

Instructor's Manual and Test Bank

to accompany

**Intellectual Property for Paralegals:
The Law of Trademarks, Copyrights,
Patents, and Trade Secrets
(Fourth Edition)**

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INTRODUCTION

Introduction and Keeping Current. Teaching an intellectual property (IP) class is exciting and challenging. Students typically display great enthusiasm and interest in trademarks, copyrights, and patents, having been exposed to brand names, logos, books, songs, and new products since childhood. The challenge for the instructor in teaching the class is keeping current with new developments in the field. Whereas some areas of law are relatively static and allow instructors to teach most of the same material from semester to semester, the field of IP changes so rapidly that it presents unique challenges to teachers. The intersection of the Internet with trademarks (domain name protection) and copyrights (unauthorized dissemination of materials, downloading of music, and security issues) has created a new field of law, often referred to as “cyberlaw.” Similarly, computer-related developments and the Leahy-Smith America Invents Act of 2011, which resulted in sweeping changes to patent law, have changed the landscape of patent law.

In addition to subscribing to conventional legal newspapers and journals, I have found it helpful to subscribe to various Internet journals (such as that provided by GigaLaw at <http://www.gigalaw.com>) that provide information and updates on IP topics. These updates provide a snapshot of newly emerging issues and often give citations to recently decided cases. Most, if not all, of the services are provided free of charge. Finally, because most of the cases in the IP field are from the federal courts and coverage of federal court cases is quite good on the Internet (at least for recent cases), those cases can be obtained and printed at no cost with a simple keystroke. Although many of the sites identified in the text (such as those for the U.S. Patent and Trademark Office [USPTO] and Copyright Office) offer an excellent introduction, some other sites are more suited to instructors, and those will be presented at the end of this section.

The Text. The text is arranged in a building-block approach. The first chapter provides an introduction to the four types of IP (trademarks, copyrights, patents, and trade secrets) and to the government agencies responsible for registering trademarks and copyrights and issuing patents. Each of the next major sections is devoted to one of the four IP fields, and each field

is covered in a “life cycle” approach. For example, the trademark section of the text starts with basic introductory information, discusses searching and registration of marks, transfers, infringement, and then concludes by discussing new developments in the field and international protection of trademarks. Copyrights, patents, trade secrets, and unfair competition are each treated in the same fashion.

Trademarks are presented first because the material is straightforward and students are keenly aware of and interested in brand names, logos, and slogans. Once students have mastered trademarks, they will be ready to move on to the more complex subject of copyrights, and then to the most complex of the IP fields, that of patent law. Thereafter, the more readily understandable topic of trade secrets is presented. The text ends with a chapter on the basics of unfair competition and then information on conducting an IP audit.

Teaching the Text. There is no doubt that the text is lengthy; however, the information is fairly straightforward and students are typically sufficiently interested in the material to read the text and prepare for class. In fact, one obstacle to covering all of the material is that students are often so interested in some topics that class discussion and questions are frequent and enthusiastic. As always, instructors will likely have a delicate balancing act between encouraging discussion and covering the material. Although case studies and discussion questions are presented at the end of each chapter (and suggested answers are included in this Manual), it may not be possible to review these thoroughly in class. In that event, students can be encouraged to meet weekly in small study groups to discuss the questions among themselves. You may then wish to photocopy and circulate the suggested answers provided in this Manual.

Although the text is introductory in its focus, it covers a great deal of material. Therefore, many instructors may prefer to keep outside readings to a minimum. This will not only reduce stress among students, it will encourage them to focus on thoroughly reading the text. If a breakout case is decided during the course of the semester, students may be given the citation and encouraged to read it. Many instructors bring in journals and newspaper articles of interest to circulate in class.

One significant advantage to teaching IP is that nearly all of the law is federal in nature. Thus, there is no need for instructors to supplement the text with extensive research on their own state's laws (other than information on trade secrets and unfair competition).

