



INTELLECTUAL PROPERTY LAW

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I. INTRODUCTION

“Intellectual property” (IP) refers to property rights in patents, inventions, trademarks, copyright and industrial designs. Intellectual property has become a valuable commodity in domestic and international trade. As the value of intellectual property increases, the body of IP law becomes increasingly complex and comprehensive in response to efforts to protect this valuable commodity from being pirated. This guide provides useful starting points for research on United States intellectual property law. It does not discuss every specialization within IP law. Instead, this guide provides a general section on intellectual property law resources and specialized sections on the core areas of IP law: patents, copyright, and trademarks.

Patents and copyrights are authorized by the United States Constitution, which grants to the U.S. Congress “power... To promote the Progress of Science and the useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” U.S. CONST. art. I, § 8, cl. 8. One can find intellectual property law in U.S. federal and state law and in international treaties (for example, the “TRIPS Agreement”). Often, U.S. federal and state intellectual property law is a mixture of U.S. common law, and federal and state statutes. Below is an annotated list of select intellectual property law resources.

II. GENERAL RESOURCES

A. Reference Books & Treatises

Robert C. Dorr and Christopher Munch, *Protecting Trade Secrets, Patents, Copyrights, and Trademarks*. (3rd ed.) (KF2979 .D67 2000).

This single-volume looseleaf is a useful starting point for researching traditional areas of intellectual property law. It discusses federal and state laws and regulations governing copyrights, patents, trademarks and trade secrets. Citations to key cases and secondary material are included. The publication is kept up-to-date by annual supplements.

Arthur R. Miller and Michael H. Davis, *Intellectual Property: Patents, Trademarks and Copyright in a Nutshell* (7th ed.) (Reserve KF2980 .M52 2007).

This book, oriented towards law students, does a good job of summarizing the basics of U.S. copyright, patent and trademark law.

J. Thomas McCarthy et al., *McCarthy's Desk Encyclopedia of Intellectual Property* (3rd ed.) (Ref KF2976.4 .M38 2004).

This volume provides useful definitions for the concepts and phrases which are found in the law of patents, trademarks and copyright. Entries include references to relevant cases, statutes, and treatises for further reading. Appendices include historical statistics on patent applications and trademark registration, as well as biographical timelines for the offices of Commissioner of Patents, Register of Copyright, and Commissioner of Trademarks.

B. Periodicals

Duke Law and Technology Review

<http://www.law.duke.edu/journals/dltr/>

The *Duke Law and Technology Review* is an online legal publication that provides thoughtful and in-depth coverage of the latest law and technology issues. The review publishes "iBriefs", short and accessible essays on current intellectual property topics.

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The Filter (Berkman Center for Internet and Society at Harvard Law School)

<http://cyber.law.harvard.edu/filter/>

A monthly e-mail newsletter by the Berkman Center for Internet & Society, *The Filter* provides the latest news on Internet issues through the eyes of leading experts, scholars, and researchers.

IP Law and Business

<http://www.ipww.com/>

From the publishers of Law.com and *American Lawyer*, this practice-oriented site publishes recent news stories and case summaries focusing on the business of intellectual property protection, and features prominent attorneys who practice in the area.

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Managing Intellectual Property (Euromoney, 2001–) (Periodicals)

This is a practice-oriented newsletter that is a valuable source of United States and international intellectual property law information. It is also available electronically to the

Duke University community through the **ABI/Inform** database
(<http://library.duke.edu/metasearch/db/id/DUK01692>)

Patent, Trademark and Copyright Journal (BNA, 1970-) (Periodicals)

This weekly publication provides case summaries and news stories related to intellectual property law. It is available online to current members of the Duke Law community through Lexis, Westlaw, and the **BNA Electronic Library**
(<http://library.duke.edu/metasearch/db/id/DUK02057>).

Both Westlaw and LexisNexis contain a number of intellectual property newsletters and magazines that are oriented towards the practicing attorney. LexisNexis includes: *Mealey's Litigation Report*. Westlaw includes: *Andrews Patent Litigation Reporter* (ANPATLR) and *Intellectual Property Law Newsletter* (IPLN).

C. Web Sites & Blogs

Franklin Pierce Law Center, **Intellectual Property Mall**

<http://www.ipmall.fplc.edu/>

This web site is highly recommended as a starting point for conducting general intellectual property research. The web site contains links to Congressional Research Service documents on intellectual property law and selected legislative histories, including those for the Patent Act of 1952 and the Digital Millennium Copyright Act of 1998. Although difficult to navigate, the "IP Links" section contains a plethora of information and links to various sub-specialties in intellectual property law. The site also includes the **IP News Blog** (<http://ipnewsblog.com/>), which provides discussion and analysis of current topics in intellectual property law.

