SYLLABUS

PATENT LAW—LAW 563-3 §1

Spring 2016
Professor Ryan T. Holte

Credit Hours: 3
Office # 256
Tuesdays, 3pm—5:40pm
Office Phone: 618.453.8749
Room 251
Secretary: Susan Williams
Exam: Tuesday, May 3, 2016, 1:15pm
Email: rholte@law.siu.edu

This syllabus is subject to change at the discretion of the professor. The class will generally follow the order of this syllabus (see assignments *infra*) with further reading assignments distributed as the course progresses. Students should monitor their email for announcements, assignments, and any changes to this syllabus.

COURSE DESCRIPTION

Although patent cases often involve complicated scientific discoveries or technologies, the essential legal principles and policies do not depend on understanding the underlying science or technology. Accordingly, students with non-technical backgrounds are encouraged to take this course, particularly given that patent assets are increasingly important to commercial clients around the world.

As part of the classroom discussions, I hope to include multiple guest speakers to review real-world patent related issues and the policies and economics underlying and justifying the patent law system. Depending on availability, guest speakers will include inventors, patent litigators, patent prosecutors, or business owners commercializing patents for profit.

This course will review the fundamental elements of patent law, and thus students will learn the basic legal rules and policies governing patentable inventions. Subjects covered will include: (1) what types of inventions or discoveries fall within the ambit of the Patent Act, including recent hot-button issues such as computer software, biotechnology and business methods; (2) the specific requirements for patentable subject matter, such as the utility, disclosure, enablement, novelty, and nonobviousness requirements, and the statutory bars of public use, sale and abandonment; (3) the basic legal rules and policies governing how patented inventions are licensed, asserted in court, and how they are treated under antitrust laws; (4) the nature and function of patent claims, claim construction, direct infringement, and the doctrine of equivalents infringement; (4) the defenses to patent infringement lawsuits, including laches, exhaustion, experimental use, inequitable conduct, and the new prior user right in the recently enacted America Invents Act of 2011 (AIA); and (5) commercialization issues raised by the exploitation of patents in the marketplace, including the doctrines of assignment, licensee estoppel, and the relationship between patent law and antitrust law.
OBJECTIVES
In addition to learning the fundamentals of patent law, the broad classroom discussion of patent principles will help students understand (1) how the law develops, changes, and is applied, and (2) evaluate legal institutions, doctrines, and principles critically and from multiple practical, theoretical, philosophical, and social perspectives. Further, through written work and class presentations, this course will help develop students’ abilities to learn complex legal principles individually and explain them in a group setting regarding a patent issue that interests them individually (see discussion below regarding presentation and paper requirements).

TEXT
ISBN: 9780769857688

INTERNET RESOURCES FOR PATENT LAW
U.S. Patent & Trademark Office
www.uspto.gov
U.S. Court of Appeals for the Federal Circuit
www.fedcir.gov
PTO website for patents
www.uspto.gov/main/patents.htm
PTO searchable database for patents
www.uspto.gov/patft/index.html
www4.law.cornell.edu/uscode/35/
www.uspto.gov/web/offices/pac/mpep/consolidated_laws.pdf
C.F.R. Title 37 - Patents, Copyrights and Trademarks (searchable)
cfr.law.cornell.edu/cfr/cfr.php?title=37
C.F.R. Title 37 - Patents, Copyrights and Trademarks (single document)
www.uspto.gov/web/offices/pac/mpep/consolidated_rules.pdf
World Intellectual Property Organization
www.wipo.int
American Intellectual Property Association
www.aipla.org
**LAPTOP & CELL PHONE POLICY**
Laptops are allowed for class note taking purposes only. Cell phones must always be on vibrate/silent setting in the classroom and should not be used during class.

**CREDIT HOURS / MEETING TIMES**
This is a three credit hour course that will meet Tuesdays from 3pm to 5:40pm. If a class is cancelled, a makeup class will be scheduled as soon as possible.

**ATTENDANCE**
Regular attendance and consistent preparation and participation are expected and required by the American Bar Association, School of Law, and the professor. Given that important circumstances can always arise (e.g. taking children to a doctor’s appointment, job requirements, extended trip home, good concert tickets for a show in Chicago), you are allowed TWO absences.

Attendance will be taken at every class. Your signature on the attendance sheet certifies that you are prepared for class—you have read the assigned material, prepared written case briefs if applicable, and are ready to participate in class discussions. If you are unprepared, you may attend class but not sign the attendance sheet. If you are found grossly unprepared through the class discussion, but signed the attendance sheet, you will be counted as absent. Do NOT sign the attendance sheet for anyone else.

If you collect more than two absences, you will be withdrawn from the course. You are responsible for keeping track of your own absences. If you have a question about your records, you may consult with my faculty assistant, Susan Williams. Ms. Williams maintains my attendance records based upon the signatures on the attendance sheets.

