

HIGHLIGHTS

**Federal Circuit Affirms Patent Ineligibility of Sequenom's Prenatal Test**

Life sciences patent stakeholders' hopes that the Federal Circuit would rescue method claims from the implications of the Supreme Court's *Mayo v. Pro-metheus* decision are dashed as the court finds Sequenom's prenatal detection methods ineligible under 35 U.S.C. § 101. The court acknowledges the scientific value of the patentees' discovery of detecting paternity-identifying DNA in a serum or plasma sample from a pregnant female, but it still fell short of statutory subject matter. **Page 2385**

**Amazon Win Against Price Optimization Patent Affirmed on Appeal**

After a six-month lull of no precedential opinions on patent eligibility, the Federal Circuit confirms that its *DDR Holdings* opinion was not an invitation for computer-implemented method patent owners to claim error in the raft of district court decisions rejecting patent claims under 35 U.S.C. § 101. Online retail operator Amazon.com successfully kicks out OIP Technologies' patent on computer-implemented methods for "pricing a product for sale." **Page 2386**

**En Banc Federal Circuit Sets Out New Means-Plus-Function Rule**

The "strong" presumption that a court should not invoke means-plus-function analysis when a claim lacks the word "means" is not so strong any more, after the full Federal Circuit bench overturns its precedent on the issue. In a revised opinion, the court says that its prior standard had "shifted the balance struck by Congress in passing [35 U.S.C. § 112, para. 6,] and has resulted in a proliferation of functional claiming untethered to § 112, para. 6 and free of the strictures set forth in the statute." **Page 2388**

**No Fed. Cir. Review of PTAB Denial of Covered Business Method Petition**

The U.S. Court of Appeals for the Federal Circuit rules that it does not have jurisdiction to review a decision by the PTAB to deny a petition for post-grant review of a covered business method patent. The *St. Jude* ruling issued in April said that the Federal Circuit could not review a decision by the PTAB to decline a petition for inter partes review; this ruling applies that same holding to challenges to covered business method patents. **Page 2390**

**Split Revealed Over Librarian of Congress Billington's Legacy**

Figures in the copyright world are sharply divided on the legacy of retiring Librarian of Congress James H. Billington. Some observers who spoke to Bloomberg BNA praised Billington as a pioneer who has led the library into the Internet era, but Billington also has critics who say he hasn't done enough to lead digitization efforts. The Copyright Office has asked to be removed from the library so that it can seek to solve its own technological infrastructure challenges. **Page 2403**

SPECIAL REPORT

**PATENTS:** The House and Senate Judiciary committees have voted in favor of bills addressing "trolling" practices. Bloomberg BNA compares the bills, which differ in key areas as viewed through the eyes of the patent bar and lobbying organizations. **Page 2409**

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**PATENTS:** The PTAB's tough standards for amending claims in post-grant oppositions are upheld—partially at least—by the Federal Circuit. **Page 2392**

**COPYRIGHTS:** The maker of Monster energy drinks should pay \$670,000 of the legal fees incurred by the Beastie Boys after their successful copyright infringement lawsuit. **Page 2402**

**COPYRIGHTS:** The Copyright Office is developing a pilot program and draft legislation for the mass digitization of orphan works, it announces in a request for comment. **Page 2407**

**PATENTS:** Applicants with multiple appeals of patent examiner rejections in progress can expedite one by dropping another, according to the Expedited Patent Appeal Pilot announced by the PTO. **Page 2397**

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# Federal Circuit

## Patents/Eligibility

### Federal Circuit Affirms Patent Ineligibility of Sequenom's Prenatal Test Methods

■ **Holding:** *Sequenom's method patent claims on detecting paternity DNA in a prenatal sample are ineligible subject matter under Mayo.*

■ **Takeaway:** *The specificity of the test is irrelevant to the analysis, as the court determines that "amplifying" and "detection" are conventional activities, like "administering," "measuring" and "adjusting dosage" in Mayo. And pre-emption arguments may be dead as well.*

Life sciences patent stakeholders' hopes that the Federal Circuit would rescue method claims from the implications of the Supreme Court's *Mayo v. Prometheus* decision were dashed June 12 as the court found Sequenom's prenatal detection methods ineligible under 35 U.S.C. § 101 (*Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, Fed. Cir., No. 2014-1139, 6/12/15).

The court acknowledged the scientific value of the patentees' discovery of detecting paternity-identifying DNA in a serum or plasma sample from a pregnant female. However, it said, "even such valuable contributions can fall short of statutory subject matter, as it does here."

The court determined that the methods begin and end with an unpatentable natural phenomenon, with steps of amplification and detection "well-understood, routine, and conventional activity"—insufficient under *Mayo* to save a claim from patent ineligibility—at the time of the invention.

A concurring opinion lambasted—but conceded that the court was bound by—that "sweeping language of the test set out" in *Mayo*.

Judge Richard Linn distinguished the activities here, where "no one was amplifying and detecting paternally-inherited cffDNA using the plasma or serum of pregnant mothers," from those in *Mayo*, which covered "the very steps that doctors were already doing—administering the drug at issue, measuring metabolite levels, and adjusting dosing based on the metabolite levels."

However, Linn said, "the Supreme Court did not limit its ruling to those particular facts and circumstances."

**Stakeholders Disappointed.** "This decision is going to have a ripple effect across the diagnostic and personalized medicine industry," according to Courtenay C. Brinckerhoff of Foley & Lardner LLP, Washington.

"Although the Supreme Court justifies the judicial exception on the basis that 'manifestations of laws of nature' should be 'free to all men and reserved exclusively to none,'" she said, "new diagnostic methods may be available to none if the lack of patent protection

discourages investment in these important technologies."

Jennifer Lane Spaith of Dorsey & Whitney, Seattle, went back to the constitution.

"Given that the patent system finds its roots in the Constitutional mandate to 'promote the Progress of Science and the Useful Arts,' many will no doubt find it disappointing that the law has developed in such a way as to deny patent protection outright to technology that even the court recognizes as a 'positive and valuable contribution to science,'" she told Bloomberg BNA.

**'No Opinion' on § 101 First Time Through.** San Diego-based Sequenom Inc. is the exclusive licensee of U.S. Patent No. 6,258,540, which relates to methods performed on a maternal serum or plasma sample from a pregnant female that comprise detecting the presence of a paternally inherited nucleic acid of fetal origin.

Ariosa Diagnostics Inc. of San Jose, Calif., and Natera Inc. of San Carlos, Calif., filed separate complaints seeking a declaration that their Harmony Test and Non-Invasive Paternity Test, respectively, do not infringe any claims of the '540 patent.

The case was before the Federal Circuit previously, in Sequenom's appeal of a denial of a preliminary injunction by the U.S. District Court for the Northern District of California.

The court faulted the lower court for its *eBay* injunction factor analysis, and in its remand, said it would offer "no opinion as to whether there is or is not a substantial question regarding the subject matter eligibility of the asserted claims." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 726 F.3d 1296, 1304, 107 U.S.P.Q.2d 1879 (Fed. Cir. 2013) (86 PTCJ 794, 8/16/13).

**"This decision is going to have a ripple effect across the diagnostic and personalized medicine industry."**

—COURTENAY C. BRINCKERHOFF OF FOLEY & LARDNER

On remand, Judge Susan Y. Illston held in favor of the challengers on that issue (87 PTCJ 68, 11/8/13). Sequenom appealed again.

The Biotechnology Industry Organization submitted an amicus brief arguing that "the development and commercialization of genetic and other diagnostic technologies will be hampered if not precluded, should this Court affirm the district court's decision below."

**Mayo Rules.** Judge Jimmie V. Reyna wrote the opinion of the court, joined by Linn and Judge Evan J. Wallach. Reyna was the only one of the three also on the panel that remanded the case in 2013.

The opinion cited other Section 101 decisions by the Supreme Court, but its reasoning ultimately was drawn almost exclusively from *Mayo Collaborative Servs. v. Prometheus Labs. Inc.*, 132 S. Ct. 1289, 2012 BL 66018, 101 U.S.P.Q.2d 1961 (2012) (83 PTCJ 727, 3/23/12).

Each of the asserted claims here begins with cell-free fetal DNA, known as “cffDNA,” taken from the sample—a patent-ineligible naturally occurring phenomenon—the court said. And the result at the end of each claim, it said, is “paternally inherited cffDNA, which is also a natural phenomenon.”

The claims thus failed the first step of *Mayo*, the court said, because “[t]he method therefore begins and ends with a natural phenomenon.”

To overcome that Section 101 failing, a party claiming patent rights must show, in the second step of the analysis, “an inventive concept sufficient to ‘transform’ the claimed naturally occurring phenomenon into a patent-eligible application,” the court said.

The amplifying and detecting steps to get from the starting natural phenomenon to the ending natural phenomenon, the court said, “amount[ ] to a general instruction to doctors to apply routine, conventional techniques when seeking to detect cffDNA.”

The court seemingly addressed the complaint of many stakeholders that this second step conflates the obviousness analysis under Section 103. The court framed the question instead in terms of the “new and useful” text from Section 101.

