TABLE OF CONTENTS

PART I RECOVERY OF MONEY DAMAGES

CHAPTER 1

Introduction to Monetary Damages

§ 1.01	Introduction	1	1-1
§ 1.02		Background to Monetary	
U		S	1-4
§ 1.03		nciples of Monetary Damages	1-7
U		rmining Whether Injuries May	
		e Compensated by Damages	1-7
	[a]	Proximate Cause	1-7
	[b]	Joint and Several Liability	1-10
	[c]	The Standard of Certainty	1-10
	L J	ulating the Damages Award	1-12
		Compensatory Damages	1-13
	[۵]	[i] Market Value Measure	1-13
		[ii] Lost Opportunity Measure	1-14
		[iii] Disclosure of Compensatory	1-14
		Damages	1-15
	[h]	Unjust Enrichment	1-15
	[b]		
	[c]	Augmented Damages	1-19
		[i] Punitive Damages	1-19
		[ii] Statutory Enhanced	1 21
	F 13	Damages	1-21
	[d]	Interest	1-22
	e	Attorneys' Fees and Costs	1-24

CHAPTER 2

Copyright Infringement Damages

§ 2.01 § 2.02		duction	
3	[1]	Actual Damages Attributable to	_
		1 7 6:	2-5
		[a] Requirement of Causal	
		Connection and Some Lo	
		of Anticipated Revenue.	
		[i] Damages Too Specula	
		in Nature	2-7
		[b] Temporal Limitations	• 0
		on Damages	2-8
		[c] Joint and Several Liability.	
		[d] Measures of Actual Damage	
		[i] Lost Sales (a.k.a. Lost	
		Profits)	
		[ii] Reasonable Royalty	
		[iii] Market Value Test	
		[e] Other Compensable Element	
		Actual Damages	
		[i] Loss of the Value of I	_
		Credited as Author	
		Work, and the Loss	of
		Good Will Derived	
		Therefrom	
		[ii] Value of Sales Lost on	
		Non-Infringed Items	
		[iii] Additional Costs	
		[f] Punitive Damages	2-23
	[2]	The Infringer's Profits Attributable	e to
		the Infringement	
		[a] Joint and Several Liability.	
		[b] Burden of Proof	2-26
		[c] Measure of Infringer's Profi	
		[i] Profit Apportionment.	2-28
		[ii] Deductible Expenses .	
		[iii] Indirect Profits	2-33
		[d] Right to a Jury Trial on	
		Defendant's Profits	2-36
	[3]	Statutory Damages	2-36
		[a] Registration Requirement	2-38
		[b] Recovery of Statutory Dama	
		at Copyright Owner's	
		Election	2-40

		TABLE OF CONTENTS	X
	[c]	The 1976 Act and the Berne Implementation Act	2-41
	[d]	The Digital Theft Deterrence and Copyright Damages	2.40
	[e]	Improvement Act of 1999 Digital Millennium Copyright	2-42
	[f]	Act Benchmarks for Setting Statutory	2-43
	[g]	Damages	2-45
	101	Minimum	2-50
	[h]	Broadcaster Exception Exceptions to the Statutory	2-51
	[11]	Maximum	2-52
	F*3	[i] Failure to Obtain a License	2-55
	[i]	Multiple Works and Multiple Infringements	2-56
		[i] The Infringement of Multiple Works Owned by the	
		Plaintiff [ii] The Infringement of	2-57
		Compilations and Derivative Works	2-58
		[iii] The Infringement of a Single Copyrighted Work by	
		More than One	2-62
	F*3	Infringing Act [iv] Multiple Infringers	2-63
	[j]	Constitutional Limits on Statutory Damages	2-64
	[k]	Some Statistics on Statutory Damages Awards	2-67
	[1]	Right to Jury on Statutory Damages	2-68
	[m]	Evidentiary Hearing on Statutory Damages	2-70
		aterritorial Damages	2-70
2 02	C	ontract Damages	2-71 2-74
§ 2.03		States as Infringerudgment Interest	2-74

