**UNIVERSITY OF CALIFORNIA, BERKELEY SCHOOL OF LAW**

**The Business of IP (Law 279.3 - 2 units)**

 **Fall 2023**

**Jeffrey Ostrow**

**jeffostrow@gmail.com**

**650-269-7471**

**Monday 3:35-5:25 PM**

**Room Law 145**

**Zoom (if necessary): Meeting ID 580 596 9218; PW 108386**

**Office Hours: Mondays 2:30-3:30 PM or by appointment**

[**bCourse Link**](https://bcourses.berkeley.edu/courses/1525736)

**Learning Outcomes**

Problem-solving and strategic thinking and planning relating to real-world IP issues; thinking critically about where IP is headed and how to plan appropriately.

**Background**

From patent monetization entities and IP-driven corporate transactions, to global data and privacy policy, to how to approach the uncomfortable clash between AI and IP, lawyers are increasingly called upon to examine an ever-changing business landscape and help craft IP strategy that aligns with a set of business, policy and even cultural goals. This course will explore how one approaches and makes those decisions.

This class will examine not only how to create a strategy around IP, but also how IP is perceived, misperceived, used, misused, understood and misunderstood. It will look at how the best-laid plans to monetize IP have succeeded and failed, and occasionally, how some just get lucky. We will look at the business of IP in litigation, transactional, and policy contexts.

**Readings/Media**

Weekly course readings or other media, sometimes from very unlikely sources, will be posted to (or linked via) bCourses. Readings will generally run 15-25 pages per class, and will be integrated with class discussion. Things can change quickly in this space so assigned readings may change as well. I have listed some essential readings in the weekly rundown below, but keep in mind, these may also change.

**Grading Policy**

The course will be graded on the NC/PC/P/H/HH system. Your final grade will be determined based on the following elements and percentages:

**Participation: 25%**

* As will be clear from the very first reading we do, communication and engagement constitute a core element of creating and setting IP strategy. Please come to class every week having read all of the assigned material and prepared to engage in meaningful discussion about it. The goal is not to regurgitate what we’ve read, but to dive deeper; come with your own questions and be ready to answer mine and those of your classmates. I expect everyone to participate and I will call on students as necessary to keep an active discussion going.

**Presentation & Papers: 75 %**

* **Presentation:**
	+ During the first week of class, students will sign up on an online calendar to make a 15-minute (no longer!) presentation on a syllabus-related topic, accompanied by a presentation deck.
	+ Three students will present each week; they should coordinate with one another to make sure there is no significant overlap of presentation topics. (Students have used WhatsApp successfully in the past, but any type of communication is fine.)
	+ Google Slides format preferred; PowerPoint also OK. Please consider font size, background colors, amount of text on each slide, etc., so your slides are legible and informative when presented in a classroom on a screen.
	+ Student-chosen presentation topics should use the week’s syllabus topic and assigned readings as a springboard for further exploration into the subject matter. In other words, students should find different angles and additional materials from which to approach the week’s focus area. (Presentations are not about the week’s reading, but expand on it.)
	+ Presentation decks are due before class and should be emailed to jeffostrow@gmail.com with student name and “presentation” in subject line.
* **Two Papers**
* **First paper**: On the student-chosen topic that is the subject of the 15-minute class presentation described above.
	+ Due the Friday after the presentation by the end of day.
	+ Should incorporate any helpful feedback to the presentation from the professor or classmates.
* **Second paper:** Assigned by professor sometime during the semester and due on the last day of finals.
	+ Although all students will write on the same general topic, there will be ample opportunity to approach the subject matter from different angles.
* **General expectations/guidelines for papers**
	+ 10-12 pages each, not including supplementary materials (pictures, graphs, etc.).
	+ Double-spaced, written in 12-point Times New Roman or 11-point Arial font, with 1-inch margins.
	+ Formal Bluebooking citation is not necessary; just be clear and consistent regarding sourcing.
	+ Proofread! Seriously.
	+ This is a course about IP strategy, not just case law and the thoughts of the authors we have read; don’t just summarize relevant readings – explore the impact new developments in law and technology will/should have on business decisions, strategy and legal approaches. Have opinions!