Organization of the Instructor's Manual. After the sample syllabus is given, this Manual presents material on each chapter. There are five separate sections for each chapter:

- **Chapter Objectives.** The objectives students should be able to achieve after reading the chapter are given in bullet form.
- **Lecture Notes.** The major points to be addressed by teachers in presenting the material in the respective chapter is broken down into short and separately numbered paragraphs. Teachers can use these Lecture Notes to teach from, if desired.
- **Case Study and Activities.** Suggested answers to the fact problems presented in the case study/activities at the end of each chapter are provided.
- **Discussion Questions.** The discussion questions that appear at the end of each chapter in the text are provided, together with suggested answers.
- **Using Internet Resources Questions.** Suggested answers to the questions that appear at the end of each chapter in the "Using Internet Resources" section are provided.

Description of Test Bank. Following the chapter-by-chapter presentations, a Test Bank is given. More than 600 questions are provided. For each chapter, true-false, short-answer, and some fill-in questions are provided that cover the material presented in each chapter.

Answers are given for each question. There are numerous questions (far too many to use on any one test or in any one semester). Users of the text are therefore encouraged to select a few questions from each chapter group when preparing exams and quizzes. There is a sufficient number of questions to allow for several versions of tests so that instructors can create different versions for different classes or semesters.

Teaching in General. Every instructor has his or her own method of teaching and vastly different methods can each be successful and productive. Although there is no one right way to teach, many experienced teachers agree that some methods consistently work well. For those individuals new to the field of teaching adults, I would offer the following comments, gained from more than 20 years of experience teaching adult learners as well as from other teachers whose methods I greatly admire:

- **Be prepared.** Students can spot an ill-prepared instructor a mile away. Each semester becomes easier to teach, but for your first semester or two, you may need extensive notes prepared in advance. So long as an instructor knows the material and does not read from the text, the class will likely be successful.
- **Follow the syllabus.** Students can deal with almost any assignment, test, or schedule, so long as they know in advance what is expected. Although changes will certainly occur during the course of a semester, consider following your syllabus as carefully as you can and departing from it only when necessary and when you have fully explained why a change is needed. The syllabus should be complete and ready for distribution at the first class session. Alternatively, you may be able to post it on Blackboard or some other similar electronic educational tool. Your syllabus should also state whether you will allow tape recorders or laptops in class.

- **Communicate your expectations.** I was shocked the first semester I taught when a few students turned their assignments in late. I had not thought to discuss the issue of late assignments because it did not occur to me that it might happen. Clearly explain your policies regarding late papers, tardiness, attendance, missing an exam, and so forth *during the first class meeting*. Your institution may have policies regarding these matters. If not, carefully consider what you expect of students. Communicate this and then stick to it. I generally announce during the first class that I will never give one student a benefit or advantage that is not offered to the class as a whole, and therefore papers that are turned in late are subject to a point penalty. Moreover, I explain that courts and government agencies have strict filing deadlines; thus, the sooner students become accustomed to working with time limits, the better prepared they will be for the “real world.” Once again, posting messages and announcements on Blackboard (and including them in your syllabus) is extremely helpful for students who might have a “selective memory” about delicate issues such as tardy policies and so forth.
- **Use as much or as little technology as you are comfortable with.** Some instructors are distinctly low-tech and primarily lecture from their own notes. Others prefer to use overhead projectors or PowerPoint® presentations. Still others are teaching online. So long as the instructor is prepared, communicates clearly, and responds to student concerns and questions, any of these methods will be successful. Again, Blackboard provides an excellent tool for posting syllabi, reminding students of assignment due dates, making announcements about class changes, and so forth.
- **Be flexible.** If you notice students seem overly tired or fidgety, you may need to end the class slightly early and make up the missed material during the next class session. If students have a particularly difficult time with a certain topic, you may need to spend extra time on it. Although sticking to the syllabus lends certainty, the learning experience should be paramount. I often keep a “fun” assignment with me and use it when I notice students are weary. For example, you can consider presenting a list of written product names and then asking students to “draw” the trademark or write the

slogan for that product or service as a lesson in how familiar we are with trademarks and logos. You can identify “famous” inventors (such as Eli Whitney) and then ask students to identify the patent or invention the individual is famous for. Such exercises can present a needed break from substantive material.

