Syllabus

Course description:

Intellectual property (IP) impacts business and industries as well as our everyday lives in many regards. Business and industries need protection for their inventions and brands, for their motion pictures, computer programs, musical and entertainment products. This is brought about by intellectual property law, such as patent law, trademark law and copyright law. In our everyday lives we come in contact with IP when we download music or other data from the internet, when we make copies in a library or when we quote from books.

IP laws are national laws; their effects are restricted to the territory of the country that has enacted the respective laws. On the other hand, intellectual property is international, it does not know any national borders. This raises the question how an IP-owner will be protected in foreign countries. That is achieved by international conventions and treaties according to which the member states take the obligation to protect the nationals of other member states. How this will be performed in detail is a complex and difficult system. The course will deal with this system of international conventions and treaties in the field of copyright and neighboring rights, patents, trademarks and geographical indications, unfair competition and trade secrets. Finally we will deal with the international enforcement of intellectual property rights. We will also have an eye to how international IP intersects with national IP, focusing mainly, but not exclusively, on U.S. and European IP law. The international institutions administering the international IP conventions and treaties will form part of the course.

Course objectives:

This course will introduce students to the world of international intellectual property law. It aims at making you familiar with the system of the international IP conventions and treaties, how they work and how they are applied. After this class you should be able to work with international IP cases and to apply the international IP law to them.
Literature and reading assignments:
We will use the casebook “International Intellectual Property” by Daniel C.K. Chow and Edward Lee, 2nd edition, American casebook series, including the supplement containing the texts of the international conventions and agreements. The order of reading assignments is set forth below as a very approximate weekly schedule. For the first class you should read in the casebook: F. Brief overview of U.S. intellectual property law (casebook at p. 77 – 83) and B. Why has IP gone “international”? 1. Globalization, international trade, and multi-national enterprises (casebook at p. 4 – 11). I expect that all students have read the materials in advance of class, even if some topics will be discussed cursorily.

We will work with PowerPoint slides showing you statutory texts, key words of the topics we will discuss, diagrams and sketches explaining complicated cases. Each set of slides will be available in TWEN after we have finished it.

In class:
Attendance on a regular, continual basis is required. This is important to acquire the knowledge needed for the exam. A student who has more than several unexcused absences may have his/her grade adversely affected. If you cannot make it inform me that and why you are unable to attend. I will then provide you with the subject matter we have dealt with during your absence. Requirements for class attendance and make-up exams, assignments, and other work in this course are consistent with university policies that can be found at:

I appreciate your comments during the class. Your participation will influence your final grade. I regard my class not as a monologue made by me but rather as a discussion between all of us. You may always ask questions – do not worry that your questions might be silly. A good way of learning is learning by making mistakes.

Course evaluation process
Students are expected to provide feedback on the quality of instruction in this course by completing online evaluations at https://evaluations.ufl.edu. Evaluations are typically open during the last two or three weeks of the semester, but students will be given specific times when they are open. Summary results of these assessments are available to students at https://evaluations.ufl.edu/results/.

Exam:
The exam will be an open book exam. This means that you may use our casebook, the statutory supplement and your notes. No other books or materials are permitted.

Grading policy: The grading will be made by the quality of your discussion and not by the quantity. You should give arguments for your opinion, your reasoning should be clear, convincing and concentrate on the relevant points. Do not discuss issues that are irrelevant for your argumentation; you
should be able to distinguish between relevant and irrelevant issues. This will considerably influence the quality of your work and is an important factor for the grading.

This is a blind grading exam. I grade the written examination without knowing the names of the students. After I have turned in the set of grades to student affairs I receive the names and compare the initial grades to the names of the students. If I feel that a student’s written examination is substantially inferior to his performance in class I will raise the grade. However, there is a limitation according to the mean grading policy. The mean of all the grades of the students cannot exceed a certain level determined according to the grade point average (GPA). For details see https://catalog.ufl.edu/ugrad/current/regulations/info/grades.aspx.

