

**UGANDA CHRISTIAN UNIVERSITY**

**FACULTY OF LAW**

**BACHELOR OF LAWS PROGRAMME**

Course Title	Intellectual Property I [Introduction to I.P and Industrial Property Law]		
Course Code	BLAW4103	Credit Hours	75 (Seventy five) <i>(Sixty teaching hours, fifteen hrs for research)</i>
Contact Hours	4 hrs of lectures & 2 hrs of tutorials per week	Core / Elective	Elective course
Lecturer: Dr. Anthony C.K. Kakooza		Tutorial Assistant: Mr. Brian Kajubi	
Telephone contacts: 0756 845 070		Telephone contacts: 0788 438 382	
Email contacts: <a href="mailto:akakooza@ucu.ac.ug">akakooza@ucu.ac.ug</a>		Email contacts: <a href="mailto:brian.kajubi@ntwaliadvocates.com">brian.kajubi@ntwaliadvocates.com</a>	

**1. Course Description**

This course offers an introduction into domestic aspects of law and policy relating to Intellectual Property, but more particularly, Patents, Industrial Designs and Utility models. Intellectual Property provides a vital, though not the only, means of protecting and regulating the use of intangible assets comprising knowledge and information. As these assets have assumed increasing commercial significance, issues associated with the further fostering of innovation; protection; exploitation and use of intellectual property, particularly patents in that regard, have come to the forefront of recent developments in the global economy. Other emerging areas related to Intellectual Property and the Patent system which are addressed include issues of biotechnology and traditional medicine.

**2. Course objectives**

This course has the following objectives:

- a) To expose students to the development and contemporary significance of intellectual property in the context of international economic activity as seen in the perspective of industrial property.
- b) To enable students to appreciate the principles of Intellectual Property Law and Policy; and
- c) To introduce students to the legal and regulatory problems associated with contemporary developments in technology and commercial practice.

**3. Required readings**

This course is organized around reading materials prepared specifically by the facilitators. As such, there is no single recommended textbook for this module. However, the following materials, which are available in the UCU Library, provide some coverage of the main issues addressed in the module:

Texts:

- Bakibinga D., & Kakungulu M., *Intellectual Property Law in East Africa*, 2016 Law Africa
- D. Bainbridge (2010), *Intellectual Property*, 8th Edition.
- W.R. Cornish, *Cases & Materials on Intellectual Property*, 5th Edition.

Legislation, related material & Agreements:

- The Industrial Property Act, 2013 and Patent Regulations S.I 216-1
- The Paris Convention for the Protection of Industrial property, Article 5A [**Available at WTO website – see link below**]
- TRIPS Agreement, special reference to articles 6, 7, 8, 27, 30 and 31 [**Available at WTO website – see below**]
- Doha Declaration on the TRIPS Agreement and Public Health, 14<sup>th</sup> November 2001 [**Available at WTO website**].
- A number of other relevant material will be highlighted and referred to in the course of the Semester.

Note: Students may also find it helpful to begin by studying the WIPO Intellectual Property Handbook: Policy Law and Use, WIPO Publication No. 489(E) (WIPO, Geneva), which is freely available online at the WIPO website: [http://www.wipo.org/news/en/index.html?wipo\\_content\\_frame=/news/en/documents.html](http://www.wipo.org/news/en/index.html?wipo_content_frame=/news/en/documents.html).

#### **4. Course Content**

##### **4.1 Course outline and Content Description**

**Part A:** This provides a brief introduction to theoretical and practical aspects of Intellectual Property systems. It examines the following:

- Nature of Intellectual property rights,
- Cross-cutting themes,
- Practical considerations,
- Commercial Exploitation of I.P,
- Framework for description of rights (Patents, industrial designs, Plant Variety Rights, Trademarks, Trade Secrets, Geographical Indications, Copyrights & Neighboring Rights, Traditional Knowledge and Folklore (T.C.Es) and other allied rights).

**Part B:** This part of the course unit examines structural and functional aspects of the national industrial property system which includes patents, industrial designs and utility models.

##### **1. Patents and Utility Models**

###### **Patent law- Background & Basic Principles.**

**Ref(s) (see citations above):** Bakibinga; Bainbridge; Cornish; for free access to British and Irish case law on I.P, see URL: <http://www.bailii.org/uk/cases/UKIntellIP> and <http://www.bailii.org/ew/cases/EWHC/Patents> )

###### Introduction:

Young v Rosenthal [1884] 1 RPC 29

Hickton's Patent Syndicate v Patents & Machine Improvements Co. [1909] 26 RPC

###### Brief Historical Perspective:

Darcy v Allin [1602] Co Rep 84b

Lairdet's Patent, [1773] 1 WPC 52

###### Justification for Patent Rights:

In Re: Patent Application by CFPH LLC [2005] EWHC 1589

Chiron Corporation v Organon Teknika Ltd [1995] FSR 325  
Sec. 21(1) Industrial Property Act, 2013  
Regln. 17, 18, 21, 22, Patent Regulations SI 216-1

