

# CARDOZO LAW

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

## **Patent Basics: Law, Policy & Skills**

Summer 2022

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**What:** Cardozo will offer a 2-credit introductory course for students interested in learning the basic legal doctrines, policy questions, and skills involved in patent practice. Half of the course will be devoted to discussion of patent law, focusing on the key issues facing business lawyers and policy makers. The other half will be structured as a series of skills workshops in which students work with a hypothetical client on all stages of the patent process, from counseling and advice through drafting patent claims, asserting or defending against them in litigation, and negotiating a settlement.

Students will earn two skills credits and the course is eligible for writing credit with permission of the instructor.

**Who:** *\*\*\*No scientific or technical background is needed.\*\*\**

This course is appropriate for students of all backgrounds and provides a useful overview of the subject for:

- students who do not plan to practice in the area but would like some exposure to intellectual property law;
- students who are interested in intellectual property but plan to focus on trademark, copyright, or Internet law; and
- students planning a career in patent law.

**Why:** Patent law is an increasingly important part of the general business lawyer's toolkit. In recent years, the subject matter covered by patents has expanded and patent litigation has boomed. A working knowledge of patent law is therefore useful in a wide variety of practice areas including litigation, transactional work, and counseling, and throughout a wide variety of industries. This course provides an introduction to one of the most frequently invoked forms of intellectual property for those who have no prior exposure to the subject and would like to see if it meets their interest without (or before) committing to a semester-long course. For those who are already interested in intellectual property but would like to focus on trademark or copyright law, the course provides an important opportunity to round out their intellectual

property education. And for those likely to pursue patent law more deeply, the course offers a business and policy perspective on the law and a chance to gain valuable skills experience.

**When:** The course will run from 9 am – 12 pm and from 1 pm – 4 pm Monday through Friday, August 1-5, 2021. Attendance at all class sessions is mandatory. The course will be offered in person.

**How:** Register online through Self-Service Banner. **Tuition for current Cardozo students is \$500 including materials (no books needed).** Students can drop the course without penalty until 2:00 PM on Friday, July 30. Withdrawals after August 6, 2021 will forfeit tuition, and students may receive a “W” on their transcript.

**Grading:** The course will be graded pass/fail. In order to pass, students must (a) attend all class sessions; (b) complete all of the afternoon skills exercises; and (c) complete an expanded brief or seminar paper by the last day of classes of the fall semester. The brief or paper can be used for writing credit with permission of the instructor.

#### **Course outline:**

##### Day 1 – Monday, August 1, 2022

*Morning:* Introduction and patentable subject matter. We begin with an overview of the basic economics of the patent system, the system’s institutional structure, and the choices that businesses face in protecting their intellectual assets. We then consider some of the most significant patent controversies in recent years, which have involved the basic question: What categories of inventions are patentable?

*Afternoon:* Client interviewing and counseling. The simulation component of the course begins with a client intake meeting at which students will meet their prospective client, find out about her invention, and evaluate in a written memo whether or not she should apply for a patent, and what the likelihood of securing a patent will be.

##### Day 2 – Tuesday, August 2, 2022

*Morning:* Disclosure and novelty (I). This morning will begin with an examination of the disclosure requirements – what information an inventor must share with the world in order to receive a grant of exclusive rights. We will then move on to the fundamental requirement that a patent claim something *new*. We will cover both the traditional novelty provisions and the changes enacted in the America Invents Act (AIA). We will also use the AIA to discuss the political economy of the patent system.

*Afternoon:* Claim drafting. Students will draft a set of claims to cover their client's invention. We will consider issues of strategy, the relationship between the claims and the disclosure, and will conduct a search for prior art that students must then draft around in writing their claims.

#### Day 3 – Wednesday, August 3, 2022

*Morning:* Novelty (II) and nonobviousness. We conclude our discussion of novelty and then examine the requirement that a patent claim something that would not have been obvious to others working in the field; that is, that it takes an "inventive step." We will compare the patent system's approach to that of other types of intellectual property, including design patents, trademarks, and copyright.

*Afternoon:* Litigation I (briefing). Students will now be separated into two groups. One will continue to represent the client from day 1 and day 2; the other will represent a competitor who has filed a complaint seeking a declaratory judgment that the patent is invalid. The students will brief cross-motions for summary judgment on the key legal issues concerning the patent's validity.

#### Day 4 – Thursday, August 4, 2022

*Morning:* Infringement. Having determined what is required to obtain a patent, this part of the course explores what a patent holder can do with her right. We begin with claim construction, the process of interpreting the scope of patents, and then discuss infringement – literally and by equivalents, and direct and indirect. We will briefly consider defenses to infringement.

*Afternoon:* Litigation II (oral argument). Oral argument on the students' motions for summary judgment will take place, including a tutorial on argument strategy and technique.

#### Day 5 – Friday, August 5, 2022

*Morning:* Remedies. Here we examine the remedies availability to patent holders who have pursued successful infringement claims. These remedies include injunctions and damages, and this segment will provide an overview of when these remedies are available and how modulating the scope of remedies impacts patent policy. We will also consider the problem of patent trolls.

*Afternoon:* Negotiation. Maintaining their roles from the litigation exercise, students will negotiate a settlement of the client's counterclaim for infringement. In so doing, students will consider the likelihood of success in the infringement action, the possible damages, and the respective business interests and needs of their clients.