



1-1-1990

Book Review [Modern Intellectual Property, Second Edition]

Santa Clara Law Review

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Recommended Citation

Santa Clara Law Review, Book Review, *Book Review [Modern Intellectual Property, Second Edition]*, 30 SANTA CLARA L. REV. 325 (1990).

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BOOK REVIEW

MODERN INTELLECTUAL PROPERTY, SECOND EDITION, By Michael A. Epstein, New Jersey, Prentice Hall Law & Business. 1989. Pp. 742. Hard Copy. \$95.00.

*Reviewed by Joseph A. Sawyer, Jr.**

The practice of intellectual property law is in the forefront of the business community and has become an endemic part of a corporation's business strategy. As companies grow and develop they must not only provide superior innovative solutions, but they must also learn how to protect those solutions so as to give their products a competitive advantage in the market place. It is important for all companies to develop strategies protecting the ideas generated through their research and development efforts. In this type of competitive environment, it is important for all of the officers of the company to understand, at some level, the different forms of intellectual property protection that are available.

The environment for intellectual property protection has become very pro-plaintiff. This is due to a variety of factors, not the least of is being the formation of the new Court of Appeals for the Federal Circuit in 1982 which considers all patent appeals. This court provides a forum which is very "pro-intellectual property" and which has rendered hundred-million-dollar judgments against corporations, and, in some cases, has shut down certain businesses within a company. For example, in the *Polaroid Corp. v. Eastman Kodak Co.*¹ decision, Kodak had to recall and stop producing certain types of cameras.

Another reason for the shift in bias toward those who own in-

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1. See *Polaroid Corp. v. Eastman Kodak*, 833 F.2d 930 (1986), *aff'd*, 789 F.2d 1556 (1986), *cert. denied*, 107 S. Ct 178 (1986).

lectual property rights is the general notion that a company that copies a product without expending any research and development costs is given an unfair advantage. This leads to the conclusion that piracy should be discouraged. Since intellectual property is such a critical part of the business of a company, it is important that before making any business decisions the intellectual property position and intellectual property protection strategy of a company should be analyzed.

Modern Intellectual Property provides a broad framework of the various types of intellectual property protection. This book is divided into the traditional areas, such as trade secrets, trademarks, patents, and copyrights. It has other sections related to specific areas of intellectual property that arise in corporations, such as noncompetition agreements, protection of computer software, biotechnology, ownership of employee inventions, government protection of business information, and the law of ideas.

This book will be very useful to business executives and attorneys who are unfamiliar with intellectual property law. For example, the "law of ideas" section is a very well written segment concerning how ideas can be exchanged; the bases for action when an idea is improperly taken; receiving ideas from a third party; and the steps that might be taken trying to protect a corporation from a charge that it used an idea unlawfully. These concepts go beyond the traditional intellectual property bounds such as copyrights, trademarks, or trade secrets.

One weakness of this book, particularly for the experienced attorney, is that there is almost no mention of foreign protection. Since many corporations are multi-national, they have extensive foreign filings of their patents and trademarks. There are different rules for different countries as well as different fees. It has been the author's experience that the expenses for foreign filing can mount rapidly without a corresponding benefit to the corporation. In many cases, companies have foreign-filed applications in countries where they do not have a significant market presence and/or have not filed in countries where they do. Another example of a problem is that in the United States there is a one-year period after publication in which to file a patent application. In most foreign countries there is no grace period; hence, foreign rights can be lost. This takes on increasing importance as companies look to Japan, Europe, Korea, and the like as significant markets.

Overall, this book provides a good base of information for the business executive or general attorney. Although this book is lacking

in some specific information for the experienced practitioner, it is a good reference book. The missing parts do not take away from the overall quality of the book, but for a person with intellectual property experience approximating the level of the ordinary practitioner or head of a corporate department, this book probably doesn't provide the detail necessary for him or her to adequately advise their client in some areas (for example, as mentioned above, foreign protection).

All in all, this is a book that should be in every corporate legal department and will also provide guidance to the private practitioner when advising corporations on intellectual property.

