

G. Intellectual Property and Technology Law

To: Students

**From: Intellectual Property Faculty
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Intellectual property law - the body of law that is primarily concerned with providing protection for the intangible creations of the human mind - has traditionally been comprised of three major subfields: Patent Law, Copyright Law, and Trademark Law. The boundaries of each of these three subfields are set largely by the federal statutes that govern each -- The Patent Act (35 USC §§ 1-376), the Copyright Act (17 USC §§101-1203), and the Lanham Act (15 USC §§ 1051 - 1127), respectively.

Patent law deals with the legal protection afforded to “inventions,” new and useful technological developments of all kinds. Due to the role played by the US Patent and Trademark Office in the review and granting of patents, patent law has a strong ‘administrative law’ component. Copyright law protects “original works of authorship” – creative expression embodied in literary, musical, graphic, and other primarily “artistic” works. Trademark law protects signs or symbols of all kinds – logos, words, phrases, musical jingles, etc.– that are used in commerce to identify the source and origin of goods or services.

The boundaries of “technology law” are a little more difficult to make out. Many different bodies of law, including the three listed above but also including Antitrust, Contracts, Commercial Law, Sales, Constitutional Law, Health Law, Environmental Law, Payment Systems, and many, many others, may bear on legal issues involving new and emerging technologies.

Technology has long played a key role in IP law, particularly in patent law. The critical role that patents have always played in the development of new technologies – from the cotton gin, the telegraph, and the transistor, up to and including the more recent innovations in biotechnology and computer networking – has meant that patent lawyers often find themselves at the cutting edge of technological development. In order to call oneself a “patent lawyer” and to practice before the United States Patent and Trademark Office, one must pass the separate Patent Bar examination (in addition to a State Bar exam), and only lawyers who majored in or complete(d) significant course work in science and technology areas are eligible to take the exam. Attorneys who engage in patent litigation and transactional work do not need to take the patent bar to practice in such areas, although some firms certainly prefer such attorneys to be members of the patent bar.

Increasingly, however, technological issues are becoming central to the other sub-disciplines within IP law. While many trademark and copyright lawyers continue to have successful practices without the slightest interest, or expertise, in technological issues, the arrival of the Internet and digital age have meant that those issues are becoming more important in these

subfields as well (and, conversely, that “technology law” is becoming more concerned with copyright and trademark issues).

The Course of Study. The study of Intellectual Property at Temple begins with the introductory course, **Introduction to Intellectual Property**. This course covers the broad outlines of patent, copyright, and trademark law (along with a fourth body of law, the law of ‘trade secrets,’ which is a curious amalgam of intellectual property and tort law doctrines). It is designed both for students who plan to work in the IP field and for those who, though they have no plans to specialize in this area, are looking to learn something about the general rules of IP.

The “second tier” of IP courses consists, first, of specialized courses devoted to each of the three major subfields: **Patent Law, Copyright Law, and Trademarks and Unfair Competition**. In addition, this second tier includes courses that cut across one or more of the boundaries between the IP subfields: **International Intellectual Property Law** and **Business Intellectual Property**.

The “third tier” of IP courses consists of more specialized patent law offerings: **Patent Prosecution, Patent Litigation, and Intellectual Property Licensing**. [Occasionally, a writing seminar, **Advanced Patent Law**, is offered.]

Introduction to Intellectual Property is a required prerequisite for each of the courses in the second and third tiers. Accordingly, students who wish to go beyond the introductory course and study any of the IP subfields in more depth are strongly encouraged to take “Introduction to Intellectual Property” as a 1L elective or in their second year [second or third year for part-time students] so that they can have maximum flexibility in designing their schedules in subsequent semesters. We will be offering sections of Introduction to Intellectual Property in both the evening and day division, in order to maximize its accessibility to students.

Finally, four other courses cover various other aspects of the relationship between law and technology: **Cyberspace; Cyberlaw and Policy; Practical Applications in Organizational Settings; and Cyberprivacy Law**. These courses are open to students who have not taken any of the Intellectual Property courses.

