

<b>Course Title</b>	<b>Intellectual Property Law</b>
<b>Professor</b>	Samuel F. Ernst
<b>Term</b>	Spring 2025
<b>Meetings</b>	Tuesdays and Thursdays 2:00-3:20 p.m.

### Professor's Contact Information

<b>Email Address</b>	sernst@wsulaw.edu
<b>Office Hours</b>	By appointment

### General Course Information

<b>Required Texts &amp; Materials</b>	<i>The Law of Intellectual Property</i> , by Nard, Madison, and McKenna, Fifth Edition, ISBN 978-1-45-48-7571-0
<b>Course Objectives</b>	<ul style="list-style-type: none"> <li>• Intellectual Property Law allows students to gain an understanding of the substantive U.S. law of intellectual property in four major areas: patent law, copyright law, trademark law, and trade secret law. Among the skills students will practice in relation to this objective are: <ol style="list-style-type: none"> <li>1) Close reading of complex materials</li> <li>2) Finding the rule in a legal case and understanding the holding</li> <li>3) Understanding the mechanics of statutory schemes and how they apply to fact patterns</li> </ol> </li> <li>• Students will develop legal argument skills. This includes (1) evaluating facts and spotting legal issues; (2) analyzing legal rules and equitable principles as set forth in statutes and common law decisions; (3) applying legal rules, equitable principles, and policy considerations to articulate arguments in favor of clients.</li> <li>• Students will practice oral communication and active listening skills by responding to the professor's questioning and by presenting analysis in an organized, persuasive, and professional manner.</li> <li>• Students will practice diagnosing problems confronting clients, understanding clients' objectives, and generating strategies to achieving those objectives competently and ethically.</li> </ul>

## Course Policies

<p><b>Attendance, Preparedness, and Class Participation</b></p>	<p>This course requires regular attendance and preparation. 10% of the class grade is awarded for consistent attendance and active participation, as determined by the index card assignment described immediately below.</p> <p>You should prepare for approximately two hours for each hour of class.</p>
<p><b>Accommodations</b></p>	<p>Western State College of Law provides accommodations to qualified students with disabilities. The Disabilities Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.</p> <p>To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Library Building, Room 275-B. Dean Espinoza's phone number and email address are: (714) 459-1117; <a href="mailto:despinoza@wsulaw.edu">despinoza@wsulaw.edu</a>. When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Dean Marisa Cianciarulo at <a href="mailto:mcianciarulo@wsulaw.edu">mcianciarulo@wsulaw.edu</a> or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."</p>
<p><b>Grading Method</b></p>	<p>10% of the grade is awarded for consistent attendance and preparation for active participation as determined by the index card assignment described immediately below.</p> <p>10% of the grade is determined by a midterm exam.</p> <p>80% of the grade is determined by a final exam.</p>

<b>Index Card Assignment</b>	<p><b>10% of the class grade is determined by class preparedness and participation under the following procedure:</b></p> <p>For each class students should prepare an index card (3X5 inches) stating the following information:</p> <ul style="list-style-type: none"> <li>• Your name</li> <li>• The name of a case in the reading</li> <li>• What you believe to be the holding of the case (This should be in the form of at least one complete sentence)</li> <li>• Whether you agree or disagree with the result of the case.</li> </ul> <p>Please hand in your index card <b>PRIOR TO EACH CLASS AS YOU ENTER THE CLASSROOM.</b> Cards may not be submitted electronically, outside of the class, or after class because the cards are used as records demonstrating your punctuality and preparedness to participate in class.</p> <p>Students may be asked to discuss any case assigned for that day, and not just the case noted on the student's card.</p>
<b>Midterm</b>	Multiple Choice
<b>Final Exam</b>	Essay

### Assignments & Academic Calendar

<b>Date:</b>	
<b>I. Patent Law</b>	
<b>1. Tuesday, January 14</b>	<ul style="list-style-type: none"> <li>• Patent eligible subject matter</li> <li>• A word about utility</li> </ul> <b>Pages 86-107</b>
<b>2. Thursday, January 16</b>	<ul style="list-style-type: none"> <li>• How to read a patent</li> <li>• Claim construction</li> <li>• Literal infringement</li> <li>• <b>Pages 28-42; 253-256</b></li> </ul> <b>Please also read the cat patent</b>
<b>3. Tuesday, January 21</b>	<ul style="list-style-type: none"> <li>• Equivalent infringement</li> <li>• Indirect infringement</li> </ul> <b>Pages 258-270; 297-309</b>
<b>4. Thursday, January 23</b>	<ul style="list-style-type: none"> <li>• Defenses: Novelty and Priority</li> </ul> <b>Pages 149-178</b>
<b>5. Tuesday, January 28</b>	<ul style="list-style-type: none"> <li>• Defenses: Non-obviousness</li> </ul> <b>Pages 178-214</b>

