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Research Guides

INTELLECTUAL PROPERTY LAW

I. INTRODUCTION	1
II. GENERAL RESOURCES	2
A. BOOKS & TREATISES	2
B. PERIODICALS, WEBSITES & BLOGS	2
C. FOREIGN & INTERNATIONAL RESOURCES	3
D. FINDING MATERIALS IN THE DUKE LIBRARIES CATALOG	4
III. PATENT LAW	5
A. BOOKS & TREATISES	5
B. PATENT GRANTS AND APPLICATIONS	5
C. WEBSITES & BLOGS	6
D. WESTLAW/LEXIS ADVANCE/BLOOMBERG LAW RESEARCH ON PATENTS	7
IV. COPYRIGHT LAW	7
A. BOOKS & TREATISES	8
B. WEBSITES & BLOGS	9
C. WESTLAW/LEXIS ADVANCE/BLOOMBERG LAW RESEARCH ON COPYRIGHTS	9
V. TRADEMARK LAW	10
A. BOOKS & TREATISES	10
B. WEBSITES & BLOGS	11
C. WESTLAW/LEXIS ADVANCE/BLOOMBERG LAW RESEARCH ON TRADEMARKS	11
VI. RELATED TOPICS	12

I. INTRODUCTION

“Intellectual property” (IP) refers to property rights created by copyright, patent, and trademark laws. IP law has become increasingly complex and comprehensive as technology advances. This guide provides useful starting points for research on United States intellectual property law, including a general section on intellectual property law resources and specialized sections on the core areas of IP law: patents, copyright, and trademarks.

Patents and copyrights are authorized by the **United States Constitution** granting the U.S. Congress the “power...To promote the Progress of Science and the useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” U.S. CONST. art. I, § 8, cl. 8. One can find intellectual property law in U.S. federal and state law and in international treaties (for example, the “TRIPS Agreement”). Often, U.S. federal and state intellectual property law is a mixture of U.S. common law and federal and state statutes. Below is an annotated list of select intellectual property law resources.

II. GENERAL RESOURCES

A. Books & Treatises

Sheldon W. Halpern, *Fundamentals of United States Intellectual Property Law: Copyright, Patent, Trademark*, 5th ed. (KF2979 .H357 2015).

This one-volume desk reference covers the basics of intellectual property topics, with case and statute references for further reading.

J. Thomas McCarthy et al., *McCarthy's Desk Encyclopedia of Intellectual Property*, 3d ed. (Reference KF2976.4 .M38 2004).

This volume provides useful definitions for the concepts and phrases found in the law of patents, trademarks and copyright. Entries include references to relevant cases, statutes, and treatises for further reading. Appendices include historical statistics on patent applications and trademark registrations, as well as biographical timelines for the offices of Commissioner of Patents, Register of Copyrights, and Commissioner of Trademarks.

Arthur R. Miller and Michael H. Davis, *Intellectual Property: Patents, Trademarks and Copyright in a Nutshell*, 5th ed. (Reserves KF2980 .M52 2012).

This book, oriented towards law students, summarizes the basics of U.S. copyright, patent and trademark law.

B. Periodicals, Websites & Blogs

Duke Law and Technology Review (<http://www.law.duke.edu/journals/dltr/>): DLTR is an online legal publication that provides thoughtful and in-depth coverage of the latest law and technology issues. The review publishes “iBriefs”, short and accessible essays on current intellectual property topics.

Intellectual Property Mall (University of New Hampshire School of Law, Franklin Pierce Center for Intellectual Property) (<http://www.ipmall.info/>): The website contains links to Congressional Research Service documents on intellectual property law and select legislative histories, including those for the Patent Act of 1952 and the Digital Millennium Copyright Act of 1998.

Intellectual Property Watch (<http://proxy.lib.duke.edu/login?url=http://www.ip-watch.org/>) This sophisticated blog follows the latest news in all areas intellectual property including international and domestic IP issues. Visit the website to set up RSS feeds and email alerts.

Managing Intellectual Property
(<http://search.library.duke.edu/search?id=DUKE004398690>)

This is a practice-oriented newsletter that is a valuable source of United States and international intellectual property law information.

