



## **National Paralegal College**

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### **PLG-112-0909**

## **Patents, Trademarks and Copyrights**

### **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 75-minute session consists of 45 to 60 minutes of online lecture by the course instructor. During the remainder of the time, students may ask questions and make comments on the material being studied. Unless otherwise noted, all lectures begin at 9:00 P.M., Eastern Time.

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 granted by the instructor, all assignments and exams must be submitted by January 8, 2010 in order to receive credit.

#### **COURSE INSTRUCTOR:**

The instructor for this course is Eric Martinez. He can be reached by email ([emmnpc@yahoo.com](mailto:emmnpc@yahoo.com)).

#### **COURSE DESCRIPTION:**

Intellectual property, often known as 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:

- Explain the differences in 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.
- Explain 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.

### **WRITTEN ASSIGNMENTS:**

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

Assignments are to be submitted via the section of the student menu entitled “Assignments & Exam Grades.” If a student wishes to attach a diagram or another document whose formatting does not allow it to be submitted easily through the website, the document may be e-mailed to the instructor.

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” (attached as an appendix to this syllabus) for more detailed information as to 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.

## Assignment Grading Rubric

<b>Factor</b>	<b>4 (Excellent)</b>	<b>3(Good)</b>	<b>2(Satisfactory)</b>	<b>1 (Poor)</b>	<b>0 (no credit)</b>
<b>Thoroughness</b>	Answered all questions in the exercise completely and in the appropriate order.	Answered all questions in the exercise but not completely and/or not on the appropriate order	Answered most of the questions in the exercise but not completely and/or not on the appropriate order	Did not answer many of the questions in the exercise but did make some reasonable effort to do so.	Made little or no reasonable effort to answer the questions posed in the assignment
<b>Demonstrated 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 students 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 b 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 point 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 was 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 critical thinking or analysis. The student's points make no sense.

## **EXAMINATIONS:**

Examinations will be posted on the NPC website as indicated on this syllabus. 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.

Each student will be required to designate a single computer to be used for all examinations. NPC will then install a security certificate on the student’s designated computer. A student may only take the examinations on the computer that has the NPC security certificate installed.

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.

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 assignments and examinations, please see the *NPC Student Handbook*.

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

## **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 one during each week, either:

- 1) Attend a live lecture  
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 simple and straightforward and will cover material covered in class that week. Answers to these questions should be short (typically 1-3 sentences) and to the point.

This student response (which is necessary only if the student does not attend a live class 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 Monday.

The weekly interaction questions will be posted alongside the assignments. Students who do not attend a live class or take an exam or submit an assignment in the given week will be required to answer the questions presented. Students who did attend a live class or take an exam or submit an assignment in the given week may ignore the question.

Any student who does not fulfill this requirement during a given week will receive a reduction in his or her over-all grade of 2 percentage points from his or her over-all average. Conversely, any student who demonstrates excellent participation either through message board participation or through relevant in class discussion may receive an increase in his or her over-all grade, in the discretion of the instructor.

***Please note that all examinations and assignments for this course are due no later than November 28, 2010.***

## **Lecture and reading assignments schedule**

### **Class 1**

**Wednesday, September 8, 2010**

**5:30 PM Eastern Time**

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

1. What Is IP
2. Scope of Protection Under IP Law
3. 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.

**Class 2**  
**Monday, September 13, 2010**

**9:00 PM Eastern Time**

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

4. Governing Law, Courts & Agencies
5. Jurisdiction, Venue, & Remedies



**Class 3: (Assignment/ Lexis walkthrough)  
Wednesday, September 15, 2010**

**9:00 PM Eastern Time**

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**  
**Monday, September 20, 2010**

**9:00 PM Eastern Time**

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

1. Concept & History of Copyright
2. Distinguishing Copyrights from Rights in Other Property
3. What Can be Copyrighted? (Title 17 §102)
  - a. Ideas vs. Expressions
  - b. Definitions §101
  - c. Subject Matter of Copyright (§102)
  - d. 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.

## **Class 5**

**Wednesday, September 22, 2010**

**5:30 PM Eastern Time**

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 2: Copyright Part I

3. What Can be Copyrighted? (Title 17 §102)

e. Characters

f. Compilations & Derivative Works (§103)

g. Government Works & Public Policy Issues (§105)

4. 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.

## **Class 6**

**Monday, September 27, 2010**

**This week's classes will be pre-recorded!**

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

1. Logistics of Ownership & Registered Copyrights
2. Sexy Copyright

### **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 administered at this point.**

## **Class 7**

**Wednesday, September 29, 2010**

**This week's classes will be pre-recorded!**

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

3. The Exclusive Rights Granted by Copyright Law (Title 17 §106)
4. Infringement & Remedies (Title 17 Chapter 5)
5. Licensing & Assignment Agreements
6. 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, In.

It may be difficult to decide whether the most interested cases come from criminal law or from copyright law, but this is certainly one of the all time greats. Not only is 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

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

1. What is a Trademark?
2. Acquiring Trademark Rights
3. Registration
4. §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 6, 2010**

**9:00 PM Eastern Time**

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

1. Loss of Trademark Rights
2. Infringement & Likelihood of Confusion
3. 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.

**Class 10**  
**Monday, October 11, 2010**

**9:00 PM Eastern Time**

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

4. Incontestability & Fair Use
5. Trademark Licensing & Assignment Agreements
6. Internet & International Trademark Issues

**Documents for Review:**

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



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

1. Origins & Underlying Concepts of Patent Law
2. Patentable Subject Matter
3. Utility, Novelty, Statutory Bar & Nonobviousness

**Cases and Statues:**

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 no be obvious (a person “skilled in the relevant art”).

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

**Class 12**  
**Monday, October 18, 2010**

**9:00 PM Eastern Time**

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

4. 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)

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

1. Patent Infringement
2. Defenses to Patent Infringement

**Cases and Statues:**

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, October 25, 2010**

**9:00 PM Eastern Time**

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

3. Remedies for Patent Infringement
4. Patent Licensing & Assignment Agreements
5. 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

**Class 15**  
**Wednesday, October 27, 2010**

**9:00 PM Eastern Time**

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

1. Trade Secret Protection Overview
2. The Uniform Trade Secrets Act & State Acts
3. Contractual Agreements Protecting Trade Secrets
4. 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 administered at this point.**

***All examinations and assignments are due no later than November 28, 2010.***