- **Learn from experience.** If your institution does not provide you with student evaluations, develop one of your own. Communicate your sincere interest in making the learning experience beneficial to students and ask them to give you reasonable and honest feedback on your methods, your expectations, the assignments, the tests, and grading.
- **Enjoy the experience.** Clearly, no one teaches for the money! The reasons you teach are that you enjoy the interaction with the students, you love the fact that you are imparting useful information, and you relish the learning environment. Try to learn as much in each class as the students do!

Assignments, Tests, and Grading. As discussed earlier, students can accept nearly anything so long as they are prepared for it. Communicate both orally and in writing what the assignments are, when the tests will be given, and provide a grading scale (if one can be given). Although many adult learners are primarily interested in mastering the information presented, nearly every class has a student who displays more interest in the grade than the material. You may wish to take class participation into account in assigning grades. Although the advantage to that approach is that students generally come well prepared for class, the disadvantage is that often some students over-participate to the exclusion of other, quieter students. It may take a semester or two before you develop the perfect mix of assignments, the perfect test, or the perfect grading scale. Decide whether your examinations will be cumulative or noncumulative. The Test Bank provided in this Manual gives numerous questions so you can develop several versions of tests and then rotate them from one class to the next to preserve test integrity. For example, you can label your tests “A,” “B,” and “C,” each of which asks different questions and which you use in the fall, spring, and summer

semesters. Grade the tests as soon as you can and then return them to the students with comments. Generally, a “debrief” session to discuss the test answers facilitates learning.

Directing the Class. Although most questions and class discussions are “on point,” nearly every class will have a student who will speak all session, if allowed. Controlling the classroom can be difficult. If you notice that one student seems to be dominating class time, consider the following: Ask students to hold questions until a certain time when a break in the material is suitable, or mention to the student that the question is slightly outside the topic but that you will be happy to discuss it after class or before the next class, and then move on with the material.

Suggested Assignments. In addition to using the Case Studies and Discussion Questions to stimulate class interest, you may also wish to have students prepare outside assignments. Following are some suggestions.

Trademark Assignments

- Students may access the USPTO website to conduct a search to determine the existence of possible conflicting marks to a mark you make up or a mark you know is registered.
- You can provide students with a trademark application number or registration number and require students to identify the mark, applicant/registrant, and other pertinent information. The students can track and monitor the progress of the application using Trademark Electronic Search System (TESS) throughout the course of the semester. (Note that even students who do not have Internet access will be able to go to any public library for Internet access.)

- Assuming a mark is available, students can be tasked with preparing a trademark application for the mark.
- Students can prepare a variety of documents, including the following: assignments; licenses; a Declaration of Continuing Use; a Statement of Use for an ITU application; a Renewal; a Notice of Opposition (and/or Extension to File a Notice of Opposition); a cease and desist letter; a Petition to Cancel a Trademark Registration; a Complaint for Infringement; a Trademark Settlement Agreement; and so forth.

Copyright Assignments

- Students can be asked to access the Copyright Office website and obtain information about filing fees, special handling, and so forth, or to obtain forms and circulars.
- Students can be required to prepare a copyright application for a book, song, photograph, and so forth, using information you provide them. Half the class can prepare one type of application and the other half can prepare another type of application, using the forms available from the Copyright Office website. Students can later prepare applications for derivative works based on the original work.
- Students can be tasked with preparing various documents used in copyright practice, including the following: licenses; assignments; work made for hire agreements; security agreements; letters informing clients how to mark their copyrighted materials; and so forth.
- Students can be asked to develop an Internet usage policy or website policy for a company to distribute to its employees, warning employees about dissemination or reproduction of copyright materials on the Web.

