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CAROLINA ACADEMIC PRESS
Durham, North Carolina

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Library of Congress Cataloging in Publication Data

Kuney, George W.

Mastering intellectual property / George W. Kuney and Donna C. Looper.
p. cm. -- (Carolina Academic Press mastering series)

Includes index.

ISBN 978-1-59460-392-1 (alk. paper)

1. Intellectual property--United States. I. Looper, Donna C. II. Title. III. Series.

KF2979.K86 2008
346.7304'8--dc22

2008035092

Carolina Academic Press
700 Kent Street
Durham, NC 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

*To Professor Margreth Barrett and memories of the Hastings College of Law
Giles Sutherland Rich Patent Moot Court Team of 1989.*

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Acknowledgments

This book would not have been possible without substantial contributions of time and effort on the part of Clayton Center for Entrepreneurial Law Research Associates Patrick Hawley, Melissa Hunter, Leah Walker, George Robert Whitfield III, and Emily Zibart. Special thanks and recognition go to Christopher William Sherman, the principal Clayton Center Research Associate and team leader on this project with the authors.

The authors also thank The American Law Institute for permission to quote the Uniform Commercial Code and various restatements of the law:

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Introduction

Intellectual property, which consists of property rights in innovations, is central to business and technological development in the global market. In the United States, the primary intellectual property rights are protected by state trade secret law, federal patent and copyright law, and state and federal trademark law. Each body of law protects different interests and operates in different ways. Further, these areas of law undergo frequent change due to the technological innovations they foster.

Intellectual property law is something of an anomaly in American law. In our society, competition and free markets are the norm, and the law generally disfavors monopolies, at least unregulated monopolies. Yet, one group of intellectual property laws—trade secret, patent, and copyright law—grants limited monopolies to induce inventors and authors to create new inventions and works. The key word here is “limited.” In addition to granting property rights, intellectual property law is concerned with limiting the intellectual property monopoly and preventing its misuse. Thus, the scope and limits of the monopoly control the extent to which intellectual property law limits competition.

The other primary group of intellectual property rights covered in this book are state and federal trademark laws. These laws also grant a monopoly—but not in exchange for innovation or creation. Rather, trademark law is meant to prevent confusion about the source of goods and services in the market. These laws are more in keeping with the American conception of the competitive marketplace. Trademark law prevents confusion about the source of goods and services by allowing the goods and services to be branded. In this way, trademark law improves the information available to market participants and lowers transaction costs associated with information gathering. Thus, trademark law promotes competition even as it grants a monopoly on the use of a particular mark.

In addition, this book covers moral rights, somewhat foreign to the American pallet, a set of protections that secures artists’ control over their work and allows them some control over their reputations. Traditionally, moral rights have not been widely recognized in the United States.

Intellectual property law has become increasingly important and increasingly pervasive in the practice of law. Although once considered to be a narrow specialty area, it is now critical that attorneys in the practice of general business law have at least a basic understanding of intellectual property law.

This book is intended to provide the intellectual property novice with a plain-language explanation of trade secret, patent, copyright, and trademark law.