CHAPTER 3

Patent Infringement Damages

§ 3.01 § 3.02	Introduction				
3 3.02	[1]			Basis for Lost Profits	3-7
	r.1			e Awards	3-8
	[2]	The S	Standa	ard of Proof	3-9
	[3]			ausation	3-10
	[2]	[a]		-For" Causation	3-10
		[_c]	[i]		3-11
			[ii]		5 11
			[11]	The Modified Panduit	
				Test	3-12
			[iii]		3-13
				Identical Infringing	5 15
			[,,]	Products	3-14
		[b]	Prox	imate Causation	3-15
		[0]	[i]	Foreseeability of Remote	3 13
			[+]	Losses	3-16
			[ii]	When the Product at Issue	3 10
			[11]	Is Not the Patented	
				Invention	3-16
			[iii]		5-10
			[111]	Not Make or Sell the	
				Patented Device	3-17
			[iv]	Balancing the Market	3-19
	[4]	The		uit Test and Its Progeny	3-19
	[٦]	[a]		and for the Patented	5-17
		[a]		oduct	3-19
			[i]	Demand and Customer	5-17
			[1]	Preference	3-21
			[ii]	Demand and Marketing	3-21
			[11]	Capability	3-22
			[iii]	Demand for the Patented	3-22
			[III]	Feature or Demand for	
				the Patented Product?	3-22
			[iv]		3-22
		Ր եՂ		Defensive Strategies	3-23
		[b]	AUSC	ence of Acceptable	3-23
				on-Infringing Substitutes In the Same Market	3-25
			[i]	Price/Characteristics	3-20
			[ii]	Differential	2 27
			F###1		3-27
			[iii]	Lacking One or More Features	2 27
			[477]	On the Market or Merely	3-27
			[iv]	Available	3-28
				Availaule	.)-40

	TABLE OF CONTENTS	xvii
	[v] Collateral Estoppel[vi] Conclusions on the Acceptable Non-Infringing	3-29
	Substitutes Prong [c] Manufacturing and Marketing Capability to Exploit the	3-30
	Demand	3-31
	Capacity[ii] Capacity to Make Foreign	3-32
	Sales[d] Proof of Amount of Lost	3-32
	Profits	3-33
§ 3.03	Quantifying Lost Profits	3-35
b	[1] Price Component	3-38
	[2] Costs	3-41
	[3] Taxes	3-44
	[4] Infringer's Profit Margin	3-44
	[5] Split Awards	3-44
	[6] Experts	3-45
	[7] Extraterritorial Lost Profits	3-47
§ 3.04	Profits on Non-Infringing Products	3-48
§ 3.04A	Future Lost Profits	3-50
§ 3.04A	Apportionment	3-50
3 3.03		3-51
	[1] When Applicable	3-52
	[2] When Not Applicable	
	[a] Entire Market Value Rule	3-53
	[b] Calculating Lost Profits Based on Direct Evidence of	
	Lost Sales	3-54.2
	[3] Difficulties with Apportionment	3-54.2
§ 3.06	Review of Damages Awards	3-54.5
§ 3.07	Established Royalty	3-54.7
y 3.07	[1] The Established Royalty Criteria	3-54.7
	[a] When the Prior Transactions	3-3-1.7
	Were Made	3-54.7
	[b] Number of Past Royalties	3-55
		3-56
		3-56
	[e] Comparable Rights Licensed	3-57
8 2 00	[2] Minimum or Maximum Recovery	3-57
§ 3.08	Reasonable Royalty	3-59
	[1] The Reasonable Royalty Rate	3-60
	[a] The Analytical Method	3-61

		[b]	The Hypothetical Negotiation	3-62
		[~]	[i] Factors Relating to	5 0 2
			Licensing Activity	3-67
			[ii] Factors Relating to the	5 07
			Value of the Patent	3-70.1
		[c]	The "25% Rule"	3-70.1
		[d]	The Nash Bargaining Solution	3-70.4
	[2]		Reasonable Royalty Base	3-70.0
	[3]		ility to Derive a Reasonable Royalty	3-70.7
	[4]		oing Royalties	3-70.10
	[5]	Prov	risional Rights	3-70.10
§ 3.09			mages Cases	3-70.11
3 3.03	[1]		gn Patents	3-70.14
	[2]		United States As Infringer	3-70.16
	LJ	[a]	The Different Valuation	
			Methods	3-70.18
		[b]	Compensation for Delay	3-71
	[3]	A St	tate As Infringer	3-73
§ 3.10	Colla	ateral 1	Assessments	3-74
§ 3.11	Limi	tations	on Award of Damages	3-75
	[1]	Time	e Period for Recovery of	
			amages	3-75
	[2]		Six-Year "Lookback"	3-76
	[3]		king	3-78
		[a]	Requirements of Constructive	2.00
			Notice	3-80
			[i] Duty to Mark	3-81
		[b]	[ii] Sufficiency of Notice Actual Notice in Lieu of	3-83
		[Մ]	Marking	3-87
		[c]	Lack of Sufficient Notice as a	3-07
		[c]	Limitation on Recovery	3-89
			[i] Burden of Proof	3-89
			[ii] Effect of Failure to Mark	
			or Notify	3-91
	[4]	Lacl	nes	3-92
			Early Development of Laches	
			in Patent Cases	3-92
		[b]	Elements of Laches Under	
			Aukerman and Its Progeny	3-93
			[i] Unreasonable and	
			Inexcusable Delay	3-95
			[ii] Prejudice Resulting from	2 00
			the Delay	3-98
			[iii] The "Bursting Bubble"	
			Presumption and the	2 100
			Burden of Proof	3-100

