**International Intellectual Property Law Spring term 2017**

**Prof. Dr. Ulrich Loewenheim**

Course number 6574

3 credits

Monday, Tuesday, Wednesday 3:00 – 3:50 room 283 Holland Hall

Office: Holland Hall 361

Telephone: 352-273-0982

Office hours: by appointment

E-mail: loewenheim@law.ufl.edu

**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 and have an in class training with a view at the exam. 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 you 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.

**Learning outcomes**:

Atthe end of this course, you will

* understand the system of international intellectual property,
* be familiar with the international legal institutions administering the international intellectual property conventions and treaties,
* be familiar with the different copyright systems in the world (the civil law and the common law system),
* be able to apply the major international conventions and treaties, including TRIPS, the Berne Convention, the Rome Convention, the Paris Convention, Patent Cooperation Treaty, the Madrid Protocol as well as the European treaties dealing with international intellectual property,
* be able to apply the international intellectual property law to cases dealing with international intellectual property law and, respectively, the relevant European treaties ,
* understand the enforcement of international intellectual property law.

**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 (you will need these books also for the final exam). The order of reading assignments is set forth below as a very approximate weekly schedule.

I expect that all students have read the materials in advance of class, even if some topics will be discussed cursorily.  It is anticipated that you will spend approximately 2 hours out of class reading and/or preparing for in class assignments for every 1 hour in class.

For the first class you should read in the casebook pages 1 – 4 (Introduction until B.) and 77 – 83 (F. Brief overview of U.S. intellectual property law).

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. Unexcused absences will result may render a student ineligible to receive credit for the course. If you cannot attend a class, inform me that and why you are unable to attend. I will provide you then 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: https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx.

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 a closed book exam with the exception that you may use our casebook and should use the statutory supplement containing the text of the international conventions and treaties. 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.

The following chart describes the specific letter grade/grade point equivalent in place:

|  |  |
| --- | --- |
| Letter Grade | Point Equivalent |
| A (Excellent) | 4.0 |
| A- | 3.67 |
| B+ | 3.33 |
| B | 3.0 |
| B- | 2.67 |
| C+ | 2.33 |
| C (Satisfactory) | 2.0 |
| C- | 1.67 |
| D+ | 1.33 |
| D (Poor) | 1.0 |
| D- | 0.67 |
| E (Failure) | 0.0 |

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 (except national laws containing principles of the international and regional IP conventions and treaties).

**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 <http://www.dso.ufl.edu/students.php>.

**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 Dean Rachel Inman when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

**Reading assignments**

Casebook “International Intellectual Property” by Daniel C.K. Chow and Edward Lee, 2nd edition, American casebook series

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 discuss in class).

1st week (Jan. 8 – 10)

* Pages 77 – 83: F. Brief overview of U.S. intellectual property law
* Pages 1 – 2; 4 – 11: A. Introduction, B. Why has IP gone “international”?,  
  1. Globalization, international trade, and multi-national enterprises
* Pages 84 – 27: C. The “system” of international intellectual property: 1. The principle of territoriality in a TRIPS world (not Problem 1–3)
* Pages 30 – 41: 2. The principle of national treatment; 3. The most favored nation principle
* Pages 42 – 48: C. The “system” of international intellectual property (continued): 4. Choice of law in transnational disputes
  + not to be discussed in class: notes and questions at p. 49, we will deal with choice of law issues in detail in chapter 6)

2nd week (Jan. 16 – 17)

* Pages 49 – 66: D. International legal institutions
  + not to be discussed in class: notes and questions at p. 66
* Pages 84 – 92: Chapter 2: Copyright and Neighboring Rights,  
   A. Introduction
  + not to be discussed in class: notes 4 and 5 at p. 91/62
* Pages 93 – 107: B. Foreign nationals acquiring copyright and neighboring rights, 1. Points of attachment and national treatment for copyright,  
  2. Berne prohibition of formalities, 3. Berne retroactivity
  + not to be discussed in class: problem 2–8 and Dam v. Russ, casebook at p. 107, concerns U.S. copyright law, not international copyright law
* Pages 115 – 125: B. Foreign nationals acquiring copyright and neighboring rights (continued), 4. Points of attachment and national treatment for neighboring rights
  + not to be discussed in class: question 3 at p. 124/125
* Pages 125 – 129: 5. Ownership and Transfer of copyright

3rd week (Jan 22 – 24)

* Pages 129 – 150: C. Subject matter
  + not to be discussed in class: notes 3 – 5 at p. 144 and Problem 2–12 at p. 146/147
* Pages 165 – 179: D. Exclusive rights of copyright
  + not to be discussed in class: notes and questions at p. 171 – 174¸notes 3, 4, 6, 7; notes and questions at p. 179/180

4th week (Jan 29 – 31)

* Pages 203 – 213: F. Copyright term and neighboring right term
  + not to be discussed in class: notes and questions at p. 207/208
* Pages 213 – 231: G. Moral Rights
  + not to be discussed in class: article by Dietz on moral rights; report for the ALAI, p. 215 – 221, Gilliam v. American Broadcasting , p. 223 – 229, note 4 and 5 in notes and questions at p. 230/231
* Pages 232 – 241: H. Special discussion: Anti- circumvention rights in the digital age
  + not to be discussed in class: Notes 4 and 5 at p. 239/240

5th week (Feb 5 – 7)

