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INTELLECTUAL PROPERTY IN THE NEW TECHNOLOGICAL AGE

Fourth Edition

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Intellectual Property in the New Technological Age

Fourth Edition

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Preface

Rapid advances in digital and life sciences technology continue to spur the evolution of intellectual property law. As professors and practitioners in this field know all too well, Congress and the courts continue to develop intellectual property law and jurisprudence at a rapid pace. For that reason, we have significantly augmented and revised our text yet again.

Here is a synopsis of the prinicipal changes in this fourth edition:

Chapter 1. Introduction. We have expanded coverage of theories of intellectual property, including discussion of the open source movement.

Chapter 2. Trade Secret Protection. We have substituted new cases on reverse engineering and remedies.

Chapter 3. Patent Law. We have reorganized the validity materials, moving the materials on written description before novelty and non-obviousness. This chapter contains expanded coverage of patenting of DNA-related inventions (with the addition of *In re Fisher*). We have substantially rewritten and updated the materials on claim construction to take into consideration the Federal Circuit's *en banc* decision in *Phillips v. AWH Corporation*. This chapter also includes new material on extraterritorial infringement and remedies.

Chapter 4. Copyright Law. The past several years have demonstrated the extraoridinary potential of the Internet as a distribution medium, and with that, tremendous dynamism in the field of copyright protection. In order to present all of the new developments coherently, we have substantially expanded our coverage of digital copyright law. We have expanded our coverage of indirect liability (MGM v. Grokster) and added material on the application of fair use to search engines (Kelly v. Arriba Soft. Corp.), as well as

added several new problems relating to Internet copyright issues. We have also expanded coverage of international copyright law.

Chapter 5. Trademark Law. The past three years have seen tremendous growth in what might be called cyber-trademark law. We have added the leading case on the requirement of trademark use (1-800 Contacts, Inc. v. When U.com, Inc.). We have also updated the materials on trademark dilution.

Chapter 6. State Intellectual Property Law and Federal Preemption. This chapter includes expanded coverage of the right of publicity, trespass to chattels, and preemption of state law.

Chapter 7. Protection of Computer Software. We have substantially expanded coverage of open source licensing, patent protection for software-related and business method inventions, and the Semiconductor Chip Protection Act.

Chapter 8. Intellectual Property and Competition Policy. We have updated coverage of the Microsoft antitrust litigation and pharmaceutical patent settlement cases.

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Note: We have selectively omitted citations and footnotes from cases without the uses of ellipses or other indications. All footnotes are numbered consecutively within each chapter, except that footnotes in cases and other excerpts correspond to the actual footnote numbers in the published reports.

Many of the problems in this text are taken from actual cases. However, in many instances we have altered the facts of the case. In most cases we have also altered the names of the parties involved. In a few cases, however, particularly in the trademark and antitrust chapters, we felt that it was important to the problem to use the name of a product or company with which the reader would be familiar. Readers should understand that the problems are hypothetical in nature and that we do not intend them to represent the actual facts of any case or situation.

Summary of Contents

Contents Preface Acknowleds	yan en te	ix xxi xxiii	
ricknowithy	ments .	XXIII	
Chapter 1	Introduction	1	
	Trade Secret Protection	33	
	Patent Law	117	
Chapter 4	Copyright Law	367	
Chapter 5	Trademark Law	617	
Chapter 6	State Intellectual Property Law and Federal Preemption	835	
Chapter 7	1 1	953	
	Intellectual Property and Competition Policy	1097	
Table of Co		1191	
	Table of Statutes		
Index		1205 1211	

Contents

Pre	face	xxi
Aci	knowledgments	xxiii
1	Introduction	1
A.	Philosophical Perspectives	2
	1. The Natural Rights Perspective	
	John Locke, Two Treatises on Government	2 2 5
	Problem	5
	2. Personhood Perspective	6
	Margaret Jane Radin, Property and Personhood	6
	3. The Utilitarian/Economic Incentive Perspective	10
	a. Prompting Innovation and Creativity	11
	Problem	19
	b. Ensuring Integrity of the Marketplace	20
В.	Overview of Intellectual Property	24
	1. Trade Secret	24
	2. Patent	28
	3. Copyright	28
	4. Trademark/Trade Dress	29
	Problem	30
2	Trade Secret Protection	33
Α.	Introduction	33
	1. History	33
	2. Overview of Trade Secret Protection	35
	3. Theory of Trade Secrets	37
В.	Subject Matter	39
	1. Defining Trade Secrets	39
		ix