	TABLE OF CONTENTS	xix
§ 3.12 § 3.13	[iv] Relation to Equitable Estoppel [c] Laches After SCA Hygiene Products [5] Double Recovery Relief for Ongoing Infringement Subsequent Invalidity	3-101 3-102.1 3-103 3-104 3-105
	CHAPTER 4	
	Trademark Infringement Damages	
§ 4.01 § 4.02	Introduction	4-2 4-5
	Infringement	4-6
§ 4.03	Infringement	4-7 4-8 4-9 4-15
	the Infringement [a] Lost Profits	4-16 4-17 4-18 4-19 4-20 4-21
	[d] Cost of Corrective Advertising	4-23 4-25 4-27 4-30 4-31
	Profits	4-33
	Deductions/Specific Items [i] Overhead and General Administrative Costs	4-34 4-35
	[ii] Cost of Goods or Raw Materials	4-36
	[iii] Labor Costs and Management Salaries	4-36

§ 5.01 § 5.02

§ 5.03

§ 5.04

§ 5.05 § 5.06

	[iv] Taxes	4-37
	[v] Advertising Costs	4-38
	[vi] Start-Up Costs	4-38
	[vii] Depreciation	4-38
	[viii] Transportation and Storage	
	Costs	4-39
	[ix] Discounts, Bad Debts,	
	Returns and Unsold	4.20
	Inventory	4-39
	[x] Costs of Corrective Action	4-39
	[xi] Costs of the Accounting	4-39
	[xii] Pass-Through Profits [e] The Accounting Period	4-40 4-40
	[e] The Accounting Period [f] Right to a Jury Trial	4-40
[4]	Preemption of State Law Remedies	4-44
[5]	Statutory Damages for Counterfeiting	4-45
[2]	[a] "As the Court Considers Just"	4-48
	[b] "Per Counterfeit Mark Per Type	0
	of Goods or Services"	4-51
[6]	Statutory Damages for Cybersquatting	4-52
	CHAPTER 5	
]	Damages for the Misappropriation	
	of Trade Secrets	
Intro	oduction	5-1
	sonable Royalty Under Section 2 of the	0 1
	niform Trade Secrets Act	5-5
	nages Under Section 3 of the Uniform	
T	rade Secrets Act	5-8
[1]		5-8
	[a] Lost Sales	5-9
	[b] Other Lost Revenue	5-11
	[c] Loss of Value of the	
	Misappropriated Trade Secret	5-12
[2]	Unjust Enrichment	5-13
[3]	Reasonable Royalty	5-21
	itations on Damage Awards	5-23
[1]	Equitable Limitations	5-23
[2]	Temporal Limitations	5-24
	ew of Damage Awards	5-27
	Defend Trade Secrets Act of 2016	5-29
[1]	Monetary Damages	5-29 5-29
[2] [3]	Injunctive Relief	5-29 5-30
131		5-50