The exam may consist of short cases with questions you have to answer as well as of multiple choice questions. You will have to apply the international and regional IP conventions and treaties we have discussed in class. National laws will be not part of the exam.

**Accommodations for students with disabilities:**

Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, www.dso.ufl.edu/drc/) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to the instructor when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

**Reading assignments**


This table can give you only a rough overview. Detailed reading assignments will be given in class, depending on how much time we need to discuss the single topics. We will not deal with all the notes and questions included the casebook. This also depends on how much time will be needed discuss the topics. You have to read only the items mentioned below (except the items we will not deal with).

1st week (Jan. 9 – 12)

Chapter 1: Introduction

- F. Brief overview of U.S. intellectual property law (casebook at p. 77 – 83)
- B. Why has IP gone “international”? 1. Globalization, international trade, and multi-national enterprises (casebook at p. 4 – 11)
- C. The “system” of international intellectual property, 1. The principle of territoriality in a TRIPS world, a. National IP laws – Territorial in scope (casebook at p. 16 – 23)
  - Note and questions (casebook at p. 23): we will discuss only the questions 1, 2, 3 and 5.
b. Territoriality and exhaustion of intellectual property rights (casebook at p. 23 – 26)
   o Note and questions (casebook at p. 26): we will discuss the questions 1 – 4.

• c. IP treaties and the world of TRIPS (casebook at p. 26 – 27): we will not deal with problem 1–3 (casebook at p. 27/28), nor with notes and questions (casebook at p. 28 – 30).

• 2. The principle of national treatment (casebook at p. 30 – 36)
   o Notes and questions (casebook at p. 35/36): we will discuss only question 1 – 3, but you should read note 5 (Information on the European Court of Justice, casebook at p. 36).

• 3. The most favored nation principle casebook at p. 36 – 40
   o Notes and questions (casebook at p. 40 – 41): we will discuss only question 1 and 2.

• 4. Choice of law in transnational disputes (casebook at p. 42 – 48)
   o Notes and questions (casebook at p. 49): to be skipped here, we will deal with the choice of law in detail in chapter 6.

2nd week (Jan. 16 – 19)
Chapter 1: Introduction (continued)

• D. International legal institutions (casebook at p. 49 – 57)
• d. Transitional provisions under TRIPS for developing and least developed countries (casebook at p. 61 – 63)

• 2. The World Intellectual Property Organization (casebook at p. 62)

• 3. The European Union (casebook at p. 63 – 66)
   o We will not discuss notes and questions (casebook at p. 66)

Chapter 2: Copyright and Neighboring Rights

• A. Introduction: 1. The rights of authors (casebook at p. 84 – 86)

• 2. International Agreements (casebook at p. 86 – 90)
   o Notes and questions (casebook at p. 90 – 92): we will discuss only Note 6.

• B. Foreign nationals acquiring copyrights and neighboring rights:
   1. Points of attachment and national treatment for copyright (casebook at p. 93 – 99)
   o Notes and questions casebook at p. 98 – 99: We will deal with notes 1, 2, 4, 5

3rd week (Jan 23 – 26)
Chapter 2: Copyright and neighboring rights (continued)

• 2. Berne prohibition of formalities (casebook at p. 100 – 104
Notes and questions (casebook at p. 103–104): will not be discussed in class, but read note 2: the U.S.’s historical reluctance to join Berne

   - we will not discuss: problem 2–8 (casebook at p. 107), Dam v. Russ (casebook at p. 107 – 112), notes and questions (casebook at p. 112 – 115)

4. Points of attachment and national treatment for neighboring rights (casebook at p. 115 – 124
   - we will not discuss notes and questions nor problem 2–10 (casebook at p. 124/125)

5. Ownership and Transfer of copyright, p. 125 – 129

4th week (Jan 30 – Feb 2)

Chapter 2: Copyright and neighboring rights (continued)

C. Subject matter, 1. protected works (casebook at p. 129 – 131
   - we will not discuss notes and questions (casebook at p. 131/132)

