TEACHING OF INDUSTRIAL PROPERTY IN THE UNITED STATES OF AMERICA

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REPORT ON THE TEACHING OF INDUSTRIAL PROPERTY IN THE USA

The teaching of industrial property in universities in the USA takes place in university law schools, in engineering schools and in business or economic departments or schools. The only comprehensive or detailed courses are those given in law schools educating students for professional practice of law or for corporate law departments or government agency lawyer positions. Some engineering may also include protection of ideas and trade secrets and a small amount of copyright. Such courses are undergraduate, optional courses for Bachelor of Science candidates or are graduate courses in a Master of Science curriculum. Business schools and economics courses often contain very summary treatment of industrial property, but typically no more than about 10 class hours are devoted to such topics.

Law School Courses

University law school courses in industrial property in the USA vary widely. There are approximately 168 accredited law schools. A cursory sampling of curricula shows the follwoing different patterns:

(1) No course in industrial property law at all.

(A rough estimate is that almost 1/2 of the accredited law schools have no courses--including most of the small-enrollment law schools.)

(2) A single survey course covering the fundamentals of patents, copyrights, and trademarks.

(Usually a 30-hour or 45-hour course entitled Patents, Copyrights and Trademarks, or Intellectual Property, or Trade Regulation Law, roughly estimated at about 50-60 law schools.)

(3) A single course covering only some types of industrial property.

(Patent Law only, Copyright only, Unfair Competition or Trade Regulation only, estimated at about 10 law schools.)

(4) Two separate courses in Industrial Property.

(Most commonly a 30-hour Patent Law course and a 30-hour Copyright and Unfair Competition course; others have Patent Law and Unfair Trade Practices or Trade Regulation courses. Estimated at about 10-15 schools.)

(5) Comprehensive coverage of industrial property in a series of courses.

(About 5 or 6 school in major metropolitan areas.) The principal law schools with comprehensive programs are George Washington University in Washington, D.C.; Georgetown University in Washington, D.C.; New York University in New York City and John Marshall Law School in Chicago, which have graduate-level courses for those desiring specialization in the field of law. Considerably less comprehensive programs are given at Catholic University in Washington, D.C.; American University in Washington, D.C.; Villanova University in Philadelphia; University of Huston; University of Detroit; University of California at Los Angeles; and Franklin Pearce Law Center at Concord, N.H.

Level and Nature of Courses

All law school courses in industrial property are optional in character. Most are second or third year courses for Juris Doctor degree candidates (first degree in law) which almost universally require an undergraduate Bachelor of Arts or Bachelor of Science degree before admission to law school. The courses are nearly always taken in the second or third year of law school. They are most commonly taught as survey courses using a casebook or textbook or multilithed materials with either socratic dialogue or class discussion or written problem exercises with discussion and critique. Several law schools give the courses as Seminars, emphasizing the preparation of individual research papers on some current problem area.

The few schools with comprehensive courses (George Washington, Georgetown, New York University, John Marshall) are primarily graduate level courses for candidates for the Master of Laws degree (second degree in law) desiring to obtain specialized training, but the courses are usually also open to undergraduate law students. Most law students taking the comprehensive patent and industrial property courses have technical training such as Bachelor of Science degrees in engineering, chemistry, physics or other sciences, because such specialized training is required for admission to practice in representing applicants for patent before the US Patent and Trademark Office. However, many law students without technical training take the courses in Copyrights, Trademarks, and Unfair Trade paractices in order to practice law in such fields where scientific training is not a requirement.

Contents of Specific Courses and Teaching Materials

A. Patents, Copyrights and Trademarks (Intellectual Property or Trade Regulation Law).

(Single course of 30 or 45 hours)

(1) Patents - Patentable Subject Matter; Conditions of Patentability; Infringement

(2) Copyrights - How Copyright is Secured; Copyrightable Subject Matter; Infringement and Fair Use

(3) Trademarks and Tradenames - How Rights are Obtained; What is Infringement; Use in Different Geographic Markets; Licensing

(4) Protection of Ideas and Trade Secrets

Materials

Choate, Robert A., Cases and Materials on Patent Law (Including Trade Secrets - Copyrights - Trademarks) (1973) (West publishing Co., St. Paul, Minn.)

Goldstein, Paul, Copyright, Patent, Trademark and Related State Doctrines - Cases and Material (1973) (Calaghan & Co., Chicago, III.)

Kitch and Perlman, Legal Regulation of the Competitive Process - Cases and Materials (2d ed. 1979)

Goldstein, E. Ernest, Patent, Trademark and Copyright Law - Cases and Materials (1959) (Foundation Press, Mineola, N.Y.)