* Pages 184 – 202: E. Exceptions to exclusive rights
* Pages 241 – 244: ISP duties, safe harbors and secondary liability
* Pages 252 – 269: Chapter 3: Patents, A. Introduction
  + not to be discussed in class: notes 5 and 6 at p. 258/259; problem 3–1 at p. 261; notes and questions at p. 267268; the India-patent case at p. 296 – 274 including the notes and questions at p. 274
* Pages 275 – 291: B. Ownership and Formalities: Obtaining domestic and foreign patents (until c. priority disputes)
* Pages 298 – 308: Working requirements (until the article by Christopher Heath which is outdated)

6th week (Feb 12 – 14)

* Pages 313 – 335: Patent requirements
  + (not to be discussed in class: notes and questions at p. 321 – 324: 1, 3, 4, 5, 7, 8; notes and questions at p. 330/331: notes 1 and 2; notes and questions at p. 335: notes 31 and 4)
* Pages 335 – 350: b. Patentability of business methods
  + not to be discussed in class: notes and questions at p. 340/341: note 2; and questions at p. 345/346 and notes and questions at p. 350
* Pages 351 – 368 (until c. Special discussion): 2. Utility or capable of industrial application
  + not to be discussed in class: Report of the WIPO Standing Committee at p. 351 – 353 including notes and questions at p. 354; Problem 3–11 at p. 354/355; notes and questions at p. 359 – 361; notes and questions at p. 366/367: note 3

7th week (Feb 19 – 21)

* Pages 376 – 381: 4. Nonobviousness or inventive step (until the Sandoz case)
* Pages 387 – 388: 5. Enablement
  + not to be discussed in class: 2
* Pages 400 – 406: D. Exclusive rights
  + not to be discussed in class: notes and questions at p. 406: note 6 (outdated) I
* Pages 407 – 432: 2. Exceptions to patent (until notes and questions at p. 432)
  + not to be discussed in class: notes and questions at p. 415– 417: notes 5 – 7; problem 3–17; notes and questions at p. 425/426: notes 3 – 5

8th week (Feb 26 – 28)

* Pages 439 – 440: Patent term
  + not to be discussed in class: notes and questions at p. 440: note 2
* Pages 441 – 459: Trademarks and geographical indications
  + not to be discussed in class: notes and questions at p. 446: note 4; notes and questions at p. 450: note 3; notes and questions at p. 457 – 458: notes 3 – 5
* Pages 459 – 474: b. Paris “Telle-Quelle” (until d. Community Trademark)
  + not to be discussed in class: notes and questions at p. 466 – 468: notes 2 – 5
  + We will not discuss casebook p. 474 – 486. Instead I will give you more updated information on the European trademark system

(March 5 – 7: spring break

9th week (March 12 – 14)

* Pages 486 – 521: 3. Ownership and transfer of trademarks
  + not to be discussed in class: notes and questions at p. 492: notes 1 and 2; notes and questions at p. 514/515: notes 1, 4, 5; notes and questions at p. 520/521: note 5
* Pages 521 – 556: 5. Exclusive rights
  + not to be discussed in class: notes and questions at p. 526/527: note 4; Empresa Cubana v. Culbro at p. 535 – 539; notes and questions at p. 539 – 541: notes 6 – 7; problem 4–12 at p. 541; problem 4–13 at p. 542; notes and questions at p. 556: notes 2, 3, 5.

10th week (March 19 – 21)

* Pages 557 – 572
  + not to be discussed in class: problem 4–15 at p. 565; KP Permanent Make-up v. Lasting Impression, including notes and questions (casebook at p. 566 – 571)
* Pages 573 – 592: Geographical indications
  + not to be discussed in class: notes and questions at p. 576: note 3 and 4; notes and questions at p. 582/583; notes and questions at p. 588/589: notes 1, 3, 4; Problem 4−19 at p. 589; problem 4−20 at p. 591; notes and questions at p. 592/593; notes 2 – 4.

11th week (March 26– 28)

* Pages 601 – 608: D. The relationship between trademarks and geographical indications
* Pages 623 – 647 (until article by Fellmeth): Chapter 5: Unfair competition and trade secrets
  + not to be discussed in class: the article by Robertson & Horton (casebook at p. 624). It is outdated (published 1995), meanwhile there are new European regulations and directives; notes and questions at p. 634; notes 2 – 3; problem 3–5 at p. 634/635; notes and questions at p. 643 – 645: notes 1 – 4, 8; problem 5–4
* Pages 656 – 659: C. Transnational lawsuits: protecting trade secrets internationally

12th week (April 2 – 4)

* Pages 660 – 676 (until 3. Special discussion): Chapter 6: International enforcement of intellectual property rights
* Pages 694 – 737: C. Enforcement obligations under TRIPS
  + not to be discussed in class: Dispute Settlement United States – China, Dispute DS 362 (casebook at p. 700 – 706 and 708 – 712, the case was discussed already in the chapter on copyright); notes and questions at p. 721; notes and questions at p. 735/736 (European approach outdated)

13th week (April 9– 11)

* Pages 742 – 776: E. Exhaustion of rights and gray market goods
  + not to be discussed in class: notes and questions at p. 750, notes 1 – 3; notes and questions at p. 767/768;; notes and questions at p. 775/776: notes 2 – 5

14th week (April 16 – 18)

No reading assignments (in class exam training)