“For process claims that encompass natural phenomenon, the process steps are the additional features that must be new and useful,” it said, but the process steps here were not.

“The only subject matter new and useful as of the date of the application was the discovery of the presence of cffDNA in maternal plasma or serum,” it said.

**Pre-emption Arguments Put Aside.** Most Section 101 cases feature a patent owner’s separate argument that its specific application of the natural phenomenon (or abstract idea) merits patent eligibility because it does not pre-empt all commercially viable uses of the phenomenon. In this case, the court said, that issue was irrelevant.

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**“For process claims that encompass natural phenomenon, the process steps are the additional features that must be new and useful.”**

—FEDERAL CIRCUIT JUDGE JIMMIE V. REYNA

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The court said that “questions on preemption are inherent in and resolved by the § 101 analysis.”

“While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility,” the court said. And limiting claim breadth here did not save Sequenom, it said.

“Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot,” the court concluded.

**Gass: Still Some Wiggle Room.** “I would not view this decision—alone or in combination with any other decision—as the death of diagnostic patent claims,” David A. Gass of Marshall, Gerstein & Borun LLP, Chicago, said in an e-mail message to Bloomberg BNA. “However, it is now one more hurdle that the industry and the biotechnology patent bar must deal with.”

Gass saw one area where the claims here were lacking, where other diagnostic claims might still succeed.

“It is possible that claims with some additional specificity with regard to how to practice the invention (e.g., machines, reagents, or steps to achieve the goals of the method) would have been analyzed differently,” he said. “In patent cases, the wording of the patent claims matters and usually is the focus of intense scrutiny.”

**Brinckerhoff: Please Grant Cert.** Given Linn’s reasoning in the concurrence, though, Gass said, “I was a surprised that the Court could not also articulate a legal basis for distinguishing the two cases and reaching a different result. There has long been a recognition that these ‘judicial exception’ cases can be fact-specific in nature.”

“Judge Linn’s concurring opinion places blame for the result here squarely on the shoulders of the Supreme Court, and urges the Court to reconsider the *Mayo* framework, and at least permit the consideration of ‘post-solution activity’ when that activity is novel,” Brinckerhoff said in an e-mail.

“Even if the Supreme Court grants certiorari, it will be another year before we could have a different decision,” she said, though. “In the meantime, patent applicants who do not have the resources to appeal the rejections of their patent applications may decide to abandon those applications, and may decide not to develop the underlying technology.”

David I. Gindler of Irell & Manella LLP, Los Angeles, represented Ariosa. William P. Schuck of Bartko, Zankel, Bunzel & Miller, San Francisco, represented Natera and its licensee, Diagnostics Center Inc. Michael J. Malecek of Kaye Scholer LLP, Palo Alto, Calif., represented Sequenom. Kevin E. Noonan of McDonnell, Boehnen Hulbert & Berghoff LLP, Chicago, submitted the BIO amicus brief.

BY TONY DUTRA

Full text at [http://www.bloomberglaw.com/public/document/Ariosa\\_Diagnostics\\_Inc\\_v\\_Sequenom\\_Inc\\_Docket\\_No\\_1401139\\_Fed\\_Cir\\_D](http://www.bloomberglaw.com/public/document/Ariosa_Diagnostics_Inc_v_Sequenom_Inc_Docket_No_1401139_Fed_Cir_D).

*Brinckerhoff* is a member of this journal’s advisory board.

### Patents/Eligibility

## **Amazon.com’s Successful Challenge to OIP Price Optimization Patent Affirmed on Appeal**

■ **Holding:** The Federal Circuit affirms dismissal of OIP’s price-optimization patent infringement case against Amazon.com.

■ **Takeaway:** DDR Holdings is still the exception to post-Alice ineligibility of computer-implemented patents.

**A**fter a six-month lull of no precedential opinions on patent eligibility, the Federal Circuit confirmed on June 11 that its *DDR Holdings* opinion was not an invitation for computer-implemented method patent owners to claim error in the raft of district court decisions rejecting patent claims under 35 U.S.C. § 101 (*OIP Techs., Inc. v. Amazon.com, Inc.*, Fed. Cir., No. 2012-1696, 6/11/15).

Amazon.com successfully kicked out OIP Technologies' patent on computer-implemented methods for "pricing a product for sale."

The court's decision—affirming dismissal on the pleadings—relied for the most part on the Supreme Court's two-step approach in *Alice v. CLS Bank*. However, the high court actually set that standard in *Mayo v. Prometheus*, which was not on a computer-related patent.

One aspect of the current opinion's here was its more general use of the *Mayo* bar against adding "well-understood, routine, conventional" steps to a claim to create eligibility. Here, OIP's patent added steps that were arguably specific to the type of data gathered by the application, but the court rejected the argument that that level of specificity gets around the *Mayo* bar.

**Patent on Price Optimization Rejected.** The invention at issue is intended to "help vendors automatically reach better pricing decisions through automatic estimation and measurement of actual demand to select prices." U.S. Patent No. 7,970,713.

OIP asserted the patent against Amazon in the U.S. District Court for the Northern District of California. Judge Edward M. Chen granted Amazon's motion to dismiss on the pleadings.

That was one of many such decisions since the Supreme Court's June 2014 *Alice* decision, and computer-implemented patent owners were waiting to see how the Federal Circuit would handle the post-*Alice* ineligibility decisions.

They may have seen some hope in the appeals court's patent eligibility decision in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1255, 2014 BL 342453 (Fed. Cir. 2014) (89 PTCJ 370, 12/12/14).

**Read *Diehr* in light of *Alice*.** The court here did not distinguish *DDR Holdings*. In fact, it said that OIP relied more on the Supreme Court's 1981 decision in *Diamond v. Diehr*, 450 U.S. 175, 209 U.S.P.Q. 1 (1981).

"However, we must read *Diehr* in light of *Alice*, which emphasized that *Diehr* does not stand for the general proposition that a claim implemented on a computer elevates an otherwise ineligible claim into a patent-eligible improvement," the court said.

*Alice* step one requires deciding if the patent is directed to an abstract idea. If so, step two allows the patentee to claim eligibility based on the "inventive concept" of the claims providing "enough" to take the claims beyond the underlying abstract idea.

OIP's claims fail step one because they are directed to "the abstract idea of offer-based price optimization," the court said. That is among the "fundamental economic concepts" found to be abstract ideas the Supreme Court and this court, it said.

**Specific Data-Gathering, Presentation Not Enough.** "At best, the claims describe the automation of the fundamental economic concept of offer-based price optimization

through the use of generic-computer functions," the court said.

At step two, the court phrased the "inventive concept" as a "key distinguishing feature."

"Both the prosecution history and the specification emphasize that the key distinguishing feature of the claims is the ability to automate or otherwise make more efficient traditional price-optimization methods," it said. It added that "relying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible."

Addressing specific steps in the claims, then, the opinion added "automatically determining an estimated outcome," "present[ing] [offers] to potential customers" and "gathering . . . statistics generated during said testing about how the potential customers responded to the offers" to the list of "well-understood, routine, conventional data-gathering activities that do not make the claims patent eligible."

In previous decisions, most activities identified as such have been ones that are associated with computing more generally—e.g., calculating, printing, displaying. OIP's claims were more specific about what is being displayed and how related statistics were calculated, but that did not save its claims.

"Like the claims in *Mayo*, which added only the routine steps of administering medication and measuring metabolite levels for the purposes of determining optimal dosage, here the addition of steps to test prices and collect data based on customer reactions does not add any meaningful limitations to the abstract idea," it said.

Judge Todd M. Hughes wrote the court's opinion, joined by Richard G. Taranto and Judges Haldane Robert Mayer.

Mayer wrote a two-page concurrence defending district courts' decisions to dispose of these cases as a threshold issue, on the pleadings.

"Addressing 35 U.S.C. § 101 at the outset not only conserves scarce judicial resources and spares litigants the staggering costs associated with discovery and protracted claim construction litigation, it also works to stem the tide of vexatious suits brought by the owners of vague and overbroad business method patents," he said.

Matthew D. Powers of Tensegrity Law Group LLP, Redwood City, Calif., represented OIP. Gregory G. Garre of Latham & Watkins LLP, Washington, represented Amazon.

BY TONY DUTRA

Full text at [http://www.bloomberglaw.com/public/document/Oip\\_Technologies\\_Inc\\_v\\_Amazoncom\\_Inc\\_Docket\\_No\\_1201696\\_Fed\\_Cir\\_Se](http://www.bloomberglaw.com/public/document/Oip_Technologies_Inc_v_Amazoncom_Inc_Docket_No_1201696_Fed_Cir_Se).

## Patents/Claim Construction

### Winner Loses and Loser Wins on Appeal In Dueling Tire Repair Kit Patent Case

**T**he tables were turned on competitive tire repair kit makers with competing patents after the Federal Circuit on June 11 reversed, in a nonprecedential opinion, most of the district court's judgments (*Sealant Sys. Int'l, Inc. v. TEK Global*, Fed. Cir., No. 2014-1405, 6/11/15).

