

Internet and Computer Law
CSCI 4317/5317
Terms for Exam 2

(Please note that any term in the slides may also appear on the exam.)

1. **shrinkwrap**– the cellophane around software that constitutes an enclosed package.
2. **digital signature**– a PIN generated by a complex mathematical formula that can be used, in combination with specialized software, to authenticate the sender of a message and that the content has not been altered in transit.
3. **35 USC §102**: Novelty section of U.S. patent law that changed on March 16, 2013 from "first to invent" to "first to file."
4. **trademark**– a distinctive mark of authenticity, through which the product of particular manufacturers or the vendable commodities of particular merchants may be distinguished from those of others.
5. **tying Arrangements** – Requirements that the buyer of a product or service purchase a second, distinct product or service as a condition of purchasing the first.
6. **"Means for" analysis** – how patent claim elements are studied to determine their specific definitions with reference to what is disclosed in a patent's specification.
7. **horizontal Restraint** – A successful operation of a price-fixing cartel would be a good example of this.
8. **common carrier** – A transporter who holds himself out to the general public for the transportation of goods over a definite route and according to a regular schedule.
9. **contract** - A traditional business document requiring *offer, acceptance, and consideration* ; requiring ink-on-paper signatures.
10. **last mile**– The term referring to the telecommunications link into the home/business over which cable and phone companies have battles.
11. **E-SIGN**- The acronym for Electronic Signatures in Global and National Commerce Act.
12. **nonobviousness under 35 USC §103** - all the elements of the patent claim may not be found in 2 or more items of prior art and a person skilled in the art and with prior art would not find the invention apparent.
13. **domain name** - the name an individual or entity uses to identify its Web site.

14. **Enablement and Claims (35 USC § 112)** - Lists what must be included in the “specification” of a patent application, including the level of technical detail required to allow a person skilled in the art to make and use the invention, as well as the best mode of making and using it..
 15. **ICANN** - the organization that assumed control in 1999 of domain name registration and has the power to license organizations to become domain name registrars.
 16. **diversity of citizenship** – a basis for federal court jurisdiction over a lawsuit that arises when (1) the parties of the lawsuit live in different states or when one of the party is a foreign government or a foreign citizen, and (2) the amount in controversy is more than \$75,000.
 17. **trade secret**– a formula, pattern, device, or compilation of information which is used in one’s business and which gives one opportunity to obtain advantage over competitors who do not know or use it.
 18. **Markman hearing**—The judge (never a jury) uses expert testimony and other evidence to analyze the meaning of patent terms prior to any litigation.
 19. **in rem jurisdiction**-- gives the court power to adjudicate a claim about a piece of property or a status.
 20. **procedural due process** - means the court must have given the defendant adequate notice of the action against her and an opportunity to be heard.
 21. **patent** – a government instrument conveying the exclusive right to make and sell a new invention.
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22. **open source**– the source program or operating system software is made freely available for modification, corrections, and redistribution
 23. **long arm statute**- permits the state court to get jurisdiction over persons not physically present within the state at the time of service.
 24. **jurisdiction**- the general power of a court to make legally binding decisions over certain persons, property, and/or geographical areas.
 25. **subject matter jurisdiction** -The court’s power to decide the kind of case before it (e.g. a case where the parties come from different states)
 26. **cybersquatter**– someone who registers a recognized name or its misspelling as his/her own domain name when it would be recognized by the general public as belonging to someone else.
 27. **substantive due process**--the power that comes from the 14th Amendment that gives the court the power to act, either upon particular property or on a particular person so as to subject her to personal liability.

28. **in personam jurisdiction** - the court's power to issue a judgment against an individual that would allow the individual to be placed in jail.
29. **quasi in rem jurisdiction** - A judgment affects only the property seized. The thing seized is a pretext for the court to decide a case without having jurisdiction over the defendant.
30. **antitrust**- The body of law that attempts to support free competition in the marketplace by curbing monopolistic and unfair trade practices.
31. **WIPO** - one of 4 organizations approved to resolve domain name disputes.
32. **UETA** - Some state legislatures have adopted this uniform law so as to authorize the use of electronic documents and electronic signatures instead of paper documents and paper signatures.
33. **vertical restraints**- Restrictions on intra-brand competition between firms operating at different levels of the manufacturing or distribution chain that restrict conditions under which firms may purchase, sell, or resell.
34. **doctrine of equivalents**- Permits a finding of patent infringement when literal infringement cannot be found for all elements.
35. **vaporware** -False and misleading announcements of forthcoming competitive products which misleads the public by making them want to wait to buy – thus hurting competition.
36. **initial interest confusion**- Where a customer is diverted to a competitor's location by misuse of a trademark. Even though the customer may realize the mistake once he gets to the competitor's website, the competitor has gained an advantage by getting the customer to look at its wares.
37. **patent troll** – a person or company that attempts to license patents it never intended to practice.
38. **blurring**- Use of the same trademark on a second product as an attempt to make the customer focus less clearly on the original mark as an indication of the source of the product.
39. **prior art**-A list of patents and other documents showing intellectual properties similar to the ones that an inventor wants to patent.
40. **per se antitrust violation**- Traditional fixing of minimum prices, certain agreements on market division and exclusive dealings, group boycotts, tying.

41. **tie-in sales**- When a company, with a monopoly on one product, uses this monopoly to force customers to buy another product from the same company.
42. **phishing** – Fraudulently soliciting consumers so as to obtain personally identifiable information.
43. **Telecommunications Act of 1996**- Federal legislation that encouraged competition among phone companies, broadband Internet services, video services, and cable companies.
44. **minimum contacts**- A “term of art” meaning that a defendant has taken actions purposefully directed toward the forum state (e.g. by buying or selling goods in that state).
45. **Rule of Reason** – In an antitrust action, where the challenged activity is not a per se violation, the Court uses this to balance the pro-competitive benefits against the anticompetitive effects to ensure that competition is being maintained or strengthened rather than restrained.
46. **consent decree** – An agreement between two parties that is sanctioned by the court .
47. **garnishment** -The defendant’s trademark creates a bad association with the plaintiff’s trademark.
48. **file wrapper estoppel**- The scope of a patent claim cannot be limited by 35 USC §112 to cover a process or apparatus that was specifically disclaimed by the applicant during the prosecution of the patent.
49. **predatory pricing** -A 3-stage process whereby: (1) a company drastically lowers prices; (2) there is an exit of producers who cannot compete; (3) the company then recoups the losses and makes money with a monopoly.
50. **Network effects**--Gains to be achieved if everyone uses the same industry standard.
51. **Switching costs**--Costs of changing industry standards.
52. **Uniform Domain Name Dispute Resolution Policy (UDRP)**-- a process established by ICANN for the resolution of disputes regarding the registration of internet domain names. The UDRP currently applies to all .biz, .com, .info, .name, .net, and .org top-level domains, and some country code top-level domains.
53. **uniform law**--a law that all state statute drafters can copy and enact in their own states.