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IP@The National Academies

<http://ip.nationalacademies.org/>

The National Academies are advisors to the U.S. government on science, technology, and health-related issues. Their Intellectual Property web site contains a number of interesting reports on various intellectual property law issues. Content is organized by topic and by sector.

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D. Finding Materials in the Duke Libraries Catalog

When searching for intellectual property materials in the Duke Libraries Catalog (<http://catalog.library.duke.edu/>), use general subject headings as a starting point and then select the appropriate subdivisions for a more precise search. Subject headings in intellectual property may include the following terms:

- Intellectual Property--United States
- Trademarks Law and Legislation
- Trademarks--United States
- Patents--International Law
- Patents--United States

- Copyright--International
- Copyright--United States
- Copyright Infringement
- License Agreements

III. RESOURCES BY TOPIC

A. Patent Law

A patent for an invention is the grant of a property right to the inventor, issued by the United States Patent and Trademark Office. The right conferred by the patent grant is “the right to exclude others” who wish to make, use, offer for sale, or sell the patented invention in the United States or who might import the invention into the United States. 35 U.S.C. § 271 (2000).

The requirements for patentability start at 35 U.S.C. § 101. Regulations on patent law commence at Title 37, chapter 1 of the *Code of Federal Regulations*.

1. Reference Books

Irwin M. Aisenberg, *Modern Patent Law Precedent: Dictionary of Key Terms and Concepts*. (7th ed) (KF3105 .A35 2006).

This is a dictionary of patent terms. Terms are organized alphabetically by keywords and phrases. Words and phrases are taken from summaries of leading patent cases with precedential value and from important sections in the U.S. Code.

Janice M. Mueller, *An Introduction to Patent Law* (2d ed.) (KF3114 .M84 2006).

This title is part of Aspen’s “Introduction to Law” series, and provides an accessible overview of patent law concepts and principles. Chapters include discussion of each requirement for patentability. Footnotes cite to relevant cases, statutes and secondary sources, for further research.

2. Treatises

Donald S. Chisum, *Chisum on Patents* (also titled *Patents: A Treatise on the Law of Patentability, Validity and Infringement*) (1978–) (KF3110 .C4 & in LexisNexis).

Scholars and practitioners alike frequently cite this essential treatise on patents. The huge fourteen-volume looseleaf set includes a glossary of patent terms, federal circuit guide, forms, statutes and commentary. This set is supplemented four times a year to stay current with the most recent patent law developments.

R. Carl Moy, *Moy’s Walker on Patents* (4th ed.) (2003–) (KF3114 .W32 & in Westlaw’s MOY-PAT database).

This multi-volume treatise revises a previous version entitled *Lipscomb’s Walker on Patents* (3rd ed.) (KF3114 .W3 1984). The Westlaw full-text contains only the current volumes of the

4th edition as they are published; 3rd edition volumes which have not yet been revised by Moy are not available electronically.

3. Patent Grants and Applications

Jeffrey G. Sheldon, *How to Write a Patent Application* (1992–) (KF3120 .S48 1992). This is an excellent looseleaf on how to write patent applications. In addition to an extensive treatment on writing applications for utility patents, the book also contains specialized information on writing applications for plant patents, electrical patents, biotech patents, and patents for computer software and chemical inventions. Select provisions of the *Manual of Patent Examining Procedure* (see below) are included in this publication.

David Pressman, *Patent It Yourself* (10th ed.) (Reference KF3114.6 .P74 2004). This title, from the popular legal self-help publisher Nolo Press, presents the patent application process in layperson's terms. Sample forms and a glossary of definitions are included.

United States Patent & Trademark Office, *Manual of Patent Examining Procedure* (8th ed.). <http://www.uspto.gov/web/offices/pac/mpep/>
This manual is intended for the use of patent examiners, who must decide whether a pending patent application meets all relevant laws and regulations. Each section describes a particular aspect of the application and examination process, and includes citations to related primary legal authority.
All prior editions and revisions (back to 1949) are available in PDF through HeinOnline's *Manual of Patent Examining Procedure Library* (<http://library.duke.edu/metasearch/db/id/DUK00693>).

4. Web Sites & Blogs

United States Patent and Trademark Office

<http://www.uspto.gov/>

This official U.S. government web site on patents and trademarks is an excellent resource for researching patent grants, patent applications, and trademark registrations. The site also contains many essential reference sources and manuals geared towards the practitioner. The patent grants database contains images of U.S. patents issued since 1790 and the full text of all patents issued since 1976. A new patent applications database contains full text and images of all patent applications since March 15, 2001.

