

# Contents

---

1	Conflicts of interest, and guiding principles for their resolution within IP's constitutional framework	1
I	The positive normative scenario	1
II	IPRs' essential scope	8
III	Firms as 'final holders' of (economic) intellectual property rights	12
IV	The salient conflicts of interests underlying IPRs' exercise	20
V	From economic conflicts to those between legal models	26
VI	For a balanced reconstruction of IP regime(s): methodological criteria and examples of their application	50
	Bibliographical notes	63
2	Patent protection of innovation: a 'monopoly' with antibodies	69
	Introduction: the reconstruction hypothesis	69
I	A rethink of patents in light of their essential function	71
II	Limitation of patentability to the fruits of applied research	81
III	The other multiple limitations of exclusive protection	98
IV	Features fostering dynamic competition	123
V	Some proposals for reform	138
	Bibliographical notes	148
3	From art to technology: copyright expansion and barriers: the evolving relation 'right v. access'	156
	Introduction	156
I	Copyright holders, subject matter, content, and conditions for granting copyright	163
II	The scope of copyright: the boundaries of the <i>ius excludendi</i>	177
III	The 'neighbouring rights' of non-copyright holders	188
IV	From analogue to digital environment: the persistent basic exclusionary model regime, and its limited breaches	191
V	Industrial design works	226

VI	Information technologies	235
	Bibliographical notes	248
4	Firms' identity and brand value in the regime of trademarks	259
	Introduction: the two souls of the trademark regime – which reconciliation?	259
I	The information on firms' market identity (distinctive function): its impact on competition	266
II	The other ('qualitative') information that <i>may</i> be conveyed by trademarks: the protection of consumers' expectations	279
III	Trademarks as goods <i>per se</i>	283
IV	The 'extramural' and 'intramural' protection of trademarks 'with reputation'	291
V	The protection of (three-dimensional) shape marks and its implications for the protection of competition	311
VI	Secondary meaning and vulgarization – the symmetry of the 'rehabilitation' of generic signs	320
	Bibliographical notes	323
5	On the 'intersection' between IP and competition law(s)	331
I	The antitrust 'interference'	331
II	The relationship between unfair competition law and IPRs regime	381
	Bibliographical notes	390
	<i>Index</i>	399