TABLE OF CONTENTS

xxi

CHAPTER 6

Remedies for Internet Infringement

§ 6.01	Introd [1]		Internet and the World	6-2
		W	ide Web	6-3
	[2]		lectual Property Infringement	<i>C</i> 1
	[3]		the Internet	6-4
	[3]		oviders	6-7
§ 6.02	Conv		nfringement on the Internet	6-9
y 0.02	[1]		es of Infringement	6-9
	[1]	[a]	Artificial Intelligence	0-7
		[a]	_	6-11
	[2]	Dam	and Copyright	
	[2]		edies f Paradia for	6-12.2
		[a]	Summary of Remedies for	6 12 2
		F1 7	Copyright Infringement	6-12.2
		[b]	Remedies Against Direct	(12 2
			Infringers	6-12.3
			[i] Damages	6-12.3
			[ii] Injunctive Relief	6-14
		[c]	Remedies Against ISPs	6-16
			[i] Pre-Digital Millennium	c 15
			Copyright Act	6-17
			[ii] Post-Digital Millennium	- 40
		_	Copyright Act	6-18
§ 6.03			Infringement and Dilution on	
			net	6-28
	[1]	Type	es of Infringement	6-28
		[a]	Generally	6-28
		[b]	Types of Internet Infringement	6-30
			[i] Domain Names and	
			Trademark Rights	6-30
			[ii] Linking and Framing	6-36
			[iii] Search Engines, Metatags	
			and Key Words	6-37
			[iv] The Metaverse	6-40
	[2]	Uniq	ue Remedies Issues	6-40.1
		[a] ⁻	Summary of Remedies for	
			Trademark Infringement	6-40.1
		[b]	Damages	6-41
		[c]	Injunctive Relief	6-41
		[d]	Injunctive Relief Against	
			Domain Name Registrars	6-45
		[e]	Attorneys' Fees and Costs	6-47
			·	

xxii	INTELLECTUAL PROPERTY DAMAGES	
	[f] Statutory Damages for	6.45
e <i>c</i> 04	Cybersquatting	
§ 6.04	Trade Secret Infringement on the Internet [1] Generally	
	[2] Unauthorized Disclosures of Trade	0-30
	Secrets on the Internet	6-50
	[a] Summary of Remedies for Trade	
	Secret Infringement	6-50
	[b] Remedies for Unauthorized	
	Disclosure of Trade Secrets on	
	the Internet	
	[c] Remedies under the DTSA	
	[i] Monetary Damages	
	[ii] Injunctive Relief	6-54
	CHAPTER 7	
	Augmented Damages	
§ 7.01	Introduction	7-2
§ 7.02	Augmented Damages for Copyright	
	Infringement	7-3
	[1] Increased Damages Under the Copyright	7.2
	Act of 1976	
§ 7.03	[2] State Law Claims	7-3
g 7.03	Infringement	7-7
	[1] Increased Damages Under the	7-7
	Patent Act	7-7
	[2] Willful Patent Infringement	
	[3] The <i>Halo Electronics</i> Decision	
	[4] Pre-Seagate Technology Caselaw	
	[a] Knowledge	
	[b] Affirmative Duty of Due Care	7-20
	[i] Opinion Regarding	7.01
	Infringement	7-21
	[ii] Competence of Opinion [iii] Good Faith Reliance on	7-23
	Outute a	7-28
	[c] Good Faith Attempts to Design	7-20
	Around/Avoid Copying	7-29
	[d] Good Faith Challenges to	. =>
	Infringement	7-30
	[e] Other Factors	7-32
	[5] Procedural Issues	7-33

	TABLE OF CONTENTS	xxiii
§ 7.04	[6] Amount of Increased Damages Augmented Damages for Trademark	7-35
	Infringement[1] Increased Damages Under the	7-38
	Lanham Act	7-38
	[a] Factors	7-40
	[b] Procedural Issues	7-43
	[c] Amount of Increases	7-44
	[2] The "Just Sum" Provision	7-45
	Counterfeiting	7-46
. = 0.5	[4] State Law Claims	7-46.2
§ 7.05	Augmented Damages for Trade Secret	7.47
	Misappropriation	7-47
	[1] Increased Damages Under the Uniform Trade Secrets Act	7-47
	[2] State Law Claims	7-47
	[3] Increased Damages Under the Defend	7-40
	Trade Secrets Act	7-52
		1-32
	[4] Constitutional Limits on Increased	
	Damages for Misappropriation of	7.50
	Trade Secrets	7-52
	CHAPTER 8	
	Recovery of Attorneys' Fees and Costs	
§ 8.01	Introduction	8-2
§ 8.02	The "American Rule"	8-5
§ 8.03	Statutory Basis for Recovery of Attorneys	0.5
3 0.02	Fees' in Intellectual Property Litigation	8-8
	[1] Timing of Motion for Attorneys' Fees	8-10
	[2] Non-Statutory Recovery of	
	Attorneys' Fees	8-11
§ 8.04	Award of Attorneys' Fees Under the Copyright	0 11
3 0.0 .	Act of 1976	8-13
	[1] Registration as a Prerequisite	8-13
	[2] Prevailing Party Defined	8-14
	[a] Multiple Causes of Action	8-16
	[b] Multiple Works at Issue	8-17
	[c] Multiple Parties	8-18
	[d] Minimal or Nominal Recovery	
	by Copyright Owner	8-18
	[3] Awards to Defendants	8-19