Patent Assignments

- You can provide students with a patent issue number and require them to locate the patent using the USPTO website and provide you with information as to the owner, type of invention, number of claims, and so forth.
- Once a patent application has been published, students can continue to track and monitor the application.
- Students can prepare documents relating to patents, such as invention disclosure documents, assignments, licenses, cease and desist letters, complaints for infringement, and so forth.
- Students can obtain information from the USPTO and World Intellectual Property Organization (WIPO) websites about PCT applications and processes.

Trade Secret and Unfair Competition Assignments

- Students can be required to prepare a memorandum to employees of a company instructing them about the importance of protecting the company's proprietary information and giving guidelines on how to ensure documents and confidential materials are protected.
- Students can prepare a list of methods to protect trade secrets for different types of businesses (e.g., for a retail store, for a defense consulting firm, for a software development firm, for an investment advisory firm).
- Students can prepare a letter to accompany an idea submission to a company, setting forth their idea about a television program, game show, or the like, including terms requiring the recipient not to use or disclose the idea.

- Students can be required to prepare a Non-Disclosure Agreement with restrictive covenants for a senior employee who will have access to a company's trade secrets, customer lists, and sales techniques.
- Students can be required to prepare advertisements or review advertisements created by you to ensure the following: that claims are “puffing” rather than representations; that discussion of a competitor's products or services is protected “fair use” or permissible “comparative advertising” rather than “product disparagement”; and that there is no improper use of another's trademarks in the ads.
- Students can be tasked with preparing a chart or memo discussing the advantages and disadvantages of different methods for protecting various items of intellectual property. For example, students can consider the best way to protect jewelry or certain fabric designs (which are protectable under both copyright and patent law).

General Assignments

- Have students select a product (e.g., a camera or a watch). They must then get a patent for it, name it and trademark the name, and then develop marketing materials, a song, and so forth, and then copyright these (and review the proposals to ensure they do not constitute false advertising and the like). Such an assignment will demonstrate the truly integrated approach legal professionals must take in protecting clients' IP.
- Students can be asked to present oral presentations (either individually or in groups) on a topic of their choice or on various cutting-edge issues:
 - Music and movie piracy/infringement issues
 - Madrid Protocol
 - Patent Law Treaty and Patent Cooperation Treaty—how have these changed patent law for patent practitioners?

- Statistics and information on IP piracy
- Continuing updates on efforts by the Recording Industry Association of America (RIAA) to stop Internet music downloading and by the Motion Picture Association of America (MPAA) to protect movies
- Congressional action and pending legislation to protect IP, particularly efforts relating to patent reform
- The Leahy-Smith America Invents Act (patent reform legislation of 2011)
- Efforts by U.S. Trade Representative to protect IP
- Section 337 investigations conducted by the International Trade Commission
- Ongoing efforts by the Federal Trade Commission (FTC) to prohibit false advertising
- New developments in IP (Students can be required to subscribe to GigaLaw and then report on new developments, cases, etc., as they occur during the course of the semester.)

Useful Websites for Instructors. Following are some websites that may be of special interest to instructors.

To obtain tips on drafting a syllabus for your class and reviewing other IP syllabi, use a search engine such as Google, and insert the appropriate terms into the search box. You will be directed to several syllabi that have been posted on the Internet.

- <http://www.ilrg.com/students/outlines>. The Internet Legal Research Group offers links to course outlines/syllabi for many courses, including IP courses.
- <http://www.lawprofessorblogs.com>. “Law Professor Blogs” offers resources, news, and information for law school teachers.
- <http://prawfsblawg.blogs.com/prawfsblawg/2007/07/constructing-10.html>. This site, PrawfsBlawg, offers information on constructing a syllabus for an IP class.
- www.internetlibrary.com. The “Internet Law Library” offers extensive summaries of court decisions relating to the Internet. A brief synopsis of new cases is provided as well as more thorough analysis of court decisions.

