



Patents, Copyrights, and Trademarks

| Class 1

Why did you decide to take this course?

- A. To Fulfill my credits to graduate.
- B. IP sounds *cool* and/or interesting.
- C. I currently work or *hope* to work in an IP firm/department.
- D. I am attending an IP class?



Intellectual Property (IP)

- **Intellectual Property**

- Intangible
- Idea → tangible
- Exclusive rights

- **3 Main Areas**

- Copyright
- Trademark
- Patent

- **3 Types of Property**

- Real Property (e.g., land, territory, mineral rights, water rights)
- Chattel (e.g., football, umbrella, car)
- Intellectual Property (e.g., copyright, trademark, patent)



Types of Intellectual Property: Copyright

- What can be copyrighted?
 - EXPRESSIONS embodied in "works"
 - Examples: books, music, paintings, radio broadcasts
- How does copyright work?
 - A copyright attaches automatically as soon as the work is put into a 'tangible medium.' (Common Law)
 - Copyright must be registered if rights-holder is looking to sue for infringement in certain courts.
 - Registration grants standing.
 - Copyrights must be registered to achieve certain awards (e.g., attorneys' fees, statutory damages – if promptly registered).
 - Copyright notice is recommended: the copyright symbol: ©
 - The copyright owner has exclusive rights to that work.
 - Others are not allowed to copy or modify the original work for commercial benefit.



Types of Intellectual Property: Trademark

- **The Lanham Act** – trademark statute
- What is trademark?
 - Consumer protection
 - Logo, color combination, slogan, distinctive packaging
 - Identification associated with a good/service
- How does trademark work?
 - Trademark protection attaches as soon as a mark is used in commerce.
 - After trademark registration, the trademark symbol can be attached: ®
 - Trademark registration grants certain rights such as a presumption of ownership and exclusive use.
- Service mark v. Trademark



Types of Intellectual Property: Patent

- What can be patented?
 - New, useful, "non-obvious"
 - Invention, design
- How do patents work?
 - Unlike copyright and trademark, a patent must be applied for first, and, if all requirements are met, a patent will be granted.
 - Protection from:
 - Reverse engineering
 - Independent discovery



Types of Intellectual Property: Patent

- Trade secrets
 - No term of years
 - No protection against reverse engineering or independent discovery.
- "A country without a patent office and good patent laws is just a crab and can't travel any way but sideways and backwards."

- Mark Twain



What type of IP law seems most interesting?

- Copyrights
- Trademarks
- Patents
- Not sure yet



The Scope of Protection of IP Law

- Having an IP right does **not** give the right to use
 - IP rights give the right to "exclude."
 - Can't use the right (even as the rights-holder) if the use would violate either a law or public policy.
 - Ex: Non-physician inventing particular surgical procedure.
- Doctrine of Exhaustion
 - IP rights-holder **can** prevent certain things (someone else passing off the work as his own) but not other things (the work being re-sold).



The Scope of Protection of IP Law (cont.)

- What can't be patented?
 - Laws of nature
 - Facts, mathematical formulas
- "Scientists investigate that which already is; engineers create that which has never been."



- Albert Einstein

- *Diamond v. Chakrabarty*, 100 S.Ct. 2204 (1979)
- *Bilski v. Kappos*, 129 S.Ct. 3218 (2010)



The Scope of Protection of IP Law (cont.)

- Patent law was meant to protect
 - "anything under the sun made by man."
 - This does NOT include things like gravity.
 - ...but one can use gravity to invent something else that can ultimately be patented.
- Difference between new and not understood or recognized prior to today



The History of Intellectual Property Law

- (history?! breathe in, breathe out...) 😊
- We give protection in order to:
 - **"promote the Progress of Science and the useful Arts."** Art.I.8.8.
 - Incentive to create
- A long, long time ago...
 - Guilds in Medieval Europe
 - "Statute of Monopolies" (1623)
 - Gave 14 years of exclusive control
 - "Statute of Anne" (1710)
 - Initial 14-year period
 - Possibility of 14-year renewal



The History of Intellectual Property Law (cont.)

- The 13 Original Colonies
 - Each state had its own body of patent law.
 - United States Constitution, Article 1, Section 8, changed this, and unified it under Federal Law.
 - Federal courts have exclusive jurisdiction.
 - Now there is more uniformity.

- Federal law controls, but sometimes you have to look at basic principles of the law for an issue within an issue.



The History of Intellectual Property Law (cont.)

- Example 1: Contract Law
 - When using contract law to protect an IP interest, the courts look for 3 things beyond the basic contract requirements:
 - The idea to be protected must be "novel and concrete;"
 - Either an express or implied agreement between the parties under which the idea was 'turned over;'
 - The person the idea was told to has to actually have used the idea.



History of IP Law, cont.

- Example 2: Tort Law
 - **Misappropriation** – A work product (usually information) is created by one party, and then used by another party for commercial purposes.
 - To be guilty of misappropriation, you need the following elements:
 1. The product (e.g., information) was gathered by "victim party" at a cost;
 2. The information is time-sensitive;
 3. The second party's use of the gathered info constitutes "free-riding" on the first party's efforts;
 4. The second party is in direct competition with the first party for the information;
 5. The ability of the 2nd party to "free-ride" would reduce the incentive of the 1st party to gather the info in the first place.
 - *International News Service v. Associated Press*



Governing Law, Courts & Agencies

- The United States Code (USC) – comprised of 50 sections
 - 2 titles are devoted to Intellectual Property law.
 - Within other titles, multiple chapters devoted to Intellectual Property law.
- **Title 17 – Copyright Law (13 chapters)**
 - Establishes U.S. Copyright Office
 - Special chapters for complex issues



Governing Law, Courts & Agencies (cont.)

- **Title 15 – Trademark Law (chapter 22)**

- Only one chapter within the title devoted to trademark law.
- Other areas of trademark/IP law are scattered throughout the USC
 - Ex: 18 USCS §1832 makes it a federal crime to steal trade secrets.

- **Title 35 – Patent Law (4 sections)**

- Deals with authority of the Patent and Trademark Office (USPTO)
- How to procure a patent
- How to protect a patent
- How to comply with the Patent Cooperation Treaty



Questions?

- Questions, concerns, confusion about subject matter.
- Questions about the course.
- THANK YOU

