

Intellectual Property Law Survey – Fall 2024

Mondays & Wednesdays, 1:15 – 2:40PM	Room: Holland Hall 270	Professor Derek Bambauer
Course: 6570-26742	Credits: 3	Office Hours: Wednesdays, 10:30AM – 12:00PM, and by appointment, in Holland Hall 326 or on Zoom
Office phone: 352.273.0957	Office: Holland Hall 326	E-mail: <bambauer@law.ufl.edu>

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Welcome to this survey course in Intellectual Property Law! In this course, we will survey the major doctrines that enable one to assert control over information, innovation, signals, and other intangible goods. The class is intended as a primer, either to begin your training in IP law, or to provide an overview for those of you who do not plan to specialize in the area. The class does not assume any prior exposure to IP or to the technologies that draw upon it.

Contact Information

Professor Bambauer can be reached by e-mail (bambauer@law.ufl.edu), by telephone / text (office 352.273.0957 / mobile 734.748.3535), or in Holland Hall 326. The best way to reach me is via e-mail or text; I rarely check my office voice mail.

Office hours are on Wednesdays, from 10:30AM – 12:00PM and by appointment, in my office or on [Zoom](#) (<https://ufl.zoom.us/my/derekbambauer>); you are welcome (and encouraged!) to stop by. My office has a candy dish. I'm also happy to get together for coffee / tea / lunch or by Zoom to discuss developments in intellectual property law, jobs in IP, the obvious (?) superiority of the Boston Red Sox, or anything else of interest. You can also follow me on Twitter/X (mostly retweets) [@dbambauer](#) until something better replaces the platform.

Logistics

- **Materials** - The required textbook for this class is Peter S. Menell, Mark A. Lemley, Robert P. Merges, & Shyamkrishna Balganesh, [Intellectual Property in the New Technological Era: 2023](#) (2 volumes). (The authors decided not to update the textbook this year, so we will read excerpted versions of recent IP cases. I will post these excerpts to the course Canvas site.) The supplement to the textbook is **optional**. All three books / volumes are available in print or as a PDF; you may purchase whichever format you prefer. Any additional materials for this course are linked to from this syllabus or posted to the course Canvas site.
- **Course Meeting Times** – The class will meet live on Mondays and Wednesdays, from 1:15 – 2:40PM, in Holland Hall 270. These sessions will be recorded automatically via Mediasite. I give **blanket permission** for any student in this class to access these recordings at any time. In addition, if you would like me to record a class via Zoom and make it available on Canvas, please send me an e-mail, preferably at least 24 hours in advance of the class. **In addition**, there will be unscheduled assignments, group activities, and asynchronous video lectures. You are responsible for completing these course components by the deadlines indicated.
- **Communication** - I will communicate with the class via e-mail and via the course Canvas site. Please monitor your e-mail account, sign up for the course Canvas site, and check the Canvas site regularly.
- **Assignments** - Please see the syllabus below for reading assignments. You are expected to have read and prepared the materials assigned for each class meeting. Please note carefully the page numbers and instructions; often, you will only need to read part of a case or section.

The syllabus will undoubtedly change; please check Canvas regularly for updates and note the “Last Updated” date at the top of the syllabus. You are responsible for reading the materials closely, and for posing questions about anything you do not understand.

- **Helpful Resources** – You should not need any additional resources beyond the required materials. However, if you would like more information on IP law, I recommend:
 - Dan Hunter, [Intellectual Property](#) (Oxford University Press 2012).
 - Treatises: CHISUM ON PATENTS (available on Lexis), MCCARTHY ON TRADEMARKS (available on Westlaw), and NIMMER ON COPYRIGHT (available on Lexis). These are the treatises most frequently used by practitioners and cited by courts.

Policies

- **Attendance** - Regular, punctual attendance is required under the College of Law and American Bar Association rules. You are responsible for ensuring that you are not recorded as absent if you arrive late. If you fail to meet the attendance requirement, you may be dropped from the course. The law school's policy on attendance can be found [here](#).

If you face special circumstances that require you to arrive late, leave early, or miss class sessions, please contact me so we can discuss how best to manage the situation. In particular, if you face an extended absence, contact me so I can help you stay current on the material.

- If you feel sick or may have been in contact with someone who is infectious, please stay home and contact me so you can participate by Zoom. Except for seeking medical care, avoid contact with others and do not travel.
 - Please notify me if you will miss a scheduled course component. All course sessions are recorded so that you can access material that you miss, or review course content.
- **Professionalism** - Please be professional while attending class and while participating in assignments outside class (for example, blog discussions and e-mail exchanges). This includes treating other students and faculty courteously, being prepared for class, ensuring that you do not distract other students, and engaging the material as best you are able. In particular, I ask that you try to curb electronic distractions: turn cellular phones **off** whenever possible, avoid playing computer games, and do not use communication tools such as instant messaging or e-mail during class time. In return, I commit to treat you with respect and professionalism, including by beginning and ending class on time.