- The site <http://www.colitz.com/site/wacky/wackyold.htm> offers information about “silly” and “absurd” patents. Some of the patents profiled (e.g., pat. No. 4,022,227 was issued for a “comb over,” specifically, “A Method of Concealing Partial Baldness”) are amusing and may serve to stimulate class discussion.
- <http://www.oblon.com>. This law firm website offers interesting and timely articles and other resources relating to IP topics.
- Three excellent free subscription services offering information on IP-related topics are as follows:
 - <http://www.ipcounselors.com>. This is the site for the law firm Epstein Drangel in New York City. Select “Publications” for articles relating to IP. Follow the instructions on the site to subscribe to issues of the firm’s e-newsletter relating to IP law.
 - <http://www.law.com>. Select “Publications” and then “Publications, E-Alerts.” Follow the instructions on the site to subscribe to a free, weekly, IP-related newsletter.
 - <http://www.gigalaw.com>. This site, called “Internet and Technology News Clips,” offers a free daily e-bulletin relating to new IP issues in the news. Follow the instructions on the site to subscribe.
- <http://www2.honolulu.hawaii.edu/facdev/guidebk/teachtip/teachtip.htm>. This site offers a variety of useful teaching tips.

SAMPLE SYLLABUS

_____ University

INTRODUCTION TO INTELLECTUAL PROPERTY LAW

Spring 2012

Time: Mondays and Wednesdays, 9:00 a.m. to 11:00 a.m.

Instructor: _____
www.xxxx@xxx.com

Required Text: *Introduction to Intellectual Property for Paralegals: The Law of Trademarks, Copyrights, Patents, and Trade Secrets* (4th ed., 2012) by Deborah E. Bouchoux

Course Description: The purpose of this course is to acquaint students with the fundamentals of intellectual property (IP) law. Students will be introduced to the four primary fields within intellectual property: trademarks, copyrights, patents, and trade secrets. At the conclusion of the course, students will fully understand how IP rights are acquired, registered (if necessary), protected, transferred, and infringed. Moreover, students will be introduced to emerging IP topics and introduced to international developments in the IP fields. Students will also learn about drafting various documents used in the IP field.

Tests: There will be three tests in the class, each of which is noncumulative and each of which counts for one-third of your grade. Tests will cover material discussed in class as well as material from the text.

Assignments: Any assignment that is not turned in promptly at the beginning of a class is late. It will automatically be penalized five points and will thereafter be penalized one point for each day (or fraction thereof) thereafter. No assignment will be accepted after seven days unless prior approval has been obtained in accordance with program policies. **NO EXCEPTIONS ARE MADE OR GIVEN TO THIS POLICY. PLEASE DO NOT ASK FOR AN EXCEPTION.** I cannot accept assignments by e-mail/fax.

Grading: There are 400 points possible. Each test is worth 100 points. In addition, each student will draft three practical assignments/documents that are designed to develop paralegal competence: a trademark application, worth 35 points; a copyright application, worth 35 points; and a patent license, worth 30 points. The total number of points you achieve will be divided by four and your grade will be assigned as follows:

95–100	A	70–72	C–
90–94	A–	68–69	D+
87–89	B+	65–67	D
83–86	B	0–64	F
80–82	B–		
77–79	C+		
73–76	C		

SYLLABUS

INTRODUCTION TO INTELLECTUAL PROPERTY

SESSION	TOPIC	ASSIGNMENT
Class 1	Intellectual Property Overview; Introduction to Trademarks	Chapters 1 & 2
Class 2	Trademark Searching and Registration; Post-Registration; Trademark Transfers	Chapters 3, 4, & 5
Class 3	Inter Partes Proceedings; Infringement; Dilution; New Developments; International Trademark Law	Chapters 6, 7, & 8 Trademark App. due
Class 4	TRADEMARK EXAMINATION	
Class 5	Introduction to Copyrights; Exclusive Rights of Copyright Ownership	Chapters 9, 10, & 11
Class 6	Copyright Ownership; Transfers; Duration; Registration; and Infringement	Chapters 12, 13, & 14
Class 7	New Developments in Copyright Law; International Copyright Law	Chapters 15 & 16 Copyright App. due
Class 8	COPYRIGHT EXAMINATION	

