Section 1

Introduction

Those who dare to fail miserably can achieve greatly.
— John F. Kennedy
35th President of the United States

Perhaps no area of law evolves at the pace with which intellectual property law evolves. Like the inventors, businesses, artists, and writers that rely upon intellectual property law to provide protections for their work and value to their toils, intellectual property law continues to revise and update itself to keep pace. While human ingenuity and creativity continues to prove we as a human race will seemingly never cease innovating, creating, and evolving, the magnitude of our creations sometimes make us wonder what could be left to create? It is rumored that in 1899 the Commissioner of the U.S. Office of Patents stated, “everything that can be invented has been invented.” Since then the airplanes took flight (1903), assembly line manufacturing took shape (1913), insulin (1921) was extracted and prepared resulting in its availability for diabetics, and lasers were fired (1958). More recently smart phones, electric cars, the human genome project, Google,® Facebook,® and Twitter®—concepts that were even a stretch for science fiction novels—have become realities.

It has been several decades now since intellectual property issues were merely matters of interest to a small number of attorney specialists practicing law in obscurity. Intellectual property rights today are front-page news. Intellectual property (IP) is subject matter that touches everyone’s life regardless of profession, socio-economic standing, or nationality and whether or not it is recognized. From an economic and business perspective, The Economist has reported that up to 75 percent of the value of a U.S. pub-
licly traded company is based solely upon the company’s intellectual property. For start-ups or companies in certain tech sectors, the entire value of a company may be tied to its IP. National and international intellectual property policies and agreements stand as pillars of government supporting the ability of nations to do business in globalized markets and provide assurances for economic investment in jurisdictions across the globe. Absent IP protections, global economic development cannot happen and economic opportunity for all would be lost.

IP and IP rights not only influence economies and the business world, they play a strong role in virtually every aspect of our modern life. Patent rights or lack of rights may dictate functionality incorporated into new devices. Trademark rights influence what products or services we purchase and copyright law protects musicians and moviemakers from rapid unauthorized duplication of their works and the resulting loss of financial benefits and credit. IP and the technologies enabled under IP rights systems also affect world events. Recently, online social media sites have become so intertwined in world events that the sites have played a significant role in social and political movements—including revolutions—around the world. For those that view life with a less global view, IP rights are still critical to their daily life. Any action involving an iPhone® or a movie rental involves intertwined IP rights, even if few realize it.

Despite the prominence and importance of intellectual property and the immense value to individuals that grasp even IP basics, there seems to be a gap in comprehensive educational materials for individuals who are not already experts in intellectual property matters. Significant volumes have been written for experienced IP attorneys and others who have already acquired both a theoretical understanding of legal principles in their law school studies and further legal knowledge through years of practical experiences in law firms, governmental work, or other IP occupations. Likewise, case law books written in the traditional casebook format for use in law school IP courses often focus on one particular type or aspect of IP. These materials have a wealth of knowledge and serve their purpose, but they typically are not very helpful to those with a thirst for practical and comprehensive experience-based information on intellectual property law and IP practice in the United States.

We have set out in the New Practitioner’s Guide to Intellectual Property (NPG) to provide a resource distinct from any in existence. As such, we believe the NPG provides for the first time a comprehensive, practical, frequency-and occurrence-based guide to intellectual property and intellectual property law that is suited for new intellectual property prac-
tioners (including new patent, trademark and copyright attorneys); general counsels; students and individuals studying and working in the sciences; non-IP attorneys who wish to get up to speed on IP issues; and institutions of higher learning offering courses on intellectual property practice. Therefore, the NPG, in contrast to other resources, provides general understanding of all the major areas of U.S. intellectual property law but also provides an understanding of the acquisition/prosecution process, as well as the enforcement/litigation process of all the major areas of intellectual property.

The NPG is intended to be not just a reference but also a cover-to-cover readable reference book. In particular, the NPG discusses in detail prosecution before the United States Patent and Trademark Office and the U.S. Copyright Office for those matters that are most regularly encountered by IP practitioners and entities securing IP rights in the United States. Likewise, common litigation actions and matters are also covered as they occur in patent, trademark, and copyright cases. The NPG is aimed to be the “senior IP associate” or “partner” that you can ask for guidance as you begin your intellectual property career or start working with matters that relate to or involve intellectual property. But again, the NPG is certainly not aimed just at new IP lawyers. For thousands of engineers and scientists who enter the work force each year, information about IP issues and how they are likely to be handled can be critical to professional success. Similarly, entrepreneurs, businessmen, and businesswomen of all walks of life can gain greatly from basic IP knowledge. We hope and believe the NPG can assist in those endeavors through its simple and enjoyable presentation of IP information that includes just the right amount of detail, providing readers with knowledge to understand and utilize the IP tools that are available in the United States. As one of America’s best known and earliest inventors, Benjamin Franklin, once said, “an investment in knowledge pays the best interest.” We hope and believe you will find the New Practitioner’s Guide to Intellectual Property to be educational, agreeable, and worth your time as a reader.