Monday, October 4, 2021**

We continue our look at copyright law by covering some of the fundamentals of property protection: Who owns the property? How long does protection last? Is it really worth registering a copyright? In addition to addressing these issues, we will look at some specific areas of copyrightable works to see how the law is forced to operate in a different way when these various types of work are on the table.

**Courseware Reading:**

Chapter 3: Copyright Part II

- Logistics of Ownership & Registered Copyrights
- Music, Movies and computer Software Copyrights

**Cases and Statutes:**

Title 17, Section 302

Copyright protection does not last forever, and §302 tells us precisely how long it does last. Changes in the law over time means we must be careful when determining the end date of copyright protection

Title 17, Section 102

§102 again plays an important role, this time in our discussion of musical works, sound recordings, and movies...perhaps some of the most interesting areas of copyright law, at least in terms of the clients and works we deal with.

**Documents for Review:**

- Copyright Office Cover Sheet for Filings
- Software Copyright Infringement Complaint

**Examination # 1 will be posted at this point.**



## **Class 7**

**Wednesday, October 6, 2021**

Today we end our look at copyright law by closely examining the actual rights that are conferred to authors. With real property and chattels we can often determine the benefits of ownership quite intuitively (I have the right to drive my car down the street, repaint it, sell it, etc.). When dealing with intellectual property, however, we can never assume the existence of certain rights; Title 17 explicitly lists the exclusive rights granted to copyright owners. Once we know which rights are at stake, we can move on to a discussion of infringement of those rights. We will also discuss copyright licenses and sales, and end with a look at the Fair Use Doctrine.

### **Courseware Reading:**

#### Chapter 3: Copyright Part II

- The Exclusive Rights Granted by Copyright Law (Title 17 §106)
- Infringement & Remedies (Title 17 Chapter 5)
- Licensing & Assignment Agreements
- Fair Use Doctrine (§107)

### **Cases and Statutes:**

#### Title 17, Section 106

The exclusive rights conferred on copyright owners are found in this section. Note that there may be more here than meets the eye.

#### Hustler Magazine, Inc. v. Moral Majority, Inc.

It may be difficult to decide whether the most interesting cases come from criminal law or from copyright law, but this is certainly one of the all-time greats. Not only is the background of this case is fascinating, but the holding is an important one in the realm of fair use. Courts will examine several factors to determine whether use of copyrighted material infringes on the copyright owner's rights, and the mere fact that the accused infringing use was for commercial gain does not necessarily trump all other factors.

### **Documents for Review:**

- Copyright Assignment Agreement for Audio-Visual Work
- Copyright Licensing Agreement for Musical Work
- Copyright Licensing Agreement for Textual Work
- ASCAP Blanket Concert Report Form
- ASCAP Internet Use Form
- Schedule of Fees for Mechanical Licenses Under §115
- Performing Arts Copyright Registration Form
- Nondramatic Literary Work Copyright Registration Form

## **Class 8**

### **Monday, October 11, 2021**

We now move into our second major topic of the course: Trademarks. The goals underlying trademark law are quite different from those for copyright, and we must once again throw out everything we thought we knew. The scope of material protected here is relatively easy to grasp, but whether a given name, slogan, etc. falls within that scope is sometimes a difficult question to answer. We will solidly cover the different categories of protected marks (descriptive terms with secondary meanings, suggestive terms, arbitrary terms, and fanciful terms). We will then discuss how trademarks rights are established and the advantages of using the optional registration mechanism.

#### **Courseware Reading:**

##### Chapter 4: Trademark Part I

- What is a Trademark?
- Acquiring Trademark Rights
- Registration
- §1052 Bars to Registration

#### **Cases and Statutes:**

##### Abercrombie & Fitch Co. v. Hunting World, Inc.

This case is a vital read for understanding the categories of trademarks, and figures prominently in Chapter 4. The court did an excellent job of explaining how a single term could fit into different categories depending on the context in which it is used.

##### Title 15, Section 1052

This section of the Code provides a number of “bars to registration” which will make a mark unregistrable. While the enumerated categories in this section seem somewhat clear, court cases in which §1052 was at issue do not necessarily help predict the outcomes of future cases, for reasons which will be discussed.

#### **Documents for Review:**

- Trademark Application Form– Principal Register
- New Jersey Trademark Registration Form

## **Class 9**

**Wednesday, October 13, 2021**

Moving into our second chapter on Trademarks we will look at the ways in which valuable intellectual property can become worthless (by becoming generic). We will also dedicate significant attention to the Polaroid factors and their relation to customer confusion. We will also discuss trademark dilution and when such is permissible and when it's considered an infringement.