Patent, Trademark & Copyright Journal (BNA, 1970-)

This weekly publication provides case summaries and news stories related to intellectual property law. It is available online to current members of the Duke Law community through the **Bloomberg BNA Electronic Library** (<http://www.law.duke.edu/lib/lresources/bna>).

Lumen (formerly Chilling Effects) (<https://lumendatabase.org/>)

This project of the **Berkman Center for Internet & Society** studies cease and desist letters concerning online content. The site features an easy-to-use search engine connected to its database, as well as a blog covering recent news on take-down notices and other restrictive IP actions.

The Electronic Frontier Foundation (EFF) (<https://www.eff.org/>)

The EFF is a nonprofit organization focusing on issues of civil liberties (including those related to intellectual property) as they relate to the digital world. Their website includes the *Deeplinks Blog* (<https://www.eff.org/deeplinks>) as well as a collection of white papers and specific projects related to creator's rights, patents, and more.

Westlaw, Lexis Advance and Bloomberg Law contain a number of other intellectual property newsletters and magazines that are oriented towards the practicing attorney. Lexis Advance includes *Intellectual Property: Mealey's Litigation Report*. Westlaw includes *Landslide*. In addition to the *Patent and Trademark Copyright* (Journal and Law Daily editions), Bloomberg has an intellectual property news page (**News & Law Reports > Latest News > Legal > Intellectual Property**).

C. Foreign & International Resources

Intellectual property law has become increasingly global in nature. Practitioners in the U.S. must often research international treaties, find foreign patent applications, and compare IP laws of other countries. Many U.S.-focused resources cited in the later sections of this guide also include information about foreign and international issues.

WIPO Lex (<http://www.wipo.int/wipolex/en/>)

The World Intellectual Property Organization (WIPO) hosts this searchable database of intellectual property legislation, which provides access to “national laws and treaties on intellectual property of WIPO, WTO and UN Members.” In some cases this includes the full text of a country's intellectual property legislation.

Collection of National Copyright Laws

(http://webarchive.unesco.org/20160803235020/http://portal.unesco.org/culture/en/ev.php-URL_ID=14076&URL_DO=DO_TOPIC&URL_SECTION=201.html)

The collection has not been updated recently, but does provide an excellent overview of national copyright laws from UNESCO member nations. The laws are official translations, in English, French, or Spanish, provided by member states. UNESCO no longer houses an active version of the site, but has preserved it in its web archive.

International Encyclopaedia of Laws: Intellectual Property (also available online at <http://search.library.duke.edu/search?id=DUKE005291012>).

This multi-volume set contains sections (“monographs”) which outline and describe the IP laws of around 60 countries, each written by an expert in the particular country’s legal framework.

World Intellectual Property Organization Administered Treaties

(<http://www.wipo.int/treaties/en/>)

Intellectual property has an expansive framework of international treaties. This website provides access to the full text of some of the most influential documents, including the Berne Convention, the WIPO Copyright Treaty, and the Patent Cooperation Treaty. It also provides information on recent actions taken by member states and new signatories.

World Intellectual Property Report (BNA, 1997-)

This monthly newsletter provides news and analysis about global developments in IP law. It is available online to current members of the Duke Law community through the **Bloomberg Electronic Library** (<http://www.law.duke.edu/lib/lresources/bna>).

Westlaw and Lexis Advance provide access to foreign and international intellectual property law resources including patent and trademark applications from a number of other countries. These resources are accessible in the same manner as described in each topic area below. Bloomberg Law has a dedicated international IP law page, with links to treatises, treaties and conventions, regulatory agencies and organizations, and regional resources.

D. Finding Materials in the Duke Libraries Catalog

When searching for intellectual property materials in the Duke Libraries Catalog (<http://search.library.duke.edu/>), use general subject headings as a starting point and then select the appropriate subdivisions for a more precise search. Subject headings in intellectual property may include the following terms:

- Intellectual Property--United States
- Trademarks -- Law and Legislation
- Trademarks--United States
- Patents--International Law
- Patents--United States
- Copyright--International
- Copyright--United States
- Copyright Infringement
- License Agreements

III. PATENT LAW

A **patent** is the property right of an inventor, granted by the United States Patent and Trademark Office (USPTO), “to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States.” 35 U.S.C. § 154. The requirements for patentability start at 35 U.S.C. § 101. Regulations on patent law commence at Title 37, chapter 1 of the *Code of Federal Regulations*.

