

PATENT LAW FALL 2022
Law 6573 Class Number 14397
3 Credits

Adjunct Professors: Tom McThenia, Jr. and Chris Ramsey

Required Text

The required text for this course is Merges and Duffy, Patent Law and Policy: Cases and Materials, 8th Edition 2021

Some reading assignments may also be taken from the Manual of Patent Examining Procedure (MPEP) Ninth Edition, Revision 10.2019, Last Revised June 2020

<https://www.uspto.gov/web/offices/pac/mpep/index.html>

Other handouts or materials may be assigned during the semester. You may access supplemental materials and view other course related information on the course CANVAS page. You are required to register on CANVAS by the end of the drop/add period for the semester.

Classes

Classes will be held on Thursdays from 5:00 pm - 6:25 pm and Fridays from 9:00 am -10:25 am in Holland Hall, Room 284

Office Hours

Our office hours are from 3:00 pm to 5:00 before class on Thursdays.
The office in the law school will be identified as assigned.

Contact Information

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Course Description

In this course, we will provide an overview of patent law, including: the US Patent Act and related regulatory framework and federal jurisdiction, types of patents, patent law policy, the administrative process and legal requirements for obtaining patents, patent infringement and litigation and patents in commercial transactions. Many classes will include lectures, practical exercises and discussions.

This course is designed for both students who intend to practice patent and intellectual property law and other students who desire to have a basic understanding of patent law. Students do not need a technical background to take this class.

Student Learning Outcomes

After completing this course, students should be able to:

i. Describe the constitutional and statutory foundations of patent law and the applicable administrative, judicial and regulatory components of the U.S. patent system.

- ii. Demonstrate an understanding of and explain key U.S. patent legal principles including patentable subject matter, novelty, obviousness, enablement, and infringement under 35 USC §§ 101, 102, 103, 112, and 271.
- iii. Explain the elements and scope of protections of different types of patents and patent claims.
 - iii. Demonstrate an understanding of legal and practical considerations relating to the use, ownership, assignment, licensing, protection and commercialization of patents.
 - iv. Demonstrate a general understanding of the global patent system, treaties and conventions.

Class Preparation, Participation, and Attendance

A. Class Preparation and Participation

Preparation for class is mandatory. Before each class you must complete the assigned reading assignments and be prepared to provide thoughtful answers to questions asked during class. (We do not recommend substituting commercial study aids for our assignments).

Note that ABA Standard 310 requires that students devote 2 hours of out-of-class preparation for every “classroom hour” of in-class instruction. Therefore, for this 3-credit course, we expect that you will spend at least 6 hours of preparation outside of class each week. This should include very careful and thorough reading and preparation of assignments prior to each class, as well as review of your notes and class materials after each class session.

We expect you to participate meaningfully, professionally, and effectively in this course. Exceptional preparation and participation may, at our discretion, be rewarded with an increase of your final course grade by up to one letter grade. Conversely, those who are consistently unprepared and/or who do not participate meaningfully and professionally in class could be penalized with a deduction of up to one letter grade. Our assessment of the strength of your participation in the course includes, but is not limited to, such factors as the quality of classroom comments, the amount of interest demonstrated in the subject, degree of preparation for class and willingness to respond to questions, demonstration of active engagement of the material via application to contemporaneous events, class attendance, disruptive, distracting, or unprofessional behavior in the classroom, and observance of course policies.

While we encourage the free exchange of ideas and opinions in class, expressions of disagreement must be made in a professional manner that is respectful of your classmates.

Conducting yourselves in a professional manner also means not engaging in any behavior during class that may distract us or your classmates. **This includes, but is not limited to, playing computer games, surfing the web, sending e-mails, and any other use of your computers during class that does not involve note taking.** Your failure to comply with this policy may be subject to the grade deduction for participation described above, your removal from the classroom, and/or loss of your privilege to use a laptop in the classroom.

B. Class Attendance¹

Attendance is mandatory. We expected you to be on time and remain seated throughout the class period unless you have an urgent need to leave the room.

¹ Only students who are registered in the course are permitted to attend class. Guests are not permitted without our express consent.

It is your responsibility to ensure that your attendance is recorded accurately. Do not misrepresent your class attendance or assist a classmate in such misrepresentation.

You will be barred from taking the final exam and will automatically fail this course if you have six (6) or more unexcused absences. If you have four (4) to five (5) absences, we may reduce your grade as described above in the section describing grade adjustments for course participation.

Policy Related to Make-up Exams or Other Work

The law school policy on delays in taking exams can be found at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>.

University Policy on Accommodating Students with Disabilities

A. Students requesting accommodation for disabilities must first register with the Disability Resource Center (<https://disability.ufl.edu/>). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester.

B. Students with disabilities who experience learning barriers and would like to request academic accommodations should connect with the Disability Resource Center at: <https://disability.ufl.edu/> to get started with the Disability Resource Center. It is important for students to share their accommodation letter with their instructor and discuss their access needs as early as possible in the semester.

University Policy on Academic Misconduct

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at: <https://sccr.dso.ufl.edu/policies/student-honor-code-student-conduct-code>.

Grading

This course follows the Levin College of Law's grading policies. We anticipate that your final course grade will be based on the final exam (70%); assigned projects (20%), subject to modification; class participation (10%); conduct, and attendance as described above. Note that the type of final examination may be subject to change due to COVID-19 uncertainties.

After course grades have been posted, you may review your exam beginning after the first week of the following semester. All exam reviews will be conducted at a mutually agreed time in our office, and you may arrange an appointment by e-mail.

The law school grading policies are available at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>.