Class 9	Introduction to Patents; Patent Application and Post-Issuance Process; Patent Ownership and Transfer	Chapters 17, 18, & 19
Class 10	Patent Infringement; New Developments; International Patent Law	Chapters 20 & 21 Patent License Due
Class 11	Trade Secrets; Unfair Competition; IP Audits	Chapters 22, 23, & 24
Class 12	PATENTS, TRADE SECRETS, UNFAIR COMPETITION EXAMINATION	

CHAPTER 1

Introduction to Intellectual Property Law

CHAPTER OBJECTIVES

After reading this chapter, students should be able to:

- Distinguish the four types of intellectual property
- Explain the rationale for the protection of intellectual property
- Understand how rights to some intellectual property (trademarks, copyrights, and trade secrets) arise from use, whereas rights to patents arise only from issuance of a patent by the USPTO
- Identify the roles of the USPTO and Copyright Office
- Understand the functions of international organizations such as INTA and WIPO and identify the treaties that protect intellectual property

LECTURE NOTES

Major points to be addressed in presenting the chapter materials include the following:

1. Intellectual property protects creative endeavors and is thus said to be intellectual. It is distinguishable from real property and personal property.
2. The protection of intellectual property is necessary to stimulate and promote further creativity. Authors, musicians, and inventors would have no incentive to engage in creative effort if the fruits of their work could be misappropriated by others.
3. There are four types of intellectual property: trademarks, copyrights, patents, and trade secrets.
4. Trademarks:
 - Definition: a word, name, symbol, or device used to indicate the origin, quality, and ownership of a product or service (the term “trademark” refers to a product, whereas the term “service mark” identifies a service).
 - Trademarks are governed by the Lanham Act, a federal statute.
 - Function: to provide guarantees of quality and consistency of the products and services they identify.

- Rights arise from use of the mark, although registration offers certain advantages.
- Trademarks can last forever if they are properly maintained.

5. Copyrights:

- Definition: a form of protection granted to authors of original works of authorship, including literary, dramatic, musical, artistic, and certain other works.
- Copyrights are governed by the Copyright Act, a federal statute.
- Function: to allow authors to reap the fruits of their creative effort.
- Rights arise from the time a work is created in fixed form, although registration offers certain advantages.
- Copyrights generally last for the author's life plus 70 years, after which time they fall into the public domain and are free for anyone to use.

6. Patents:

- Definition: a grant from the U.S. government permitting its owner to prevent others from making, using, or selling an invention.
- Patents are governed by the Patent Act, a federal statute.
- Types of patents: utility, design, and plant patents.
- Protection is available only for useful, novel, and nonobvious inventions.
- Patent rights arise only upon issuance of a patent by the USPTO and have a limited duration (20 years from the date of filing of utility patent application).

7. Trade secrets:

- Definition: any valuable business information that, if known by a competitor, would afford the competitor some benefit or advantage.
- No registration process; governed by state statutes and cases and contractual agreements.
- If properly protected, trade secrets may last forever.

8. Other intellectual property rights exist: semiconductor chip protection, vessel hull design protection, plant variety protection, right of publicity and other rights relating to unfair competition (such as passing off, false advertising, and misappropriation).