A. Books & Treatises

Irwin M. Aisenberg, *Modern Patent Law Precedent: Dictionary of Key Terms and Concepts*, 16th ed. (Reference KF3112 .M63 2014 & online in Westlaw).

This is a dictionary of patent terms organized alphabetically by keywords and phrases. Words and phrases are taken from summaries of leading patent cases with precedential value and from important sections in the U.S. Code. The library no longer receives updates of the print version.

Donald S. Chisum, *Chisum on Patents* (also titled *Patents: A Treatise on the Law of Patentability, Validity and Infringement*) (KF3110 .C4 & online in Lexis Advance).

Scholars and practitioners frequently cite this essential treatise on patents. The huge fourteen-volume loose-leaf set includes a glossary of patent terms, federal circuit guide, forms, statutes, and commentary. The library’s print copy is no longer updated.

R. Carl Moy, *Moy’s Walker on Patents*, 4th ed. (KF3114 .W32 & online in Westlaw).

This multi-volume treatise revises a previous version entitled *Lipscomb’s Walker on Patents* (3rd ed.) (KF3114 .W3 1984). The Westlaw full-text contains only the current volumes of the 4th edition as they are published; 3rd edition volumes which have not yet been revised by Moy are not available electronically.

Janice M. Mueller, *Patent Law*, 4th ed. (KF3114 .M84 2013).

This title is part of the “Aspen Student Treatise Series,” and provides an accessible overview of patent law concepts and principles. Chapters include discussion of each requirement for patentability. Footnotes cite to relevant cases, statutes and secondary sources, for further research.

B. Patent Grants and Applications

Jeffrey G. Sheldon, *How to Write a Patent Application* (Ref. KF3125.C5 S473).

This is an excellent loose-leaf on how to write patent applications. It provides an extensive discussion on writing applications for the three types of patents: utility, design, and plant. It also contains a discussion on particular types of patents including electrical patents, biotech patents, and chemical inventions. Select provisions of the *Manual of Patent Examining Procedure* (see below) are included in this publication.

David Pressman, *Patent It Yourself*, 13th ed.

(<http://search.library.duke.edu/search?id=DUKE000662261> and available electronically <http://search.library.duke.edu/search?id=DUKE004298780>).

This title, from the popular legal self-help publisher Nolo Press, presents the patent application process in layperson's terms. Sample forms and a glossary of definitions are included.

USPTO, *Manual of Patent Examining Procedure*

(<http://www.uspto.gov/web/offices/pac/mpep/>).

This manual is intended for the use of patent examiners, who decide whether a pending patent application meets all relevant laws and regulations. Each section describes a particular aspect of the application and examination process, and includes citations to related primary legal authority. All prior editions and revisions (back to 1949) are available in PDF at the site, as well as through HeinOnline's *Manual of Patent Examining Procedure Library* (<http://search.library.duke.edu/search?id=DUKE003131760>).

C. Websites & Blogs

United States Patent and Trademark Office (USPTO) (<http://www.uspto.gov/>)

This official U.S. government web site on patents and trademarks is an excellent resource for researching patent grants, patent applications, and trademark registrations. The site also contains many essential reference sources and manuals geared towards the practitioner. The patent grants database contains images of U.S. patents issued since 1790 and the full text of all patents issued since 1976. A patent applications database contains full text and images of all patent applications since March 15, 2001. The USPTO also publishes the *Official Gazette* (<http://www.uspto.gov/learning-and-resources/official-gazette>), the official journal of the USPTO, which is published every Tuesday and contains bibliographic information and representative drawings of patents granted on that date.

Google Patent Search (<http://www.google.com/patents>)

This patent search engine allows users to search the full text of issued patents and applications by keyword. Like the USPTO site, Google offers the entire collection of issued patents back to 1790, and selected patent applications. Patents are provided in downloadable PDF format.

Derwent Innovations Index (<https://search.library.duke.edu/search?id=DUKE006052910>)

Allows users to search patent and citation information across the Web of Science platform. Patents are grouped by subject matter: chemical, electrical, electronic, and mechanical engineering.

Patent Term Calculator (USPTO)

(http://www.uspto.gov/patents/law/patent_term_calculator.jsp#heading-1)

This beta website estimates patent expiration dates for utility, plant or design patents. You must provide specific information such as the U.S. patent number to use the software.

