

University of Houston Law Center

Fall 2014 Course Syllabus

Procedure for Patent Litigation - 5:30-7:30PM (M)

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Office Hours: With respect to office hours, please email me and I can arrange to meet you the following Monday either before or after class.

Materials: Kimberly A. Moore et al. Patent Litigation and Strategy (3d ed. 2008) or (4th ed. 2013).¹ Additional materials will be provided separately.

I. Overview of Course

- A.** The Course will focus on how to litigate a patent case in a district court and the relationship of the district court and Federal Circuit in patent litigation. In particular, the course will examine a hypothetical patent case from the pleadings all the way up through Markman and to Trial and focuses on the hands-on issues that patent lawyers face in their day to day preparation.
- B.** The goal is to provide the students with an overall process for how a patent case is conducted all the way through trial.
- C.** The course will also require students to draft documents that are typically used in patent litigation.

II. Assignments

- A.** The assignments for each week are noted below. Additional materials will be identified as needed and will include patents and related files, as well as additional cases.

III. Grading and Evaluation

- A.** Drafting of Materials - these assignments will count towards your final grade. These documents will be based on an actual patent dispute.
 - 1.** Preparing a complaint and answer - 20%

¹ Please note that a new Fourth Edition of this book has been published. The page numbers assigned below reflect the third edition of the book. We will revise the page numbers to reflect the assignments for the newer edition. If you prefer to use the third edition, we do not anticipate that being an issue so long as you can complete the assignments.

2. Drafting discovery - 20%

3. Drafting claim charts - 25%

4. Preparing a section for a claim construction brief - 35%

B. Assignments must be turned in at the beginning of class that day. Please do not email assignments without prior permission. Emailing assignments is an exception and will require a “good” excuse.

C. Grading will be based on quality of work-product, thoroughness, attention to detail, and further explained in instructions for each assignment.

IV. Attendance Policy

A. The Law Center has an 80% attendance policy. There will be a sign in sheet at the beginning of each class. Please sign in to the roll sheet. Note, however, that you are responsible for keeping a track of your attendance and meeting the 80% attendance policy.

V. Miscellaneous

A. Computer use is allowed for taking notes.

B. Internet use that is not related to class is not allowed.

August 25, 2014

Week 1: Introduction to structure of course

No reading assigned

September 1, 2014

NO CLASS: Labor Day Holiday

September 8, 2014 (Guest lecturer)

Week 2: Jurisdiction, Venue, Impact of Patent Reform

21-22; 53-60; *In re TS Tech* (Fed. Cir. Dec. 29, 2008); *In re Genentech* (Fed. Cir. 2009); review problems 1-2 on pages 89-90; 100-101; 119-120; *In re EMC Corp.*, 677 F.3d 1351; America Invents Act (Joinder portion)

September 15, 2014 (Class may be cancelled - last class will then be Dec. 1)

Week 3: Pleadings

129-141; 141-150; *Ashcroft v Iqbal* 129 S Ct 1937 (2009); *Bell Atlantic v Twombly*, 550 U.S. 554 US 544 (2007); *Landmark Tech, LLC v. Aeropastle*, 2010 WL 5174954 (E.D. Tex. Sept. 12, 2011)

September 22, 2014

Week 4: Discovery - Initial Decisions

164-191; Sample Protective Order Supplied by Court; Discovery Order; E-Discovery Order; Docket Control Order; "Track B Initial Patent Case Management Order" (EDTX); Model Order Focusing Patent Claims and Prior Art to Reduce Costs (EDTX).

September 29, 2014

Week 5: Discovery - Additional Considerations

Assignment 1 due²

October 6, 2014

Week 6: Infringement Considerations.

322-324; 334-346; 432-444; Supreme Court Decision in *Limelight Networks, Inc., v. Akamai Techs., Inc.* v. No. 12-786 (June 2, 2014), available at http://www.supremecourt.gov/opinions/13pdf/12-786_664d.pdf.

² If class is cancelled on September 15, then your assignment due dates will be adjusted by a week

October 13, 2014

Week 7: Invalidity Considerations

Assignment 2 due

498-500; 500-505; *KSR v Teleflex*, 550 US 398; *Microsoft v i4i*, 131 S. Ct. 2238 (2011)

October 20, 2014

Week 8: Inter Partes review and Experts

205-209; 216-221; 222-224; 873-875; 887-895

October 27, 2014

Week 9: Claim construction

279-311; *Phillips v AWH*, 415 F.3d 1303 (Fed. Cir. 2005); *O2 micro Intern. v. Beyond Innovation Tech.*, 521 F.3d 1351 (Fed. Cir. 2008);

November 3, 2013

Week 10: Markman

Assignment 3 due; *Parallel Networks, LLC v. Abercrombie & Fitch*, 2011 WL 3609292 (EDTX)

November 10, 2014

Week 11: Preparation for close of discovery and trial

225-249; 765-769

November 17, 2014

Week 12: Preparation for trial and Damages:

814-815; 831-836; 718-733; 745-757;

November 24, 2014

Week 13: Appeals and Damages

Uniloc USA v Microsoft Corp., 2010-1035 (Fed. Cir. Jan 4, 2011); *ResQNet.com v Lansa*, 594 F.3d 860 (Fed. Cir. 2010); *In re MSTG*, 675 F.3d 1337 (Fed. Cir. 2012); *LaserDynamics v. Quanta*, 694 F.3d 51 (Fed. Cir. 2012); 865-873;

Assignment 4 due