### **Courseware Reading:**

Chapter 5: Trademark Part II

- Loss of Trademark Rights
- Infringement & Likelihood of Confusion
- Trademark Dilution

### **Cases and Statutes:**

#### Bayer Co. v. United Drug Co.

This is the essential case on "genericism." Almost 100 years ago Bayer's product name "Aspirin" became available for almost anyone to use. When the public associates a name with a type of product, rather than with a certain company's product, others will no longer be prevented from using that term to describe their competing products.

#### Polaroid Corp. v. Polarad Electronics Corp.

Trademark law protects against the likelihood of customer confusion, and this 2<sup>nd</sup> Circuit case lays out the 8 factors which must be considered as part of this analysis in that Circuit. Courts in other circuits have delineated similar rules.

**Assignment # 3 can be completed at this point.**

**Class 10**  
**Monday, October 18, 2021**

We will start this class with a discussion of defenses against a trademark action, such as the fair use defense. We will also discuss the mechanics and complexities of selling trademarks, and licensing them. Finally, we will see just how the internet and international developments affect trademark law in the U.S.

**Courseware Reading:**

Chapter 5: Trademark Part II

- Incontestability & Fair Use
- Trademark Licensing & Assignment Agreements
- Internet & International Trademark Issues

**Documents for Review:**

- Trademark Infringement Complaint
- Trademark Assignment Agreement
- Trademark Licensing Agreement
- Trademark Website Infringement Complaint

**Class 11**  
**Wednesday, October 20, 2021**

With our transition to Patent law we encounter yet another strange beast. Patents are dramatically different from copyrights and trademarks, not least because they can only arise from a grant by the Patent & Trademark Office. After covering the basics of these differences we will examine the four categories of patent protection and the requirements for patentability.

**Courseware Reading:**

Chapter 6: Patents Part I

- Origins & Underlying Concepts of Patent Law
- Patentable Subject Matter
- Utility, Novelty, Statutory Bar & Nonobviousness

**Cases and Statutes:**

Title 35, Section 101

Title 35 of the United States Code contains the Patent Act, and §101 lays out the four categories of patentable subject matter (products and processes).

Juicy Whip, Inc. v. Orange Bang, Inc.

In order to be patentable, a product or process must be useful. This case helps define the outer edge of the utility requirement of §101, and tell us that it is less demanding than one might think.

Graham v. John Deere Co.

An important case for understanding the nonobviousness requirement of §103, this 40- year-old Supreme Court case holds that the rule on nonobviousness formulated by the Court over 100 years earlier was codified by §103 of the Patent Act. This case helps make clear to whom the invention must not be obvious (a person “skilled in the relevant art”).

Suggested Videos:

<https://lawshelf.com/videos/entry/intellectual-property-law-the-basics-of-patent-law>

**Assignment # 4 can be completed at this point.**

**Examination # 2 will be posted at this point.**

**The early assignment submission deadline is Sunday, October 24, 2021 at 11:59 PM EASTERN TIME; that’s EASTERN time. That means 8:59 PM Pacific time, 9:59 PM Mountain time, 10:59 PM Central time, etc.**

**Class 12**  
**Monday, October 25, 2021**

We will devote this class to the patent application process. We will discuss the importance of careful patent claim drafting using a sample claim as our launching point. We will also discuss important issues such as using the USPTO's website to do an originality search, etc.

**Courseware Reading:**

Chapter 6: Patents Part I

- The Patent Application Process

**Documents for Review:**

- Form to Accompany Payment of Patent Maintenance Fees
- Patent Fee Notice Address Change Form
- Notice of Appeal from PTO Decision
- Predecisional Memorandum (to be completed by PTO Examiner)

Suggested Videos:

<https://lawshelf.com/videos/entry/patent-trolls>

<https://lawshelf.com/videos/entry/the-process-of-securing-patent-protection>

## **Class 13**

### **Wednesday, October 27, 2021**

Our next class takes us through the maze of Patent infringement. In contrast with other areas of IP law, patent law sometimes imposes liability on someone who did not actually commit the infringement. In addition to our discussion of so-called “induced infringement” and “contributory infringement,” we will pay careful attention to what is known as the Doctrine of Equivalents, a rule created to prevent unscrupulous copiers from sidestepping the bounds of patent law. We will then analyze the myriad of defenses that are available against a claim of patent infringement.

#### **Courseware Reading:**

Chapter 7: Patents Part II

- Patent Infringement
- Defenses to Patent Infringement

#### **Cases and Statutes:**

##### Larami Corp. v. Amron

Known as the Supersoaker case, this 1993 decision provides great insight into the meaning of “literal infringement” under the Patent Act. Wording in patent applications can be vital in convincing the PTO to grant the patent, but this case shows how that same wording can be vital in an infringement case. The difference between “therein” and “thereon” can be all it takes to lose a literal infringement case.