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Patently-O: Patent Law Blog

<http://patentlaw.typepad.com/>

This popular blog, maintained by a professor at Boston University Law School, posts the latest cases and developments in patent law.

5. Westlaw & LexisNexis Research on Patents

Both Westlaw and LexisNexis contain full text U.S. patent applications dating back to 1974. Similarly, both Westlaw and LexisNexis possess a number of intellectual property treatises, newsletters and journals.

In Lexis, follow the path Legal > Area of Law (by Topic) > Patent Law to view available databases, which include *Chisum on Patents*, specialized news sources, and patent applications and grants from the U.S., Japan, Germany, and the U.K.

In the Westlaw Directory, select Topical Materials by Area of Practice > Intellectual Property > Patents & Copyrights to view available materials. These include patent applications from the U.S., Japan, Germany, France, and the U.K. Westlaw also maintains a superior collection of treatises on patent licensing, such as Eckstrom's *Licensing in Foreign and Domestic Operations* (ECKLICN) and *Licensing of Intellectual Property* (LICENSIP).

B. Copyright Law

Federal copyright law is located in Title 17 of the U.S. Code. Copyright law protects "original works of authorship" that are fixed in a tangible form of expression. According to 17 U.S.C. § 102, copyrightable works may include the following subject matter categories:

- Literary works;
- Musical works, including any accompanying words;
- Dramatic works, including any accompanying music;
- Pantomimes and choreographic works;
- Pictorial, graphic, and sculptural works;
- Motion pictures and other audiovisual works;
- Sound recordings; and
- Architectural works.

These categories should be viewed broadly. For example, computer programs and most "compilations" may be registered as "literary works"; maps and architectural plans may be registered as "pictorial, graphic, and sculptural works." However, copyright law does not apply to ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries. 17 U.S.C. § 102. (NOTE: patent law may apply in some of these instances.)

1. Treatises

Paul Goldstein, *Goldstein on Copyright*, 3rd ed. (KF2979 .G633 & in CCH Business & Finance Library; <http://library.duke.edu/metasearch/db/id/DUK00923>).

Paul Goldstein, a professor at Stanford Law School, has written this scholarly treatise for lawyers, judges, legal researchers, and public policy decision-makers. The set is composed of 18 chapters on all aspects of copyright law. There are extensive citations to primary and secondary authorities including cases, statutes, regulations, legislative history and other documents.

Melville B. Nimmer and David Nimmer, *Nimmer on Copyright: A Treatise on the Law of Literary, Musical and Artistic Property and the Protection of Ideas* (1978–) (Reserve KF2994 .N56 1978; also available on Lexis).

This ten-volume looseleaf set is the classic treatise on copyright law. Courts and other scholars cite to it frequently. The treatise is an excellent starting place for researching specific aspects of copyright law. Updated twice a year, this treatise stays current with recent copyright law developments.

2. Web Sites & Blogs

United States Copyright Office

<http://www.copyright.gov/>

This web site, the official U.S. government web site for copyrights, contains a number of informative circulars and brochures that focus on the basics of copyright law. The site also includes a helpful "New and Pending Legislation" section that links to full-text U.S. House and Senate bills pertaining to intellectual property law. The U.S. Copyright Office site also contains a searchable database of copyrighted works, which contains records of copyright registrations and ownership documents since 1978. Note, however, that this database is not comprehensive in scope.

Creative Commons

<http://creativecommons.org/>

The brainchild of prominent intellectual property law scholar Lawrence Lessig, Stanford Law School, Creative Commons offers model language for various copyright licenses that are less restrictive than traditional licenses. Certain licenses on the site allow the copyright owner to put his work in the public domain for unrestricted use. Other interesting features of the site include a blog with comments and links to free/low cost media provided by users and the Common Content, a repository and directory of Creative Commons licensed works.

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Stanford Copyright Renewal Database

<http://collections.stanford.edu/copyrightrenewals>

This pilot project from Stanford provides information on the copyright renewal status of books which were published in the United States between the years 1923-1963. This time period is unique in copyright law, since earlier works have generally fallen into the public domain, and works published after 1963 were given an automatic renewal by the 1976 revision of the Copyright Act. The titles covered by the Stanford database required a renewal application to avoid copyright expiration, and the records of these applications were previously difficult to obtain.