Class Recording Policy

The Office of Student Affairs will continue to record all classes via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will determine when students may have access to these recordings, and the recordings will be password protected. These recordings will be retained only for a short period of time and it is the student's responsibility to contact the Office of Student Affairs as soon as possible after an absence.

Recording Devices and Cell Phones

Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.

University Policy on Student Course Evaluations

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens, and can complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluer.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

ASSIGNMENTS

Below are the reading assignments. We reserve the right to modify the assignments from time to time, and to utilize additional handouts and materials. All assignments are from the required text unless otherwise noted. Where problems or notes are included in the assignment, be prepared to discuss them in class. On occasion, however, time may not permit such discussion. Your review and preparation of the problems will nevertheless be a helpful exercise.

Class Date	Topic	Reading Assignment:
Thursday 8/25/22	OVERVIEW OF THE PATENT SYSTEM	Historical overview, pp. 3-20; Overview of patent rights and patent process, pp. 58-67;

Class Date	Topic	Reading Assignment:
		The courts, the PTO, and the PTAB, pp. 919-930
Friday 8/26/22	PARTS OF A PATENT/TYPES OF CLAIMS	The architecture of a modern patent, pp. 20-33; Patent claims, pp.33-41
Thursday 9/1/22	UTILITY REQUIREMENT	Introduction, pp. 269-276; Beneficial utility, pp. 276-286
Friday 9/2/22	UTILITY REQUIREMENT	Substantial, practical, and specific utility, pp. 286-319
Thursday 9/8/22	PATENT DISCLOSURE REQUIREMENTS – 35 U.S.C. §112	Anatomy of §112, pp. 460-463; Enablement, pp. 463-490
Friday 9/9/22	PATENT DISCLOSURE REQUIREMENTS – 35 U.S.C. §112	Written description, pp. 491-511; Best mode, pp. 516-519; Definiteness, pp. 519-535
Thursday 9/15/22	CLASS IS LIKELY TO BE RESCHEDULED DUE TO AN ARBITRATION HEARING MAKE-UP DATE AND TIME TBD	
Friday 9/16/22	CLASS IS LIKELY TO BE RESCHEDULED DUE TO AN ARBITRATION HEARING MAKE-UP DATE AND TIME TBD	
Thursday 9/22/22	NOVELTY - 35 U.S.C. §102	Preface to Ch. 2 & 3, pp. 79-85; Prior art under AIA §102, pp. 85-133 (on sale, public use, otherwise available to the public); Documentary prior art, pp. 133-149 (printed publications, patents, patent applications)
Friday 9/23/22	NOVELTY - 35 U.S.C. §102	§102(b) exceptions, pp. 150-60 Anticipation, pp. 164-183 (identity requirement, accidental and inherent anticipation)

Class Date	Topic	Reading Assignment:
Thursday 9/29/22	NOVELTY - 35 U.S.C. §102	Comparison of AIA and pre-AIA §102, pp. 201-268
Friday 9/30/22	OBVIOUSNESS - 35 U.S.C. §103	Introduction to obviousness and §103, pp 325-384
Thursday 10/6/22	OBVIOUSNESS - 35 U.S.C. §103	Subtests of obviousness, pp. 384-424
Friday 10/7/22 (No class - Homecoming)		
Thursday 10/13/22	OBVIOUSNESS - 35 U.S.C. §103	Appellate case law, pp. 424-437; Scope and content of the prior art, pp. 438-452
Friday 10/14/22	PATENT LICENSING	Licensing introduction pp. 1169-1170; Tying agreements, pp. 1171-1188; Temporal extensions, pp. 1188-1195; Exhaustion and first sale, pp. 1217-1230
Thursday 10/20/22	PATENTABLE SUBJECT MATTER - 35 U.S.C. §101	Introduction, pp. 541-548; Abstract ideas, pp. 548-558; Natural laws, pp. 558-571; Natural products, pp. 571-579
Friday 10/21/22	PATENTABLE SUBJECT MATTER - 35 U.S.C. §101	Abstract ideas (<i>Alice</i>), pp. 584-617
Thursday 10/27/22	INFRINGEMENT	Claims/infringement, pp. 619-630; Interpreting claims basics, pp. 630-647; Interpreting claims in context, pp. 647- 688
Friday 10/28/22	INFRINGEMENT	Joint/divided infringement, pp. 691-698; Claim construction, pp. 698-711; Doctrine of equivalents, pp. 711-737; Prior commercial use, pp. 758-759; Indirect infringement, pp. 759-784
Thursday 11/3/22	DESIGN PATENTS PLANT PATENTS	Assigned patents and supplemental reading to be provided.

Class Date	Topic	Reading Assignment:
Friday 11/4/22	INVENTORSHIP AND OWNERSHIP	Basics of inventorship, pp. 1071-1103; Assignment/ownership, pp. 1103-1136
Thursday 11/10/22	INTERNATIONAL PATENT OVERVIEW	Paris Convention, Patent Cooperation Treaty (PCT); European Patent Office. Supplemental reading to be provided.
Friday 11/11/22 No class (Veteran's Day)		
Thursday 11/17/22	PATENTS IN COMMERCIAL TRANSACTIONS	Supplemental reading and examples to be provided.
Friday 11/18/22	INTERPLAY OF PATENTS VS OTHER IP	Supplemental reading and examples to be provided.
To be scheduled	LEGAL PROCESS	Chapter 10: pp. 919-954
To be scheduled	REMEDIES	Chapter 9, pp. pp. 795-865 (assigned) pp. 897-911 (optional)
Tuesday 11/22/22	REVIEW AND QUESTIONS	Last day of class

Due to the academic calendar for Fall 2022 semester, we will need to make up an additional class to have the equivalent of 13 Friday classes. Date and time of this additional class to be determined.