

Law 6573, Section 17706

3 Credits

Required Text

The required text for this course is:

Adelman, Rader and Thomas, Cases and Materials on Patent Law (4th Ed. 2015)

Other handouts and materials will be assigned during the semester.

Recommended Text

Students have a statutory supplement, either in print or available on-line. I recommend the following:

Schechter's Selected Intellectual Property and Unfair Competition Statutes, Regulations, and Treaties, 2018 Edition, West Academic Publishing.

Classes

Classes will be held:

Wednesdays from 6:30 p.m. to 9:00 p.m. in room 270 Holland Hall

Office Hours

My office hours are:

Wednesdays before class from 5:30 p.m. to 6:30 p.m. in room 356 Holland Hall.

While you should feel free to stop by without an appointment during office hours, I highly recommend that you make an appointment to reserve the amount of time that you need, and eliminate wait time. If you are unable to meet with me during my regularly scheduled office hours, please send me an e-mail and I will be happy to arrange another mutually convenient time.

Contact Information

You can reach me during non-office hours by phone or e-mail:

(904) 807-8207

RVermut@dmphlaw.com

I strongly encourage you to contact me regularly during the semester and to ask any questions that you may have about the course or even more generally about the practice of law.

Course Description

In this course we will explore select legal principles and policies of patent law. The topics to be covered are listed below in the weekly course assignments. Please note that

this course does not cover patent prosecution or patent drafting.

Class Preparation, Participation, and Attendance

A. Class Preparation and Participation

Preparation for class is mandatory. Before each class you must complete the assigned reading and be prepared to provide thoughtful answers to questions that I pose during class. (Do *not* substitute commercial study aids for my assignments.)

I expect you to participate meaningfully, professionally, and effectively in this course. Exceptional preparation and participation may, at my 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. My 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.

Please note that while I 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 me 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 Attendance

Attendance is mandatory and you are expected to be on time. It is your responsibility to locate and initial the sign-in sheet for each class session. By signing your initials, you affirm that you are physically present in class during that class period. It will be considered a violation of the course rules and the Honor Code to falsely indicate that you were present in class, or to assist a classmate in such misrepresentation. Only students who are registered in the course are permitted to attend class. Guests are not permitted without my express consent.

If you have six (6) or more absences (the equivalent of 2 class periods), you will be barred from taking the final exam, and will automatically *fail* this course. Four (4) to five (5) absences may result in a reduction of your grade as described above in the section describing grade adjustments for course participation. University recognized religious holidays are exempt. Excused absences and extenuating circumstances may

also be taken into consideration and subject to University approval. Please provide me with advance notification of all absences.

Grading

Your final course grade will be based principally on a final exam, and will be subject to modification based upon course participation and attendance as described above. Special circumstances for foreign students and foreign LL.M. students may be taken into consideration during grading.

The final exam is tentatively scheduled for December 5, 2018 at 8:30 a.m.

1. Unless excused by me each student must attend every class. I have the right to lower a student's grade for failing to attend class.
2. I may increase a student's grade by up to one letter grade for exceptional participation. Exceptional participation includes regularly volunteering in class and meaningful participation in class discussions.
3. The Levin College of Law's mean and mandatory distributions are posted on the College's website and this class adheres to that posted grading policy. 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

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

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>.

Recording Devices and Cell Phones

Use of any recording devices (including audio and/or video) is not permitted in the classroom without my express permission. Cellular telephones should not be used during class, and ringers must be silenced.

Assignments

Below are the reading assignments for the course. I *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.

Accommodations

Students requesting accommodation for disabilities must first register with the Dean of Students Office (<http://www.dso.ufl.edu/drc/>). The Dean of Students Office will provide documentation to the student who must then provide this documentation to the Dean Rachel Inman when requesting accommodation. You must submit this documentation prior to submitting assignments or taking the quizzes or exams. Accommodations are not retroactive, therefore, students should contact the office as soon as possible in the term for which they are seeking accommodations.

Workload/Class Preparation and Requirements

Students should expect to spend, on average, approximately two hours preparing for every hour of class. Reading assignments are set forth below in the syllabus and may be available on-line as posted by the Law School. ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. This course has 2 “classroom hours” of in-class instruction each week, requiring at least 4 hours of preparation outside of class. Accordingly, you will have about 120 pages of reading each week, on average throughout the semester.

Student Learning Outcomes

After completing this course, students should be able to:

1. Demonstrate an understanding of the general principles of patent law, and the strategy of using patent law to protect subject matter not otherwise protected by other areas of traditional intellectual property law.
2. Demonstrate an understanding of the general legal principles of determining what is patent eligible subject matter, including the patentability of living organisms, abstract ideas, software and medical procedures.
3. Demonstrate an understanding of the general legal principles of patentability, including novelty, utility and non-obviousness, both under past law (pre- and post-AIA).
4. Demonstrate an understanding of the general legal principles for proving and assessing patent infringement, including claim interpretation, literal infringement and non-textual infringement.
5. Demonstrate an understanding of the general legal principles for assessing defenses to patent infringement, damages and enhanced damages and attorneys’ fees.

6. Provide basic advice to clients on analyzing the patentability of an invention and patent eligibility.
7. Provide basic advice to clients on construing a patent and its claims and analyzing infringement, non-infringement and potential defenses and remedies.