3. LexisNexis & Westlaw Research on Copyrights

The "U.S. Copyrights" database (COPYRIGHT) in Westlaw contains copyright registration information dating back to 1978. Westlaw also provides currently-available Copyright Office publications and circulars (FIP-CPYINFO), the Copyright Office practices manual (FIP-CPYPRC) and also contains an Arnold & Porter Legislative History for the General Revision of the Copyright Act of 1976 (COPYREV76-LH). The Treatises section of the

Intellectual Property subfolder also contains the full text of many practice-oriented titles like *Copyright Litigation Handbook* (COPYLITIG) and *Copyright Law: A Practitioner's Guide* (PLIREF-CPYT).

LexisNexis's copyright databases are virtually identical to that of Westlaw, and can be accessed by following the path Legal > Area of Law (by Topic) > Copyright Law. However, LexisNexis also provides access to the **CIS Legislative Histories Index**, which is used for compiling legislative histories on copyright laws. Lexis also provides the full text of its Matthew Bender treatises, such as *Nimmer on Copyright* (COPYRT; NIMMER) and Geller and Nimmer's *International Copyright Law and Practice* (COPYRT; INTCLP).

C. Trademark Law

A trademark is a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs, that identifies and distinguishes the source of the goods of one party from those of others. Trademark law is embodied in both state and federal law. The seminal federal trademark law is called the "Lanham Act." 15 U.S.C. § 1052. Regulations for trademarks and trade names start at Title 37 of the C.F.R.

1. Reference Books & Treatises

International Trademark Association, *U.S. Trademark Law: Rules of Practice, Forms, Federal Statutes & Regulations* (3rd ed., 2000–) (KF3181 .A3 2000).

This looseleaf gathers and reprints essential U.S. trademark law including the Lanham Act. It also includes the Trademark Rules of Practice, trademark registration forms and other practice-oriented materials.

Adam L. Brookman, *Trademark Law: Protection, Enforcement and Licensing* (1999–) (KF3180 .B68).

Written by a trademark attorney, this highly readable single-volume looseleaf publication is oriented towards attorneys that are new to trademark law. It is a useful reference source for academic research and includes helpful charts, citations to important case law and a table of cases. Fully up-to-date, *Trademark Law: Protection, Enforcement and Licensing* provides a thorough analysis of differences between federal circuits on aspects of trademark law.

J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* (4th ed., 1996–) (KF3180 .M32 1996) (Reserve KF3180 .M32 1996; also available on Westlaw).

This treatise is considered the most authoritative source of information about trademark and unfair competition law. Supplemented annually, it covers all aspects of trademark and unfair competition law.

2. Web Sites & Blogs

United States Patent and Trademark Office

<http://www.uspto.gov>

The USPTO site contains a searchable database of over 3 million pending, registered, and dead trademarks. This database is referred to as the "Trademark Electronic Search System"

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or “TESS.” The site also contains introductory materials and several U.S. federal trademark practice guides.

The Trademark Blog

<http://www.schwimmerlegal.com/>

This blog is maintained by the law offices of Schwimmer Mitchell, a New York law firm specializing in trademark and copyright law. It is frequently updated with news and analysis of current trademark issues.

3. Westlaw & LexisNexis Research on Trademarks

Both Westlaw and LexisNexis gather and organize federal and state trademark cases and trademark registration databases. In Lexis, follow the path Legal > Area of Law - By Topic > Trademarks to view available databases, which include registration information from U.S. and international jurisdictions, Matthew Bender treatises and practice materials, and specialized case law and legislative databases. LexisNexis contains a useful database on domain name disputes that includes dispute decisions from WIPO and the CPR Institute for Dispute Resolution.

From the Westlaw Directory, select Topical Materials by Area of Practice > Intellectual Property > Trademarks and Trade Names to view available databases, which include registration searches for various jurisdictions, the trademark examiner’s procedural manual, and the publication *Brands and Their Companies*. Westlaw also contains a useful database on domain disputes that includes dispute decisions from international organizations based on the Uniform Domain Name Dispute Resolution Policy (URDP-ARB).

D. Related Topics

Roger M. Milgrim, *Milgrim on Trade Secrets* (1967–) (KF3197 .M55 & in LexisNexis). Milgrim, a partner specializing in intellectual property law at a prominent law firm in New York, has authored this essential reading for any scholar or practitioner specializing in trade secrets law. This four-volume set is supplemented to stay up-to-date.

J. Thomas McCarthy, *The Rights of Publicity and Privacy* (KF1262 .M4, also available on Westlaw).

This two-volume looseleaf is a useful treatise addressing almost any topic in this area. The author also writes *McCarthy’s Desk Encyclopedia of Intellectual Property* (Ref. KF2976 .M38).

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