2. Originality or creativity requirements (casebook at p. 132 – 143
   - we will not discuss notes and questions (casebook at p. 143/144)

3. Special discussion: Database protection, p. 144 – 146
   - we will not discuss problem 2–12 (casebook at p. 146/147) nor the case British Horseracing Board including notes and questions (casebook at p. 150 – 156)

D. Exclusive rights of copyright (economic), p. 165 – 171
   - we will not discuss problem 2–15 (casebook at p. 171) nor notes and questions (casebook at p. 171 – 174)

E. Exceptions to exclusive rights, 1. Berne Convention and TRIPS agreement (casebook at p. 184 – 202)
   - we will not discuss problem 2–16 (casebook at p. 186/187)
   - we will not discuss notes and questions (casebook at p. 196/197)

F. Copyright term and neighboring right term, p. 203 – 207
   - we will not discuss notes and questions (casebook at p. 207/208)

5th week (Feb 6 – 9)

Chapter 2: Copyright and neighboring rights (continued)

2. EU copyright term directive, read only p. 209 – 210; we will not discuss problem 2–21
• G: Moral Rights (casebook at p. 213 – 215)
  o We will not discuss in detail the article by Dietz on moral rights; (report for the ALAI) (casebook at p. 215 – 221) nor the notes and questions (casebook at p. 221)

• Berne Convention Implementation Act (casebook at p. 229 – 230)
  o We will not discuss notes and questions (casebook at p. 230/231)

Chapter 3: Patents

• A. Introduction: 1. The right of inventors, (casebook at p. 252 – 254)
    o Notes and questions (casebook at p. 257– 259): We will not discuss questions 5 and 6

6th week (Feb 13 – 16)

Chapter 2: Copyright and neighboring rights (continued)

• B. Ownership and Formalities (casebook at p. 275 – 281)
  1. Filing for and prosecuting patents around the world, a. The period of Paris priority (casebook at p. 276 – 281)
    o Notes and Questions (casebook at p. 287 – 291): we will discuss only notes 1 and 7
  2. Working Requirements (casebook at p. 298 – 301)
    o we will not discuss the notes and questions (casebook at p. 301/302)
  3. Ownership (casebook at p. 302 – 308)
    o we will not discuss the article by Christopher Heath (casebook at p. 308 – 312)
    o we will not discuss the notes and questions (casebook at p. 312/313)

7th week (Feb 20 – 23)

Chapter 3: Patents (continued)

• C. Patent requirements, 1, Subject matter (casebook at p. 313 – 321)
  o Notes and questions (casebook at p. 321 – 324): we will only discuss note 9

• DNA Sequences and Gene patents (casebook at p. 324 – 330)
• We will not discuss notes and questions casebook at p. 330/331

• Monsanto v. Cefetra (casebook at p. 331 –355)
  o We will not discuss notes and questions casebook at p. 335

• 2. Utility or capable of industrial application (casebook at p. 351 – 355)
  o We will not discuss notes and questions casebook at p. 354 nor problem 3–11 (casebook at p. 354/355)

• 3. Novelty (casebook at p. 355 – 366)
  o We will not discuss notes and questions (casebook at p. 359 – 361)
  o We will not discuss notes and questions (casebook at p. 366 – 368)
  o We will not discuss p. 368 – 376 until “4. nonobviousness or inventive step”

8th week (Feb 27 – March 2)

Chapter 3: Patents – Patent requirements (continued)

• 4. Nonobviousness or inventive step (casebook at p. 376 – 381)
  o We will not discuss p. 387 until “5. enablement “

• 5. Enablement (casebook at p. 387 – 388)
  o We will not discuss notes and questions (casebook at p. 388)

• D. Exclusive rights, 1. Patent rights (casebook at p. 400 – 406)
  o Notes and questions (casebook at p. 405): we will discuss only questions 1, 2, 4, 5.