##### Warner-Jenkinson Co. v. Hilton Davis Chemical Co.

The Doctrine of Equivalents allows patent owners to prevail on infringement cases when the defendants have tried to make minor changes to a patent to avoid liability under the Patent Act. There are some important limitations on this doctrine, however, which are spelled out for us in this case.

**Class 14**  
**Monday, November 1, 2021**

We will start this class by discussing the various remedies that are available to victims of patent infringement, including compensatory damages, equitable relief and even treble damages in some cases. Next, we will address what might be the next generation of patent law in the United States by looking at the difference between our first-to-invent system and the first-to-file system which is more popular in other nations.

**Courseware Reading:**

Chapter 7: Patents Part II

- Remedies for Patent Infringement
- Patent Licensing & Assignment Agreements
- International Patent & the First-to-File System

**Cases and Statutes:**

Morton Salt Co. v. G.S. Suppiger Co.

Patent law is designed to strike a balance between providing incentives to invent and obtaining benefits for society. When a patent is used to stifle competition over an unpatented product, an accused infringer might be able to defend its conduct by arguing that the patentee has misused the patent. Although the defense of patent misuse might be on the decline in the U.S., the Morton Salt case set the standard for this mode of argument.

Title 35, Section 283

Although monetary damages are often required to make a patent owner whole for past infringement, unless ongoing infringement can be stopped the patent monopoly is no monopoly at all. By authorizing injunctions against infringers, §283 protects the value of valid patents.

**Documents for Review:**

- Patent Assignment Agreement
- Patent Assignment Filings

**Assignment # 5 can be completed at this point.**



## **Class 15**

**Wednesday, November 3, 2021**

In our final class we move to the protection of intellectual property by state law. In most states there exist Trade Secret acts, which provide statutory causes of action for the improper disclosure and use of trade secrets. In addition, whether or not a state has passed such a statute, contract law can greatly aid in the preservation of valuable intellectual property.

### **Courseware Reading:**

Chapter 8: Trade Secrets & State Laws Protecting Intellectual Property

- Trade Secret Protection Overview
- The Uniform Trade Secrets Act & State Acts
- Contractual Agreements Protecting Trade Secrets
- Defenses to Trade Secret Actions

### **Cases and Statutes:**

#### The Uniform Trade Secrets Act

Serving as the basis for statutes in the majority of the states, the UTSA provides for the protection of intellectual property not protected under the law of copyrights, trademarks, or patents. Because those states which have passed trade secret acts have not all passed perfect mirror images of the UTSA, by discussing the UTSA we can cover the general rules which apply in most states.

**Examination # 3 will be posted at this point.**

**All examinations and assignments are due no later than Sunday, December 5, 2021 at 11:59 PM EASTERN TIME: that's Eastern Time. That means 8:59 PM Pacific time, 9:59 PM Mountain time, 10:59 PM Central time, etc.**

### **NPC EXTENSIONS POLICY**

**1) Extensions that conform to the rules below may be requested from the “Assignments and Exams” page on the NPC student website.**

**2) No extensions are possible unless the student has first submitted at least one assignment or examination by the course deadline.**

- **Students must submit a legitimate assignment or exam to qualify for an extension. Submitting any assignment for another course or a blank document as a placeholder does not qualify you for an extension.**
- **Extensions taken based on placeholder assignments or blank exams may be removed.**

3) The maximum possible extension allowed under the NPC system are as follows:

- A student who has submitted one assignment or exam may take an extension of up to seven (7) days.
- A student who has submitted two assignments or exams (or any combination) may take an extension of up to seven (7) additional days (14 days total).
- A student who has submitted three assignments or exams (or any combination) may take an extension of up to seven (7) additional days (21 days total).
- A student who has submitted four assignments or exams (or any combination) may take an extension of up to seven (7) additional days (28 days total).
- A student who has submitted five assignments or exams (or any combination) may take an extension of up to two (2) additional days (30 days total).
- No extensions of more than thirty (30) days beyond the deadline are possible for any reason at all.

4) Requested extensions are granted automatically. It is not necessary to give any reason for the request. However, for each day of extension you request, you may be penalized 3 raw points (of 500 that determine your final grade). This accounts for 0.6% of your course grade, per day of extension. This is necessary to compensate for the advantage that students who take more time to do their work enjoy over those who complete their work on time. This also means that a short extension (e.g., a day or two) is unlikely to affect your grade, but a long extension (e.g., two weeks) is guaranteed to affect your grade.

5) The penalty referenced in Paragraph 4 may be waived by the dean in extreme cases only. Extreme cases include circumstances beyond the control of the student that caused the student to be unable to complete work for *a significant period of time*. Circumstances such as being busy at work or at home, vacations, family occasions or power or internet outages lasting a few days, are foreseeable life circumstances. Extensions may be taken for these reasons (or, for that matter, for any reason at all), but the grade penalty discussed above applies. However, please note that the course deadline cannot be extended more than 30 days for any reason at all.