

BUCERIUS / UC HASTINGS SUMMER PROGRAM: LICENSING TRANSACTIONS IN INTELLECTUAL PROPERTY

Hamburg, June 29 – July 17, 2020

DL-101 Online General Course on Intellectual Property WIPO Academy

Offered through the WIPO eLearning Center, this course provides an in-depth view of the fundamentals of IP law. It is composed of a series of modules treating the following topics:

- Copyright
- Related Rights
- Trademarks
- Geographical Indications
- Industrial Design
- Patents
- WIPO Treaties
- Unfair Competition
- Protection of New Varieties of Plants
- IP and Development - The WIPO Development Agenda

Algorithmic Licensing: Technological and Legal Issues Dr. Stefan Dittmer

Algorithms and data can be incredibly valuable assets but the legal landscape surrounding these themes is fragmented at best. In this session, we will look at means of protection and licensing of such assets.

Conflict of Laws in International Agreements Prof. Dr. Karsten Thorn

This session deals with IP-related European rules on international jurisdiction and conflict of laws (existence and scope of IP rights, infringement, licensing). Where appropriate, a comparison with rules of other jurisdictions will be undertaken.

Disruptive Technologies –Challenges for R&D Cooperations and Licensing and strategies to overcome them Dr. Gösta Schindler

The lecture will look at characteristics of “disruptive” technologies in a transactional setting. Specifically, we will consider the issues that such technologies raise in the context of research and development contracts and licenses. Practical examples will highlight instances in which current standard terms may fall short of the parties’ expectations or fail to meet their practical needs. Possible approaches to overcome these problems will be discussed.

Drafting Principles

Emma Ziercke

This session is designed to help you develop strong drafting skills to create clearly enforceable contractual provisions. We will focus on the key principles of effective drafting, draft clauses without the aid of a precedent, and review clauses to identify drafting errors.

IP and Artificial Intelligence

by Kseniia Gyga

Description to follow

IP Aspects of Technology Transactions

Allison Mages

Technology is at the heart of today's business transactions and intellectual property plays a crucial role in making them successful. This session will provide an overview of how IP is dealt with in a variety of transactions, helping you recognize potential stumbling blocks and providing strategies to manage them effectively. We will discuss how IP rights are handled in the context of various transactions, including M&A activity and joint development agreements.

IP Rights and the EU Digital Content Directive

Prof. Dr. Linda Kuschel

In this session we will discuss key provisions of the new EU Digital Content Directive (Directive (EU) 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services). Since most digital goods or services are somehow protected by IP rights, the Directive will—although it is not supposed to—have a large impact on IP-transactions. Topics of this session will include: the directive's influence on End-User License Agreements (EULA), how Digital Rights Management (DRM) might conflict with the requirements for conformity of digital goods and the question of "digital resale."

IP Transactions Based on Blockchain and Smart Contracts

Zoi Michalopoulou

Blockchain, combined with smart contracts, is expected to revolutionize licensing transactions in intellectual property. After explaining the function and main characteristics of this emerging technology, this session will discuss practical examples of current, in part experimental applications: In particular, we will look at blockchain-based platforms, which promise secure licensing of digital content and use smart contracts to automate such transactions and standardize licensing terms and conditions. Thereby, we will focus on legal and technical opportunities as well as challenges. Topics of this session will include the relevance of the blockchain technology for the issue of digital exhaustion in copyright law, the potential of blockchain and smart contracts regarding the administration and enforcement of IP rights and possibilities to protect features of blockchains as IP.

IT and Cloud Projects - Legal Framework and Negotiations

Dr. Jacek Lagoni

This unit will provide an overview of problems that attorneys may face while working on IT projects. It will cover rather traditional approaches as well as modern ones. While one part of the session will consist of the presentation and discussion of theoretical concepts, the other part will focus on the practical implementation of such concepts. During the latter part the participants will have the opportunity to practice their skills in simulated negotiations and analyses of IT contracts.

Legal Aspects of Licensing

Christian Stoll

This session will provide an overview of the general structure of license agreements and the most relevant legal aspects of license agreements. Topics of this session will include the underlying principles of international license agreements, the most relevant provisions in license agreements, applicable law, license agreements in litigations and the relevant rules of antitrust and competition law. The session will include many practical examples to provide a good foundation for the program.

Legal Tech and Professional Rules in the Context of IP Transactions

Dr. Philipp Plog

Description to follow

Licensing in Biotech

Dr. Jochen Dieselhorst

Licensing deals in the biotech/pharma sector are one of the most complex and most valuable IP transactions. Due to the particularities of the biotech/pharma sector, certain standards have evolved to balance the development risk of the licensee with the potential value of the licensed drug candidate.

This session aims to give a practical insight into licensing and negotiation issues of biotech/pharma license deals. It will explain typical clauses to address these on the basis of a license deal template that will be handed out as part of the lecture.

Limitations on License Agreements

Prof. Dr. Dana Beldiman / Prof. Dr. Jeffrey Lefstin

While parties are generally free to choose the terms of their license agreements, the legal regime of most jurisdiction circumscribes that freedom to a greater or lesser degree. These limitations may arise from policies of the intellectual property laws, or from other bodies of law. This class will address some of the more important legal limitations on license agreements, including exhaustion and royalty structure, FRAND obligations, bankruptcy, and antitrust (US) or competition law (EU).

Negotiation Principles

Dr. Jo Beatrix Aschenbrenner

Negotiation is omnipresent in the professional life of a lawyer and business person. This session will guide you through the essentials of the Harvard Principles as well as typical (detrimental) negotiation dynamics and teach you how to avoid them.

The session is designed to best prepare you for the real-life negotiation scenario at the end of the summer program and for your (later) professional practice. You and your peers will receive various input and get involved in several group activities to explore the content as deep as possible in the short amount of time.

Negotiation (Demonstration)

Dr. Gösta Schindler / Jacob D. Koering

Two practicing attorneys specialized in international transactions will guide the group through the negotiation of a cross-border license transaction. The attorneys will each assume the roles

of licensor and licensee, respectively. They will each seek to negotiate IP-related clauses that are favorable to their respective client, making appropriate arguments in support.

Successful License Relationships

Dr. Ulf Marquardt

Drawing on extensive experience acquired with Nestlé and in private practice, Dr. Marquardt will talk about values that make licensing transactions develop into synergetic and long-term relationships, beneficial to all parties involved.

License arrangements can be an important tool to strategically contribute to the equity of a brand and the business of a company. To achieve this, considerations that go beyond the mere terms of a contract are essential. It is key to consider, for example, the overall business purpose of the transactions, the competencies of the partners, common goals and interests, and the pursuit of innovation while preserving a company's core competence. All these aspects are important during the preparation of a license relationship, during the negotiations and in the management of the relationship after signature.