OTMEVAL0017-Introduction to EU law and EU IP law

SYLLABUS / SUMMER 2017

General Information

3 ECTS

Period: week 22 (29-31 May)

Instructor:

University lecturer Rosa Maria Ballardini (rosa.ballardini@ulapland.fi)

Lecturers:

Professor Juha Karhu, ULap

University lecturer Rosa Maria Ballardini, ULap

Professor Haijun Jin, Renmin Law School**,** China

Learning Goals:

The aim of the course is to give a basic understanding of some of the core concepts and principles of substantive European Union law and European Intellectual Property Law (especially copyright, trademark and patent law). Moreover, the course will provide also a basic overview of the IP system in China.

After having successfully completed the course the students will be able to:

- Master general knowledge of fundamental concepts of EU law and intellectual property law;
- Analyze and apply principles of EU and IP law in a global setting;
- Understand basic concepts of Chinese IP law and system.

Contents:

The course covers issues related to:

1) Fundamental values of EU, its institutional structure and functioning of EU legal order;

2) Fundamental principles of European IP law, including background and history of harmonization, requirements for protection and scope of protection of IP rights in Europe;

3) Basic concepts and framework of the Chinese IP system.

Previous studies:

This course is part of the IPR Summer School program in intellectual property law organized at the IPR University Center (https://iprsummerschool.com/program/). ***Other students are welcome. However, the instructors may limit the number of other students.*** There are no pre-requisites for this course.

Methods:

Lectures (12 contact hours), learning diaries, self-study, independent research, exercises.

Language of Instruction:

English

Office hours: by appointment

Assessment:

1) Required readings (literature, case law, laws and regulations, lecture notes and slides);
2) 12 h Lectures (100% mandatory attendance);
3) Leaning diary (1 page per lecture);
4) Term paper (15 pages).

Total students workload: 82, devided in:

Task	Hours of work	Grade %
Lectures and preparation (i.e. Required readings)	24	**20%**
Learning diary	8	**10%**
Term paper	50	**70%**

P. Bernt Hugenholtz, *Copyright in Europe: Twenty Years Ago, Today and What the Future Holds*, 23 Fordham Intell. Prop. Media & Ent. L.J. 503 (2013). Available at: http://ir.lawnet.fordham.edu/iplj/vol23/iss2/4

Hettinger, "Justifying Intellectual Property", 18 *Phil. And Pub. Aff.* 31 (1989), http://hettingern.people.cofc.edu/Hettinger%20-%20Justifying%20Intellectual%20Property.pdf

3) Introduction to European Copyright Law (29.5)

Literature:

WIPO Intellectual Property Handbook: Policy, Law and Use (2008), Available at: http://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf, Ch 2 (Copyright and Related Rights, pp. 40-67)

Legislation (for reference purposes):

The EU Copyright Legislation:

https://ec.europa.eu/digital-single-market/en/eu-copyright-legislation

Case law:

Monkey selfies dispute (ownership)

http://www.theguardian.com/technology/video/2014/aug/07/monkey-owns-selfie-wikimedia-video

Football Dataco (C-604/10) (originality)

http://curia.europa.eu/juris/liste.jsf?&num=C-604/10

Trumf AS vs Stokke AS, Supreme Court of Norway (27.06.2012) (scope of protection)

http://www.internationallawoffice.com/Newsletters/Intellectual-Property/Norway/Bryn-Aarflot-AS/Supreme-Court-rules-on-chair-copyright

Temple Island Collections Ltd v New English Teas Ltd & Anor [2012] EWPCC 1 (12 January 2012) (reproduction rights)

http://www.bailii.org/ew/cases/EWPCC/2012/1.html

‘Blurred Lines’ vs ‘Got to Give it Up’ (reproduction rights)/ Settled
https://www.youtube.com/watch?v=ziz9HW2ZmmY

Meltwater (C-360/13) (temporary copies)

http://curia.europa.eu/juris/document/document.jsf?text=&docid=153302&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=397300

