

Intellectual Property, Patents and Trademarks

MAPO_014131

Departments	Department of International, European Union and Comparative Law, Department of Law
Teaching Languages	English
ECTS	3
Teacher responsible	Marta Baylina Mele - marta.baylina@esade.edu

Description

Course contribution to program

This course aims, through a practical approach of the laws relating to copyrights, trademarks, patents and trade secrets (know-how), to examine the protection provided by the law in regards to ideas, inventions, information and other forms of creative effort. The course will provide insight and will consider basic and practical issues arising from the exploitation and the strategic business use of intellectual property. Students completing this course should have a basic grounding in the law of the area, its limitations, policies, and objectives, including the basic features of the various systems of protection.

The course is divided into three parts each dedicated to an intellectual property right (copyrights, trademarks, and patents) combining theory and practical exercises.

This course is not open to students in the IP-IT track.

Short description

This course aims, through a practical approach of the laws relating to copyrights, trademarks, patents and trade secrets (know-how), to examine the protection provided by the law in regards to ideas, inventions, information and other forms of creative effort. The course will provide insight and will consider basic and practical issues arising from the exploitation and the strategic business use of intellectual property. Students completing this course should have a basic grounding in the law of the area, its limitations, policies, and objectives, including the basic features of the various systems of protection.

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Activities

Written and/or oral exams

Final Exam:

It will consist of an open book test based on one or more hypothetical cases. Only printed materials will be allowed during the exam (no web-browsing or checking documents in electronic format).

Other

2. Class Participation:

Class participation will be calculated on the basis of the “pop-up” quizzes/questions I will give from time to time mostly related to mandatory readings, as well as hypothetical cases presented in class and on class oral interventions.

While grading oral class participation is necessarily subjective, we try to make it as “objective as possible”. Some of the criteria for evaluating effective class participation include:

- a) Is the participant prepared? Do comments show evidence of analysis of the case? Do comments add to our understanding of the situation? Does the participant go beyond simple repetition of case facts without analysis and conclusions? Do comments show an understanding of theories, concepts, and analytical devices presented in class lectures or reading materials?
- b) Is the participant a good listener? Are the points made relevant to the discussion? Are they linked to the comments of others? Is the participant willing to interact with other class members?
- c) Is the participant an effective communicator? Are concepts presented in a concise and convincing way?

Attendance:

Attendance is mandatory. Students who miss 2 or more sessions will fail the class. Late attendance is not allowed.

Readings

Readings:

In the course Moodle you will find, session by session, the required readings. During the course, the professors will also suggest and post, from time to time, other non-mandatory readings and resources for those wishing to explore themes more in-depth.

Case study resolution

1. Writing assignments:

Take home resolution of 2 hypothetical cases:

- In groups of 4-5 students. The groups will be freely chosen by the students, but must remain the same for both hypotheticals.
- The hypothetical cases will be provided via moodle at least 5 days prior to the due date.
- Maximum length indicated, as the case may be, must be respected.
- Students (only 1 from each group) are expected to submit their resolutions via moodle by their due dates. In addition, on the date of the in class resolution each group must bring one printed copy to class.
- The teacher may also ask individual questions about the hypothetical during the class, which will be part of the grade.

Hypothetical submission deadlines:

1st hypothetical:

2nd hypothetical:

Students (only 1 from each group) are expected to submit their resolutions via moodle by their due dates and to complete the course according to the published class schedule. Must bring a printed copy to class.

If you fail to deliver the case, the case will be marked with a 0. Late assignments will not be accepted. Not negotiable.

Content

#	Topic
1	Introduction to the course. Intellectual Property: concept and differences in terminology. Overview of different Intellectual Property Rights. Purpose of protection. Coexistence of Intellectual Property Rights
2	Patents v. Trade Secrets Copyright basics. Legal Framework. Foundations of Copyright protection. The subject matter of Copyright: works of authorship. Originality.
3	Idea-expression dichotomy. Absence of formalities: advantages of registration. Author's rights: exploitation rights v. moral rights. Exclusive exploitation rights: right of reproduction, right of distribution and first-sale doctrine, right of communications to the public (what is public?), and right of transformation (aka right to make derivative works).
4	Exclusive exploitation rights (C'ed). Term of Protection. Ownership v. Authorship. Transfer v. Licenses. Key issues when licensing IP rights. Defences. What is a trademark? Types of trademark signs. Principle of Specialty / Purpose of Trademarks. Principle of territoriality. Distinctiveness. Dynamism of distinctiveness: vulgarization of trademark and acquired distinctiveness. Securing Protection. Grounds for rejection (or invalidity).
5	Resolution of Hypothetical No. 1 *** What is a trademark? (C'ed)
6	The trademark Rights. Special rights conferred by well-known Brands. Defences. Life of a Trademark. Risk/Likelihood of confusion, association, and dilution. Defences.
7	Basics about Domain Names and conflicts between Trademarks and Domain Names. PATENTS. What is a patent? Patentability requirements. Industrial Application (utility), Novelty, and Inventive Step (non-obviousness). Sufficiency of disclosure. Inventorship v. Ownership. Duration. The patent rights.
8	Resolution of Hypothetical No. 2 Patents (C'ed) Inventorship v. Ownership. Duration. The patent rights. Direct and indirect infringement. Literal infringement. The doctrine of

#	Topic
8	equivalence. Defences. Private use. Experimental use. Types of patents based on territory: PCT, European Patent, Unitary Patent, and national patent: defining the best strategy for maximizing protection.

Assessment

Tool	Assessment tool	Category	Weight %
Quizzes/tests	Resolution of 1st Hypothetical	Retake and ordinary round	25.00%
Quizzes/tests	Resolution of 2nd Hypothetical	Retake and ordinary round	25.00%
Participation in program activities	Class participation	Retake and ordinary round	10.00%
Quizzes/tests	Final Exam* To pass the class, the student must have a minimum of 4/10 in the Final Exam.	Retake and ordinary round	50.00%

PROGRAMS

- 113-Law Exchange Program (Undergraduates: Law)
 - 113 Year 1 (Optative)
- DD05-Double Degree Program (exchange) (Undergraduates: Law)
 - DD05 Year 1 (Optative)
- LIB23-Master of Lifelong Learning in International Business Law (Masters: MUA)
 - LIB23 Year 1 (Mandatory)
- MUA23-Master in Professional Legal Practice and Procuring (Masters: MUA)
 - MUA23 Year 1 (Optative)