Further points on attendance:
- Late arrivals will be treated as absences—do not sign the attendance sheet if class has already started when you walk in.
- If you have special circumstances that may require you to have an excused absence from class, or an excuse to turn in a written assignment late, please contact the Associate Dean for Academic Affairs, Chris Behan. Dean Behan will then be in contact with me to notify me of any excused absences and how to proceed. Please note that absences may be excused in only extremely rare circumstances (not for the normal cold/flu or pre-planned vacations, generally only for hospital treatment emergencies or funerals).
GRADING / EXAM
Grades in this class will be determined as follows:

40%, Final Exam—The final exam will consist of a three hour short answer and essay question exam. It will be an open-book/open-notes exam.

25%, Class Presentation—Each student will be required to present on a patent law subject. Students will be allowed to select their subject through a pool of options created by the professor. The presentation will be to the class and is expected to last 30 minutes to one hour with discussion included. The style of presentation is to facilitate more of a classroom discussion on the subject as opposed to a speech. Students will be graded on clarity, organization, handouts and/or visuals, and class discussion. The expectations for a properly organized presentation include: speaking with me (via email or directly) at least the week before your presentation regarding your topic plan and general research sources for discussion; emailing me a copy of your rough draft PowerPoint slides at least the Saturday before your Tuesday presentation; and handing me a printed copy of your PowerPoint slides in class before you deliver your presentation.

25%, Written Paper—Tied to the presentation, each student will be required to draft a research paper regarding the patent law subject they present on. The paper will be between 12 and 15 pages (3,300 words minimum, 4,000 maximum). The paper will introduce and explain the subject, historical background, recent developments, and future concerns. Students will be graded on research, organization, and clarity. Please see specific written work requirements infra.

*Given that Patent Law can be very obscure, and that some students may not be patent practitioners in their careers, my hope with the presentation and paper is that each student will have the opportunity to research and learn about an area of patent law that interests them the most. Whether the interest applies to an exciting current development (e.g. “patent trolls), an interesting technology (e.g. nanotechnology) or a personal connection (a friend with a patent), I hope you will find the opportunity to select your own topic as an enjoyable and rewarding exercise.

10%, Class Participation—Each student will be evaluated on class participation. Special emphasis will be on participation related to discussions and questions during guest lectures. Students will be provided the names of guest speakers prior to the lecture and are expected to individually research and prepare for questions regarding the speaker’s background and topic.

NOTE: Students should contact Dean Behan to discuss any extensions of time needed for the final exam, rescheduling the date the exam is administered, or extensions of time related to written assignments.
WORKLOAD EXPECTATION
The American Bar Association standards for accrediting law schools contains a formula for calculating the amount of work that constitutes one credit hour. According to ABA Standard 310(b)(1), “a ‘credit hour’ is an amount of work that reasonably approximates: not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time.” This is a three credit hour class, meaning that we will spend three hours of classroom time together each week (interpretation 310-1 states that 50 minutes suffices for an hour of classroom instruction, so 150 minutes per week). The amount of assigned reading and out of class preparation should take you about six hours for each class session. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending at least nine hours per week (three hours in class and six hours preparing for class) on course-related work for Patent Law.

DISABILITIES REQUIRING ACCOMODATION
Disability Support Services provides the required academic and programmatic support services to students with permanent and temporary disabilities. DSS provides centralized coordination and referral services. To utilize DSS services, students must come to the DSS to open cases. The process involves interviews, reviews of student-supplied documentation, and completion of Disability Accommodation Agreements. http://disabilityservices.siu.edu/. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreement to the School of Law Registrar’s Office to ensure the School of Law provides the proper classroom and examination accommodations.

*Due to the anonymous grading policy, students should not discuss exam accommodations with professors.*

CLASS RECORDING
Recording the class is prohibited without my written permission. It is an Honor Code violation to create or distribute such recordings when the instructor has prohibited either action.¹

OFFICE HOURS / COMMUNICATING WITH PROFESSOR
I have an open door policy for students to drop by my office. If my door happens to be closed, please knock to see if I may be available to meet. Please feel free to stop by whenever you’d like, or email me to make an appointment, as I am in my office regularly during normal business hours Monday—Wednesday. My “official” office hours are Mondays and Wednesdays from 3:30pm to 5pm (with priority for Property Law students) and Tuesdays from 1pm to 2pm (exclusively for Patent Law students). You may also email me questions about the course or material; however, if the answer requires lengthy explanation I will likely suggest that you stop by my office to discuss. If you email me, please put the words “PATENT LAW CLASS” in your subject line.

¹ Honor Code I.E.1.g
LETTERS OF RECOMMENDATION

Many legal jobs, or other legal positions (internships, externships, etc.), have applications requiring letters of recommendation from law professors. When considering which of your professors to request a letter from, you should consider how much direct interaction you have had with the professor, including classroom discussions, office hour meetings, and non-class law school activities that may reflect your individual interests (e.g. law school clubs devoted to a specific interest).

Should you need a letter of recommendation, please email me at least four weeks before the letter is needed and include a copy of your résumé, all detail regarding what the letters is for, a list of classes you have taken from me, and the grade you received in each class. Since building material to discuss in a recommendation letter takes time, if this is your first class with me, I will write a letter after the spring semester.