Usedsoft (C-128/11) (distribution right)

http://curia.europa.eu/juris/liste.jsf?num=C-128/11

Art&Allposters (C-419/13) (distribution right)

http://curia.europa.eu/juris/liste.jsf?num=C-419/13

Svensson (C-466/12)(communication to the public; linking)

http://curia.europa.eu/juris/document/document.jsf?text=&docid=147847&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=400516

4) Introduction to European Patent Law (30.5)

Literature:

WIPO Intellectual Property Handbook: Understanding Industrial Property (2014), Available at: http://www.wipo.int/edocs/pubdocs/en/intproperty/895/wipo_pub_895.pdf

Ullrich, H., “Harmonizing Patent Law: The Untamable Union Patent”, *HARMONISATION OF EUROPEAN IP LAW: FROM EUROPEAN RULES TO BELGIAN LAW AND PRACTICE*, M.-Chr. Janssens, G. Van Overwalle, eds., Brussels (Bruylant) 2012, pp. 243-294. Available at SSRN: http://ssrn.com/abstract=2027920

Case law:

Referral to Enlarged BoA - G03/8 (patentable subject matter/software and business methods)

http://www.epo.org/law-practice/case-law-appeals/recent/g080003ex1.html

Brüstle (Case c-34/10) (patentable subject matter/biotechnology)

http://curia.europa.eu/juris/liste.jsf?language=en&num=C-34/10

G 0002/06 (Use of embryos/WARF) of 25.11.2008

(patentable subject matter/human embryonic stem cells; morality)

http://www.epo.org/law-practice/case-law-appeals/recent/g060002ep1.html

EPO - T 641/00 (COMVIK) (inventive step - problem/solution approach)

https://www.epo.org/law-practice/case-law-appeals/recent/t000641ep1.html

Legislations (for reference purposes):

European Patent Convention (1973/1998)

https://www.epo.org/law-practice/legal-texts/epc.html

EPO Guidelines for examination:

https://www.epo.org/law-practice/legal-texts/guidelines.html

Unitary patent agreement:
http://documents.epo.org/projects/babylon/eponet.nsf/0/A1080B83447CB9DDC1257B36005AAAB8/$File/upc_agreement_en.pdf

Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:361:0001:0008:en:PDF

Council regulation (EU) No 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:361:0089:0092:en:PDF

EU Directive 98/44/EC on Biotechnological inventions

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998L0044:EN:HTML

SPC Regulation

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:152:0001:0010:en:PDF

Finnish patent Act

https://www.prh.fi/en/patentit/lainsaadantoa/patenttilaki.html

Examples of patents:

http://www.google.com.ar/patents/EP2345953A2?cl=en

5) Introduction to European Trade Mark Law (30.5)

Literature:

WIPO Intellectual Property Handbook: Policy, Law and Use (2008), Available at: http://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf, Ch 2 (Trademarks, pp. 67-105)

"Study on the overall functioning of the European trade mark system" (15.02.2011), Max Plank Institute for Intellectual Property and Competition Law Munich. Available at:

http://ec.europa.eu/internal_market/indprop/docs/tm/20110308_allensbach-study_en.pdf

European Parliament and EU Council back European Commission trade mark reform package (21 April 2015), see http://europa.eu/rapid/press-release_IP-15-4823_en.htm

Case law:

C-283/01 Shield Mark/Kist (protectable subject matter)

C-273/00 Sieckmann/DPMA (graphical representation, smell marks)

Joint cases C-53/01 & C-54/01 Linde AG, Winward Industries, Rado Uhren AG (distinctiveness)

T-123/04 - *Cargo Partner /OHIM* (CARGO PARTNER) (compound marks)

T-508/08, Bang&Olufsen/OHIM (particular forms of signs - shapes of products)

C-108/97 and 109/97, *Windsurfing Chiemsee/Huber & Attenberger* (acquired distinctiveness)

C-299/99, Philips/Remington (limits on registrations of shapes)

C-291/00 - LTJ/Vertbaudet (double identity)

C-251/95 – *SABEL/Puma, Rudolf Dassler Sport* (Likelihood of confusion)