The case began when Sealant Systems International filed an action seeking a declaration of invalidity of Tek Corp.'s patent. U.S. Patent No. 7,789,110. Two months later, Sealant's sister company, Accessories Marketing Inc., purchased a patent on similar technology. No. 6,789,581. And it joined the Sealant litigation after that, with the two filing an amended complaint that asserted the '581 patent against Tek.

The Federal Circuit faulted Tek with respect to a question of AMI's standing, saying that it ultimately was actually a question of misjoinder, and that Tek had failed to object at the time of the amended complaint filing.

As to Tek's '110 patent, the court faulted the district court's construction of the term "cooperating with," describing the relationship between a hose and the inflatable article. The specification allowed for that term to be construed as "connected to," with no other description or embodiment that would make it broader.

Thus, the court concluded, prior art used to invalidate Tek's patent did not disclose this new construction of "cooperating with," and it vacated invalidity findings accordingly.

Turning to AMI's '581 patent, the court said that "no reasonable juror" could have concluded, as this jury did, that a prior art reference did not disclose certain specific elements of the asserted claims.

Text is available at: [http://www.bloomberglaw.com/public/document/Sealant\\_Sys\\_Intl\\_Inc\\_v\\_TEK\\_Global\\_SRL\\_Docket\\_No\\_1401405\\_Fed\\_Cir\\_A](http://www.bloomberglaw.com/public/document/Sealant_Sys_Intl_Inc_v_TEK_Global_SRL_Docket_No_1401405_Fed_Cir_A).

## Patents/Means-Plus-Function

### En Banc Fed. Circ. Shifts Functional Claim Analysis With New Means-Plus-Function Rule

■ **Holding:** One district court ruling in favor of online collaboration tool firms is affirmed after the en banc Federal Circuit change overrules a panel decision, but the companies have more to do on remand.

■ **Takeaway:** Nonce words, like "module" here, are more likely to indicate means-plus-function analysis, leading to more findings of patent claim indefiniteness.

The "strong" presumption that a court should not invoke means-plus-function analysis when a claim lacks the word "means" is not so strong any more, after the full Federal Circuit bench on June 16 overturned its precedent on the issue (*Williamson v. Citrix Online, LLC*, Fed. Cir., 3012-1130, 6/16/15).

In a revision of a Nov. 5 opinion, the court said that its prior standard had "shifted the balance struck by Congress in passing [35 U.S.C. § 112, para. 6,] and has resulted in a proliferation of functional claiming untethered to § 112, para. 6 and free of the strictures set forth in the statute."

The change means that "nonce" words, including "module" as applied here, will more likely be assumed to signal functional claiming. The court now defined its standard by quoting a 2000 opinion:

When a claim term lacks the word 'means,' the presumption can be overcome and § 112, para. 6 will apply if the challenger demonstrates that the claim term fails to "recite sufficiently definite structure" or else recites "function

without reciting sufficient structure for performing that function."

Two dissenting opinions were filed.

Judge Jimmie V. Reyna questioned why the court didn't go further and clarify that its presumption when "means" is present "applies to functional claiming generally."

Judge Pauline Newman said that the result of losing the clear signal that the presence or absence of "means" in a claim is "that no one will know whether a patentee intended means-plus-function claiming until this court tells us."

The en banc opinion ultimately favored online collaboration tools makers Citrix, WebEx, Microsoft, Adobe and IBM, but they must still go back to district court to fight infringement charges related to other claims asserted.

**Software Patent Claims Reeling.** The result is another blow for software patent claims, already subject to new patent eligibility challenges under Section 101 since the Supreme Court's *Alice v. CLS Bank* decision.

Under functional claiming, the patent specification or prosecution history must provide sufficient structure to support the function, including algorithms for software functions.

With the court's decision here, Scott A. Hogan of Reising Ethington PC, Troy, Mich., told Bloomberg BNA, "More claims will be given 112(f) treatment under the new rule and scrutinized for definiteness."

The opinion effectively states that claims reciting terms like "module," "mechanism," "element" or "device" now are likely to face the same indefiniteness scrutiny under Section 112.

**Online Distributed Learning Systems Charged.** At Home Corp. was granted a patent—System and method for distributed learning—in December 2000 (U.S. Patent No. 6,155,840). The company filed for bankruptcy in 2001. Richard A. Williamson is trustee for the At Home Bondholders Liquidating Trust.

Williamson sued multiple firms in the U.S. District Court for the Central District of California, claiming infringement by the following products: Citrix's GoToMeeting, GoToWebinar and GoToTraining; Cisco's WebEx Training Center, WebEx Meeting and WebEx Event Center; Microsoft's Office Live Meeting and Lync Online; IBM's LotusLive Meetings; and Adobe Connect.

Williamson stipulated to invalidity of claims 8-16 and noninfringement of the other 15 claims of the patent after Judge A. Howard Matz construed certain terms in the defendants' favor. Williamson appealed the claim construction judgments.

The Federal Circuit panel, in a 2-1 decision, vacated on both points (*Williamson v. Citrix Online, LLC*, Fed. Cir., 770 F.3d 1371, 112 U.S.P.Q.2d 1793 (Fed. Cir. 2014)).

**Panel Split, En Banc Rehearing Petition.** In Federal Circuit precedent, use of the word "means" in a claim creates the rebuttable presumption of a means-plus-function limitation.

The June 16 decision did not affect that presumption. It dealt only with whether the absence of the word creates the opposite presumption.

The panel majority adhered to precedent, beginning with *Lighting World, Inc. v. Birchwood Lighting, Inc.*,

382 F.3d 1354, 1358, 72 U.S.P.Q.2d 1344 (Fed. Cir. 2004)(68 PTCJ 587, 9/24/04), that the presumption that means-plus-function claiming does not apply is “a strong one that is not readily overcome.”

However, the court has also previously identified certain “nonce words” as replacements for the word “means.”

It specifically dealt with “module” only in a 1998 affirmation without opinion, but “module” is also listed as one of those nonce words in the Patent and Trademark Office’s Manual of Patent Examining Procedure § 2181.

Reyna’s panel dissent looked at definitions of “module” and saw only that it be “either hardware, software, or both.”

“Without more, the concept of generic software or hardware only reflects function,” he said. “It refers only to a ‘general category of whatever may perform specified functions,’” a quote from *Robert Bosch, LLC v. Snap-On Inc.*, 769 F.3d 1094, 112 U.S.P.Q.2d 1617 (Fed. Cir. 2014) (88 PTCJ 1539, 10/17/14).

The defendants petitioned for en banc rehearing on Dec. 5. The court issued an order June 16 granting the petition “for the limited purpose of overruling certain prior precedent regarding the application of 35 U.S.C. § 112, para. 6.”

The claim term at issue—in claims 8-16—in the en banc rehearing is “distributed learning control module for receiving communications transmitted between the presenter and the audience member computer systems and for relaying the communications to an intended receiving computer system and for coordinating the operation of the streaming data module.”

The other claims at issue on appeal did not turn on that term. Accordingly, the posture of the case as to those claims is still a reversal of a claim construction judgment, with the noninfringement judgment vacated.

**New (Revived) Standard.** Judge Richard Linn wrote the panel opinion and—shifting his position now, along with colleague Judge Kimberly A. Moore, and in light of the *Lighting World* opinion he joined in 2004—wrote Section II.C.1 of the new opinion—the section that the en banc court joined.

The court acknowledged that it has confirmed the “strong presumption” against means-plus-function analysis when “means” is lacking as recently as *Apple Inc. v. Motorola, Inc.*, 757 F.3d 1286, 1297, 110 U.S.P.Q.2d 1695 (Fed. Cir. 2014) (88 PTCJ 12, 5/2/14).

The court said, “Our consideration of this case has led us to conclude that such a heightened burden is unjustified and that we should abandon characterizing as ‘strong the presumption that a limitation lacking the word ‘means’ is not subject to § 112, para. 6.’”

“We also overrule the strict requirement of ‘a showing that the limitation essentially is devoid of anything that can be construed as structure,’” the court said.

Its new standard, as quoted above, derives from *Watts v. XL Sys., Inc.*, 232 F.3d 877, 880, 56 U.S.P.Q.2d 1836 (Fed. Cir. 2000) (61 PTCJ 80, 11/24/00).

The en banc court’s vote was confined to this section.

Linn’s subsequent analysis of claims 8-16 of the ’840 patent was thus part of the panel decision, with Reyna’s panel opinion as to that analysis now described as a concurrence.

**Williamson’s Patent Claims Fail.** Under the new standard, the “distributed learning control module” in those claims, the court said, “is drafted in the same format as

a traditional means-plus-function limitation, and merely replaces the term ‘means’ with ‘nonce’ word ‘module,’ thereby connoting a generic ‘black box’ for performing the recited computer-implemented functions.”

The court found nothing in either the specification or the prosecution history that would “provide any structural significance” to the term based on these particular modifiers of the word “module.”