PROFESSIONALISM

Since law students are lawyers in training, and since a large part of the law school classroom time is to prepare students for how to interact in a professional legal environment, there will be certain expectations for professionalism in the classroom. I will address all students as Mr. or Ms. (name), and the professor will be addressed as “Professor Holte.” Students should address each other as Mr. or Ms. (name) and, during lecture time (as opposed to group work), should act as if they were within a courtroom (no eating, no phone usage, no talking amongst each other, no wearing hats, etc.).

Exceptions to this are that drinks in closed containers are allowed in the classroom and the professor does not expect students to dress as if they were in court (but please dress appropriately). I reserve the right to decrease your final grade by 0.10 for unprofessional conduct in the classroom.

Since social media is such a large part of our professional culture, it is worth noting that the professor looks forward to adding all students as social media contacts once students transition from “students” to “legal colleagues” (after graduation). Until graduation please do not try to add me on LinkedIn, Facebook, etc.

EMERGENCY PROCEDURES

Emergency Procedures. Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT's website at www.bert.siu.edu, Department of Safety’s website www.dps.siu.edu (disaster drop down) and in Emergency Response Guideline pamphlet. Know how to respond to each type of emergency.

Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency. The Building
Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.

**SALUKI CARES**
The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453-5714, or siucares@siu.edu, http://salukicares.siu.edu/index.html. At the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is judiray@siu.edu, and her phone number is 618-453-3135.
READING ASSIGNMENTS

- The page numbers for readings appear long, but the text contains many pictures, notes, and copies of original source materials. Unless specifically stated, students are only required to skim the text footnotes and source materials.
- If specific cases (with citations) are listed within the reading assignment, you are responsible to locate and find the case via the Internet or Lexis/Westlaw.
- Further class assignments will be distributed regularly throughout the semester as the course progresses.
- We may move through some material more quickly or slowly. I will announce at the end of each class what should be prepared for the next class period if it diverges from the listed assignment. Due dates for written papers will never change.
- All assigned material, even if not covered it in class, is relevant for the final examination.
- All written papers for the class should include the following at the top of the first page: your name, the date the assignment is due, total word count, and the subject (or purpose) of the paper. All written papers should be double spaced, have 1” margins, 12 point Times New Roman font, be printed on white paper, have properly Blue-booked footnotes for all citations in 10 pt font, and have all pages stapled together with a single horizontal staple.

<table>
<thead>
<tr>
<th>CLASS</th>
<th>READING ASSIGNMENTS</th>
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| 2. 26 January 2016 | TOPIC: Patentable Subject Matter M&D 107-110; 123-147; 152-158  
AMP v. Myriad Genetics, 569 U.S. __, (2013)  
(skim Mayo and Myriad for holdings and changes in law)  

Turn in a one page list of your top three subject area choices for the research paper and presentation. Subjects can be from future class topics (see below) or current patent law issues. The list should be in descending order of preference and meet the written paper requirements supra (no need for word count). Should you list a topic we will review in a future class (which I expect most people will), your presentation will be the date scheduled in the syllabus for that topic. The presentation and paper will introduce and explain the subject, historical background, recent developments (e.g. recent Fed. Cir. cases), and future concerns. Should you list a topic that we do not have plans to review in a future class, please briefly describe your plan for the discussion and sources to be used (1-2 sentences for each topic).
<table>
<thead>
<tr>
<th>Date</th>
<th>Topic</th>
<th>References</th>
</tr>
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<tbody>
<tr>
<td>3. 2 February 2016</td>
<td>TOPIC: Utility; Enablement</td>
<td>M&amp;D 209-220; 241-284</td>
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<td>4. 9 February 2016</td>
<td>TOPIC: Written Description, Definite Claims</td>
<td>M&amp;D 289-336</td>
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<td>5. 16 February 2016</td>
<td>TOPIC: Novelty</td>
<td>M&amp;D 337-358; 364-387</td>
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<td>6. 23 February 2016</td>
<td>TOPIC: Novelty Contd.</td>
<td>M&amp;D 387-452; 467-469</td>
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<tr>
<td>7. 1 March 2016</td>
<td>TOPIC: Statutory Bars</td>
<td>M&amp;D 493-536; 540-550; 558-572; 576-581</td>
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<td>8. 8 March 2016</td>
<td>TOPIC: Nonobviousness</td>
<td>M&amp;D 605-624 (skim); 624-653; 698-699 (Note 1); 708-715; 739-747</td>
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<td><em>IN RE: Anita DEMBICZAK</em>, Fed. Cir. 1999 (pumpkin trash bag case)</td>
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<td>9. Future Classes</td>
<td>Future Class Topics: Doctrine of Equivalents; Injunctions; Patent Assertion Entities; Patents and Antitrust; Defenses to Patent Infringement</td>
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<td>LAST CLASS—All written papers will be due on or before Tuesday April 26th, our last class meeting.</td>
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