C- 375/97 - General Motors (Marks having a reputation - earlier reputation)

C-408/01 - Adidas-Salomon and Adidas Benelux (Marks having a reputation - similar marks)

C-487/07 - L'Oréal SA/Bellure NV (Marks having a reputation - unfair advantage)

C-252/207 – Intel (Marks having a reputation - blurring/dilution)

Legislations (for reference purposes):

Community Trademark Regulation (No 40/94, 20.12.1993)

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:078:0001:0042:en:PDF

Trademarks Directive (89/104/EEC)

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:299:0025:0033:en:PDF

6) Introduction to Chinese IP System (31.5)

Literature:

IP Protection in China Is Finally Changing (Forbes): http://fortune.com/2016/10/18/ip-intellectual-property-china-michelle-lee/

Best Practices: Intellectual Property Protection in China (USCBC): https://www.uschina.org/reports/best-practices-intellectual-property-protection-china

Updates on intellectual property protection in China (Ministry of Commerce, China): http://www.chinaipr.gov.cn/

Legislations (for reference purposes):

Chinese Copyright Law (1990, as amended in 2010)

Chinese Trademark Law of China (1982, as amended in 2013)

Chinese Patent Law (1984, as amended in 2008)

Both Chinese and English texts are available at: http://www.wipo.int/wipolex/en/profile.jsp?code=cn

Case law:

US v. China WTO Dispute on China's protection and enforcement of IPRs, Especially concerning Articl 4(1) of Chinese Copyright Law: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds362_e.htm

Michael Jordan v. TRAB on a registered trademark identical to the Chinese translation of Jordan: http://news.xinhuanet.com/english/2016-12/08/c_135890668.htm; https://www.theguardian.com/world/2016/dec/08/michael-jordan-scores-partial-victory-china-trademark-case-qiaodan. Though no English version yet available, the full decision in Chinese is available at: http://blog.sina.com.cn/s/blog_53ab0c3b0102wunr.html

Term Papers

The term paper is mandatory in order to pass the course!

Checklist:

1) *Choose a topic*: Please choose a topic for your term paper from the list of available topics.
2) *Length of the TP*: The term paper should be about 15 pages (12 pt Times New Roman; Line spacing 1,5) including everything (e.g. table of case, bibliography, references, etc..).
3) *Form of the TP:* The term paper should be on the form of an academic paper/essay (as opposed to a handbook-like paper!). Headings within the text are encouraged (usually no more than 4 levels of headings). References to the main sources of literature, cases, statutes, etc. are required (always remember to acknowledge when you use ideas of others!).

- *Submit the TP*: The final term paper should be sent to rosa.ballardini@ulapland.fi by **Friday 16 June 2017 at 16.15 EET**. Please remember to include:
    - Title of the work
    - Student name
    - Student number (if you have)
    - Programme where you are enrolled

NOTE: List of topics for term papers will be made available during late April!

Learning diaries

- Students are requested to write a learning diary from the lessons learned from the readings and the related lectures
- You should write one diary per each lecture (total 6 diaries):
  - Introduction to EU law
  - Introduction to IP law in Europe
  - Introduction to European copyright law
  - Introduction to European patent law
  - Introduction to European trademark law
  - Introduction to Chinese IP system
- The length of the diary is about 1 page per lecture (i.e. tot. about 6 pages)
- Each diary should highlight one main issue that the student considers to be the most important lesson learned from that specific lecture and related readings.
- The diary should also be a way to provide feedback from the students to the instructor with concern to the lecture at stake.
- Please send your learning diaries in one document (i.e. one document of about 6 pages, not 6 documents of about 1 page each!) to rosa.ballardini@ulapland.fi not later than **Friday 2 June 2017 at 16.15 EET**.

Summary of deadlines

Deadline	Task
1) Friday 2 June 2017 at 16.15 EET	Send learning diary to rosa.ballardini@ulapland.fi
2) Friday 16 June 2017 at 16.15 EET	Submit the final term paper via sending it to rosa.ballardini@ulapland.fi