The court hinted that its conclusion may have been different had the claim described “how the ‘distributed learning control module’ interacts with other components in the distributed learning control server in a way that might inform the structural character of the limitation-in-question or otherwise impart structure” to the module.

Thus, the four-word term was in means-plus-function format, with a requirement to find corresponding structure in the specification for the three functions listed in the rest of that limitation.

The court agreed with the district court that the third function—“coordinating the operation of the streaming data module”—lacked such structure.

In this case, the court used a distinction between a “general purpose computer” and a “special purpose computer” usually reserved for patent eligibility analysis—the former is unlikely to save a software patent claim under Section 101.

The court said that the distributed learning control module is described in the specification as implemented in a special purpose computer, but that requires disclosure of an algorithm corresponding to the function, not evident in the ’840 specification.

“Because the ’840 patent fails to disclose any structure corresponding to the ‘coordinating’ function of the ‘distributed learning control module,’ we affirm the judgment that claims 8–16 are invalid for indefiniteness under 35 U.S.C. § 112, para. 2,” the court said in conclusion.

**Reyna Dissent.** Reyna said in a footnote that the court’s presumption of patent validity has clear implications for the burden a challenger must overcome, but “the majority opinion does not provide an associated standard of proof for the § 112 para. 6 presumptions. Indeed, I remain unconvinced that this court has applied a different standard of proof dependent on how the presumption is labeled or characterized.”

He read the opinion to set a different presumption if the patentee used the word “means” compared to when the patentee uses a nonce word. And he faulted the court for not assuring that the same presumption would apply to a “means” as would apply to a “step” in a process patent—Section 112, para. 6 (now 112(f)), uses both terms.

“In sum, my view is that perhaps we need to revisit our judicially-created § 112, para. 6 presumptions,” he said in closing.

**Newman Dissent.** “Paragraph 6 has morphed from a clear legal instruction into a litigator’s delight,” Newman said in her dissent, repeatedly criticizing the new standard for eliminating the notice function served by the presence or absence of “means.”

She also faulted the en banc court for making this decision “without notice to and participation of the interested public.”

But ultimately her primary objection was that the court was using paragraph 6 of Section 112 to do what

other paragraphs—addressing written description, enablement and definiteness—were intended to do.

“The court states its concern with overly broad interpretation of software claims,” she said. “If there have been abuses, as the majority states, the remedy is not to eliminate the statute [in paragraph 6], but to apply the statute [in paragraphs 1 and 2].”

**What Should Patent Applicants Do?** “This case elevates the importance of function-performing structure in the specification as a safeguard against invalidity any time functional claim language is used—with or without ‘means—due to the uncertainty inherent in the ‘sufficiently definite structure’ threshold applied to the claim language,” Hogan said in an e-mail.

He offered two pieces of advice for patent prosecutors.

“Practitioners might consider erring on the side of caution: Assume that functional claim language is presumed to trigger 112(f), and write the specification accordingly to disclose multiple structures capable of performing the function,” he said. “The new standard does not include this presumption, but the court’s analysis seems to.”

Also, Hogan said, “Claim diversity remains an important tool, whether in the form of dependent claims that impart additional structure to functional limitations of the base claim, or in the form of multiple independent claims that cover closely related subject matter in different forms. Note that Williamson’s patent still includes valid method and apparatus claims on remand to the district court.”

Brett J. Williamson of O’Melveny & Myers LLP, Newport Beach, Calif., represented Richard Williamson. Kurt L. Glitzenstein of Fish & Richardson P.C., Boston, represented the defendants at oral argument and Citrix specifically. Baker Botts LLP, Dallas, represented WebEx. Goodwin Procter LLP, New York, represented IBM.

Full text at [http://www.bloomberglaw.com/public/document/Richard\\_Williamson\\_v\\_Citrix\\_Online\\_LLC\\_Docket\\_No\\_1301130\\_Fed\\_Cir\\_](http://www.bloomberglaw.com/public/document/Richard_Williamson_v_Citrix_Online_LLC_Docket_No_1301130_Fed_Cir_).

### Patents/Anticipation

#### **Device on Material Handling Vehicle Not Anticipated by Device on Table With Rollers**

**A** table with rollers so that the device on top of the table can be moved between locations cannot anticipate a patent on a “material handling vehicle” carrying the same device, according to a June 10 non-precedential decision by the U.S. Court of Appeals for the Federal Circuit (*Acme Scale Co. v. LTS Scale Co.*, Fed. Cir., No. 2014-1721, 6/10/15).

Acme Scale Co. owns a patent titled “Material Transport In-Motion Product Dimensioning System and Method” and directed to obtaining the dimensions of an article or product for loading on a material handling vehicle. U.S. Patent No. 7,757,946.

Competitor LTS Scale Co. filed a reexamination request in 2011.

The PTAB reversed an examiner’s patentability judgment as to claims 9 and 20–22, rejecting them for anticipation and obviousness. For each, the board relied on a

Bourgoin patent that disclosed the same characteristics of the dimensioning device, with one embodiment using “a table with rollers to facilitate its displacement.”

The court first dealt with an issue of whether the case was prematurely appealed, because the board made this determination after agreeing to a rehearing request. LTS argued that the new ground of rejection required further proceedings at the Patent and Trademark Office.

But, the court said, a “new decision” by the board on rehearing is subject to permissive follow-up at the PTO, under its 37 C.F.R. § 41.79(d), compared to required follow-up on first hearing, under Rule 41.77(a).

As to the merits, the case depended on whether the broadest reasonable interpretation of a materials handling vehicle could conceivably encompass Bourgoin’s table with rollers.

“The inclusion of rollers makes movement easier (the table need not be lifted); and the movement can take place with items on the table,” it said. “However, it stretches the bounds of any reasonable interpretation to say that, by virtue of those facts, the table is a ‘vehicle.’”

Judge Evan J. Wallach wrote the court’s opinion, joined by Judges Richard G. Taranto and Raymond T. Chen.

Grant H. Peters of Barnes & Thornburg LLP, Chicago, represented Acme. Brij Kumar Agarwal of Eckert Seamans Cherin & Mellott LLC, Pittsburgh, represented LTS.

BY TONY DUTRA

Text is available at: [http://www.bloomberglaw.com/public/document/ACME\\_Scale\\_Company\\_Inc\\_v\\_LTS\\_Scale\\_Company\\_LLC\\_Docket\\_No\\_1401721\\_](http://www.bloomberglaw.com/public/document/ACME_Scale_Company_Inc_v_LTS_Scale_Company_LLC_Docket_No_1401721_).

### Patents/Post-Grant Opposition

#### **Federal Circuit Cannot Review PTAB’s Denial of Petition Review in CBM Proceeding**

**T**he U.S. Court of Appeals for the Federal Circuit ruled on June 16 that it does not have jurisdiction to review a decision by the PTAB to deny a petition for post-grant review of a covered business method patent (*GTNX, Inc. v. Intra, Inc.*, Fed. Cir., No. 2015-1349, 6/16/15).

The *St. Jude* ruling issued in April said that the Federal Circuit could not review a decision by the PTAB to decline a petition for inter partes review; this ruling applies that same holding to challenges to covered business method patents.

GTNX Inc. of Oakland, Calif., is a subsidiary of GT Nexus Inc., which offers cloud-based platforms for international trade and logistics.

Intra Inc. of Parsippany, N.J., provides online logistics resources and technical tools for providers and users of ocean-shipping services. It holds four patents covering technologies related to an online marketplace for shipping services (U.S. Patent Nos. 7,752,142; 7,756,794; 7,761,387 and 7,827,119).

In 2011, GTNX initiated a declaratory judgment action in the U.S. District Court for the Northern District of California, seeking a declaration that the four Intra patents were invalid.

In 2014, while the district court proceeding was still pending, GTNX filed a petition with the Patent and Trademark Office for review of their patentability as covered-business-method patents.

The Patent Trial and Appeal Board instituted review. But Intra then filed a motion for dismissal under 35 U.S.C. § 325(a)(1), which states that “review may not be instituted . . . if, before the date on which the petition for such a review is filed, the petitioner or real party in interest filed a civil action challenging the validity of a claim of the patent.”

The PTAB then granted the motion in an order stating that the decisions to institute review had been vacated and the proceedings had been terminated. GTNX appealed.

The Federal Circuit first determined that the PTAB’s decision should be treated as a decision not to institute a CBM proceeding, even though it had originally instituted a proceeding and then terminated it.

Having characterized the prior events in this manner, the court then determined that it could not exercise jurisdiction in the matter, under 35 U.S.C. § 328, which allows the Federal Circuit to review a decision by the PTAB only when the PTAB has issued “a final written decision with respect to the patentability of any patent claim challenged by the petitioner.”

This case was the CBM parallel to *St. Jude Med., Cardiology Div. Inc. v. Volcano Corp.*, 749 F.3d 1373, 110 U.S.P.Q.2d 1777 (Fed. Cir. April 24, 2014) (88 PTCJ 18, 5/2/14), which said that the Federal Circuit could not hear an appeal of the PTAB’s decision not to institute a trial in the face of a petition for inter-partes review.