xxiv	INTELLECTUAL PROPERTY DAMAGES				
	[4]	Awards in the Court's Discretion [a] Factors Favoring an Award [i] Willful Infringement	8-23 8-25 8-27		
		[ii] Litigation Misconduct	8-28		
		[b] Factors Disfavoring an Award	8-31		
		[i] Innocent Infringement	8-31		
		[ii] Conduct of the Litigation	8-32		
	[5]	Reasonable Fees	8-33		
	[6]	Standard of Review on Appeal	8-36.4		
§ 8.05	Awa	rd of Attorneys' Fees Under the			
	Pa	atent Act	8-37		
	[1]	Prevailing Party	8-38		
		[a] Arising Under the Patent Laws	8-40		
		[b] Multiple Causes of Action	8-42		
		[c] "Split" Verdicts	8-42		
	[2]	"Exceptional" Cases	8-44		
		[a] Awards to Prevailing Patent			
		Owners	8-47		
		[b] Awards to Prevailing			
		Defendants	8-48		
		[i] Bad Faith Filing of a Patent			
		Infringement Action	8-49		
		[ii] Litigation Misconduct	8-52		
		[iii] Fraud or Inequitable			
		Conduct During the			
		Patent Prosecution	8-55		
	[3]	Discretion	8-56		
	[4]	Reasonable Attorneys' Fees	8-59		
	[5]	Standard of Review on Appeal	8-64		
	[6]	Award of Attorneys' Fees Outside			
		the Patent Act	8-64.2		
	[7]	Attorneys' Fees on Appeal			
		of a PTAB Decision	8-66		
§ 8.06	Awa	rd of Attorneys' Fees in Trademark			
		itigation	8-67		
	[1]	Prevailing Party	8-67		
	[2]	"Exceptional" Cases	8-69		
		[a] Awards to Trademark Owners	8-74.1		
		[b] Awards to Alleged Infringers	8-75		
	[3]	Discretion	8-77		
	[4]	Trademark Counterfeiting	8-79		
	[5]	Reasonable Attorneys' Fees	8-80		
	[6]	Attorneys' Fees on Appeal	8-82.1		

	TABLE OF CONTENTS	XX
§ 8.07	[7] Attorneys' Fees on Appeal of a TTAB Decision	. 8-82.2
3 0.07	Litigation	. 8-83
	[1] Prevailing Party Defined	
	[2] Special Circumstances	
	[3] Discretion	
	[4] Reasonable Fees	
	[5] The Defend Trade Secrets Act	. 8-90
§ 8.08	Award of Attorneys' Fees Against the	
	United States	. 8-91
§ 8.09	Costs	
	[1] Electronic Discovery Costs	
	[2] Expert Witness Fees	
	[3] Other Expenses	. 8-102
	CHAPTER 9	
	Interest on Monetary Awards	
§ 9.01	Introduction	. 9-1
§ 9.02	Prejudgment Interest	. 9-4
	[1] Under the Patent Act	
	[a] Historical Standard	
	[b] Modern Standard	
	[c] Federal Circuit Cases	
	[d] Calculating the Award	
	[2] Under the Copyright Act	
	[a] Decisions Under the 1909 Act	
	[b] Decisions Under the 1976 Act	
	[c] Calculating the Award	
	[3] Under Trademark Law	
	[a] Ordinary Trademark Infringement.	
	[i] Calculating the Award	
	[b] Trademark Counterfeiting [i] Calculating the Award	
	[i] Calculating the Award [4] Under the Uniform Trade Secrets Act	
§ 9.03	Postjudgment Interest	
8 7.03	[1] Federal Cases	
	[2] Misappropriation of Trade Secret	.)-2
	Cases	. 9-30
		. , ,

PART II STOPPING FURTHER INFRINGEMENT

CHAPTER 10

Introduction to I	Nonmonetary	Remedies
---------------------------	-------------	----------