• 2. Exceptions to patent (casebook at p. 407 – 415)
  o Notes and questions (casebook at p. 415): we will discuss only question 1

• 3. Compulsory licenses (casebook at p. 418 – 421)
  o Read only: Need of access to medicines in developing countries (casebook at p. 422/423), we will not discuss it in class, it is self-explaining
  o We will not discuss Brazil Industrial Property Law nor the Doha declaration and the Thai case (casebook at p. 423 – 439

  o We will not discuss notes and questions (casebook at p. 440)

9th week (March 13 – 16)

Chapter 4: Trademarks and geographical indications

• A. Introduction, 1. The rights in marks for goods and services, (casebook at p. 441 – 444)
• 2. International agreements: TRIPS, the Paris Convention, and the Madrid Protocol (casebook at p. 444 – 446)
  o We will not discuss notes and questions (casebook at p. 446 – 447)
• B. Trademarks, 1. Trademarks: Formalities, registration and use requirements, (casebook at p. 447 – 453)
  o We will not discuss problem 4–1 (casebook at p. 450/451)
• 2. Paris priority and registering trademarks in different countries (casebook at p. 453 – 459)
  o We will not discuss notes and questions (casebook at p. 457 – 459)
• b. The Telle-Quelle Trademark (casebook at p. 459 – 468)
  o We will not discuss notes and questions (casebook at p. 466 – 468); instead I will present a European case

10th week (March 20 – 23)
Chapter 4: Trademarks and geographical indications (continued)
• c. Filing an international application under the Madrid System (casebook at p. 468 – 474)
  o Notes and questions (casebook at p. 473/474): We will discuss question 1 – 3
• d. Community trademark: We will not discuss casebook at p. 474 – 486. Instead I will give you in brief some basic information on the European trademark system
• 3. Ownership and transfer of trademarks (casebook at p. 486 – 492)
  o Notes and questions (casebook at p. 492/493): We will discuss only question 3
• 4. Subject Matter and Distinctiveness (casebook at p. 493 – 520)
  o We will not discuss notes and questions (casebook at p. 496)
  o We will not discuss notes and questions (casebook at p. 506 – 509)
  o We will not discuss notes and questions (casebook at p. 514 – 515)
  o We will not discuss notes and questions (casebook at p. 520/521)

11th week (March 27 – 30)
Chapter 4: Trademarks and geographical indications (continued)
• 5. Exclusive Rights (casebook at p. 521 – 535)
  o Notes and questions (casebook at p. 526 – 527): we will discuss notes 1 – 3 only
We will not discuss Empresa Cubana v. Culbro (casebook at p. 535 – 539)

Notes and questions (casebook at p. 539 – 541): we will discuss notes 1 – 3 only

- c. Dilution claims (casebook at p. 541 – 556)
  - We will not discuss problem 4–13 (casebook at p. 541)
  - Notes and questions (casebook at p. 248 – 550): we will discuss note 7 only
  - Notes and questions (casebook at p. 556): we will discuss note 4 only
  - Interflora v. Marks & Spencer (casebook at p. 557– 564). You need not read this case including the notes and questions. The case implies details of European trademark law rather than international trademark law. I will give you brief information on the facts and the core holding.

- 6. Abandonment (casebook at p. 565)
  - We will not discuss problem 4–15 (casebook at p. 565)

- 7. Exceptions to the rights (casebook at p. 565 – 566)
  - We will not discuss KP Permanent Make-up v. Lasting Impression including the notes and questions (casebook at p. 566 – 571)

- 8. Term of trademark registration (casebook at p. 571)

- 9. Other types of marks: Collective marks and trade names (casebook at p. 571 – 572)

12th week (April 3 – 6)

Chapter 4: Trademarks and geographical indications (continued)

- C. Geographical Indications: Basic approach: Rights and exceptions (casebook at p. 573 – 583)
  - We will not discuss notes and questions (casebook at p. 576)
  - We will not discuss notes and questions (casebook at p. 582 – 583)
  - We will not discuss Germany and Denmark v. European Commission including the notes and questions (casebook at p. 584 – 589)

