

Prof. Andrew Chin
Law 286.1
www.andrewchin.com
chin@unc.edu

Fall 2023 Syllabus
University of North Carolina School of Law
Room 3025
MTh 10:25-11:50 (3 credit hours)

PATENT LAW

Description

This course provides an introduction to essentially all aspects of patent law and practice, including the legal doctrines, public policies, and intellectual perspectives that inform the practices of patent prosecution, counseling, and litigation. You will initially develop an understanding of the form and substance of the patent instrument, with particular attention to the claims that define the substantive scope of the patent grant. You will then study the statutory requirements for obtaining a patent grant, including subject matter eligibility, utility, novelty, nonobviousness, and adequacy of disclosure. You will also learn the procedures, both before and after the patent grant, that are relevant to the acquisition and maintenance of patent rights. Finally, you will examine the law governing patent infringement, including literal infringement and infringement under the doctrine of equivalents, as well as the applicable defenses and remedies.

Teaching Approach

My classroom instruction employs a combination of lecture and Socratic questioning, with the aim of providing the conceptual scaffolding necessary for you to engage the material before inviting you to inform the discussion. My aim in questioning you is to provoke critical thinking, self-directed learning, and a search for the connections between the detailed facts of a case and the deeper principles it illustrates. Eventually, such questioning should become a habit of mind, so that you will independently be able to incorporate legal materials efficiently and critically into your knowledge base and work product.

Course Materials

The casebook is MARTIN J. ADELMAN ET AL., *CASES AND MATERIALS ON PATENT LAW* (5th ed. 2019), published by West Group. You should also print out a copy of the Patent Act (including pre-AIA provisions) from the link on the course Web site (<http://unclaw.com/chin/teaching/patent/>). Supplemental readings will be handed out in class, distributed via Sakai, and/or linked from the course Web site. I will not be using Sakai except to email the class and distribute materials between class sessions.

Prerequisites

None. Comfort with reading scientific and technical literature written for a popular audience is helpful.

Course Format and Reading

Lectures and discussion will consume the bulk of our class time. Assigned readings for this class may total as much as 50 pages per week. Plan accordingly and read ahead whenever possible, especially before the Tuesday classes. You are responsible for reading ahead and being prepared to discuss approximately one unit per class meeting. I will call on students present at random. If you are unprepared and wish to be spared being called

on in class, you may email or speak to me before class and I will do my best to remember not to call on you.

Class Participation

The class session numbers indicated in the Order of Topics table are approximate; you are assured of “safety” by reading and being prepared to discuss the materials one unit ahead.

If you are unprepared and wish to be spared being cold-called, you may email or speak to me before class and I will do my best to remember not to call on you.

Do not use your computer, smart phone, e-reader or similar device in a way likely to distract others. This includes browsing to Web sites unrelated to antitrust law, chat rooms, e-mail, or other uses not related to note-taking for class or viewing of course materials.

Grading

There will be a three-hour open book, open notes final examination on **Wednesday, December 6 at 9 p.m.**, which will be graded in accordance with the Law School’s curve for small classes. Past examinations are available via the Law Library Web site and My Carolina Law. Your participation grade will be A+, which will count for between 0% and 20% of your final grade, based on the overall quality of your participation via in-class discussion and/or response papers. (High-quality participation reflects time, effort and study on *your* part, as contrasted with reliance on the efforts of others.) The examination likely will consist of three or four questions, at least one of which will involve some discussion of theoretical and/or policy issues, and the remainder of an issue-spotting variety.

Attendance

As a small class exploring a specialized area of law, our class will require the attendance, punctuality and consistent participation of all students. Please use the self-reported attendance function on <http://unclaw.com> to record your attendance. All classes will be recorded.

The names of students who have accumulated six or more absences during the semester will be brought to the attention of the Associate Dean for Academic Affairs. Under the Law School’s attendance policy (<https://law.unc.edu/academics/academic-policies/>), a student must attend at least 80% of the required meetings; i.e., 21 of our 26 meetings. A student who does not do so presumptively fails the course. To avoid failing the course, students can make up certain missed course meetings, as described below.

Some absences are excused. Excused absences personal/family illness or emergency including COVID-related situations, pregnancy or disability as approved by Accessibility and Resource Services, and up to two religious observances under the Law School’s policy.

If you accumulate so many excused absences that you cannot meet the 80% minimum, you may make up absences to bring your number of attended classes up to 10. Making up an excused absence includes viewing the entire recorded class, turning all assignments and any other written work completed by the students in attendance, and working with your partner as necessary to ensure that both of you can timely complete all subsequent coursework. If possible, you should view the recording for a missed class session before the next class session.

Please send me a timely email notifying me of any absence, whether excused or unexcused. Please also send me an email once you have completed the necessary work to make up any excused absence(s).

If you have attendance-related questions or concerns, please contact Allison Standard Constance in the Student Development Office.

Honor Code

The Honor Code is in effect in this class and all others at the University. I am committed to treating Honor Code violations seriously and encourage all students to become familiar with its terms set out at <http://instrument.unc.edu>. If you have questions, it is your responsibility to ask me about the Code's application. All exams, written work and other projects must be submitted with a statement that you have complied with the requirements of the Honor Code in all aspects of the submitted work.

Office Hours

Room 5079, Mondays 12-1, preferably with advance notice. Please email me at chin@unc.edu if you need to schedule a different time. Please do not rely on my office voicemail for time-sensitive matters.