Practical Considerations:

Priority date, Specifications and Claims:

Sec. 10 (2), Industrial Property Act, 2013  
Sanitam Services (E.A) Ltd v Rentokil (K) Ltd & Anor [2006] eKLR  
Sanitam Services (E.A) Ltd v Rentokil (K) Ltd & Anor [2010] eKLR  
In the matter of Abaco Machines (Australasia) Pty Ltd's Application [2007] EWHC 347 (Pat)  
Biogen Inc v Medeva Plc. [1997] RPC  
AEA Technology PLC v. Peter Read [1999] UKIntelIP o03699

Sec. 21(1)(c) and (1)(e) Industrial Property Act, 2013  
Regn., 19, 21, 22 Patent Regulations SI 216-1

Requirements for patentability and ownership of patents:

Introduction & Basic Requirements:

Apex Creative Ltd & Anor v Kartasi Industries Ltd [2011] eKLR  
Faulu Kenya Deposit Taking Microfinance Ltd v Safaricom Ltd [2012] eKLR  
Hydra-Ject Services UK Ltd & Anor. V. Eric James (Patent) [2004] UKIntelIP 020604  
Biogen Inc v Medeva plc [1995] RPC 25

Part III Industrial Property Act, 2013. See Sections 8-10

Novelty:

Sec. 10(1) Industrial Property Act, 2013

Windsurfing International Inc v Tabur Marine [1985] RPC 59  
General Tire & Rubber Co v Firestone Tyre & Rubber Co Ltd [1972] RPC 457

Inventive step:

In Re: Patent Application by Cecil Lloyd Crawford [2005] EWHC 2417  
British Leyland Motor Corporation Ltd v. Armstrong Patents Co. Ltd [1986] AC 577  
Biogen Inc v Medeva plc [1997] RPC 1

Tests for inventive step:

Theresia M. Benker v. The Comptroller General of Patents [2011] EWHC 3604  
Windsurfing International Inc v Tabur Marine [1985] RPC 59 at 73

Inventiveness/Non-Obviousness:

Sec. 11(1) Industrial Property Act, 2013  
BASF AG v. Smith Kline Beecham Plc [2002] EWHC 1373 (Patents)

Industrial application:

Sec. 12(1) Industrial Property Act, 2013  
Chiron Corp v Murex Diagnostics Ltd [1996] RPC 535  
Chiron Corp. v Organon Teknika Ltd (No. 3) [1994] FSR 202  
Hiller's Application [1969] RPC 267

**Exclusion from Patentability:**

See: Section 8(3) Industrial Property Act, 2013

A discovery, scientific theory or mathematical method

Citibank v Comptroller [2006] EWHC 1676

Chiron Corp. v Organon Teknika Ltd (No. 3) [1994] FSR 202

Genetech's Patent [1987] RPC 553

Gales Application [1991] RPC 305

A scheme, rule or method for performing any mental act, playing a game or doing business, or a program for a computer

Autonomy Corporation Ltd v. The Comptroller General [2008] EWHC 1640

Re Gale's Patent Application [1991] RPC 305

Fujitsu Ltd's Application [1997] RPC 608

Mode of storage:

Genver's Application [1970] RPC 91

Burrough's Corporation (Perkin's) Application [1974] RPC 147

Mental steps doctrine:

Raytheon Co's Application [1993] RPC 427

Fujitsu Ltd's Application [1997] RPC 608

**Exclusions:**

Sec. 13 of the Industrial Property Act, 2013

**Genetic Engineering**

Onco-Mouse/Harvard [1990] EPOR 4 and [1990] EPOR 501

**Ownership & Dealings in Patents**Proprietorship:

Sec. 38, 42, 43 & 46. Industrial Property Act, 2013

Michael B. Fraser et al v. Oystertec Plc et al [2003] EWHC 2787

Goddin and Rennies Application [1996] RPC 141

Henry's Brothers Ltd v The Ministry of Defense [1997] RPC 693

Employee inventors:

Charles Parsons v. Patent Letters [1898] AC 673

Eloctrolux Ltd v Hudson [1977] FSR 312

Greater Glasgow Health Board's Application [1996] RPC 207

Dealing in patents:

Sec. 39, Industrial Property Act, 2013

Baxter Int. Inc v Nederlands Produktielaboratorium [1998] RPC 250

Coflexip Stena Offshore Ltd's Patent [1997] 179  
Insituform Technical Services Ltd v Inliner UK Plc [1992] RPC 83  
Beecham Group Ltd. v. International Products Ltd. & Anor [1968] E.A 396