The weekly class reading assignments are as follows:

Week 1 - August 15

INTRODUCTION AND OVERVIEW

Read pages 1-65

Bonito Boats, Inc. v. Thunder Craft Boats, Inc., In re Bergy and E.I. DuPont deNemours & Co. v. Christopher

Week 2 - August 22

PATENT ELIGIBILITY

Read pages 67-131

Diamond v. Chakrabarty, Mayo Collaborative Services v. Prometheus Laboratories, Inc., Association for Molecular Pathology v. Myriad Genetics, Inc., Bilski v. Kappos and Alice Corp. Pty. Ltd. v. CLS Bank International

Week 3 – August 29

PATENT ELIGIBILITY (continued)

UTILITY

Read pages 133-153

Lowell v. Lewis, Juicy Whip, Inc. v. Orange Bang, Inc. and Brenner v. Manson

Week 4 – September 5

ANTICIPATION

Read pages 169-179

Titanium Metals Corp v. Banner and Schering Corp. v. Geneva Pharmaceuticals, Inc.

NOVELTY UNDER THE AIA

Read pages 193-244

Egbert v. Lippmann, Metallizing Engineering Co. v. Kenyon Bearing & Auto Parts, Pfaff v. Wells Electronics, Inc., In re Lister, Alexander Milbourn Co. v. Davis-Bournonville Co., and City of Elizabeth v. American Nicholson Pavement Co.

Week 5 - September 12

NOVELTY (CONTINUED)

NOVELTY PRE-AIA

Read pages 245-292

Woodcock v. Parker, Gillman v. Stern, Oka v. Youssefyeh, Scott v. Finney, Gould v. Schawlow and Apotex USA, Inc. v. Merck & Co., Inc.

Week 6 - September 19

NOVELTY (CONTINUED)

NONOBVIOUSNESS

Read pages 293-359 and 380-394

Hotchkiss v. Greenwood, Great A. & P. Tea Co. v. Supermarket Equipment Corp., Graham v. John Deere Co., KSR International Co. v. Teleflex Inc., In re Translogic Technology, Inc., Transocean Offshore Deepwater Drilling, Inc. v. Maersk Drilling USA, Inc. and Innovention Toys, LLC v. MGA Entertainment, Inc.

Week 7 – September 26

NONOBVIOUSNESS (CONTINUED)

THE PATENT SPECIFICATION: Enablement, Written description and Best mode

Read pages 395-419, 426-436, 458-473

Gould v. Hellwarth, Atlas Powder Co. v. E.I. Du Pont, In re Wright, Vas-Cath Inc. v. Mahurkar and Chemcast Corp. v. Arco Industries, Corp.

CLAIMS

Read pages 475-485

Ex Parte Fressola

Week 8 - October 3

CLAIMS (continued)

Read pages 485-532

(Skim cases. They will not be covered in class)

Read pages 532-546

Orthokinetics, Inc. v. Safety Travel Chairs, Inc. and Nautilus, Inc. v. Biosig Instruments, Inc.

PATENT PROSECUTION

Inventorship

Read pages 551-579

Ethicon v. United States Surgical Corp.

INEQUITABLE CONDUCT

Read pages 579-601

TheraSense, Inc. v. Becton, Dickinson & Co.

Week 9 - October 10

DOUBLE PATENTING AND POST-GRANT PROCEDURES,

Read pages 601-630

(Skim cases. They will not be covered in class)

LITERAL INFRINGEMENT

Read Pages 643-693

Autogiro Co. of America v. United States, Markman v. Westview Instruments, Inc., Cybor Corp. v. FAS Technologies, Inc., Phillips v. AWH Corp. and Computer Docking Station Corp. v. Dell, Inc.

Additional cases (not in textbook)

Teva Pharmaceuticals USA, Inc. v. Sandoz, Inc., 574 U.S. ____ (2015)

Week 10 - October 17

LITERAL INFRINGEMENT (continued)

DOCTRINE OF EQUIVALENTS

Read pages 693-739

Graver Tank v. Linde Air Products Co., Warner-Jenkins Company v. Hilton Davis Chemical Co., Corning Glass Works v. Sujimoto Electric USA, Inc., Festo v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd., Johnson & Johnston Associates Inc. v. R.E. Service Co., Inc. and Wilson Sporting Goods Co. v. David Geoffrey & Associates

Week 11 - October 24

INDIRECT INFRINGEMENT

Read pages 739-770

Global-Tech Appliances, Inc. v. SEB S.A., Jazz Photo Corp. v. ITC, and Limelight Networks, Inc. v. Akamai Technologies, Inc.

Additional cases (not in textbook)

Commil USA, LLC v. Cisco Systems, Inc., 135 S.Ct. 1920 (2015)

Week 12 – October 31

ADDITIONAL DEFENSES

Read pages 797- 842

Roche Products, Inc. v. Bolar Pharmaceutical Co., Inc. and Madey v. Duke University, USM Corp. v. SPS Technologies, Inc., A.C. Aukerman Co. v. R.L. Chaides Construction Co., and McElmurray v. Arkansas Power & Light Co.

Week 13 - November 7

REMEDIES

Read pages 843-865 and 899-905

eBay Inc. v. MercExchange, L.L.C., Panduit Crop. v. Stahlin Bros. Fibre Works, Inc., and Georgia-Pacific Corp. v. United States Plywood

Corp.

ENHANCED DAMAGES AND ATTORNEY FEES

Read pages 905-907 and 919-927

Octane Fitness, LLC v. Icon Health & Fitness, Inc.

Additional cases (not in textbook)

Halo Electronics v. Pulse Electronics, 2016 U.S. LEXIS 3776 (June 13, 2016)

Week 14 - November 14

Make-up / catch-up of prior class assignments