

THOMAS F. COTTER

PRESENT POSITION:

Professor of Law, with Tenure
Washington and Lee University School of Law

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PROFESSIONAL EXPERIENCE:

Professor of Law, with Tenure
University of Florida Fredric G. Levin College of Law, 1999-2005

Research Foundation Professor, 2000-02 and 2004-05
Associate Dean for Faculty Development, spring 2005
Director, Intellectual Property Law Program, 2000-2005

Associate Professor of Law, University of Florida College of
Law, 1997-99

Assistant Professor of Law, University of Florida College of Law,
1994-97

Associate, Jenner & Block, Chicago, Illinois, 1990-94; engaged in
the general practice of civil and criminal litigation

Associate, Cravath, Swaine & Moore, New York, New York,
1988-90; engaged in the general practice of civil litigation

Law Clerk, Honorable Lawrence W. Pierce, United States Court of
Appeals for the Second Circuit, 1987-88

COURSES TAUGHT:

Antitrust (Spring 2006); Civil Procedure (Fall 1994-96); Copyright
(Spring 2003, 2005); Evidence (Spring 1995-99; Fall 1999);
Intellectual Property (Spring 1996; Fall 1996-98, 2000-04);
International Intellectual Property (Summer 1998, Montpellier,
France; Spring 2000, 2004, 2006; Summer 2001 and 2002; Fall
2002 and 2004); Introduction to American Intellectual Property
Law (two-week course, Spring 1999-2000, Warsaw University,
Warsaw, Poland); Introduction to Law (one-week course, Fall
1996-97; Spring 1997, 1999); Patent Law (Fall 2005); Patents,
Product Development, and Technology Transfer (course organizer
and one of several co-teachers of course offered in the University

of Florida Biomedical Engineering Program, Spring 2000-01, 2003); Seminar on Intellectual Property Theory (Fall 1997-98, 2000, 2003; Spring 2000, 2003; Fall 2001); Unfair Competition (Spring 2004-05)

**SCHOLARLY
PUBLICATIONS:**

BOOK: *Intellectual Property: Economic and Legal Dimensions of Rights and Remedies* (coauthored with Roger D. Blair) (Cambridge University Press 2005)

ARTICLES:

2005: *Some Observations on the Law and Economics of Intermediaries*, 2005 Michigan State Law Review ____ (forthcoming symposium issue)

Memes and Copyright, 80 Tulane Law Review 331-409 (2005)

2004: *Accommodating the Unauthorized Use of Copyrighted Works for Religious Purposes Under the Fair Use Doctrine and Copyright Act § 110 (3)*, 22 Cardozo Arts & Entertainment Law Journal 43-66 (2004)

Antitrust Implications of Patent Settlements Involving Reverse Payments: Defending a Rebuttable Presumption of Illegality in Light of Some Recent Scholarship, 71 Antitrust Law Journal 1069-1097 (2004)

An Economic Analysis of Enhanced Damages and Attorneys' Fees for Willful Patent Infringement, 14 Federal Circuit Bar Journal 291-331 (2004)

Market Fundamentalism and the TRIPs Agreement, 22 Cardozo Arts & Entertainment Law Journal 307-342 (2004)

2003: *Gutenberg's Legacy: Copyright, Censorship, and Religious Pluralism*, 91 California Law Review 323-392 (2003)

Prolegomenon to a Memetic Theory of Copyright: Comments on Lawrence Lessig's The Creative Commons, 55 Florida Law Review 779-793 (2003)

Refining the “Presumptive Illegality” Approach to Patent Settlements Involving Reverse Payments: A Comment on Hovenkamp, Janis, and Lemley, 87 *Minnesota Law Review* 1789-1816 (2003)

Written on the Body: Intellectual Property Rights in Tattoos, Makeup, and Other Body Art, 10 *UCLA Entertainment Law Review* 97-138 (2003) (coauthored with Angela M. Mirabole)