<b>6. Thursday, January 30</b>	<ul style="list-style-type: none"> <li>• Defenses: Statutory bars</li> </ul> <b>Pages 214-248</b>
<b>7. Tuesday, February 4</b>	<ul style="list-style-type: none"> <li>• Section 112 Defenses: Enablement, Written Description, and Claim Definiteness</li> </ul> <b>Pages 55-84</b>
<b>8. Thursday, February 6</b>	<ul style="list-style-type: none"> <li>• Patent eligible subject matter</li> <li>• A word about utility</li> </ul> <b>Pages 86-107</b>
<b>II. Trade Secret Law</b>	
<b>9. Tuesday, February 11</b>	<ul style="list-style-type: none"> <li>• Proving a trade secret</li> </ul> <b>Pages 1439-1461</b>
<b>10. Thursday, February 13</b>	<ul style="list-style-type: none"> <li>• Trade secret misappropriation</li> <li>• The employer-employee relationship</li> </ul> <b>Pages 1461-1487</b>
<b>11. Thursday, February 20</b>	<b>ASSESSMENT SESSION</b>
<b>III. Copyright Law</b>	
<b>12. Tuesday, February 25</b>	<ul style="list-style-type: none"> <li>• Copyright eligibility: originality and authorship</li> </ul> <b>Pages 437-468</b>
<b>13. Thursday, February 27</b>	<ul style="list-style-type: none"> <li>• Copyright eligibility: fixation and expression</li> </ul> <b>Pages 468-474; 487-499</b>
<b>14. Tuesday, March 4</b>	<ul style="list-style-type: none"> <li>• Copyright classification</li> </ul> <b>Pages 519-558</b>
<b>15. Thursday, March 6</b>	<ul style="list-style-type: none"> <li>• Copyright ownership: joint works and works for hire</li> </ul> <b>Pages 570-590</b>
<b>16. Tuesday, March 18</b>	<ul style="list-style-type: none"> <li>• Copyright infringement: musical and literary works</li> </ul> <b>Pages 595-604; 616-623</b>
<b>17. Thursday, March 20</b>	<ul style="list-style-type: none"> <li>• Copyright infringement: pictorial works, derivative works, the right of public display and performance</li> </ul> <b>Pages 623-629; 642-650; 665-671</b>
<b>18. Tuesday, March 25</b>	<ul style="list-style-type: none"> <li>• Copyright infringement: secondary liability and the Digital Millennium Copyright Act</li> </ul> <b>Pages 689-694; 701-714; 725-736</b>
<b>19. Thursday, March 27</b>	<ul style="list-style-type: none"> <li>• Copyright defenses: fair use and a word about copyright exhaustion</li> </ul> <b>Pages 767-785; 789-796; 799-819</b>

<b>IV. Trademark Law</b>	
<b>20. Tuesday, April 1</b>	<ul style="list-style-type: none"> <li>• Trademark acquisition: distinctive classification of word marks</li> </ul> <b>Pages 951-971</b>
<b>21. Thursday, April 3</b>	<ul style="list-style-type: none"> <li>• Trademark acquisition: distinctive classification of symbols and trade dress</li> </ul> <b>Pages 983-997; 1001-1014</b>
<b>22. Tuesday, April 8</b>	Midterm Exam
<b>23. Thursday, April 10</b>	<b>No Class</b>
<b>24. Tuesday, April 15</b>	<ul style="list-style-type: none"> <li>• Trademark acquisition: functionality</li> </ul> <b>Pages 1015-1022; 1029-1036</b>
<b>25. Thursday, April 17</b>	<ul style="list-style-type: none"> <li>• Trademark acquisition: functionality</li> </ul> <b>Pages 1036-1046; 1057-1064</b>
<b>26. Tuesday, April 22</b>	<ul style="list-style-type: none"> <li>• Trademark acquisition: use in commerce, priority, and geographic scope of rights</li> </ul> <b>Pages 1065-1072; 1081-1093</b>
<b>27. Thursday, April 24</b>	<ul style="list-style-type: none"> <li>• Trademark infringement: likelihood of confusion and reverse confusion</li> </ul> <b>Pages 1163-1196</b>
<b>Friday, April 25</b>	<ul style="list-style-type: none"> <li>• Trademark infringement: initial interest confusion and post-sale confusion</li> </ul> <b>Pages 1196-1229</b>
<b>28. Tuesday, April 29</b>	<ul style="list-style-type: none"> <li>• Trademark dilution</li> </ul> <b>Pages 1243-1269</b>

*These descriptions and timelines are subject to change at the discretion of the Professor.*

## Western State College of Law – Programmatic Learning Outcomes

Western State College of Law’s curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

- (1) **Doctrinal Knowledge**  
Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.
- (2) **Practice Skills**  
Students will demonstrate the development of other law practice skills. Each student’s chosen outcomes within this category will be varied based on the student’s particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.
- (3) **Legal Analysis**  
Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.
- (4) **Legal Research**  
Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.
- (5) **Communication**  
Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker’s ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author’s ideas).
- (6) **Advocacy of Legal Argument**  
Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.
- (7) **Client Sensitivity and Cultural Competency**  
Students will demonstrate an awareness of clients’ needs and goals, including a sensitivity to clients’ background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.
- (8) **Legal Ethics**  
Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.