Patently-O: Patent Law Blog (<http://patentlyo.com/>)

This popular blog, maintained by an Associate Professor Dennis Crouch at The University of Missouri School of Law, posts the latest cases, developments, and reform efforts in patent law.

D. Westlaw/Lexis Advance/Bloomberg Law Research on Patents

Both Westlaw and Lexis Advance contain full text U.S. patent applications dating back to 2001. Similarly, both Westlaw and Lexis Advance possess a number of intellectual property treatises, newsletters and journals.

In Lexis Advance, follow the path **Browse > Sources > By Practice Area > Patent Law** to view available databases, which include *Chisum on Patents*, specialized news sources, and patent applications and grants from the U.S., Japan, Germany, and the U.K.

In Westlaw, select **Secondary Sources > Intellectual Property** to view available materials, which include a superior collection of treatises on patent licensing, such as Eckstrom's *Licensing in Foreign and Domestic Operations* and *Modern Licensing Law*.

Bloomberg Law has both a patent and a patent assignment searchable database, along with multiple online treatises, legal and regulatory, and news sources. All are available on its patent practice center: **Practice Centers > Patents & Trade Secrets**. Bloomberg Law also allows you to sign up for daily notifications of decisions in the Court of Appeals for the Federal Circuit (CAFC), which include links to full text of all precedential decisions and nonprecedential patent and trademark decisions.

IV. COPYRIGHT LAW

Federal copyright law is located in Title 17 of the U.S. Code. Copyright law protects “original works of authorship” that are fixed in a tangible form of expression. According to 17 U.S.C. § 102(a), copyrightable works may include the following subject matter categories:

- Literary works;
- Musical works, including any accompanying words;
- Dramatic works, including any accompanying music;
- Pantomimes and choreographic works;
- Pictorial, graphic, and sculptural works;
- Motion pictures and other audiovisual works;
- Sound recordings; and
- Architectural works.

However, copyright law does not apply to any “idea, procedure, process, system, method of operation, concept, principle, or discovery.” 17 U.S.C. § 102(b). (NOTE: patent law may apply in some of these instances.)

The last major revision to U.S. copyright law was the Copyright Act of 1976 (90 Stat. 2541) (<http://www.gpo.gov/fdsys/pkg/STATUTE-90/pdf/STATUTE-90-Pg2541.pdf>). A legislative

history of the revisions is available both in print and electronically, titled *Omnibus Copyright Revision Legislative History* (Documents Y 4.J 89/2:C 79 and on HeinOnline (<http://www.heinonline.org/HOL/Index?index=leghis/ocrh&collection=leghis>)). These materials have also been gathered in the *Kaminstein Legislative History Project: A Compendium and Analytical Index of Materials Leading to the Copyright Act of 1976* (KF2989.56.A16 K35 and on HeinOnline (<https://search.library.duke.edu/search?id=DUKE003131760>)).

A. Books & Treatises

Jane C. Ginsburg and Robert A. Gorman, *Copyright Law* (Reserves KF2994 .G56 2012).

This brief introduction to U.S. copyright law covers the history of copyright, basics of copyright and proceeds to more advanced discussions of public policy issues touching upon related international copyright issues. Ginsburg is well known for her contributions to copyright law and theory.

Paul Goldstein, *Goldstein on Copyright*, 3d ed. (KF2979 .G633).

Paul Goldstein, a professor at Stanford Law School, has written this scholarly treatise for lawyers, judges, legal researchers, and public policy decision-makers. The set is composed of 18 chapters on all aspects of copyright law. There are extensive citations to primary and secondary authorities including cases, statutes, regulations, legislative history and other documents.

Bruce P. Keller and Jeffrey P. Cunard, *Copyright Law: A Practitioner's Guide* (KF2994 .K345 & Looseleaf Updates). Covers the fundamentals of copyright law, analysis of key copyright cases, and analyzes how to make practical judgments based on this foundation.

Mary LaFrance, *Copyright Law in a Nutshell*, 3d ed. (Reserves KF2994 .L34 2017). This short volume, written for use as a study aid, provides a basic introduction to copyright law.