- 2. Heightened protection for wines and spirits and exceptions (casebook at p. 589 – 592)
  - We will not discuss problem 4–19 (casebook at p. 589 – 591), problem 4–20 (casebook at p. 581), notes and questions (casebook at p. 592/593, Unresolved issues relating to Geographical Indications” (pages 593 – 601)
• D. The Relationship between trademarks and geographical indications (casebook at p. 601 – 608)
  o We will not discuss notes and questions (casebook at p. 609)

Chapter 5: Unfair competition and trade secrets
• A. Unfair competition: 1. National approaches (casebook at p. 623 – 629)
  o Skip the article by Robertson & Horton (casebook at p. 624). It is mostly outdated (published 1995), meanwhile there are new European regulations and directives
  o We will not discuss Oréal v. Bellure (casebook at p. 629 – 634)

13th week (April 10 – 13)
Chapter 5: Unfair competition and trade secrets (continued)
• 2. The Paris Convention and the TRIPS Agreement (casebook at p. 634 – 646)
  o We will not discuss Problem 5–3 (casebook at p. 634/635)
  o Notes and questions (casebook at p. 643 – 645): We will discuss note 7 only
  o We will not discuss Problem 5–4 (casebook at p. 646)
• B. Protection for undisclosed test data for pharmaceuticals and agricultural chemical productions (casebook at p. 646 – 656)
  o We will not discuss the articles by Felmeth (casebook at p. 647) and Berensen (casebook at p. 652) nor the notes and questions (casebook at p. 654 – 656)
• C. Transnational lawsuits: protecting trade secrets internationally (casebook at p. 656 – 659)
• D. The relationship between trademarks and geographical indications (casebook at p. 601 – 608) nor E. Special discussion: Internet domain names and trademark disputes (casebook at p. 609 – 622)

Chapter 6: International enforcement of intellectual property rights
• A. Introduction, p. 660 – 661
• B. Commercial piracy, p. 661 – 674
  o We will not discuss problem 6–1 (casebook at p. 674) nor notes and questions (casebook at p. 675 – 676)
  o We will not discuss casebook at p. 676 – 694
• C. Enforcement obligations under TRIPS (casebook at p. 694 – 727)
  o We will not discuss Problem 6–6 (casebook at p. 699)
  o Dispute Settlement United States – China, Dispute DS 362 (casebook at p. 700 – 706 and 708 – 712): we discussed this case already in the context of copyright (slide set 03, slide 40) and will not discuss it again
Problem 6–7 (casebook at p. 722) just describes the issue we deal with when discussing the next case you need not read it.

Notes and questions (casebook at p. 726/727): we will deal with note 3 only.

14th week (April 17 – 20)

Chapter 6: International enforcement of intellectual property rights (continued)

- D. Private Enforcement – Choice of forum, jurisdiction, and choice of law (casebook at p. 727 – 742)
  - Notes and questions (casebook at p. 735/736): We will not discuss notes 1q and 2. As to note 3: The casebook refers to the Brussels Convention on Jurisdiction. This convention is outdated and replaced by regulation (EU) 1215/2012. We will discuss this regulation.
  - We will not discuss Feraud International v. Viewfinder (casebook at p. 738 – 742)

- E. Exhaustion of rights and gray market goods, (casebook at p. 742 – 744)

  - Notes and questions (casebook at p. 750/751): we will deal only with the case mentioned in note 4 (Silhouette v. Hartlauer)
  - Notes and questions (casebook at p. 758/759): Omit notes 1 – 2. Read for your own information note 3, but we will not discuss it in class.

2. Exhaustion of copyright: Approach in the EU and the U.S., p. 759 – 768
  - We will not discuss notes and questions (casebook at p. 767/768): Omega v. Costco is abrogated by Kirtsaeng v. Wiley (not in the casebook).

3. Exhaustion of Patents: Approach in the EU and the U.S., p. 768 – 775
  - Notes and questions (casebook at p. 775/776): we will discuss note 1 only.

15th week (April 24)

- No reading assignments