		Metal	lurgical Industries Inc. v. Fourtek, Inc.	39
		Proble	ems	48
	2.	Reasonable Ef	forts to Maintain Secrecy	49
		Rockn	vell Graphic Systems, Inc. v. DEV Industries, Inc.	49
		Proble	ems	57
	3.	Disclosure of	Trade Secrets	58
C.	Mis	appropriation of	of Trade Secrets	62
	1.	Improper Mea	ins	62
		E. I. a	luPont deNemours & Co. v. Rolfe Christopher et al.	62
		Proble	em	67
	2.	Confidential R	Relationship	67
		Smith	v. Dravo Corp.	67
		Proble	ems	72
	3.	Reverse Engin		74
		Kada	nt, Inc. v. Seeley Machines, Inc.	75
		Proble		79
	4.		ase of Departing Employees	80
			Trade Secrets	82
			r v. Greenberg	82
			on the Common Law Obligation to Assign Inventions	87
		Proble		88
			on Trailer Clauses	88
			etition Agreements	89
			on the "Inevitable Disclosure" of Trade Secrets	94
			on Nonsolicitation Agreements	98
75		Proble		99
D.	Ag	reements to Kee		101
			er-Lambert Pharmaceutical Co. v. John	101
17	n		Reynolds, Inc.	105
E.	Rei	nedies	an Barranda Comban 2M Comb	105
			on Research Corp. v. 3M Corp. on Criminal Trade Secret Statutes	106
				112
			on Federal Criminal Liability for Trade Secret	112
		17115	appropriation	113
_				
3		Patent Law		117
A.	Int	roduction		117
	1.	Historical Bac	kground	117
	2.		of the Patent Laws	124
			ents for Patentability	124
		-	nferred by a Patent	125
	3.	Theories of Pa		127
В.		Elements of F		128
50		Patentable Sul		128
	- 1		ond v. Chakrabarty	128
			-Davis & Co. v. H. K. Mulford Co.	135

			Problem	139
			Note on Patenting "Abstract Ideas"	139
			Note on Patenting Business Methods and "Printed Matter"	141
			Problems	142
	2.	Utili		144
			Brenner v. Manson	144
			In re Fisher	149
			Note on the Patent Office Utility Guidelines	152
			Problems	154
			Note on Different Types of Utility	155
	3.	Desc	cribing and Enabling the Invention	159
			Procedures for Obtaining a Patent	159
			Disclosure Doctrines: Enablement and Written Description	164
			The Incandescent Lamp Patent	165
			Note on "Analog" Claims in Chemical and Biotechnology	
			Patents: An Exploration of Patent Breadth	170
			The Gentry Gallery, Inc. v. The Berkline Corp.	175
			Note on "Written Description" and Biotechnology	180
			Note on the Best Mode Requirement	183
			Problem	184
	4.	Nove	elty and Statutory Bars	185
		a.	The Nature of Novelty	187
			Rosaire v. National Lead Co.	187
			Note on the Inherency Doctrine	191
		b. 5	Statutory Bars: Publications	192
			In re Hall	193
			Problem	195
		c. 5	Statutory Bars: Public Use	196
			Egbert v. Lippmann	196
			Problem	201
		d. '	The Experimental Use Exception	203
			City of Elizabeth v. Pavement Company	203
		e.	Priority Rules and the First to Invent	207
			Griffith v. Kanamaru	209
			Note on Recent Changes to Patent Law:	
			International Harmonization	212
	5.	Non	obviousness	214
			Graham v. John Deere Co.	214
		a. (Combining References	226
			In re Vaeck	226
			In re Dembiczak	229
			Note on Nonobviousness and Biotechnology Inventions	235
		L 6	Problem	236
0	T C		"Secondary" Considerations	237
U.	100	ringer	nent n Interpretation	239
	1.			239
		a.	The Proper Role of Judge and Jury in Patent Cases Phillips v. AWH Corporation	
	2.	Liter	ral Infringement	241 257
	Said 4	LAUCI	Larami Cort v Amron	257