9. IP rights often intersect and overlap. For example, computer programs are protectable under copyright law, patent law, and perhaps as trade secrets. While marketing materials are being developed they are a trade secret; once fixed they are protected by copyright. Once materials are widely distributed, they lose their status as trade secrets.
10. Agencies responsible for IP protection:
 - USPTO: grants patents and registers trademarks
 - Library of Congress: registers copyrights
11. International organizations, agencies, and treaties:
 - **INTA**: composed of trademark owners and practitioners to promote trademarks
 - **WIPO**: composed of more than 180 member nations; administers various IP treaties and promotes protection of IP throughout the world
 - **WTO**: composed of more than 150 industrialized nations to deal with trade matters, including trade disputes and trade matters related to intellectual property
 - **Berne Convention**: 164 member nations; protects literary and artistic works
 - **Madrid Protocol**: promotes trademark protection for its member countries; United States a member since November 2003
 - **Paris Convention**: facilitates patent and trademark protection for its more than 170 member nations
 - **NAFTA**: adhered to by the United States, Canada, and Mexico and resulted in some changes to U.S. trademark law
 - **TRIPS**: establishes minimum levels of protection that member countries must afford each other with regard to intellectual property
12. IP rights are becoming increasingly important, primarily due to rapidity with which information can be communicated. Piracy of IP rights is becoming an increasing problem, as it causes a loss of revenue to artists, authors, and industry.

Case Study. Your firm's client, Holiday Cruises, Inc., operates a cruise line. Its various ships make both domestic and international cruises. The cruise ships offer a wide variety of activities for their guests and provide on-board restaurants, offshore excursions, and many other entertainment options. When guests check in, they are issued a "Holi-Day Pass," a laminated card that allows them to purchase beverages and other items aboard the ship. Guests also have access to Fit Ship, the fitness centers on board each ship. These fitness centers offer a wide variety of exercise classes and fitness machines and equipment,

including a new type of resistance band created by one of Holiday's employees. Holiday advertises its cruises on television and in magazines, often using a song, "Holidays Ahead," composed by one of Holiday's employees. Holiday is currently considering offering cruises to various ports in Mexico and is conducting confidential market surveys to determine the level of interest in such cruises.

Activities. Identify the intellectual property Holiday might own.

Note to Instructors: It is possible that the trademarks are not sufficiently distinctive to qualify for registration at the USPTO and that the patentable matter is subject to the *on-sale bar* discussed later in the text. Assuming that the marks are not merely descriptive and that the patentable matter qualifies for protection, the following intellectual property rights might be owned by Holiday.

Holiday owns the following intellectual property rights:

Trademarks: Holiday owns trademark rights in any distinctive names, logos, and slogans, including "Holi-Day Pass" and Fit Ship.

Copyrights: Holiday owns copyrights in the script for any commercials and the text for any advertising. Additionally, Holiday owns copyright rights in the song "Holidays Ahead" (assuming that its employee does not retain any rights in the song).

Patents: The new type of resistance band should qualify for patent protection. Additionally, if Holi-Day Pass is an electronic type of card (similar to a credit card), it may qualify for patent protection.

Trade secrets: Holiday's plans to expand its cruise offerings into other ports are likely trade secrets because they provide Holiday with a competitive edge—if competitors knew about these plans, Holiday would likely be damaged by not being the first to enter the market in the Mexican ports. So long as the plans and surveys are treated confidentially and reasonably protected by Holiday, they qualify as trade secrets.

Discussion Questions – Chapter 1

1. Singer and composer Katy Perry was born in 1984 and cowrote her hit song "Hot N Cold" in 2008. When will the copyright in this song expire?

The copyright will expire 70 years after the author's death.

2. The trademark JOHN DEERE was registered for plows and lawn mowers with the USPTO in 1913. How long will protection for this mark last?

If the registration for the mark is properly and timely renewed, the registration can endure perpetually.

3. Kylie Harrison has invented a new type of camera and intends to call it CUTIE CAM in various advertising and marketing materials. The specific plans for the launch of the product are known only to Kylie and the company she has hired to publicize CUTIE CAM. Identify the types of intellectual property rights Kylie owns.

The camera itself is patentable. Its name, CUTIE CAM, should be protected as a trademark. The advertising and marketing materials are copyrightable. The specific plans for the launch of the product appear to be kept on a confidential basis by the people who need to know them, and thus they should qualify as trade secrets.