The court’s opinion was authored by Judge Richard G. Taranto and joined by Judges Timothy B. Dyk and Raymond T. Chen.

GTNX was represented by Wilson, Sonsini, Goodrich & Rosai P.C., Palo Alto, Calif. Intra was represented by Morgan, Lewis & Bockius LLP, Palo Alto.

BY ANANDASHANKAR MAZUMDAR

Text is available at: [http://www.bloomberglaw.com/public/document/GTNX\\_INC\\_Appellant\\_v\\_INTRA\\_INC\\_Appellee\\_20151349\\_20151350\\_201513](http://www.bloomberglaw.com/public/document/GTNX_INC_Appellant_v_INTRA_INC_Appellee_20151349_20151350_201513)

## Patents/Priority

### Alexsam Prepaid, Gift Card Processing Patents Invalidated on Appeal to Fed. Cir.

**A**lexsam Inc.’s patents on prepaid phone and gift card processing systems were invalid as anticipated by a similar system tested just a few months before the original patent application had been filed, according to a June 16 Federal Circuit nonprecedential opinion (*Alexsam, Inc. v. The Gap, Inc.*, Fed. Cir., No. 2014-1564, 6/16/15).

The court’s decision overturned judgment of no invalidity by the U.S. District Court for the Eastern District of Texas.

Though the lower court had found the Gap not liable for infringement here and the appeals court had reversed a judgment of IDT Corp.’s infringement in 2013, several other defendants were potentially at risk if the validity judgment had stood.

**Major Retailers Alleged Infringers.** Alexsam Inc. asserted two patents (U.S. Patent Nos. 6,000,608 and 6,189,787) against 15 companies—including large retailers Barnes & Noble, Best Buy, McDonald’s, J.C. Penney, the Gap, Home Depot, Toys “R” Us and Best Buy. The district court severed the case.

Litigation on the ’608 patent against IDT Corp. came before the Federal Circuit on appeal in 2013.

The patent requires use of “unmodified” point-of-sale terminals. The appeals court reversed the district court’s infringement judgment because Alexsam failed to prove a negative—that the POS devices used by Walgreens and others had not been modified in any way to implement the IDT system. *Alexsam, Inc. v. IDT Corp.*, 715 F.3d 1336, 106 U.S.P.Q.2d 1895 (Fed. Cir. 2013) (86 PTCJ 170, 5/24/13).

The case against the Gap and Direct Consumer Services LLC continued, with one jury finding in favor of Alexsam on validity and another jury finding the patents not infringed.

The Gap continued despite the latter result, moving for judgment as a matter of law of invalidity for anticipation. Judge Michael H. Schneider denied the motion and the Gap appealed.

**SVS Antedates, Inventor Can’t Swear Behind.** Anticipation in this case was based on 35 U.S.C. § 102(g), as it existed prior to the enactment of the America Invents Act. Under this subsection, the Gap had to show another inventor’s priority of invention.

The two parts to the priority inquiry are to determine that the other inventor beat the patent application date, and if so, determine whether the patentee’s activities, up to one year prior to filing the application, can beat the other inventor’s date.

Ceridian Stored Value Solutions Inc. had implemented the SVS system—Alexsam acknowledged that it included all the patented elements—as a pilot in Kmart stores in May 1997, prior to the Alexsam patent application date.

The Kmart system wasn’t rolled out to all stores until August of that year, but the court concluded that it “was practiced under actual working conditions” during the pilot.

*Scott v. Finney*, 34 F.3d 1058, 1063, 32 U.S.P.Q.2d 1115 (Fed. Cir. 1994), held that “practice” in this sense does not “requir[e] commercial perfection nor absolute replication of the circumstances of the invention’s ultimate use.”

With respect to the second part of the inquiry, Alexsam failed to provide evidence that patentee Robert Dorf could claim reduction to practice of two elements of the patented system prior to the SVS practice date.

Dorf pointed to an August 1997 document that described those elements and said they were discussed in a 1996 conversation. But, the court said, that does not meet the “contemporaneous corroborating evidence” requirement for an inventor’s claim to prior invention.

Judge Evan J. Wallach wrote the court’s opinion, joined by Judges Kimberly A. Moore and Raymond C. Clevenger III.

Philip D. Segrest Jr. of Husch Blackwell LLP, Chicago, represented Alexsam. Alan M. Fisch of Fischer LLP, Washington, represented the Gap.

BY TONY DUTRA

Full text at [http://www.bloomberglaw.com/public/document/Alexsam\\_Inc\\_v\\_The\\_Gap\\_Inc\\_Docket\\_No\\_1401564\\_Fed\\_Cir\\_Jun\\_25\\_2014\\_C](http://www.bloomberglaw.com/public/document/Alexsam_Inc_v_The_Gap_Inc_Docket_No_1401564_Fed_Cir_Jun_25_2014_C).

## Patents/Post-Grant Opposition

### PTAB Amendment Rules Upheld But Microsoft Challenge Proxyconn Patent in Trouble

■ **Holding:** Microsoft is in worse shape as it goes back to the PTAB in its challenge to Proxyconn's network data access patent.

■ **Takeaway:** The Federal Circuit criticizes the PTAB's rules and standards for handling patent owners' motions to amend claims, but blesses enough so that the decision against Proxyconn here stands.

The Patent Trial and Appeal Board's tough standards for amending claims in post-grant oppositions were upheld—partially at least—by the Federal Circuit in a June 16 opinion (*Microsoft Corp. v. Proxyconn, Inc.*, Fed. Cir., No. 2014-1542, 6/16/15).

The court previously held that the board was justified in not allowing the patent owner to expand the scope of its claims through amendment. Now it added that the PTAB could require the patent owner to respond to a ground of unpatentability “over the prior art of record.”

In this case, Proxyconn's argument was that Microsoft had cited prior art in the case overall, but that art was not used with reference to the claims it was trying to amend. The PTAB's rules do not make that distinction, and the court agreed.

However, in a footnote, the court said it was not going to rule on a further PTAB expansion of that requirement—that the patentee “show patentable distinction over all ‘prior art known to the patent owner.’”

**BRI Yes, Too Much BRI No.** Proxyconn asserted the patent at issue against Microsoft in the U.S. District Court for the Central District of California (U.S. Patent No. 6,757,717). Microsoft filed two inter partes review petitions at the PTAB challenging the patent's validity. IPR2012-00026 and IPR2013-00109.

The board found in favor of Microsoft on all but one claim. Both parties appealed.

In the first part of the opinion, the Federal Circuit said it was bound by a prior decision that the PTAB could use the “broadest reasonable interpretation” standard for claim construction, citing *In re Cuozzo Speed Techs., LLC*, 778 F.3d 1271, 113 U.S.P.Q.2d 1613 (Fed. Cir. 2015) (89 PTCJ 877, 2/6/15).

“That is not to say, however, that the Board may construe claims during IPR so broadly that its constructions are *unreasonable* under general claim construction principles,” the court said. And it found multiple errors in this particular PTAB panel's constructions.

The court overturned such judgments, vacating findings of unpatentability of eight claims.

The court affirmed the board's decision against Microsoft on claim 24, leaving those nine claims still in play on appeal. But it upheld unpatentability of three other claims, for anticipation by a “DRP” reference.

Proxyconn had sought to amend claims 1 and 3, and Microsoft had not challenged those claims with reference to the DRP reference. But the board denied the amendments because Proxyconn's new claims failed to overcome it.

**Board Rules and Standards.** The board defended its decision on the basis of its rules and an “informative” opinion it published related to amendments.

As to the rules:

■ 37 C.F.R. § 42.20 applies generally to motions practice, and requires that “[r]elief, other than a petition requesting the institution of a trial, must be requested in the form of a motion” and that “[t]he moving party has the burden of proof to establish that it is entitled to the requested relief.”

■ 37 C.F.R. § 42.121 is specific to the amendment process, and subsection (a)(2) provides that: “A motion to amend may be denied where: (i) The amendment does not respond to a ground of unpatentability involved in the trial; or (ii) The amendment seeks to enlarge the scope of the claims of the patent or introduce new subject matter.”

The informative opinion, *Idle Free Sys., Inc. v. Bergstrom, Inc.*, No. IPR2012-00027 (P.T.A.B. June 11, 2013) (88 PTCJ 987, 8/15/14), offered “a general discussion of several important requirements for a patent owner's motion to amend claims.”

**Board's Approach Blessed in Part.** The court agreed with the PTAB that it could resort to Rule 42.20 to make its decision here, because Rule 121(a)(2) was not necessarily an exhaustive list of grounds on which the amendment could be denied.

*Idle Free* further established that as part of Rule 42.20(c), “The burden is not on the petitioner to show unpatentability, but on the patent owner to show patentable distinction over the prior art of record and also prior art known to the patent owner.”

The court criticized the board slightly, at least, even as it was affirming the board's authority to apply the *Idle Free* standard, for creating uncertainty with respect to standards.