	3.	The Doctrine of Equivalents	263
		a. Basic Issues	263
		b. Prosecution History Estoppel	268
		Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.	268
		c. Subject Matter "Disclosed but Not Claimed"	280
		Johnson & Johnston Associates Inc. v. R.E. Service Co., Inc.	281
		d. After-Arising Technologies	289
		Problem	292
	4.	The "Reverse" Doctrine of Equivalents	293
		Problem	292
	5.	Equivalents for Means-Plus-Function Claims	296
	6.	Contributory Infringement	300
		C. R. Bard, Inc. v. Advanced Cardiovascular	
		Systems, Inc.	300
		Note on Inducement	302
	7	Infringement Involving Foreign Activities	303
	, .	Eolas Technologies Inc. v. Microsoft Corp.	306
D	De	fenses	308
	1.	The "Experimental Use" Defense	308
	2.	Inequitable Conduct	313
		Kingsdown Medical Consultants, Ltd. v. Hollister Inc.	313
	3.	Patent Misuse	318
	0,	Motion Picture Patents Company v. Universal Film	010
		Manufacturing Company et al.	318
		Problem	325
		Note on the Scope of the Patent Misuse Doctrine	326
E.	Int	ernational Patent Law	330
٠.		Procedural Rules	330
	2.		333
F.		medies	335
1.	1.	Injunctions	338
		H. H. Robertson Co. v. United Steel Deck, Inc.	338
	2.	Damages: Reasonable Royalty and Lost Profits	342
	2.	a. Reasonable Royalty	345
		b. Lost Profits Damages	347
	3.	Willful Infringement	350
	υ.	Knorr-Bremse Systeme Fuer Nutzfahrzeuge	330
		Gmbh v. Dana Corporation	350
G	De	sign and Plant Patents	356
G.	1.	Design Patents	357
	1.	a. Introduction	357
		b. Requirements for Patentability	357
		c. Claim Requirements and Procedure d. Infringement	360 361
	2.	d. Infringement Plant Patents	
	4.		362
		a. The Plant Patent Act b. The Plant Variety Protection Act	362 363
		D. THE TIGHT VALLETY FIOLECTION ACT	200

4		Copyright Law	367
Α.	Int	roduction	367
2.21	1.	Brief History of Copyright Protection	368
	2.		372
	3.	Philosophical Perspectives on Copyright Protection	374
В.		quirements	376
1).		Original Works of Authorship	376
	1.	Feist Publications v. Rural Telephone Service	378
		Problem	386
	2.		386
	3.	Formalities	389
	0.	a. Notice	389
		b. Publication	390
		Problem	392
		c. Registration	393
		d. Deposit	394
		Note the Restoration of Foreign Copyrighted Works	394
0	Co	pyrightable Subject Matter	395
U.		Limitations on Copyrightability: Distinguishing Function and	393
	1.		395
		Expression The Idea Expression Dichetomy	395
		a. The Idea-Expression Dichotomy Baker v. Selden	396
		Problem	401
			401
		Morrissey v. Procter & Gamble Problems	
			405
			405
		Brandir International, Inc. v. Cascade Pacific Lumber Co.	407
		Problems	415
		c. Government Works	415
		Problem	419
	2.	The Domain and Scope of Copyright Protection	420
		a. Literary Works	420
		b. Pictorial, Graphic, and Sculptural Works	421
		Problem	422
		c. Architectural Works	422
		d. Musical Works and Sound Recordings	424
		e. Dramatic, Pantomime, and Choreographic Works	425
		Problem	425
		f. Motion Pictures and Other Audiovisual Works	426
		g. Derivative Works and Compilations	426
		Roth Greeting Cards v. United Card Company	427
		Problems	430
D.	Ow	vnership and Duration	430
	1.	Initial Ownership of Copyrights	431
		a. Works Made for Hire	431
		Community for Creative Non-Violence et al. v. Reid	431
		b. Joint Works	439
		Aalmuhammed v. Lee	439

		c. (Collective Works	445
			Note on the Rights of Authors and Publishers in	
			Electronic Compliations	446
			Problems	446
	2.	Dura	tion and Renewal	449
			Problems	453
	3.	Divisi	ion, Transfer, and Reclaiming of Copyrights	453
		a. I	Division and Transfer of Copyright Interests Under the	
		1	909 Act	454
		b. I	Division and Transfer of Copyright Interests Under the	
		1	976 Act	455
		c. R	Reclaiming of Copyrights	455
E.	Tra	dition	al Rights of Copyright Owners	458
	1.		Right to Make Copies	459
			Copying	460
			Arnstein v. Porter	460
			Problem	466
		b. I	mproper Appropriation	466
			Nichols v. Universal Pictures Corp.	466
			Steinberg v. Columbia Pictures Industries, Inc.	474
			Problems	482
	2.	The I	Right to Prepare Derivative Works	484
			Anderson v. Stallone	485
			Problems	494
	3.	The 1	Distribution Right	494
			Problem	497
	4.	Publi	c Performance and Display Rights	498
			Problems	502
	5.	Mora	l Rights	503
F.	De	fenses		506
	1.	Fair V	Use	506
			Harper & Row, Publishers, Inc., et al. v. Nation	
			Enterprises et al.	507
			Problems	519
		a. V	Videotaping Videotaping	520
			Sony Corporation of America v. Universal City Studios, Inc.	520
			Problem	525
		b. P	hotocopying	525
			American Geophysical Union, et al. v. Texaco Inc.	525
		c. P	arodies	539
			Campbell v. Acuff-Rose Music, Inc.	539
			Problems	550
	2.	Othe	r Defenses	551
G.	Ind	lirect I	Liability	553
			Sony Corporation of America v. Universal City Studios, Inc.	556
			Problem	563
Η.	Dig	gital C	opyright Law	564
			al Copyright Legislation	565
			. Prohibition on Commercial Record and Software Rental	565
		b	. Digital Audio Tape Devices	565