COURSE DESCRIPTIONS FOR INTELLECTUAL PROPERTY AND TECHNOLOGY LAW COURSES CURRENTLY OFFERED

Law 547. Introduction to Intellectual Property 3 Credits

This course will cover the broad outlines of the four major branches of intellectual property law: patent, copyright, trademark, and trade secret law. Time permitting, the course also will look at the emerging doctrine of “misappropriation” as applied to intellectual property. The course will

look generally at why (and how) intellectual property law differs from the law governing real property or tangible personal property, as well as at the special features of each of these sub-fields of intellectual property law. The course should provide a helpful overview of this area of the law for students who do not plan to specialize in intellectual property, as well as providing those who plan to go on to more detailed study of, and practice in, this area with an introductory exposure to the kinds of problems that are common to all intellectual property disciplines.

Prerequisite: Law 418. Property

Law 552. Patents

3 Credits

This course provides an extended introduction to United States patent law. Topics covered include the patenting process, patent-eligible subject matter, patent validity requirements, patent infringement, and the nature of rights secured by a patent. The course also briefly examines trade secret law, and discusses the relationship between, and the relative advantages and disadvantages of, patent and trade secret law for protecting intellectual property rights in inventions and discoveries.

Prerequisite: Law 547. Introduction to Intellectual Property

Law 553. Copyrights

2 or 3 Credits depending on section

The goal of this course is to introduce students to the basics of US copyright law. Without detracting from this goal of covering the (domestic) copyright basics, we will also look at these issues in the specific context of these new technologies and the growing internationalization of copyright law, in order to introduce you to some of the problems that are likely to arise as copyright law enters the next century. Topics to be covered include the subject matter of copyrights, copyright ownership, the scope of copyright protection, the nature of the copyright infringement inquiry, the "fair use" and other defenses, and selected issues concerning the international enforcement of copyrights.

Prerequisite: Law 547. Introduction to Intellectual Property

Law 551. Trademarks and Unfair Competition

2 Credits

Addressing both theoretical and practical issues, this course combines a traditional law school examination of common law and statutory principles with a "real world" application of those principles as a practitioner sees them. The principles include unfair competition topics such as the right of publicity, misappropriation of trade values and trade secrets, regulation of false and deceptive advertising, and interference with contract and trade relations. The principles focus, however, on trademark law topics such as the creation and maintenance of trademark rights, infringement of trademark rights and dilution, special defenses and limitations, and remedies.

These topics are examined in light of modern advertising and marketing practices, including special issues raised by the Internet and international considerations. Among the more practical aspects covered are the federal trademark registration process, proceedings before the Trademark Trial and Appeal Board of the U.S. Patent and Trademark Office, and highlights of trademark litigation in the courts.

Prerequisite: Law 547. Introduction to Intellectual Property

Law 467. International Intellectual Property

3 Credits

Obtaining Rights by Registration in the United States and other typical Examination Countries; joint Examination by the European Patent Office. Effect of the Patent Cooperation Treaty and proposals toward Patent Harmonization under the General Agreements on Tariff and Trade (GATT); focus on: Application Requirements, Coverage, Appeal Rights, Term of Protection and Maintenance Costs. Exploitation of Intellectual Property Rights with a focus on: Technology Transfer including Compulsory Licensing, Foreign Ownership Requirements in Ventures and Anti-Trust and Anti-Monopoly considerations. Protection of Rights with a focus on: the difficulties of protecting intellectual property rights by litigation, policing the property rights, preventing international distribution, international trade piracy, gray market goods and other topics as time permits.

Prerequisite: Law 54. Introduction to Intellectual Property

Law 476. Business Intellectual Property Planning and Practice

2 Credits

The objective of this course is to address various intellectual property related issues businesses may face when developing and selling products. The course will focus on business-to-business transactions, not businesses dealing directly with consumers. The course is divided into four segments. The first segment addresses issues businesses may face when hiring employees to develop and sell products. The second segment addresses issues businesses may face when developing new products for the market. The third segment addresses issues businesses may face when selling its products to customers. The fourth segment addresses issues businesses may face when the competition presents obstacles to that business's sales efforts.