The court said that the art of record was sufficient and there was no need to look to prior art known to the patent owner.

The DRP reference was part of the relevant record and Proxyconn bore the burden to prove patentability in light of it, the court said.

Since Proxyconn failed to address that prior art, the court affirmed the board's denial of the motion to amend.

Chief Judge Sharon Prost wrote the court's opinion, joined by Judge Alan D. Lourie and Judge Rodney Gilstrap of the U.S. District Court for the Eastern District of Texas, sitting by designation.

John D. Vandenberg of Klarquist Sparkman LLP, Portland, Ore., represented Microsoft. Bryan K. Wheelock of Harness, Dickey & Pierce PLC, St. Louis, represented Proxyconn. The PTO was represented by Solicitor Nathan K. Kelley.

BY TONY DUTRA

Full text at [http://www.bloomberglaw.com/public/document/Microsoft\\_Corporation\\_v\\_Proxyconn\\_Inc\\_Docket\\_No\\_1401542\\_Fed\\_Cir\\_J](http://www.bloomberglaw.com/public/document/Microsoft_Corporation_v_Proxyconn_Inc_Docket_No_1401542_Fed_Cir_J).

# News

## *Patents/Pay-for-Delay*

### **Proposed Competition Bureau Guidance Addresses Patent Litigation Settlements**

**P**atent litigation settlements are a major focus for Canada's Competition Bureau in the second phase of its overhaul of its Intellectual Property Enforcement Guidelines to reflect current enforcement approaches, Competition Commissioner John Pecman reported on June 9.

Patent litigation settlements allow parties to avoid costly litigation, but, in the pharmaceutical sector, such settlements have the potential to prevent or delay the timely market entry of lower-cost generic drugs, leading to higher prices and less choice for consumers, Pecman said in a keynote address to the Canadian Bar Association's annual spring competition law conference in Toronto.

"Like other agencies around the world, we have a keen interest in these types of agreements," he disclosed.

The bureau's publication on June 8 for public comment of further draft changes to the Intellectual Property Enforcement Guidelines includes specific provisions related to patent litigation settlements that take into account responses, from the competition law bar and other stakeholders, to a white paper on the issue that was published in September 2014, he said.

The draft guidance provides that such agreements involving a "payment" from the brand owner to a generic firm will generally be reviewed under Section 79 or Section 90.1 of Canada's Competition Act, he said.

However, if the parties' intent is to fix prices, allocate markets or restrict output, such agreements may be reviewed under the criminal provisions in § 45 of the Act, particularly if they appear to be nothing more than "naked restraints" on competition, he posited.

"I think that would happen on a limited basis, but where the facts support us doing one of these cases criminally, we will not hesitate to do so," he said. "This approach is consistent with the provisions in the Act and the bureau's Competitor Collaboration Guidelines. While the bureau respects the legitimate exercise of IP rights, in cases where firms go beyond the mere exercise of such rights, the bureau has a responsibility to prevent conduct that negatively affects competition."

Pecman noted, but dismissed, suggestions that the bureau's approach to patent litigation settlements could chill such settlements. Issues arise under the Competition Act only in the case of "reverse-payment" settlements, and the U.S. Federal Trade Commission recently found that, of 145 final patent dispute settlements filed in the 2013 fiscal year, only 29 potentially raised "pay-for-delay" issues, he reported.

"The vast majority of these disputes—in this case 80%—were resolved without compensation to the generic manufacturer. There is clearly scope to resolve

such disputes in ways that do not raise antitrust concerns," he said.

The second phase of review of the IPEGs follows on completion of the first phase in September 2014, which included changes to reflect amendments to the Competition Act, incorporate enforcement experience and ensure consistency with other enforcement guidelines, Pecman said.

In addition to patent litigation settlements, the second phase addresses the conduct of standard essential patent owners and the activities of patent assertion entities, he said.

**Detailed Approach.** The latest draft version of the IPEGs, open to public comment through Aug. 10, provides detailed information on the bureau's approach to addressing settlements of disputes between brand name and generic pharmaceutical companies under Canada's Patented Medicines (Notice of Compliance) Regulations.

The draft document identifies the agency's approaches to three basic forms of settlements:

- entry-split settlements in which the brand-name company provides no consideration other than allowing a generic to enter the market before patent expiry, which are not considered to pose an issue under the Competition Act;

- settlement with a payment, which will be reviewed under the agreements between competitors provisions in Section 90.1 of the act, or possibly the abuse of dominance provisions in Section 79 of the act; and

- settlements in which there is evidence of intent to fix prices, allocate markets or restrict output, which would be addressed under the criminal provisions in Section 45.

The draft guidelines provide hypothetical examples for each, with two examples for settlements with potential criminal implications to highlight situations where the ancillary restraints defense would or would not apply.

The draft document also addresses standard essential patents, confirming that the Competition Bureau recognizes the procompetitive benefits of technical standards development, including through formal standards development organizations, but that it can raise concerns through reduced price competition, foreclosure of innovative technologies and restrictions on firms' ability to compete by denying access to the standard or providing access on discriminatory terms.

The draft update confirms that "patent hold-up" and "patent ambush" situations can raise concerns that would be addressed under the abuse of dominance provisions in Section 79 of the Act, as well as breaches of voluntary commitments to license on fair, reasonable and non-discriminatory terms.

The document offers hypothetical examples involving the standard-setting process, patent "ambush," re-

neging on a licensing commitment, transfer of a patent with a licensing commitment and seeking an injunction after making a licensing commitment.

**Patent Assertion Entities.** The second phase of the guidelines update addresses the bureau's concerns about patent assertion entities through an additional example added to the hypotheticals used to highlight how it views application of the Competition Act to intellectual property issues.

It indicates that the bureau will address complaints about potential "patent trolls" under the misleading representation provisions in Section 74 of the act, unless the misleading representation is made knowingly or recklessly, in which case it would be reviewed under the criminal provisions in Section 52 of the act, it said.

"In cases where the reviewable matters prohibitions against misleading advertising have been found by the court to have been contravened, the court can order the business not to further engage in the conduct, to pay an administrative monetary penalty, to pay restitution to consumers and to publish a corrective notice," it said. "Convictions under the criminal provisions can result in fines at the discretion of the court, as well as imprisonment for individuals of up to 14 years."

The act's civil deceptive marketing practices provisions authorize administrative monetary penalties of up to 10 million Canadian dollars (\$8.1 million) for a first offense and up to 15 million Canadian dollars (\$12.2 million) for subsequent offenses.

In general, the Intellectual Property Enforcement guidelines specify that the bureau's overall approach to applying the Competition Act to intellectual property will involve use of the general provisions of the act for actions that are something more than the mere exercise of an IP right and the special remedies in Section 32 of the act for actions that involve exercise of the IP right and nothing else.

"In either case, the bureau does not presume that the conduct violates the general provisions of the Act or needs to be remedied under Section 32," it said. "When conduct involving an IP right warrants a special remedy under Section 32, the bureau will act only in the very rare circumstances described in this document and when the conduct cannot be remedied by the relevant IP statute."

The bureau's existing analytical framework for determining the presence of anticompetitive effects from exercise of rights to non-IP forms of property is sufficiently flexible to apply to conduct involving intellectual property, even though intellectual property has important characteristics that distinguish it from other forms of property, it said.

The agency noted that application of its enforcement discretion will be based on the relevant circumstances, suggesting that individuals contemplating a business arrangement involving intellectual property either consult qualified legal counsel or contact the bureau for assistance in evaluating the risk of the arrangement contravening the Competition Act.

By PETER MENYASZ

Text of the draft guidelines is available at: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03935.html>.

## Patents/Foreign Laws

### Observers Question Frequency of Injunctions, Call for Speedier Resolution of Cases

**P**atent lawyers and analysts in India are increasingly questioning the frequency and leniency with which interim injunctions, particularly ex parte, are granted.

They argue that injunctions are nearly impossible to vacate, and given the typically lengthy timelines for settling disputes in India, defendants and public interest are unduly penalized.

Pharmaceutical and telecommunications-related cases have been most problematic from a public interest point of view, and some analysts suggest that in complex cases, courts should do away with interim injunctions and expedite to trial stage directly.

**'Problematic' injunctions.** Some practitioners complain of the widely varying standards that are applied to judge whether or not a case is fit for grant of injunction.

In March 2014, when the Switzerland-headquartered Novartis AG filed quia timet actions against several Indian generic drug-makers involving its drug Galvus (Vildagliptin), the Delhi High Court issued ex-parte ad-interim injunctions against Bajaj Healthcare, Wockhard and Alembic Pharmaceuticals.

Biocon, Glenmark and Cadila undertook to not make or market the drug in India until after a scheduled hearing.

Lawyers and analysts criticized the ex parte granting of injunctions without the participation of opposing parties, particularly when no harm had yet been established.

In April 2013, in another case filed by Merck Sharp & Dohme against Glenmark, a single-judge panel of the Delhi High Court refused to grant an injunction even though Glenmark had made an at-risk launch of its generic version of Merck's popular anti-diabetes drug Sitagliptin.