Marshall A. Leaffer, *Understanding Copyright Law*, 6th ed. (Reserves KF2994 .L43 2014). Another short volume meant for use as a study aid providing an overview of copyright law.

Melville B. Nimmer and David Nimmer, *Nimmer on Copyright: A Treatise on the Law of Literary, Musical and Artistic Property and the Protection of Ideas* (KF2994 .N56 1978 & in Lexis Advance).

This loose-leaf set is the classic scholarly treatise on copyright law. Courts and other scholars cite to it frequently. The treatise is an excellent starting place for researching specific aspects of copyright law. Updated three times a year, this treatise stays current with recent copyright law developments.

William F. Patry, *Patry on Copyright* (KF2994 .P355 & in Westlaw). This multi-volume treatise provides a broad overview of copyright law with a particularly good discussion of the impact of technological advancements on copyright law. It was written by William Patry, a former law professor who is currently the Senior Copyright Counsel to Google. The print edition features a foreword by Sandra Day O'Connor, who cited to Patry's work while a Supreme Court justice.

B. Websites & Blogs

United States Copyright Office (<http://www.copyright.gov/>)

The official US website for copyright, this website offers copyright basics (including a link to title 17 of the United States Code), copyright registration, a searchable database of copyrights, developments in law and policy, and licensing information. This user-friendly website is a great starting point for general copyright questions. The site offers a short introduction to copyright law, which is available in both English language (<http://www.copyright.gov/circs/circ01.pdf>) and also in Spanish language versions (<http://www.copyright.gov/espanol/circ01-espanol.pdf>). Those interested in tracking copyright legislation, both current and historical, can do so through the site's Legislative Developments page (<http://www.copyright.gov/legislation/>).

Center for the Study of the Public Domain (<http://web.law.duke.edu/cspd/>) The Center, a project of Duke Law School, gathers and produces resources and research devoted to the contribution that works in the public domain (or works that are no longer or never were covered by copyright restrictions) contribute to speech, culture, science and innovation generally.

Creative Commons (<http://creativecommons.org/>)

Creative Commons is the brainchild of prominent intellectual property legal scholar Lawrence Lessig of Harvard Law School. It is a non-profit organization which offers model language for various copyright licenses that are less restrictive than traditional licenses. The licenses are offered free to the public.

Copyright Term and the Public Domain in the United States

(<https://copyright.cornell.edu/publicdomain>)

Copyright term can be difficult to ascertain. If you need to determine when a copyright term ends or if a work has fallen into the public domain, this Cornell University website is a useful guide.

Stanford Copyright Renewal Database (<https://exhibits.stanford.edu/copyrightrenewals>)

This database provides information on the copyright renewal status of books that were published in the United States between the years 1923-1963. This time period is unique in copyright law, since earlier works have generally fallen into the public domain, and works published after 1963 were given an automatic renewal by the 1976 revision of the Copyright Act. The titles covered by the Stanford database required a renewal application to avoid copyright expiration, and the records of these applications were previously difficult to obtain.

Pre-1870 Copyright Records (<http://law.gwu.libguides.com/pre1870copyrightrecords>)

This guide provides access to a collection of records not centralized in the Library of Congress, and previously thought to be lost. The guide organizes the records by state of origin, and includes copyright ephemera.

C. Westlaw/Lexis Advance/Bloomberg Law Research on Copyrights

Westlaw provides currently-available Copyright Office publications and circulars (search Copyright Info Circulars & Fact Sheets), the Copyright Office practices manual (search Copyright Office). It also provides easy access to the Arnold & Porter Legislative History for

the General Revision of the Copyright Act of 1976 (search Arnold & Porter Legislative Histories) as well as practice-oriented titles like *Copyright Litigation Handbook* (search Copyright Litigation Handbook).

Lexis Advance's copyright databases can be accessed by following the path **Browse > Sources > By Practice Area > Copyright Law**. Its collection includes the full text of its Matthew Bender treatises, such as *Nimmer on Copyright* and Geller and Nimmer's *International Copyright Law and Practice*.

Bloomberg Law now includes access to multiple books and treatises, including the *Copyright Law Deskbook*. Follow the path **Practice Centers > Trademarks & Copyright > Copyrights** for a collection of all Bloomberg's resources. This page also has access to the significant laws, regulations, federal opinions, and regulatory organization documents.