2002: *Are Settlements of Pharmaceutical Patent Disputes Illegal Per Se?*, 47 *Antitrust Bulletin* 491-539 (2002) (coauthored with Roger D. Blair)

Strict Liability and Its Alternatives in Patent Law, 17 *Berkeley Technology Law Journal* 799-845 (2002) (coauthored with Roger D. Blair)

2001: *Rethinking Patent Damages*, 10 *Texas Intellectual Property Law Journal* 1-93 (2001) (coauthored with Roger D. Blair)

2000: *The Elusive Logic of Standing Doctrine in Intellectual Property Law*, 74 *Tulane Law Review* 1323-1407 (2000) (coauthored with Roger D. Blair)

1999: *Intellectual Property and the Essential Facilities Doctrine*, 44 *Antitrust Bulletin* 211-250 (1999) (reprinted in IV Ruth Towse & Rudi W. Holzhauser, *The Economics of Intellectual Property* 177-216 (Edward Elgar Ltd. 2002))

When the State Steals Ideas: Is the Abrogation of State Sovereign Immunity from Infringement Claims Constitutional in Light of Seminole Tribe?, 67 *Fordham Law Review* 1435-1515 (1999) (coauthored with Christina Bohannon)

Is This Conflict Really Necessary?: Resolving an Ostensible Conflict Between Patent Law and Federal Trademark Law, 3 *Marquette Intellectual Property Law Review* 25-75 (1999)

An Economic Analysis of Seller and User Liability in Intellectual Property Law, 68 *University of Cincinnati Law Review* 1-45 (1999) (coauthored with Roger D. Blair)

1998: *Do Federal Uses of Intellectual Property Implicate the Fifth Amendment?*, 50 *Florida Law Review* 529-572 (1998)

An Economic Analysis of Damages Rules in Intellectual Property Law, 39 William & Mary Law Review 1585-1694 (1998)
(coauthored with Roger D. Blair)

1997: *Pragmatism, Economics, and the Droit Moral*, 76 North Carolina Law Review 1-97 (1997)

1996: *Legal Pragmatism and the Law and Economics Movement*, 84 Georgetown Law Journal 2071-2141 (1996)

Conflicting Interests in Trade Secrets, 48 Florida Law Review 591-606 (1996)

1995: *Owning What Doesn't Exist, Where It Doesn't Exist*, 1995 University of Illinois Law Review 487-541

1987: *Cargill, Inc. v. Monfort of Colorado, Inc.: The Supreme Court Restricts Private Antitrust Challenges of Horizontal Mergers*, 1987 Wisconsin Law Review 503-541

OTHER AND MINOR SCHOLARLY WORKS: *Not Fare Well, But Fare Forward, Voyagers*, 10 Journal of Technology Law & Policy ix-xii (2005)

Law, Economics, and Intellectual Property (Book Review of William M. Landes & Richard A. Posner, *The Economic Structure of Intellectual Property Law*, antitrustsource.com (Mar. 2004)

Introduction to Symposium on Intellectual Property, Development, and Human Rights, 14 Florida Journal of International Law 147-153 (2002)

Pragmatism (Update), in 4 Encyclopedia of the American Constitution Supplement (Leonard W. Levy & Kenneth J. Karst, eds., 2d ed. 2000), pp. 1983-84

Guest Editor, *Perspectives on United States v. Microsoft Corp.*, 44 Antitrust Bulletin 553-738 (1999)

Foreword, 3 Journal of Technology Law and Policy 1-3 (1998)
<<http://journal.law.ufl.edu/~techlaw/3-1/foreword.html>>

Civil Procedure and Jurisdiction, in 1997 Business Litigation Conference Certification Review Course (Florida Bar Continuing

Legal Education Committee and Business Law Section, Apr. 17-18, 1997)

Civil Procedure and Jurisdiction, in 1996 Business Litigation Certification Review Course (Florida Bar Continuing Legal Education Committee and Business Law Section, Apr. 26-27, 1996)