A division bench of the Delhi High Court, however, overturned the order in March 2015, saying Merck had made out a strong prima facie case, the balance of convenience clearly lay in its favor and irreparable injury would be caused to it if interim injunction were not issued (89 PTCJ 1446, 3/27/15).

However, within days, the Supreme Court of India overturned the injunction and agreed to examine an appeal by Glenmark arguing that Merck's patent claim on Sitagliptin was overbroad (a *Markush* claim) in claiming "all acceptable salts"; that the Sitagliptin free base was unstable and not industrially applicable on its own; that the patent was anticipated in prior art; and that MSD had failed to disclose several crucial proceedings in various patent jurisdictions (89 PTCJ 1521, 4/3/15).

While some analysts say the twists and turns in the Sitagliptin case attest to the robustness of the legal process in India, it also raises questions over interpretation of the criteria established in law for grant of injunctions.

Swaraj Barooah, who edits the Spicy IP blog, told Bloomberg BNA in a June 5 e-mail message that none of the criteria laid out under law for grant of interim injunction—whether there is a prima facie case in favor of the plaintiff; whether the plaintiff is likely to suffer

irreparable injury if the defendant is not restrained; whether the balance of convenience lies in favor of the plaintiff; and whether grant of injunction is in public interest—have been conceptually clarified by Indian courts.

The guidelines laid down by the Supreme Court for grant of ex parte interim injunctions in civil suits—in *Union of India v. Era Educational Trust* and *Morgan Stanley Mutual Fund v. Das*—are rarely invoked.

“It is relevant to note that in these complex patent cases, it would anyway be nearly impossible to determine a ‘prima facie’ case, when the questions and technology involved in the dispute cannot simply be understood without in-depth review of all the evidence,” he said.

Lawyers also point out that, when a defendant challenges the grant of the patent in its defense in an infringement suit, the judge, in trying to establish a prima facie case, has to examine complex questions such as whether the alleged infringing product is covered by the patent in question and whether the challenge to validity of patent raised by the defendant presents a credible challenge.

This requires careful scrutiny of scientific evidence, and is often impossible to determine at an interim stage.

Nataraj Guruswamy, a Delhi-based patent attorney, told Bloomberg BNA in a June 10 e-mail message that the frequency of grant of interim injunctions is “doubly unfortunate” as most patent suits that are filed tend to be quia timet; that is, based on the patentee’s assertion that they apprehend a harm.

“In such cases, it would be better for the Courts to determine factually whether the patentee would actually suffer any harm at all before granting any injunction,” he said, “While patentees will assert that they have spent money on investment in research, and would suffer huge losses, this is rarely backed by any kind of serious and credible data. It is often the case that the patentee actually does not either meet the needs of the Indian public in full, or in fact, may not even be making and selling the product in India.”

He pointed out that in cases in which a product is merely imported into India, grant of an interim injunction, ex parte or otherwise, would be in conflict of Section 83 of the Patents Act of 1970, which requires a finding of domestic practice of a patent.

Barooah said another trend his blog team is studying is forum-shopping, wherein plaintiffs choose a particular court to apply for injunctions because it has a history of awarding such orders.

“In these cases, glaring questions of jurisdiction arise, and these questions are never raised by the defendant because he isn’t even given a hearing in most cases before the injunction is granted,” he said, “Thus, you have plaintiffs with extremely weak cases being awarded injunctions even when there are glaring preliminary defects in their claims.”

**Long Pendency.** Barooah’s team has been gathering data on preliminary injunctions, which shows that proceedings to vacate ex parte injunctions can stretch for a year or more.

“Along with this, there are also a large number of inordinate delays and adjournments. All while the interim order remains in force, despite there being no legal clarity on the grounds on which these injunctions have been granted!,” he said.

He cited three cases from the last few years that exemplify such delays—*Vifor v. Mohan Rao* (44 months), *Symed v. Sharon* (35 months) and *Issar v. Vinod Dua* (36 months).

“Order 39 Rule 3A of the CPC [civil procedure code] provides that petition for vacation of an ex-parte order be heard within 30 days. Yet, there is a case where even after three years after the passage of the ex parte order, and with 37 hearings being held, the defendant still hasn’t been heard on merits,” he said.

In the 2009 *Bajaj v TVS* ruling, the Supreme Court of India commented that suits involving patents, trademarks and copyrights take years to conclude and litigation mainly focuses on temporary relief via injunction.

The court ordered that interim injunctions be done away with in complex patent cases and strict timelines be mandated for the trial.

In a few isolated cases, however, judges have tried to follow the order in spirit.

Justice R. Bhat of the Delhi High Court dispensed with the interim phase in *Bayer Corp. v. Union of India*.

In *Merck v. Glenmark*, the Supreme Court ordered that procedures such as recording of evidence be speeded up.

“We make it clear that we have taken a little unusual and extraordinary course of action in ordering the above time schedule. This has been prompted by our desire to ensure that highly contested commercial cases, in which category this instant case can be put, requires immediate attention and disposal to ensure a suitable commercial environment which is vital to national interest,” the court said.

Nevertheless, expediting of cases remains an exception and cases drag on for years.

For example, Barooah noted that *Bajaj v. TVS* itself has stretched on to more than five-and-a-half years since the court set a deadline.

**Public Interest.** Another common argument against frequent grant of interim injunctions is that although they are based on the presumption of irreparable harm to the complainant, a successful challenge can enable the patentee to recover damages, but erroneously granted interim injunctions can have a huge impact on public interest.

For example, in pharmaceuticals cases, it can deny access to essential medicines; in telecommunications, it can unnecessarily drive prices up.

Barooah said that given the Indian context, complex patent cases are often pharmaceutical patent cases, wherein a generic company offering the drug at a much more affordable price, is the defendant.

“The fact that patients’ health and lives across the country are severely affected by such delays, (which are often baseless and/or unnecessary), cannot be understated,” he said, adding that some would argue that this reason alone is sufficient to take the case directly to trial.

“Even aside from pharmaceutical cases, any complex patent case in a fast growing economy like our own, often have significant innovation implications, as well as of course, implications for access to the affected goods,” he said.

Barooah said that there are many cases in which the plaintiff is standing on “remarkably thin ice,” patents that are vulnerable to revocation, for example.

Nataraj cited several examples where the product apparently covered by a patent is merely imported into India in a prepared form, and simply repackaged.

Licenses given to local entities to resell under different brand names are not filed with the Indian Patent Office as is required under the law, defeating the objective of transparency.

The result is that the public does not know why the same tablet manufactured by the same entity is provided at differential pricing across the country.

He also offered the example of Trastuzumab, in which case the patent owner, Switzerland-based Roche, abandoned the parent patent, and the Indian Patent Office refused three separate divisional patent applications.

However, Roche brought a case on the ground of data usage which has resulted in a partial injunction.

“In this case, the Court does not appear to have assessed the potential harm to the consumer—the published decisions do not state if any question was ever asked on whether Roche would be able to meet the requirements of the Indian public,” he said.

Nataraj said that while this is not a patent litigation, the principle remains the same – are the needs of the ultimate consumer met by the person bringing the action?

“My view is that a patent is not granted as an absolute monopoly for a technology squatter. It is granted in order to ensure that while protection is given, the right holder actually does take the steps necessary to introduce and make the product in India,” he said.

Barooah said, that in most such cases, the plaintiff is a large multinational company while the defendant is a smaller player.

“In a war of attrition over legal fees, the plaintiff is obviously going to win out. Further, while the plaintiff, being a larger player, is usually more diversified and has other means of staying afloat and receiving the final award, the defendant usually markets just one or two products, and the seizure of his equipment due to the injunction could put him out of business well before the court gives a judgment of merits. Thus, it’s possible that by the time the court rules in his favor, the defendant could no longer be in existence,” he said.

**The Contrary View.** Not all practitioners, however, see the frequent grant of injunctions as misplaced.

Shukadev Khurajam of Remfry & Sagar told Bloomberg BNA via e-mail June 7 that although patent litigation jurisprudence is still evolving in India, by and large, Indian courts have adopted a balanced approach in considering the rights of innovators and the general public at large.

“Strong patents are being protected in India irrespective of whether they belong to an Indian or foreign company,” he said.

Khurajam said that injunctions, being one of the primary forms of protection available to innovators, are an effective tool for patent enforcement especially in India where a final decree takes a long time to obtain.

“The ground reality in India is that the threat of injunction brings the non-patent holder to the discussion table (especially in FRAND cases),” he said, “If that too is taken away, what element of patent laws in India will dictate that a potential licensee get into legitimate business discussions before implementing accepted industry “standards” for their products?”

Ranjan Narula of RNA IP Attorneys also shared this view, and offered the example of an infringement claim filed on March 24 by the Swedish Ericsson against Indian mobile handset makers Intex and Micromax, in which the court has done away with lengthy interim injunctions as the case is likely to take long to decide.

Narula told Bloomberg BNA on June 5 that infringement proceedings can take up a large part of a patent’s lifetime, so not offering interim injunctions would be unfair to patent holders.