4. Determine whether the following items are protectable as trademarks, copyrights, patents, or trade secrets:

- The Lacoste alligator that is displayed on men's and women's clothing

Trademark

- The book *The Help*, written by Kathryn Stockett

Copyright

- Journal entries prepared on a computer word processor by Secretary of State Hillary Clinton

Copyright (the work need not be published to be protectable)

- A new device that removes dents from cars

Patent

- AMERICAN IDOL, used in connection with a television talent show

Trademark

- A new song composed by Taylor Swift

Copyright

- A company's plans to test market its new television

Trade secret

5. American author Nathaniel Hawthorne published his novel *The Scarlet Letter* in 1850, 14 years before his death in 1864. May a movie based on the novel be made without permission or is the novel still protected by copyright protection?

Yes. The copyright for the work has long expired. Mr. Hawthorne died in 1864; thus, copyright for the novel expired many years ago. The present term (author's life plus 70 years) is the most generous of the copyright terms granted by federal law (the term differed at the time Mr. Hawthorne was alive). Thus, even under the current generous copyright term, copyright expired in 1934, and the work "fell into" the public domain at that time, and thus is free for anyone to use.

6. The novel *True Grit*, originally published in 1968, has seen a resurgence in popularity after the movie was remade in 2011. The author of the novel, Charles Portis, was born in 1933. When will the rights to this novel fall into the public domain?

The rights to the novel will fall into the public domain 70 years after the author's death.

7. Steve filed a patent for his new refrigerator on April 5, 2009. The patent was granted by the USPTO on July 14, 2010. What is the term of protection for this item?

Patent rights exist for 20 years after the date of filing of the application for patent. Thus, this patent will expire on April 5, 2029.

8. Hannah filed a design patent for a necklace on August 12, 2010. The patent was granted by the USPTO on September 10, 2011. What is the term of protection for this item?

Design patent rights exist for 14 years from the date of grant of a design patent. Thus, this patent will expire on September 10, 2025.

Using Internet Resources – Chapter 1

1. Access the website of the USPTO.
 - a. Locate the Glossary. What is the definition of a trademark?

A trademark protects words, numbers, symbols, sounds, or colors that distinguish the goods and services from those manufactured or sold by others and to indicate the source of the goods. Trademarks, unlike patents, can be renewed forever as long as they are used in commerce.

- b. Locate the FAQs for the Madrid Protocol. What is the duration of an international trademark registration under the Madrid Protocol?

The duration is 10 years from the date of registration (although it may be renewed for additional 10-year periods by paying a renewal fee to the International Bureau).

- c. What is the basic filing fee to file a utility patent application?

The basic filing fee is \$330 (\$165 for small entities). If a small entity files electronically, the basic fee is \$82.

2. Access the website of the Copyright Office. Review the FAQs.

- a. Can a domain name be copyrighted?

No. A domain name cannot be copyrighted.

- b. Can a website be copyrighted?

Yes. The original authorship appearing on a website may be protected by copyright. This includes writings, artwork, photos, and other forms of authorship protected by copyright.

- c. Does a work have to be published to be protected under copyright law?

No.

3. Access the fee schedule for the U.S. Copyright Office. What is the fee to electronically file a basic claim of copyright? What is the fee if one files a paper application, using Form TX?

The fee for electronic filing of a basic claim of copyright is \$35. The fee for filing a paper application using Form TX is \$65.

4. Access the Factsheets posted on the website of the U.S. Copyright Office. Are the ingredients for a recipe for spinach salad copyrightable? If the recipe is included with others in a cookbook that also includes illustrations and text, is the product copyrightable?

The ingredient listing is not copyrightable. The collection of recipes in a cookbook that is accompanied by illustrations and text is copyrightable.

5. Access the U.S. Code. What is the subject matter of 17 U.S.C. § 105?

The subject matter relates to works owned by the U.S. government and provides that copyright protection is not available for works of the U.S. government.