WORKS-IN-PROGRESS

The Procompetitive Interest in Intellectual Property Law, Berkeley Center for Law and Technology, Law and Technology Scholarship, Paper 15 (Jan. 27, 2006), available at <http://repositories.cdlib.org/bclt/lts/15>; earlier version available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=870307

Consider the Source: Identity, Anonymity, and the Demands of the First Amendment (coauthored with Lyrrisa Barnett Lidsky)

Book Review of *Antitrust, Patents and Copyright: EU and US Perspectives* (François Lévêque & Howard Shelanski eds. 2005), to be published at antitrustsource.com

SCHOLARLY AND PROFESSIONAL PRESENTATIONS:

Invited to discuss “Fifth Amendment Takings and Intellectual Property” at the Association of American Law Schools’ Workshop on Intellectual Property, forthcoming June 14-16, 2006, Vancouver, British Columbia, Canada

Presented paper, currently titled “The Procompetitive Interest in Intellectual Property Law,” at (1) Annual Meeting of the American Law and Economics Association, University of California at Berkeley, May 2006 (forthcoming); (2) faculty workshops at the University of Minnesota School of Law and at Washington and Lee University School of Law, January 2006; and (3) Fifth Annual Intellectual Property Scholars Conference, Benjamin N. Cardozo School of Law, Yeshiva University, Aug. 11, 2005

Presented paper, titled “The Law and Economics of Intermediaries: Developing a General Analytical Framework,” at a conference titled “W(h)ither the Middleman: The Role and Future of Intermediaries in the Information Age,” Michigan State University College of Law, Apr. 9, 2005

Organizer of Continuing Legal Education Program, titled “Fourth Annual Law and Technology Institute,” Orlando, Florida, Feb. 25, 2005

Panelist, “Digital Music: The New Era of Creative Commons and What It Means for Recording Artists, Copyright Ownership, and the Listening Public,” and “Copyright Issues: Whose Song Is It, What Happens If the Band Breaks Up, Licensing and Royalties,” Third Annual Music Law Conference, University of Florida Fredric G. Levin College of Law, Jan. 29, 2005

Presented paper, titled “An Economic Analysis of Enhanced Damages and Attorneys’ Fees for Willful Patent Infringement,” at a Symposium on Willful Patent Infringement, held at The George Washington University Law School, Mar. 19, 2004

Organizer of Continuing Legal Education Program, titled “Third Annual Law and Technology Institute,” Orlando, Florida, Feb. 20, 2004

Presented three chapters from forthcoming book, titled *Intellectual Property: Economic and Legal Dimensions of Rights and Remedies*, at a faculty workshop at Case Western Reserve University School of Law, Cleveland, Ohio, Sept. 27, 2003

Organizer of Continuing Legal Education Program, titled “Second Annual Law and Technology Institute,” Orlando, Florida, Feb. 28, 2003

Presented paper, titled “Market Fundamentalism and the TRIPs Agreement,” at a conference titled “Patent Law, Social Policy, and Public Interest: The Search for a Balanced Global System,” Benjamin N. Cardozo School of Law, Yeshiva University, Nov. 7, 2002

Presented paper, titled “Gutenberg’s Legacy: Copyright Censorship, and Religious Pluralism,” at a conference titled “Creation, Control, and Censorship: Is Copyright an Engine of Free Expression or a Tool of Private Censorship?,” Benjamin N. Cardozo School of Law, Yeshiva University, Apr. 15, 2002

Presented paper, coauthored with Roger D. Blair and titled “Strict Liability and Its Alternatives in Patent Law,” at Conference on Reform of the Patent System, Berkeley Center for Law and Technology, Mar. 1-2, 2002

Organizer of Continuing Legal Education Program, titled “First

Annual Law and Technology Institute,” Miami, Florida, Feb. 22, 2002

Presented *Gutenberg’s Legacy* at a faculty workshop at Florida State University College of Law, Jan. 2002

Organizer of Symposium on Intellectual Property, Development and Human Rights, University of Florida Fredric G. Levin College of Law, Mar. 24, 2001