V. TRADEMARK LAW

A trademark is a word, phrase, symbol or design, or a combination thereof, that identifies and distinguishes the source of the goods of one party from those of others. Trademark law is embodied in both state and federal law. The seminal federal trademark law is called the "Lanham Act" (codified at 15 U.S.C. §§ 1051 et seq.). Regulations for trademarks and trade names start at Title 37 of the C.F.R.

A. Books & Treatises

Adam L. Brookman, *Trademark Law: Protection, Enforcement and Licensing* (KF3180 .B68).

Written by a trademark attorney, this highly readable single-volume loose-leaf publication is oriented towards attorneys that are new to trademark law. It is a useful reference source for academic research and includes helpful charts, citations to important case law and a table of cases. Updated through 2013, it provides a thorough analysis of differences between federal circuits on aspects of trademark law.

Siegrun D. Kane, *Kane on Trademark Law: A Practitioner's Guide* (KF3180 .K363).

From the Practising Law Institute, this fully updated loose-leaf guide covers the basics of American trademark law from registration through litigation.

J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, 5th ed. (KF3180 .M32 2017 & Westlaw).

This treatise is considered the most authoritative source of information about trademark and unfair competition law. Supplemented annually, it covers all aspects of trademark and unfair competition law.

Linda A. Tancs, *Understanding Trademark Law: A Beginner's Guide* (Reference KF3180 .T36 2009).

Part of Oceana's "Law for the Layperson" series, this volume provides a basic, easy to read introduction to trademark registration, maintenance, and enforcement.

B. Websites & Blogs

United States Patent and Trademark Office (USPTO) (<http://www.uspto.gov>)

The USPTO site contains a searchable database of over 3 million pending, registered, and dead trademarks. This database is referred to as the “Trademark Electronic Search System” or “TESS.” The site also contains introductory materials and several U.S. federal trademark practice guides. The USPTO also maintains a directory of state trademark laws on the website (<http://www.uspto.gov/trademarks-getting-started/process-overview/state-trademark-information-links>), as well as a copy of its *Trademark Manual of Examining Procedure* (<http://tmep.uspto.gov/RDMS/detail/manual/TMEP/current/d1e2.xml>), which provides reference work on the practices and procedures of the USPTO in the prosecution of trademark applications.

The TTABlog (<http://thettablog.blogspot.com/>)

This blog is maintained by John Welch of the law firm Wolf Greenfield in Boston, Massachusetts. It is updated on a regular basis with trademark news relating to the rulings of the Trademark Trial and Appeal Board (TTAB).

C. Westlaw/Lexis Advance/Bloomberg Law Research on Trademarks

Both Westlaw and Lexis Advance gather and organize federal and state trademark cases and trademark registration databases. In Westlaw, select **Secondary Sources > Intellectual Property and select the relevant format**, which includes the trademark examiner’s procedural manual. Westlaw also contains a useful database on domain disputes that includes dispute decisions from international organizations based on the Uniform Domain Name Dispute Resolution Policy. For a truncated list of trademark and trade secret related databases, type “Trade” into the unified search bar.

In Lexis Advance, follow the path **Browse > Sources > By Practice Area > Trademark Law** to view available databases, which include registration information from U.S. and international jurisdictions, Matthew Bender treatises and practice materials, and specialized case law and legislative databases. Of particular use is *Gilson on Trademarks*, which contains in-depth analysis of trademark issues, a section of forms and drafting guides, and a primary source appendix.

In Bloomberg Law, follow the path **Practice Centers > Trademarks & Copyrights > Trademarks & Copyrights Home**. The Practice Center allows you to focus on trademark litigation, prosecution, and counterfeiting, as well as other topics, and includes research databases and links to books and treatises.

VI. RELATED TOPICS

The Rights of Publicity and Privacy (KF1262 .M42 & Westlaw).

This serial is a useful treatise addressing almost any topic in this area. It is updated with a yearly supplement. The author also writes *McCarthy's Desk Encyclopedia of Intellectual Property* (Reference KF2976 .M38).

Melvin F. Jager, *Trade Secrets Law* (KF3197 .J34 and Westlaw).

This multi-volume set focuses on trade secrets litigations while discussing Fifth Amendments and Freedom of Information Act implications.

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