§ 10.01	Introduction	10-1
§ 10.02	Historical Background to the Development	
	of Equity	10-3
§ 10.03	General Principles of Equity	10-7
	[1] Procedural Aspects of Equity	10-7
	[a] No Jury	10-7
	[b] Equitable Defenses	10-8
	[i] Laches	10-8
	[ii] Unclean Hands	10-9
	[2] Remedial Aspects of Equity	10-11
	[a] No Adequate Remedy at Law	10-11
	[b] The Balance of the Hardships	10-13
	[c] The Public Interest	10-13
§ 10.04	Nonjudicial Remedies	10-15
	[1] The Customs Service	10-15
	[2] The International Trade Commission	10-16
	CHAPTER 11	
	Injunctive Relief in Intellectual	
	Property Cases	
	Troperty Cuses	
§ 11.01	Introduction	11-3
§ 11.02	General Federal Statutes, Rules and Case	
U	Law Governing Injunctive Relief	11-5
	[1] Preliminary Injunctions	11-5
	[a] Governing Statutes and Rules	11-5
	[b] The "Four-Factor" and	
	"Either-Or" Tests	11-7
	[c] Other General Considerations	11-10
	[2] Temporary Restraining Orders	11-11
	[a] Grounds for Issuing a TRO	11-11
	[b] Format of a TRO	11-12
	[c] Ex Parte TROs	11-13
	[3] Prohibitory, Mandatory and All-Relief	
	Injunctions	11-16
	[a] Mandatory Injunctions	11-17
	[b] All-Relief Injunctions	11-19

			TABLE OF CONTENTS	xxvii
	[4]	Bond	Requirement	11-19
	[5]		edies for Violations or Improper	
			rant of Injunctions	11-20
	[6]		anent Injunctions	11-22
	[7]		icability to Third Parties	11-24
	[8]		eal of Injunctive Relief	11-25
	r.1	[a]	Temporary Restraining Orders	11-25
		[b]	Preliminary Injunctions	11-26
		[c]	Permanent Injunctions	11-26
		[d]	Stay of Injunction Pending	11 20
		[^ω]	Appeal or Reconsideration	11-27
		[e]	Right to Expedited Appeal	11-28
§ 11.03	Iniur		Relief Under the Copyright Act	11-29
y 11.03	[1]		Presumption of Irreparable Harm	11-29
	[2]	Facto	ors to Consider in Analyzing	11-29
	[4]		reparable Harm	11-32
				11-32
		[a]	Inadequacy of Money	11-32
			Damages	11-32
			[i] Infringer's Ability to Pay	11 22
			Damages	11-32
			[ii] Loss of Customers and	11 22
		F1 7	Goodwill	11-32
		[b]	Duration or Time-Value of	11 22
		r 1	Copyright	11-33
	[3]	[c]	Delay	11-34
		[d]	Cessation of Infringement	11-35
			minary Injunctions	11-36
		[a]	Likelihood of Success	11-36
			[i] Validity and Right to	
			Enforce	11-36
			[ii] Infringement	11-37
		[b]	The Balance of Hardships	11-37
		[c]	The Public Interest	11-38.1
	[4]		porary Restraining Orders	11-38.2
	[5]	Perm	anent Injunctions	11-38.2
		[a]	Violation of Permanent	
			Injunctions	11-38.4
§ 11.04	Injur	11-38.5		
3	[1]	11-38.5		
	r-1	[a]	arable Harm	11-39
		F7	[i] Infringer's Ability to Pay	
			Damages	11-40
			[ii] Loss of Market Share	11-41
			[iii] Loss of Goodwill and	11 11
			Reputational Harm	11-43
		[b]	Delay and Selective Enforcement	11-43
			*	11-43
		[c]	Cessation of Infringement	11-44