Prerequisite: Law 547. Introduction to Intellectual Property

Law 472. Patent Litigation

2 credits

This course will address the manner in which patent cases are litigated, with special emphasis on a number of special issues that frequently arise in that context. Topics to be covered include

preparation and content of the complaint and answer, discovery, the role of expert witnesses, preliminary injunctions, claim construction and the “Markman hearing,” proof of infringement and damages, jury instructions, and appeals. There will be a number of hands-on exercises, and a final examination.

Prerequisites: Law 402. Civil Procedure I; Law 547 Introduction to Intellectual Property
Recommended: Law 552. Patents

Law 471. Patent Prosecution
2 Credits

This course will focus on the legal issues that arise during the process of drafting patent applications and negotiating with patent examiners over patent validity. We will look at the prosecution history of a single successful patent application, and examine the kinds of decisions that the prosecuting attorneys were called upon to make and the ways in which questions about patent law, patent licensing, and the enforceability of patents and possible litigation concerns, help to shape the prosecution process.

Prerequisites: Law 547. Introduction to Intellectual Property; Law 552. Patents

Law 981. Advanced Patent Law (Writing Seminar)
3 Credits

This course covers patent topics not examined in the basic Patent Law course (such as claim interpretation, the experimental use defense, the Hatch-Waxman Act, design and plant patents, and patent misuse and antitrust), and also studies current hot topics in patent law and policy. Students will write a research paper on a topic related to patent law and policy, not limited to those topics covered in class.

Prerequisite: Law 547. Introduction to Intellectual Property; Law 552. Patents is useful, but not required.

NOTE: This course may not be taken until after the mandated First Year Program has been completed.

Law 848. Cyberspace (Writing Seminar)
3 Credits

The emergence of the global digital electronic communications network--the "Internet" and its constituent networks--and the associated "digital revolution"--the ability to access, store, and transmit vast amounts of information in digital form (computer software, video games, music, text, etc.)--present an array of new problems and opportunities for lawyers preparing to practice in the 21st Century. It is becoming increasingly evident that the process of "mapping" existing legal concepts and tools into this new domain presents certain difficulties, and that a number of familiar legal concepts will need to be rethought before they can be effectively applied in this new environment.

The goal of this course is to introduce students, by means of a series of specific case studies chosen to illustrate the clash between existing legal regimes and new technologies, to a reasonably comprehensive subset of the legal problems that are being addressed as part of the developing "online law." Topics to be covered include the law of copyright as applied to electronic information, trademark law as applied to Internet "domain names," application of the First Amendment to the regulation of Internet communications, privacy concerns on the Internet, the law of anonymous communication and the regulation of encryption technology, and the difficult international jurisdictional questions presented by Internet activity.

Each student will be required to write a substantial research paper focused on one of these topics (or another chosen in consultation with the Professor), and to present preliminary findings in class. Although there are no prerequisites for this course, it is strongly recommended that students have had a course on intellectual property prior to enrolling in this course.

Recommended: Law 547 (Introduction to Intellectual Property)

NOTE: This course may not be taken until after the mandated First Year Program has been completed.

**Law 652. Cyberlaw and Policy: Practical Applications in Organizational Settings
2 Credits**

This course is a practical and concrete course applying Cyberlaw to pseudo-clients in legal practice. Legal and policy principles are studied that should be included in an acceptable use of electronic communications and technology policy. Included are the legal aspects of Internet, computer and information technology such as cyberprivacy, cybersecurity, commercial disparagement and defamation, cybercrimes, computer forensics, e-business, electronic mail, speech, and online copyright issues. Students will be expected to prepare an acceptable use policy that is usable for a private corporation or public entity.

Prerequisites: Law 406. Contracts; Law 404. Constitutional Law; Law 420. Torts

**Law 478. Cyberprivacy Law
2 Credits**

Information law deals with the flow of information - when do you restrict information and when do you let it flow? During this course students will examine information privacy legal principles related to electronic surveillance, the media, anonymity, databases and information, genetic testing and neuroimaging, terrorism and national security, public and private sector information, and home, school and work.

Students will be expected to prepare for each class by reading the required legal readings and by accessing Internet web sites for current policy information. During class, students will discuss their prepared material and become involved in resolving problems that apply the out-of-class preparation. Additionally, students will make an in-class presentation on one topic. In-class work will contribute information to enhance the students' legal understandings.