Panelist, “India and the United States: Intellectual Property, International Trade and Investment Issues,” University of Florida Fredric G. Levin College of Law, Sept. 18, 2000

Presented paper, titled “The Elusive Logic of Standing Doctrine in Intellectual Property Law,” at a faculty workshop at George Mason University School of Law, Nov. 2, 1999

Presented paper, titled “An Economic Analysis of User and Seller Liability in Intellectual Property Law,” at a faculty workshop at the University of Arizona James E. Rogers Law Center, Jan. 22, 1999

Presented paper, titled “Intellectual Property and the Essential Facilities Doctrine,” at a conference titled “Antitrust: The Cutting Edge,” University of Florida, Gainesville, Florida, Oct. 24, 1998

Presented paper, titled “An Economic Analysis of Damages Rules in Intellectual Property Law,” at the Canadian Law and Economics Association Tenth Annual John M. Olin Annual Conference in Law and Economics, Toronto, Canada, Sept. 25, 1998

Panelist, “Unifying Disciplines in Aid of Truth and Justice,” Tenth International Conference on Socio-Economics, Vienna, Austria, July 16, 1998

Co-organizer, Continuing Legal Education Program, “When Science and the Law Meet: The Uses of Scientific Evidence in the Courtroom,” Orlando, Florida, Mar. 6-7, 1998

Presented paper, titled “Conflicting Interests in Trade Secret Law,” at a Law Faculty Symposium, University of Florida College of Law, Gainesville, Florida, Oct. 24, 1997

Presented lecture, “Civil Procedure and Jurisdiction,” Florida Bar Business Litigation Certification Review Course, Orlando, Florida,

Apr. 17, 1997

Presented paper, titled “Legal Pragmatism and the Law and Economics Movement,” at the Eighth International Conference on Socio-Economics, Geneva, Switzerland, July 14, 1996

Presented lecture, “Civil Procedure and Jurisdiction,” Florida Bar Business Litigation Certification Review Course, Orlando, Florida, Apr. 26, 1996

**PROFESSIONAL
HONORS AND
AWARDS:**

Awarded a University of Florida Research Foundation Professorship for the years 2000-2002, and again for 2004-06, in recognition of distinguished record of research and scholarship

Secretary/Newsletter Editor, Association of American Law Schools Intellectual Property Section, 1999-2001

Recipient, University of Florida Teaching Improvement Program Award, 1998

Voted Professor of the Year by University of Florida College of Law John Marshall Bar Association, 1997

Recipient, 1996 Ladas Memorial Award—Professional competition for writing excellence on the subject of trademarks and related matters

EDUCATION:

University of Wisconsin Law School

J.D., magna cum laude, 1987

Grade point average: 91.28

Class rank: 1/248

Senior Articles Editor, Wisconsin Law Review

Honors and awards:

Order of the Coif

Salmon W. Dalberg Prize for the outstanding graduating law student of the class of 1987

Constitutional Law Prize for outstanding achievement in constitutional law, 1987

George W. Laikin Award for outstanding student comment appearing in the Wisconsin Law Review

American Jurisprudence Awards for achievement in Conflict of Laws, Constitutional Law 2, Contracts 1, Payments Systems, Professional Responsibility, Property, and Trusts and Estates

University of Wisconsin-Madison
Master of Science (Economics), 1984

University of Wisconsin-Madison
Bachelor of Science (Economics), 1982

BAR MEMBERSHIPS: United States Supreme Court; United States Courts of Appeals for the Federal, Fifth, and Seventh Circuits; United States District Courts for the Northern District of Illinois and the Western District of Wisconsin; State of Illinois (inactive status)

PROFESSIONAL ASSOCIATIONS: American Bar Association; American Law and Economics Association; Society for Evolutionary Analysis in Law

MEDIA APPEARANCES: ABC World News Tonight, Dallas Morning News, Forbes, National Law Journal, Orlando Sentinel, Washington Post, Wired, among others