Contents	===	xv

		c. Webcasting	566
		d. Criminal Enforcement	568
		e. Anticircumvention Prohibitions	569
		f. Online Service Providers Safe Harbors	573
		Problem	575
	2.	Enforcement	575
		a. Digital Hardware Devices	576
		b. Search Engines, Services, and Software	576
		MGM Studios Inc. v. Grokster, Ltd.	578
		Problem	591
		c. End Users	592
	3.	Fair Use in Cyberspace	593
		Kelly v. Arriba Soft Corp.	593
		Problem	599
I.	Int	ernational Copyright Law	600
		Evolution of the International Copyright System and	600
	36. 4	U.S. Participation	000
	2.	International Copyright Treaties	602
		Protection of U.S. Works Against Infringement Abroad	605
	4.	Protection of Foreign Works Against Infringement in the	608
	Т.	United States	000
J.	En	forcement and Remedies	609
) -	LJII	Sheldon et al. v. Metro-Goldwyn Pictures Corp. et al.	610
		Note on Injunctive Relief	614
		Problem	616
		1.00.011	010
		Trademark Law	617
-J		Trunemurk Luw	617
Α.	Int	roduction	617
		Background	617
		A Brief Overview of Trademark Theory	619
	3.	The Basic Economics of Trademarks and Advertising	620
В.		nat Can Be Protected as a Trademark?	624
	1.	Trademarks, Trade Names, and Service Marks	625
	2.	Color, Fragrance, and Sounds	626
	2.	Qualitex Co. v. Jacobson Products Co., Inc.	626
	3.		632
	4.	Trade Dress and Product Configurations	634
C		rablishment of Trademark Rights	634
U,	1.	Distinctiveness	634
	1.	a. Classification of Marks and Requirements for Protection	634
		Zatarain's, Inc. v. Oak Grove Smokehouse, Inc.	635
		b. Distinctiveness of Trade Dress and Product Configuration	648
		Two Pesos, Inc. v. Taco Cabana, Inc.	648
		Wal-Mart Stores, Inc. v. Samara Brothers, Inc.	653
	2	Problem	660
	2.	Priority Zazu Designs v. L'Oveal S A	660

		Note on Geographic Limitations on Trademark Use	670
		Note on Priority and Trademark Theory	672
		Note on Secondary Meaning in the Making	676
		Problems	679
	3.	Trademark Office Procedures	679
		a. Principal vs. Supplemental Register	680
		b. Grounds for Refusing Registration	680
		Problem	682
		In re Nantucket, Inc.	684
		Problem	690
		c. Opposition	690
		d. Cancellation	691
		e. Concurrent Registration	692
	4.	Incontestability	693
		Park 'N Fly, Inc. v. Dollar Park and Fly, Inc.	693
D.	Inf	ringement	699
	1.	The Requirement of Trademark Use	699
		1-800 Contacts, Inc. v. When U.com, Inc.	699
		Problem	708
	2.	Likelihood of Consumer Confusion	709
		AMF Incorporated v. Sleekcraft Boats	709
		Note on Other Types of Confusion	716
		Problems	721
	3.	Dilution	721
		Moseley v. V Secret Catalogue, Inc.	725
		Note on Dilution and "Search Theory"	736
		Problem	736
	4.	Extension by Contract: Franchising and Merchandising	736
		Problem	740
	5.	Domain Names and Cybersquatting	741
		a. Anticybersquatting Consumer Protection Act	741
		Shields v. Zuccarim	742
		People for the Ethical Treatment of Animals v. Doughney	748
		b. The Uniform Dispute Resolution Procedure	753
	6.	Contributory Infringement	759
	7.	False Advertising	760
		Johnson & Johnson *Merck Consumer Pharmaceuticals Co. v. Smithkline Beecham Corp.	760
E.	De	fenses	769
4.3.	1.	and the second s	769
		The Murphy Door Bed Co., Inc. v. Interior Sleep Systems, Inc.	770
		Note on Genericide, Language, and Policing Costs	777
	2.	Functionality	780
	200	TrafFix Devices, Inc. v. Marketing Displays, Inc.	780
		Problems	789
	3.	Abandonment	790
	J.	Major League Baseball Properties Inc. v. Sed Non Olet	790
		Denarius, Ltd. Problems	797
		a a O D I D I I I I I I I I I I I I I I I I	1 11