Compulsory license:

Sec. 43, 44, 58 Industrial Property Act. 2013  
Research Corporation's (Carboplatin) Patent [1990] RPC 663  
EC Commission v United Kingdom [1993] FSR 1  
Richco Plastic Co's Patent [1989] RPC 722

Terms of license as of right or compulsory license:

Sec. 50, Industrial Property Act, 2013  
British Technology Group v. Boehringer Mannheim Corporation [2000] EWHC Patents 148  
Smith Kline & French Laboratories Ltd (Cimetidine) Patents [1990] RPC 203  
American Cyanamid Co's (Fenbufen) Patent [1990] RPC

Use by the State:

Sec. 66, Industrial Property Act 2013  
Dory v Sheffield Health Authority [1991] FSR 221  
Brittany Hayes: Innovation & Infringement: The Wright Brothers, Glenn H. Curtiss, and the Aviation Patent Wars

Bolar exception:

Roche Products, Inc. v. Bolar Pharmaceutical Co. 733 F.2d 858 (Fed. Cir. 1984)  
Sec. 43(1), Industrial Property Act

**Industrial Designs/Utility Models:**

Secs. 2, 68, 69, 70, 71, 72, 73, 75, 80 of Industrial Properties Act, 2013  
Safepak Ltd v Power Plast Industries Ltd [2014] eKLR  
Safepak Ltd v Asili Plastics Ltd [2013] eKLR

**Patents – Infringement, Defenses and Remedies**

Infringement:

Sec. 92, 93, 94, Industrial Property Act, 2013  
Hadley Industries Plc v. Metal Sections Ltd et al [1998] EWHC Patents 284  
Adwest Engine Controls Ltd & Anor v. Tavismanor Ltd [1997] EWHC Patents 353  
Pioneer Electronics Inc v Warner Manufacturing Europe GmbH [1995] RPC 487

Interpretation of claims:

Rodi & Wienenberger AG v Henry Showell Ltd [1969] RPC 367  
Van der Lely NV v Bamfords [1963] RPC 61  
Catnic components Ltd v Hill & Smith Ltd [1982] RPC 183  
PLG Research Ltd v Avardon International Ltd [1995] FSR 116

Equivalence:

Rodi & Wienenberger AG v Henry Showell Ltd [1969] RPC 365  
Epilady patent [1991] RPC 597

Improver Corp v Raymond Industries Ltd [1991] FSR 223

Evidence:

Sanitam Services (EA) Ltd v Tamia Ltd & 16 Ors [2012] eKLR

Morris v London Iron & Steel Co. [1987] All ER 496

Imperial Chemical Industries v Montedison (UK) Ltd [1995] RPC 449

Defenses:

Sanitam Services Ltd v Bins (Nairobi) Services Ltd [2008] eKLR

Auchincloss v Agricultural & Veterinary Supplies Ltd [1997] RPC 649

Solar Thomson Engineering Co Ltd v Barton [1997] RPC

Microbeads AC v Vinburst Road Markings Ltd [1975] 1 All ER 529

Remedies:

Sec. 93, Industrial Property Act, 2013

Crossley v The Derby Gas Light Co. [1834] 4 LT Ch. 25

Union Carbide Corp v BP Chemicals Ltd [1998] FSR 1

Genetics BV Smith Kline & French Laboratories Ltd [1997] RPC 801

Shelfer v City of London Electric Lighting Co. [1895] 1 Ch 287

American Cynamid Co v Ethicon Ltd [1975] AC 396

Assessment of damages:

General Tire & Rubber Co v Firestone Tyre & Rubber Co Ltd [1975] 2 All ER 173

Gerber Garments Technology Inc v Lectra Systems Ltd [1995] RPC 383

South Australia Asset Management Corp v York Montague [1996] 3 WLR 87

**Patent rights vis-à-vis Right to Health:**

P.A.O & 2 Others v Attorney General [2012] eKLR

**5. Weekly Schedule:**

Week	Topic	Required Reading [including Industrial Properties Act, 2013]	Reading Assignments [see course outline – supra]
1	Course Introduction & Introductory aspects of Intellectual Property law.	D., Bainbridge: Intellectual Property law.	Bainbridge pp. 3 - 25
2	Patent law: Background, basic principles & practical aspects.	Bainbridge (pp. 377-388) Sec(s): 21, Regulations 17, 18, 19, 21, 22.	Cases on Introduction; historical perspective; and Justification for Patent Rights.
3	Requirements for Patentability & ownership of patents.	Bainbridge (pp. 412-470). Part III, Industrial Property Act	Cases on priority date, specifications and claims; Requirements for patentability & ownership of patents.
4	Ownership: Dealing with Patents.	Bainbridge (pp. 473-490). Sections 10 – 12 of the Industrial Property Act.	Cases on novelty; Inventive Step; Tests for Inventive step; Non-obviousness & Industrial application.
5	Exclusion from	Sec.8 (3) of the Industrial	Cases on discovery &