B. Patent Law (30 or 45 class hours)

(1) Objectives of the Patent System and Nature of Patent Grant

(2) Patentable Subject Matter

(3) Conditions for Patentability

(4) Securing the Patent

(5) Amendment and Correction of Patents

(6) Infringement and Patents

(7) Remedies

(8) Licensing of Patent

[This is a fairly typical pattern where only a single Patent Law course is given. In Schools where separate Patent Office Practice course is given, items 4 and 5 are not included. In schools with a separate Licensing course, item 8 is not included.]

Reading Materials

Kayton, Irving, Patent Property - Cases and Readings (2 Vol.) (Patent Resources Group, 2011 Eye Street, N.W., Washington, D.C.

Choate, Robert A., Cases and Materials on Patent Law (1973) (West Publishing Co., St. Paul, Minn.)

Treaties for Collateral Reading and Research

Deller's, Walker on Patent (9 Vol.) (2d ed. 1964 with 1979 Supplement)

Dunner, Gambrell and Kayton, Patent Law Perspectives (several vol.)

Chisum, Donald S., Patents (5 Vol., 1978)

C. Copyright Law (30 or 40 class hours)

(1) Historical Background

(2) How Copyright is Secured

(3) Subject Matter of Copyright

(4) Remedies and Fair Use

(5) International Aspects of Copyright Under Berne Union, Universal Copyright Convention and Inter-American Convention

(6) Licensing and Performing Right Societies

Materials

Kaplan, Benjamin and Brown, Ralph S. Jr., Copyright, Unfair Competition and Other Topics Bearing on the Protection of Literary, Musical and Artistic Works (3d ed. 1978) (Foundation Press, Mineola, N.Y.)

Nimmer, Melville B., Cases on Copyright and Other Aspects of the Law Pertaining to Literary, Musical and Artistic Works (2d ed. to be published in late 1979) (West Publishing Co., St. Paul, Minn.)

Collateral Readings and Research

Latman, Alan, The Copyright Law: Howell's Copyright Law Revised (1979) (BNA Books, Wash., D.C.)

Henn, Harry G., Copyright Primer (Practicing Law Institute, 810 Seventh Ave., New York, N.Y. 10019)

Nimmer, Melville G., Nimmer on Copyright Law (1963) (Annual Supplements)

D. Trademarks and Unfair Competition (Trade Regulation) (30 class hours)

(1) Functions of Trademarks and Tradenames

(2) How Trademark Rights are Obtained

(3) Requirements for a Protectable Trademark

(4) Infringement and Unfair Competition

(5) Concurrent Use of Tradenames in Different Geographic Markets

(6) Imitation of Configuration or Dress of Goods

(7) Federal and State Registration Procedure

(8) Remedies and Defenses

(9) Licensing and Trademarks

Materials

Patishall, Beverly and Hilliard, Trademarks, Trade Identity and Unfair Trade Practices - Cases and Materials (1974) (Matthew Bender & Co., New York, N.Y.)

McCarthy, J. Thomas, Trademarks and Unfair Competition (2 vol. treatise 1973 with 1978 Supplement) (Callaghan & Co., 6141 North Cicero Ave. Chicago, Ill. 60644)

Gilson, Trademark Protection and Practice (2 vol. treatise 1976) (Matthew Bender & Co., 235 East 45th St., New York, N.Y. 10017)

E. Unfair Trade Practices (or Trade Regulation or Regulation of Competitive Practices (30 or 45 class hours)

(1) Common Law and Statutory Privilege to Enter Markets and Compete Fairly

(2) Interference with Contractual Relations

(3) Trademarks and Tradenames - How Rights are Obtained; What is Protectable; Infringement; Use in Different Geographical Markets; Protection of Configurations and Dress of Goods

(4) Protection of Unpatented Ideas

(5) The Misappropriation Doctrine (protection of news, professional sports performances and other entertainment values, etc.)

(6) Copyrights - How Rights are Obtained; Copyrightable Subject Matter; Infringement and Fair Use

(7) Trade Secrets and Protection of Confidential Business Information

(8) Regulation of Deceptive Advertising

Materials

Oppenheim, S.C. and Weston, Glen E., Unfair Trade Practices and Consumer Protection (3d ed. 1974 and 1977 Supplement) (West Publishing Co., St Paul, Minn.)

Kitch, Edmund and Perlman, Harvey, Legal Regulation of the Competitive Process (2d ed. 1979) (Foundation Press, Mineola, N.Y.)

F. Patent and Know-How Licensing

(1) Business Objectives in Licensing

(2) Rights and Duties of Parties to License

(3) Negotiating Terms of Licenses

(4) Administering and Enforcing the License

(5) Antitrust and Misuse Constraints

(6) Tax Factors

(7) Special Problems of Trade Secret and Know-How Licenses

(8) International Licensing

Materials

Finnegan, Marcus and Brunsvold, Brian, Creative Patent Licensing (1977) (Patent Resources Group, Washington, D.C.)

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