| **Class** | **Topic** | **Readings/Media - *Subject to Change*** |
| --- | --- | --- |
| **Week 1 - 8/21/23** | **How Should We Use IP?** | 1. *Strategic Management of Intellectual Property*, Fisher & Oberholzer-Gee, Cal Management Review, Vol 55 No 4 @157
2. *When it Comes to Intellectual Property, Netflix Has a Different Approach Than Disney,* Motley Fool (Video)
 |
| **Week 2 -** **8/28/23** | **What Can We Observe from the Outside?**  | 1. *Facebook Patents Reveal How it Intends to Cash in on Metaverse*, FT Jan 17, 2022
2. *Huawei turns to patents for a lifeline - including those in the U.S.,* CNBC, Feb 5, 2023
3. What’s going on at Peloton?
4. What are Ford and MSFT up to?
	1. Ford and powering your house
	2. MSFT tracking “down” time
 |
| **Week 3 -****9/11/23** | **People Really Buy IP?** | 1. Buying a company: Amazon and the Roomba
	1. *Amazon is buying Roomba vacuum maker iRobot for $1.7 billion*, NPR, Aug 5, 2022
2. Buying some patents:
	1. Recent: Various articles on Intel’s recent IP strategy
	2. Historical: The Journey of the Moto Mobility Patent Portfolio (various blogs and articles)
3. What is going on with Blackberry? *Collapsed BlackBerry-Catapult patent sale sparks litigation, arbitration,* IAM, June 6, 2023
 |
| **Week 4 -** **9/18/23** | ***Apple v. Samsung* resulted in What? OpCo Patent Strategy** | 1. Explore most recent developments in *Sonos v Google*
2. *The Permission Problem*, Surowiecki, New Yorker, Sept 8, 2018
3. *The Rise and Fall of the First American Patent Thicket*, Mossoff, Arizona Law Review, Vol 53 @ 165
 |
| **Week 5 -****9/25/23** | **So you Got a Letter from Something Called IntVen: The Strategy of Dealing with (or Being) an NPE** | 1. *When Patents Attack*, NPR Podcast in Two Parts
2. *The Feds Can Stop Patent Trolls from Endangering COVID-19 Testing and Treatment*, EFF, March 25, 2020
 |
| **Week 6 -** **10/2/23** | **Do We Ever Learn From Our Mistakes? The Business of Music Copyrights** | 1. *Napster: The Culture of Free*, NY Times Video, Dec 9, 2014
2. *In the Spotify era, many musicians struggle to make a living*, WaPo, Feb 4, 2023
 |
| **Week 7 -****10/16/23** | **Embed This. The Rest of the Copyrights** | 1. *Is Tech Supporting Google? It Sure Doesn’t Appear So*, Glueck, Oracle Blog, Feb 17, 2020
2. Instagram 9th Cir Opinion, July 17, 2023
 |
| **Week 8 -****10/23/23** | **Should I Swim in the Community Pool? Plus: SEPs, [F]RAND, IEEE, 3GPP, ETC…: Standards** | 1. *How Licensing Standard-Essential Patents Is Like Buying a Car*, Sidak, WIPO Magazine
2. An Exploration Through the IEEE’s Policies and Procedures on Standards
3. *How patent pools have fuelled technology licensing,* IAM Nov 30, 2022
4. *An Insider’s Guide to Patent Pools*, Rijnen, IAM March 3, 2020
5. *Has the Promise of Patent Pools Dried Up,* Siegel, IAM Magazine, Autumn 2019 @ 66
 |
| **Week 9 -** **10/30/23** | **Just Do It: The Business of Trademarks** | 1. *Trademark Disputes Could Mean Elon’s ‘X’ Is Already Fxxked,* Gizmodo, July 25, 2023
2. *Trader Joe’s sues its Union,* Complaint Case 2:23-cv-05664, filed July 13, 2023
3. *How Driscoll's Reinvented the Strawberry*, Goodyear, New Yorker, Aug 21, 2017
 |
| **Week 10 -****11/06/23** | **Your Overlord Wants a Patent and Your 10 Year-Old Nephew Wants a Copyright: IP and AI** | 1. *The AI boom is here, and so are the lawsuit*s, Vox, Feb 1, 2023
2. What goes in? *Sarah Silverman v. Meta,* ND CA Case 3:23-cv-03417, filed July 7, 2023
3. What comes out? *Doe v Github*, ND CA Case 3:22-cv-06823, filed 11/3/22
4. Explore the Artificial Inventor Project
 |
| **Week 11 -** **11/13/23** | **Satoshi Nakamoto, A Musical: Blockchain** | 1. *Bitcoin: A Peer-to-Peer Electronic Cash System*, Nakamoto, bitcoin.org, 2008
2. Explore the ongoing Saga of Craig Wright
 |
| **Week 12 -** **11/20/23** | **COVID 19 and IP**  | 1. *Pharmaceutical Profits and Public Health Are Not Incompatible*, Hemel, NY Times Op Ed April 8, 2020
2. *COVID-19 Medical Countermeasures: Intellectual Property and Affordability*, Congressional Research Service, March 18, 2020
 |
| **Week 13 -** **11/21/23** | **What’s It Gonna Take? Lobbying and IP** | 1. Tracking MMA Legislation Through Passage
2. STRONGER Patent Act (proposed)
 |
| **Week 14 -****TBD** | **"There's just not that many videos I want to watch" (Steve Chen, co-founder of YouTube)** **What Does the Future Look Like?** | 1. *Steve Jobs, Rolling Stone’s 2003 Interview*, Rolling Stone (Republished Oct 6, 2011)
2. *For the Love of Culture*, Lessig, New Republic, Jan 25, 2010
 |