

## Overview of the University of San Diego School of Law Intellectual Property Law Clinic 2013-14

### Program Coordinators

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### Summary Description

The Intellectual Property Law Clinic (“IP Clinic”) at the University of San Diego School of Law is a new program wherein USD Law School places law students at participating law firms in San Diego to engage in clinical work related to intellectual property. This academic year, the program will begin in late August and will team approximately 6-8 law students per semester with local law firms to provide pro bono services to individuals and companies in the areas of patent, trademark, copyright and trade secret law. Students will work on responses to office actions, searches, provisional and utility patents, IP transactions and IP litigation. The IP Clinic will feed potential pro bono clients to the participating law firms. Students will perform work for these clients under the supervision of the law firm. The IP Clinic is separate from the Technology Entrepreneurship Law Clinic, which provides pro bono services to San Diego CONNECT startups.

Briefly, the process of the clinic is as follows (further details below):

1. Professors Sichelman and Robinson will identify the pool of available USD law students to the participating law firms by early May 2013.
2. Law firms will select 1-2 students for the fall semester through an application and interview process no later than early June 2013.
3. Students will extern at that law firm for the entire fall semester (2013), and if the law firm and student agree, during the spring semester (2014).
4. Prospective clients will come through the USPTO, tech transfer offices at UCSD and SDSU, local inventor, artist, and musician organizations, as well as other pro bono clients and, if accepted, will be assigned to the law firms on a rotating basis.

Students will start at their respective law firm in late September. In August and September, Professors Robinson and Sichelman will teach a 5-6 week “boot camp” to introduce students to the variety of IP work mentioned above. In conjunction with the supervising lawyers, Professors Robinson and Sichelman will provide on-going guidance to the students throughout the semester.

### Detailed Description

#### *Selection of Clients; Conflicts Check for Clients*

Prospective clients will come through the IP Clinic from various sources, such as the USPTO, local entrepreneurship organizations, university tech transfer offices, and through those who find the IP Clinic online and complete an application for consideration. Firms interested in representing the prospective client will inform the IP Clinic, who will assign the clients to firms on a rotating basis. Firms will then interview the prospective client to understand its legal needs and whether there is a fit—if the firm

wants to represent the client, it will perform a conflicts check and execute a retainer letter.<sup>1</sup> The company or individual will then be the client of the law firm (with the understanding that the client may use other attorneys on unrelated matters). Although we expect that student externs will perform work for these clients, a law firm may provide additional services to the client independent of the Clinic.

### *Conflicts, Liability, and Related Concerns for Student Externs*

Each participating law firm will select 1-2 students from the pool of applicants (see below for details on the selection process). After law firms clear conflicts for each student, the students will extern at the firm (and only that firm) on an unpaid basis for approximately 10 hours per week.<sup>2</sup> Students will perform work on a pro bono basis for the pro bono clients referred through the IP Clinic. If the participating law firm has potential pro bono client work that it would like to include in the students' workload, these clients should be cleared by the IP Clinic prior to assigning the work to the student externs so that the IP Clinic can track the workflow and sync with the program. **In the event the firm cannot provide approximately 10 hours of work with IP Clinic referred clients, firms may assign students work for other (preferably, pro bono or fee-reduced or -deferred) clients, provided that students perform no more 25% of their time for paying clients, and provided that students are not billed out for any of their time. Under no circumstances may students perform work for contingent-fee or flat-fee clients, since such work is effectively billed work. Related, firms must not bill for any time spent by law firm attorneys supervising the students as part of the program.** Any liability for student work must be covered by each associated law firm's malpractice insurance policy. USD Law School does not provide any insurance coverage and may execute an express waiver of liability with IP Clinic referred clients.

### *Supervision of the Student Externs*

Direct supervision of the student externs will be performed by their applicable law firms. Because students must adhere strictly to attorney-client and related confidentiality obligations, they will not discuss any specific matters with the professors—however, they will provide general training at a “boot camp” offered at the beginning of the semester as well as on-going supervision and advice.

The course will be pass/fail—thus, law firms need not provide any feedback on student assignments to USD (though, we expect feedback will be provided to the students). Students, not law firms, will be responsible for keeping track and reporting to the professors their hours worked each week.

All students will be informed in very clear terms that they should have no expectation of a job offer from the law firm following the internship. In that regard, students will not be permitted to continue their unpaid work into the summer in order to avoid potential conflicts in hiring with paid summer associates.

### *Types of Work*

Supervising law firms have the ultimate discretion in determining the types of work students should perform. We expect that students will be assigned a variety of projects based on their previous and current coursework and educational background. Projects will mainly include patents (e.g., drafting

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<sup>1</sup> In the event the firm does not want to engage in a relationship with the client, the client will go back to the pool for review by other law firms in the program.

<sup>2</sup> Students working for other firms during the school year will not be eligible for the program.

patent disclosures, work on patent office actions, work on provisional and utility patent applications, and litigation), trademarks (e.g. searches, office actions, appeals, agreements and litigation), copyrights (e.g. analysis, filing, responses to refusals, etc.), and trade secrets (e.g. non-disclosure agreements, employment aspects of IP, litigation, etc.).

### *Selection of Students*

Students will complete an application form no later than early May, and submit that along with a resume and transcript to Professor Robinson, who will screen the applications to eliminate unqualified students. The remaining applications will be circulated no later mid-May among participating law firms. Law firms interested in a particular student may then interview the student on campus or at the firm no later than mid-June. Each law firm will select students on a ranked basis. In the event a given student is selected by multiple law firms at the same rank, the student will select the firm. Students will begin their externships at law firms in early September 2013.

### *Compliance with State and Federal Laws*

Because this program is undertaken by an accredited academic institution for the purposes of training students in an educational manner similar to that undertaken on campus; the experience is for the benefit of the intern; does not displace any regular employees (since the work is primarily pro bono); is subject to close supervision by the law firm; the law firm derives no immediate advantage from the intern's activities and must expend resources to supervise the student, which may impede its operations; the intern receives no wages; and the intern is not entitled to a job at the conclusion of the internship, we believe that our program satisfies applicable state and federal requirements. (See <http://www.dol.gov/whd/regs/compliance/whdfs71.htm>; <http://www.dir.ca.gov/dlse/opinions/2010-04-07.pdf>). In an abundance of caution, law firms may choose to pay minimum wage to the students, in which case the students become at-will employees of the law firm, subject to applicable state and federal laws for paid employees. In this instance, students will still receive credit for the course.

If you have any further questions, please contact either Ted Sichelman at [tsichelman@sandiego.edu](mailto:tsichelman@sandiego.edu) or Dana Robinson at [danarobinson@sandiego.edu](mailto:danarobinson@sandiego.edu).