Diversity and Inclusion

In this course we will study law as it has been written, interpreted, and enforced in the past, but we will also study the value choices that have influenced the creation of that law and how it could be reformed to achieve different and perhaps more effective forms of justice. When discussing such topics, as with discussions on all topics, I value the perspectives of individuals from all backgrounds reflecting the diversity of our students. The term "diversity" in this statement refers to race, gender identity, national origin, ethnicity, religious, social class, age sexual orientation, political beliefs, and physical and learning ability.

In class discussion, students are encouraged to share their own experiences as they relate to the course; however, no student is expected to speak for anyone or anything other than their own experience or point of view. Please remember to give one another the benefit of the doubt, including in situations in which we inadvertently fail to express ourselves as sensitively as we might. We must also never forget that another person's humanity cannot be up for debate.

I am given a class roster with students' legal names, and I will gladly honor a request to address you by whatever name or gender pronoun you prefer. Please advise me of this preference early in the semester so that I may make appropriate changes to my records. Please also let me know if there is anything I can do to improve.

Accommodations and Accessibility

The University of North Carolina at Chapel Hill facilitates the implementation of reasonable accommodations, including resources and services, for students with disabilities, chronic medical conditions, a temporary disability or pregnancy complications resulting in difficulties with accessing learning opportunities. Accommodations are determined through the Office of Accessibility Resources and Service (ARS) for individuals with documented qualifying disabilities in accordance with applicable state and federal laws. See the ARS Website for contact information: <https://ars.unc.edu> or email ars@unc.edu. Relevant policy documents as they relate to

registration and accommodations determinations and the student registration form are available on the ARS website under the About ARS tab.

Discrimination and Harassment

Acts of discrimination, harassment, interpersonal (relationship) violence, sexual violence, sexual exploitation, stalking, and related retaliation are prohibited at UNC-Chapel Hill. If you have experienced these types of conduct, you are encouraged to report the incident and seek resources on campus or in the community. Resources include the Director of Title IX Compliance or Director of Equal Opportunity and Compliance and Title IX Coordinator (eoc@unc.edu), Report and Response Coordinators (reportandresponse@unc.edu), Counseling and Psychological Services (CAPs) (confidential) in Campus Health Services, or the Gender Violence Services Coordinators (gvsc@unc.edu) to discuss your specific needs. Additional resources are available at safe.unc.edu.

Counseling and Psychological Services

Counseling & Psychological Services (CAPS) is strongly committed to addressing the mental health needs of a diverse student body through timely access to consultation and connection to clinically appropriate services, whether for short or long-term needs. Go to CAPS or visit their facilities on the third floor of the Campus Health Services building for a walk-in evaluation or call (919) 966-3658 to learn more.

Show and Tell Assignment (Class 3)

Find a household object, preferably one that you can bring to class, that is marked with a U.S. Patent number. (*Optional:* For more on the significance of marking, read pages 993-1001 of your casebook.) Then visit the U.S. Patent Office Web site (www.uspto.gov) and print out the full text of the patent document. (You can also use google.com/patents, but do familiarize yourself with the USPTO site.) Be prepared to discuss the object and the document with your practice group.

Order of Topics

The principal cases are listed for your convenience; however, you are also responsible for all material on the pages listed, whether or not it is covered in class. We will not meet Friday, Oct. 11; makeup date/time TBA. **Other minor revisions to this syllabus are likely; they will be announced in class and posted on the class Web site.**

Invitation to the Course

1	Legal Foundations of the Patent System	1.2–1.4[a]	5–36	Bergy
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Is the Patent Bargain a Good Deal for the American Public?

2	Rationales for the Patent System; Show and Tell Exercise	1.4[a], 1.5	39–53, Readings on Patent Valuation	
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The Inventor's Part of the Bargain: A Legally Complete Patent Application [§ 112]

3	Claims	11.1–11.2	639–59	Fressola, Catalina
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4	Claim Drafting Exercise			
5-6	Enablement	8.1	411–42	Gould v. Hellwarth, Atlas Powder, Wright, Pharmaceutical Resources
7-8	Written Description; Best Mode	8.2, 8.3	442–81	Vas-Cath, Ariad, Chemcast

Timing of the Patent Application: Anticipation and Novelty [§ 102]

9-10	Anticipation; Public Use	4, 5.2[a]	169–209	Titanium Metals, Schering, Egbert, Metallizing
11-12	“On Sale”; “Otherwise Available to the Public”	5.2[b–d], 5.3	Handout, 209–55	Pfaff, Medicines, Lister, Milburn, City of Elizabeth
13-14	Prior Invention; The Elements of Invention; Other First-to-Invent Provisions	6.1–6.4	257–304	Woodcock, Gillman, Oka, Scott, Gould, Apotex

Nonobviousness [§ 103]

15-16	Nonobviousness	7.1–7.3	305–13, 317–75	Hotchkiss, Graham, KSR, Translogic, Orexo, Transocean
17	Analogous Arts; Nonobviousness Exercise	7.5	396–406, Handout	Innovention, Deuel

Patentable Subject Matter and Utility [§ 101]

18-19	Patentable Subject Matter: Biotechnology	2.1	73–110	Chakrabarty, Mayo, Myriad
20	Patentable Subject Matter: Information Technology	2.2	110–31	Benson, Alice
21	Utility: General Principles	3.1	133–53	Lowell, Juicy Whip, Brenner

Infringement [§ 271]

22-23	Claim Construction; Literal Infringement	12.1–12.2	715–57	Autogiro, Markman, Teva, Phillips
24-25	The Doctrine of Equivalents (time permitting)	11.3–11.4	765–801	Graver Tank, Warner-Jenkinson, Corning, Festo
26	Indirect Infringement (time permitting)	12.5	812–23, 834–39	Global-Tech, Akamai