xxviii INTELLECTUAL PROPERTY DAMAGES

		[d] Length of Patent Term	11-44.1
		[e] Standard Essential Patents	11-44.1
	[2]	Preliminary Injunctions	11-45
		[a] Likelihood of Success	11-46
		[i] Title	11-47
		[ii] Validity	11-47
		[iii] Infringement	11-50
		[b] The Balance of Hardships	11-51
		[c] The Public Interest	11-52
		[d] Preliminary Injunctions Against a	11 02
		Patent Owner Communicating	
		its Patent Rights	11-52
	[3]	Temporary Restraining Orders	11-53
	[4]	Stay Pending Reexamination	11-54
	[5]	Permanent Injunctions	11-55
	[-]	[a] No Double Recovery	11-56.1
		[b] Laches	11-56.1
		[c] Violation of Permanent	
		Injunctions	11-56.2
§ 11.05	Iniur	nctive Relief Under the Lanham Act	11-56.3
3 11.00	[1]	The Presumption of Irreparable Harm	11-56.3
	[2]	Considerations for Irreparable Harm	11-56.7
	[-]	[a] The Trademark Owner's	11 50.7
		Considerations	11-56.7
		[i] Loss of Customers and	11 000,
		Goodwill	11-56.7
		[ii] Infringer's Ability to Pay	
		Damages	11-56.8
		[b] The Defendant's Considerations:	
		Rebutting the Presumption of	
		Irreparable Harm	11-56.9
		[c] Cessation of Infringement	11-57
	[3]	Preliminary Injunctions	11-58
		[a] Likelihood of Success	11-58
		[i] Validity and Right to	
		Enforce	11-58
		[ii] Infringement and Likelihood	
		of Confusion	11-59
		[b] The Balance of Hardships	11-61
		[c] The Public Interest	11-62
	[4]	Temporary Restraining Orders	11-63
	[5]	Permanent Injunctions	11-64
§ 11.06		nctive Relief for Misappropriation	
		Trade Secrets	11-69
	[1]	The Presumption, or Lack of	
		Presumption, of Irreparable Harm	11-71

		TABLE OF CONTENTS	XX1X
	[2]	Factors for Analysis of Irreparable	11.72
		Harm[a] Loss of Customers and	11-73
		Goodwill	11-73
		[b] Delay	11-74
	[3]	Preliminary Injunctions	11-75
		[a] Likelihood of Success	11-75
		[i] Existence of a Trade Secret[ii] Likelihood of	11-76
		Misappropriation and	
		Inevitable Disclosure	11-76
		[b] The Balance of Hardships	11-79
	F 43	[c] The Public Interest	11-79
	[4]	Temporary Restraining Orders	11-80
	[5]	Permanent Injunctions	11-81
		CHAPTER 12	
Exclus	sion o	of Infringing Products from Importation	n and
	0	ther International Trade Remedies	
§ 12.01	Intro	duction	12-3
§ 12.02	Prob	lems in Extraterritorial Enforcement	12-6
_	[1]	Different Perceptions of Intellectual	
		Property Abroad	12-6
	[2]	Difficulties in Obtaining Adequate	
		Remedies Against Intellectual	
		Property Infringement Abroad	12-7
§ 12.03		usion by Customs	12-9
	[1]	Imported Products Infringing a	4.0
	507	United States Patent	12-9
	[2]	Imported Products Infringing a	10.11
	F23	United States Trademark	12-11
	[3]	Imported Products Infringing a	10 14
	Γ <i>4</i> Ι	United States Copyright	12-14
	[4]	Imported Products Infringing a	12 10
	[5]	Trade Name/Trade Style	12-18
	[5]	Customs' Dissemination of Information to the Field	12-19
§ 12.04	Rem	edies Against the Importation of Gray	12-19
g 12.04		Earket Goods	12-21
	[1]	Definition of Gray Market Goods	12-21
	[2]	Trademarks	12-21
	[4]	[a] Primary Statutory Bases for	14-43
		Trademark Protection from	
		Gray Market Goods	12-23
		Gray Franket Goods	12 23

		[b]	Common Ownership and Control Exception to Section 526 and	
			Section 42	12-24
		[c]	Denial of Entry, Detention, and	
			Seizure of Trademarked Gray	
		F 13	Market Goods	12-27
		[d]	Exceptions to Customs	10.07
		F.1	Regulations	12-27
		[e]	Procedural Aspects of Trademark	12.20
			Enforcement by Customs [i] Recordation with Customs	12-29 12-29
			[ii] Recordation with Customs [iii] Obtaining Lever Brothers	12-29
			Protection	12-30
	[3]	Con	yright	12-31
	[-]	[a]	Primary Statutory Bases for	12 01
		LJ	Copyright Protection from	
			Gray Market Goods	12-31
		[b]	Copyright Enforcement by	
			Customs	12-32
		[c]	First Sale Doctrine	12-33
	[4]		national Trade Commission	
		. R	emedies	12-34
§ 12.05			of Infringing Merchandise Under	10.06
			337 of the Tariff Act	12-36
	[1]		oduction to Section 337	12.26
	[2]		roceedings	12-36 12-36
	[2] [3]		usion Orders	12-30
	[4]		lification or Revocation of	12-39
	[-1]		xclusion or Cease and Desist	
			orders	12-39
§ 12.06	Othe	r Inter	national Trade Remedies for	
o.			ual Property Rights Violations	12-41
	[1]		ion 301	12-41
	[2]	The	World Trade Organization	
		7)	WTO)	12-44
		[a]	Rights Protected Under the	
			Agreement on Trade Related	
			Aspects of Intellectual	10.45
		Γ Ι . Ί	Property	12-45 12-46
		[b]	Copyrights and Related Rights Trademarks and Service	12-40
		[c]	Marks	12-46.1
		[d]	Geographical Indications	12-46.1
		[e]	Industrial Designs	12-40.2
		[f]	Patents	12-47
		[g]	Layout Designs (Topographies) of	- - .,
		101	Integrated Circuits	12-49
			-	