	Patentability.	Property Act.	scientific methods; scheme or method, or computer program; mode of storage; mental steps doctrine.
6	Exclusions, Ownership & Dealing in Patents.	Sec. 13, 38, 39, 42, 43 & 46 of the Industrial Property Act	Cases on Genetic Engineering; Proprietorship; Employee inventors, Dealing in patents.
7	Exclusions (Continued).	Sec. 43, 44, 50, 58 & 66 of the Industrial Property Act	Cases on compulsory license; terms of license; use by the state.
8	Infringement.	Bainbridge (pp.492-524 and pp. 545-561). Sec. 2, 68, 69, 70, 71, 72, 73, 75, 80, 92, 93, 94 of the Act.	Cases on Industrial designs; patent infringement, & Interpretation of claims.
9	Infringement (Continued).	Bainbridge (pp. 492-524)	Cases on Doctrine of Equivalence; Evidence.
10	Infringement – Defenses & remedies.	Bainbridge (pp. 492-524) Sec. 93 of the Act.	Cases on Defenses and remedies.
11	Infringement – claim for damages; Right to Health issues. Slot for Guest Speaker.		Cases on assessment of damages; Patent rights vis-à-vis right to health.
12	Re-cap: Moot Court competition/Debate on contemporary IP issue.		Revision of previous weeks.

## 6.1 Assignment explanations/Methodology

Teaching methods:

You are required to read ahead of every class meeting following the schedule in the course content for texts and cases. Lessons will be conducted using the Socratic Method. Students will be called upon at random to explain judicial decisions from cases on any topic that will be under discussion. Students are also advised to be up to date with the day to day events surrounding Intellectual Property law and policy as covered outside of the classroom environment, inclusive of media coverage. Guest lecturers and a Moot Court or Debate scenario may also be utilized in the latter part of the Semester.

## 7. Assessment criteria

The assessment for the course will follow the following criteria:

- Coursework which will consist of **one take-home essay** carrying 30% of the total exam mark. The take-home essay comprises of a research paper of not more than **2500 words**. The research paper will be undertaken from the **24th of October 2016** and submitted on the **7<sup>th</sup> of November 2016**. The Lecturer reserves the right to reject assessment of a research paper that is submitted beyond the given deadline.
- Further assessment is derived from class participation basing on advanced reading of cases and reference materials, as well as impromptu attendance tests.
- The essay assignment should include a title page, an Introduction, a Conclusion and a List of References or Bibliography indicating the author, title of book or Publication, the publisher and the year it was published. References in the main body of the essay

should be presented in accepted English academic style (*for guidance, see **Glanville Williams: Learning the Law***).

- Plagiarism or any form of cheating will be heavily penalized.
- The final exam at the end of the semester will be open book and will consist of **six** questions out of which candidates will be required to answer **three** to be marked out of 70%.

### 8. Faith in teaching

Intellectual Property Rights are fully integrated in Biblical teaching. Various scriptures give an indication of God's gift of Intellectual property and blessings of innovation towards man, as evidenced below:

- Exodus 4:2 and Deuteronomy 28:12, illustrate God's guidance and blessings towards man's innovation.
- Philippians 4: 13, shows that all of man-kind has the power and ability to create Intellectual Property.
- Philippians 4: 19, shows that there is an abundance of Intellectual Property waiting to be realized through God's gift of innovation.
- Psalms 139: 14, shows that each and every creation is God's unique Intellectual Property.

### 9. Selected Bibliography

There is substantial literature dealing with intellectual property law and policy within the realm of Patent law. Besides the aforementioned text material, the following is a selection of some of the relevant works:

- F. Abbott, T. Cottier and F. Gurry (1999) *The International Intellectual Property System: Commentary and Materials* (Kluwer, London)
- M. Blakeney (1996) *Trade Related Aspects of Intellectual Property Rights: A concise guide to the TRIPS Agreement* (Sweet & Maxwell)
- Vivas-Eugui David, *Bridging the Gap on Intellectual property and Genetic Resources in WIPO's Intergovernmental Committee (IGC)*, International Centre for Trade and Sustainable Development, Issue Paper No. 34 (January 2012), ICTSD Programme on innovation, Technology and Intellectual Property, Switzerland.
- Report of the Commission on Intellectual Property Rights: *Integrating Intellectual Property Rights and Development Policy*; London, September 2002 See: [www.iprcommission.org/papers/pdfs/final\\_report/ciprfullfinal.pdf](http://www.iprcommission.org/papers/pdfs/final_report/ciprfullfinal.pdf)