- **Special Circumstances** - If you face special circumstances that could affect your participation in class or your ability to prepare adequately (such as a life event, a disability, repetitive strain injury (RSI), or stage fright), please contact me. There are resources at the College of Law and beyond that we can enlist to assist you. Law school can be a stressful experience; I (along with the rest of the faculty and administration) am here to help you manage its challenges. This applies outside of class as well: if you need help or are facing a problem, please reach out. There are a lot of resources here to assist you. In particular, I would like you to be aware of:
 - [Wellness at UF Law](#)
 - [U Matter, We Care](#) – contact at <umatter@ufl.edu> or 352.392.1575 (24 hours)
 - [Counseling and Wellness Center](#) – <UFLawCares@law.ufl.edu> or 352.392.1575
 - [Student Health Care Center](#) – 352.392.1161 (24 hours)
 - [University of Florida Shands Emergency Room / Trauma Center](#) – 352.733.0111; the ER is at 1515 SW Archer Road, Gainesville, FL 32608.
- **Out-of-Class Requirements** – American Bar Association Standard 310 requires devoting 2 hours of preparation outside (before) class for each hour of classroom instruction. This class has approximately three hours of classroom instruction per week; thus, you should spend roughly six hours per week outside class reading the assigned materials, preparing practice problems, formulating questions, and so forth.
- **Feedback** - At several points during the course, I will ask you for feedback in writing / electronically about how the course is progressing and how it can be improved. This feedback is anonymous, and it is extremely important to me. It is also a **required component** of the class. I will read and carefully consider everything that the class shares with me; then, I will summarize it at the start of the next session and also describe how I will respond based upon it.
- **College of Law Standard Syllabus Policies** - Information about other College of Law policies, including compliance with the University Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>.

Grading

Your grade for the class will be based upon **3 components**: class feedback, three quizzes, and the final examination.

Deadlines are vitally important to IP lawyers. Failing to meet a deadline can mean that your client will be treated as having abandoned a patent application or as having waived objections or counterarguments in litigation. I may grant deadline extensions in my discretion, on a case by case basis, **if you ask for the extension in advance**. Late assignments will be penalized or will receive no credit at my discretion.

- **Feedback (5% total grade)** – At one or more points during the semester, I will ask you to submit feedback about the course via written response, Canvas post, or e-mail message. I use this feedback to adjust the course during the semester and to improve it year to year. **You earn points simply for submitting feedback – you will not be evaluated in any way based upon the content of the feedback.** (That’s the point of asking for candid input!)
- **Quizzes (3 x 11% each, 33% total grade)** - After we complete the modules on patent law, copyright law, and trademark law, there will be a short quiz (three in total) on each of those topics. Each quiz will comprise **5-7 short-answer questions**; quizzes are **closed-book** and will be hosted on Canvas. You will have **20 minutes**, starting when you commence the quiz, to answer the questions. Quizzes are **not cumulative**: for example, the quiz after the trademark section will test only trademark law. We will discuss the logistics of the quizzes in class in greater detail.
- **Final Examination (62% total grade)** - The largest component of your grade will be the final examination. It will consist of an 8-hour test that you can download and take at a point of your choosing during exam period (December 4-17, 2024). I will post instructions for the final exam to Canvas well in advance of the test - **read them carefully**. You may not copy pre-prepared material into your exam answer. The final exam is open book, open note, and open Internet. It goes without saying that your exam must consist of your own work; you may not accept or provide aid to other students during the examination. (Collaborative preparation in studying for the exam is permitted, and encouraged to the degree you find it helpful.)

Objectives

This class is designed to enable you to:

- Understand the theoretical rationales for granting exclusive legal entitlements over information, and for limiting those grants
- Explain why a particular piece of information is or is not eligible for protection under the doctrines we study
- For each doctrinal area, to analyze:
 - Criteria for eligibility for protection
 - Rights granted to the IP owner
 - Elements in a claim for infringement of those rights
 - Applicable defenses to infringement
 - Remedies available in a successful infringement suit
 - Procedural requirements for obtaining protection and litigating infringement
- Understand the limits placed upon each doctrine by various constitutional provisions and statutes

Syllabus

Page numbers refer to the textbooks unless otherwise indicated. Additional materials will either be posted to Canvas (“Canvas”) or linked to via hyperlink. This syllabus will change as we move through the course; I anticipate that I will reduce, but not increase, the reading as I assess our pace over the semester.

Some modules *may* be covered asynchronously: you will watch a recorded lecture on the material at a time of your choosing. These modules will be marked as “**ASYNC**” in the list of assignments below.