			TABLE OF CONTENTS	XXX1
		[h]	Protection of Undisclosed	
		[i]	Information Enforcement of Intellectual	12-50
			Property Rights Under TRIPS	12-50
			[i] Dispute Prevention and Settlement: Departures	12-30
			from GATT	12-50
		[j]	[ii] Transitional Arrangements Provisions of Enforcement: General Obligations of the Member Nations to Provide	12-52
			Adjudicatory and	10.52
		[k]	Enforcement Mechanisms Civil and Administrative	12-53
		[IX]	Procedures and Remedies	12-54
		[1]	Provisional Measures	12-56
		[m]	Special Requirements Related	
		r 1	to Border Measures	12-57
		[n]	Criminal Procedures	12-59
		[o]	The Dispute Settlement Understanding: Provisions	
			Governing Disputes Between	
			Member Nations	12-60
		[p]	The Future of Special 301	
			Within the WTO Framework	12-63
	[3]		North American Free Trade	10.74
			Areas Protected: Additions to	12-64
		[a]	TRIPS Protections	12-64
		[b]	Enforcement Provisions: Internal	12 01
			Requirements	12-66
			[i] Civil and Administrative	
			Procedures	12-67
			[ii] Criminal Procedures and	12 (7
			Penalties	12-67 12-67
			[iv] Dispute Settlement	12-07
			Provisions	12-68
			CHAPTER 13	
		C	Civil Raids and Seizures	
8 13 01	Intro	duction	n	13-2
§ 13.01	Civil	Seizu	res in Copyright Litigation	13-2
=			,, , , , , , , , , , , , , , , , , , ,	(Dal 18)

xxxii	INTELLECTUAL PROPERTY DAMAGES	
	[1] The Copyright Act of 1976	13-5
	[2] The Copyright Rules of Practice	13-7
§ 13.03	Civil Seizures in Trademark Litigation [1] Seizures in Ordinary Trademark	13-10
	Litigation	13-10
	Counterfeiting Litigation [a] Procedural Requirements for Obtaining an Ex Parte	13-11
	Seizure Order	13-13
	Seizure Order	13-15
	[c] Conducting a Raid to Execute	
	the Seizure Order	13-16
	[d] The Post-Seizure Hearing	13-17
	[e] Wrongful Seizures	13-18
0.12.04	[f] Appellate Review	13-18.1
§ 13.04	Civil Seizures in Trade Secret Cases	13-19
	[1] The Uniform Trade Secrets Act	13-19
	[2] Other State Law Remedies	13-20
e 12.05	[3] The Defend Trade Secrets Act	13-21
§ 13.05	Establishing the Required Facts to Obtain a	12 22 2
	Civil Seizure Order	13-22.3
	[1] The Infringement Has Taken a	13-22.3
	Particular, Tangible Form [2] The Infringement is Occurring Within	13-22.3
	[2] The Infringement is Occurring Within the Jurisdiction of the Court	13-23
	[3] The Infringement Will Continue	13-23
	Absent a Seizure Order	13-23
	[4] The Harm to the Intellectual Property	13-23
	Owner Can Be Halted by a Seizure	
	Order	13-24
§ 13.06	Constitutional Issues in Civil Raids and	13 2 1
g 13.00	Seizures	13-25
	[1] Due Process Concerns	13-25
	[2] Unreasonable Search Concerns	13-26
	[a] Who May Conduct the Search	
	and Seizure	13-27
	[b] What Premises May Be	
	Searched	13-28
	[c] What May Be Seized	13-29
§ 13.07	Destruction and Other Disposition of	
-	Infringing Articles	13-31
INDEX .		I-1