

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





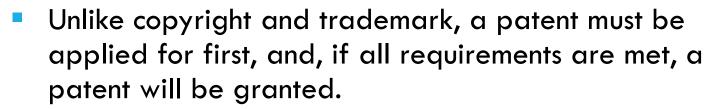




Types of Intellectual Property: Patent



- What can be patented?
 - New, useful, "non-obvious"
 - Invention, design
- How do patents work?



- 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.l.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;
 - 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