Module and Topic	Date	Assignment
1 – Introduction and IP Theory	Monday, 19 August 2024	Textbook pages 1-39
2 – Patent Law: Introduction and Subject Matter	Wednesday, 21 August	35 U.S.C. §§ 100, 101 169-81 - Skim 288-98 298-309 319-25 - Skim 312-6 (begin at #6)
3 – Patent Law: Utility & Novelty (pre-AIA)	26 August	35 U.S.C. § 102 246-54 256-57 (##1 & 2) 182-92
4 – Patent Law: Novelty (post-AIA), Priority, & Statutory Bars	28 August	192-95 196-209 214-18, 35 U.S.C. § 102 (post-AIA).
5 - Patent Law: Non-obviousness	4 September	35 U.S.C. § 103 (pre-AIA) 220-39 243-46
6 – Patent Law: Disclosure	9 September	35 U.S.C. § 112 (pre-AIA) 257-66 266-68 268-73 274-75 (##4, 5) 280-81 - Skim 285-87

7 – Patent Law: Claims & Direct Infringement	11 September	• 35 U.S.C. § 271 • 340-45 • 358-62 • 368 • 376-82 • 385-89
8 – Patent Law: Direct Infringement & Doctrine of Equivalents	16 September	• 388-89 • <i>Warner-Jenkinson Co. v. Hilton Davis Chemical Co.</i> (Canvas). • 393-96
9 – Patent Law: Secondary Infringement, Defenses, & Remedies	18 September	• 400-07 • 407-11 • 418-23 • 424-27 • 429-30 • 430-37 • 449-54 • 455-56 • 35 U.S.C. § 284
Patent Quiz	Available 9:00AM Thursday 19 September; must take by 11:59PM Monday 23 September.	
10 – Trade Secrets: Trade Secret - Subject Matter, Reasonable Efforts, & Disclosure	23 September	• 44-61 • 67-71 • 76-83 • Explaining the Defend Trade Secrets Act, AM. BAR ASS'N (Sept. 20, 2016)
11 – Trade Secrets: Misappropriation, Defenses, & Remedies	25 September	• 83-89 • 90-96 • 97-101 • 145-50 • 150-57
12 – Copyright: Introduction, Fixation, & Subject Matter	30 September	• 17 U.S.C. 101 (as needed) • 17 U.S.C. 102 • 519-25 • 528-35 • 535-40 • 543-48 • 556-65

13 – Copyright: Subject Matter & Ownership	2 October	• 17 U.S.C. § 103 • 566-72 • 574-82 • Skim 593-600 • 619-26 • 632 (# ii)
14 – Copyright: Duration & Rights / Direct Infringement (Reproduction, Derivative Works)	7 October	• 17 U.S.C. 106 • 17 U.S.C. 302(a), (b), (c) • 647-53 • 660-66 • 671-75 • 704
15 – Copyright: Rights & Direct Infringement (Distribution, Public Performance, Public Display, Moral Rights)	9 October	• 17 U.S.C. § 501(a) • 704-09 • 716-18 • Skim 719-29 • 731-32 • Skim 732-40 • 748-50
16 – Copyright: Indirect Infringement & Defenses – Fair Use	14 October	• 17 U.S.C. § 107 • 767-78 • 779-92 • 796-800
17 – Copyright: Defenses – Fair Use	16 October	• 801-07 • 808-16 • 859-62 • Adam Liptak, Prince Photo or Just Formerly Known as One? Supreme Court Weighs Warhol's Art., N.Y. TIMES (Oct. 12, 2022)
18 – Copyright: Remedies	21 October	• 17 U.S.C. 502 • 17 U.S.C. 504 • 898-901 • 902-08 • Skim 909-14
19 – Copyright: Digital & Internet	23 October	• 17 U.S.C. § 512(c) • 686-97 • 862-74 • Skim 878-90

Copyright Quiz	Available 9:00AM Thursday October 24; must take by 11:59PM Monday October 28	
20 – Trademarks: Introduction, Procedure, Subject Matter, Distinctiveness	28 October	• 15 U.S.C. 1051(a) • 15 U.S.C. 1127 (as needed) • 930-37 • 1022-23 • 938-51 • 956-57
21 - Trademarks: Distinctiveness	30 October	• 15 U.S.C. § 1052 (f) • 957-63 • 970-75 • 976-81 • 982-86
22 – Trademarks: Functionality, Use, Geographic Limits, & Priority	4 November	• 15 U.S.C. §§ 1051(b), (d) • 989-99 • 1003-12 • 1016-17 • 1012-14 • 1014-16
23 – Trademarks: Registration	6 November	• 15 U.S.C. §§ 1051(a), 1052 • Review 1022-23 • 1024-27 • 1030-37
24 – Trademarks: Infringement by Confusion	13 November	• 15 U.S.C. §§ 1125(a), 1114(1) • 1043-53 • 1057-61 • Greg Stohr, Supreme Court to Consider Overseas Reach of US Trademark Law, BLOOMBERG (Nov. 4, 2022)
25 – Trademarks: Dilution & Cybersquatting	18 November	• 15 U.S.C. §§ 1051(c), (d) • 1085-1103 • 1104-06

26 – Trademarks: Secondary Liability & Defenses	20 November	• 15 U.S.C. §§ 1064, 1115(b), 1117(a) • 1106-18 • 1134-40 • 1142-51 • 1038-43 • 1173-80 • 1185-88
<i>Trademarks Quiz</i>	Available 9:00AM Thursday November 21; must take by 11:59PM Monday November 25	