**The Way Forward.** Nevertheless, all commenters agreed that concluding trials on the merits speedily is the best course of action.

Khurajam said this would be very welcome but may not be feasible for most cases in the current scenario.

“This may perhaps be achievable if the government creates specialized benches with adequate judicial and technical members, and supports that with practice rules that make delaying a matter difficult,” Khurajam said. “Setting up specialized IP courts to adjudicate matters to finality in 12-18 months would alter the enforcement environment significantly.”

Nataraj said the steps entailed in normal trials should be decreased and time-bound procedures instituted for adjudication and passing of a decree.

Also, local commissioners may be appointed on a statutory basis to conduct the evidentiary stages of the trial in parallel.

He said often litigants delay trials by asking for adjournments, but there have been cases in which both parties have shown willingness to finish with the interim proceedings quickly.

He cited the example of the Atazanavir litigation in the Hyderabad High Court, where plaintiff Bristol Myers-Squibb and defendant Mylan sought no adjournments so that within five months of filing of the claims, the interim injunction application had been heard, disposed of, appealed and the appeal disposed of by the High Court.

“This only goes to show that if the parties wish, and if the Court directs (as the High Court had done in Hyderabad), interim proceedings can be concluded in a short period of time. If interim proceedings can be concluded fast, there is no earthly reason why the entire trial itself cannot be concluded speedily,” he said.

Barooah and his team are planning to file a writ petition asking that the grant of temporary injunctions, particularly ex parte, in IP cases be moderated.

“Given that the Supreme Court as well as the Delhi High Court have prescribed more judicious use of interim injunctions in complex patent cases, along with provisions of the Civil Procedure Code laying down supporting provisions, it seems like a writ arguing for this would certainly stand a fair chance,” he said.

He said a majority of patents that have been challenged in recent years have been revoked. His team’s study of pharmaceutical patents up to September 2010 showed that 72.5 percent of opposed patents had been rejected.

Therefore, he said, in cases in which a patent has been challenged, the interim phase should be dismissed and the case should proceed to trial.

By MADHUR SINGH

## Patents/Infringement

### Jawbone Takes Second Bite at Fitbit In Pre-IPO Lawsuit Claiming Infringement

**W**earable devices maker Fitbit Inc. was accused of patent infringement as its initial public offering approaches in a second lawsuit by rival Jawbone Inc. (*AliphCom v. Fitbit, Inc.*, N.D. Cal., No. 5:15-cv-02579, complaint filed, 6/10/15).

Jawbone says Fitbit's activity tracking devices use technology protected by three patents owned by Body-Media Inc., which Jawbone acquired in 2013 for \$100 million, according to a complaint filed Wednesday in the U.S. District Court for the Northern District of California.

Jawbone sued Fitbit two weeks ago in California state court, alleging it had recruited its employees and plundered its trade secrets (*AliphCom Inc. v. Fitbit Inc.*, Cal. Super. Ct. (San Francisco Cty.), No. CGC15-546004).

The latest suit comes as Fitbit is expected to price its IPO on June 17. It's seeking to raise as much as \$478 million, according to data compiled by Bloomberg.

Scholars debate whether companies time the filing of patent claims to coincide with an IPO to force a settlement, or because the IPO makes for a cash-rich target, said Michael Risch, a law professor at Villanova University, Philadelphia.

"This was obviously a strategic filing," Risch said in an e-mail. "Filing a separate trade secret case in state court is a hallmark of that. But does Jawbone really think that Fitbit will simply roll over simply because there is an IPO? I doubt it. More likely, Jawbone just wants its competitor to feel some pain and this is a good time to do it using the legal system."

**Fitbit Profitable.** Fitbit is profitable, with \$745 million in revenue last year and more than \$100 million in net income.

Still, as it markets the sale to investors, the company must show them it can continue growing despite heightened competition and the tendency for many users to stop using activity trackers after a few months.

Wednesday's lawsuit was filed by AliphCom, a corporate entity that does business as Jawbone, and Pittsburgh-based BodyMedia.

They said in their complaint that they will ask the U.S. International Trade Commission to investigate Fitbit's imports of infringing technology.

That ITC petition will be based on at least some of the same patents, according to the complaint.

Fitbit said it will vigorously defend against Jawbone's claims.

"As the pioneer and leader in the connected health and fitness market, Fitbit has independently developed and delivered innovative product offerings to empower its customers to lead healthier, more active lives," the company said in an e-mailed statement. "Since its inception, Fitbit has more than 200 issued patents and patent applications in this area."

Jawbone alleged in its first complaint on May 27 that San Francisco-based Fitbit's recruiters contacted a third of its employees this year and hired at least five, some of whom used USB thumb drives to steal proprietary information as they left.

The data-theft allegations, if true, are serious, Risch said.

"In general, it's not trade secret misappropriation to solicit employees and companies often overclaim solicitation as a method of interrogation," he wrote. "But if there is evidence of cherry picking the best employees, and information about the best employees came from someone with a secrecy duty, that too could create a problem."

By JOEL ROSENBLATT

To contact the reporter on this story: Joel Rosenblatt in San Francisco at [jrosenblatt@bloomberg.net](mailto:jrosenblatt@bloomberg.net)

To contact the editor responsible for this story: Michael Hytha at [mhytha@bloomberg.net](mailto:mhytha@bloomberg.net)

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## Patents/Patent and Trademark Office

### PTO Pilot Program Allows Expedited Rejection Appeal on an Application if Dropping Another

- **Patent and Trademark Office:**
- *Expedited Patent Appeal Pilot notice.*
- *80 Fed. Reg. 34,145, June 15, 2015*
- **Summary:** *Temporary program—withdraw one appeal and expedite another, more important one.*

**A**pplicants with multiple appeals of patent examiner rejections in progress can expedite one by dropping another, according to the Expedited Patent Appeal Pilot announced by the PTO on June 15.

The benefit to the applicants is "hastening the pace" at which products and services can enter markets with patent protection on those inventions "of greater importance to the applicant," according to the Federal Register notice describing the program.

The benefit to the office is to "reduce the backlog of appeals pending before the Board." The backlog has been trending down, but more than 24,000 appeals are still in progress.

The pilot, set to begin June 19, with only appeals docketed by that date eligible, will run for one year or until 2,000 appeals have been granted expedited status under the program.

Currently, ex parte appeals are handled by the Patent Trial and Appeal Board in the order in which each appeal is docketed.

PTO rules, under 37 C.F.R. § 1.102(c) and (d), allow for advancement of an appeal out of turn after receiving a "petition to make an application special" on various grounds. The pilot program creates a new ground for advancement.

To qualify for participation in the pilot, the applicant must file a certification and petition under Rule 41.3, via the PTO's EFS-Web electronic filing system, using a new Form PTO/SB/438. The normal \$400 fee is waived.

No oral hearing will be allowed for the application to be advanced. The appeal to be withdrawn may be either of an original examination or ex parte reexamination, so long as it was docketed no later than June 19. The

applicant may file a request for continued examination of the withdrawn application.

The office set goals of reaching a decision on the petition within two months and then a decision on the appeal no more than four months after that.

In contrast, the current pendency for ex parte appeals to the PTAB runs anywhere from 24.7 to 32.5 months, on average, depending on the technology.

Full text at <http://pub.bna.com/ptcj/80FR34145.pdf>.

PTO website <http://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/expedited-patent-appeal-pilot>.

## Patents/Taxation

### Strong Interest in Patent Boxes As Part of Tax Revamp, JCT Chief Says

Interest in patent boxes—special tax rules for income derived from patents—remains strong as a potentially viable option on Capitol Hill as lawmakers continue their work on tax reform, according to Thomas Bartholds, chief of staff for the Joint Committee on Taxation.

The issue has been highlighted by the Organization of Economic Cooperation and Development's base erosion and profit shifting project, which has dealt with the issue of patent boxes, and the question of "modified nexus" that accompanies the concept, among a broad range of issues.

Speaking June 10 at the 2015 OECD International Tax Conference, Barthold said, "I think it's fair to say that the discussion of modified nexus and a patent box is in the minds of a number of members who have sort of blessed that as a viable reform option. In that sense the OECD's work may be propelling discussions on the Hill."

Barthold said the need to pay for reauthorization of the Highway Trust Fund this summer may drive some action on reform. "A lot of members are thinking about what we can do to reach consensus on business tax reform in the context of the process surrounding the Highway Trust Fund," he said at the conference.

Along those lines, Rep. Paul D. Ryan (R-Wis.), chairman of the Ways and Means Committee, announced June 10 that the committee will be holding a June 17 hearing on funding the highway bill with an eye toward finding a long-term funding solution "as we make our international tax system more competitive."

**BEPS Through Regulation?** At the session on BEPS and tax reform, Danielle Rolfes, tax counsel for Treasury International, outlined areas of the BEPS action items that she believes could be accomplished through regulations, versus those that would require legislation in the U.S.

She said she believed that the United States has the regulatory authority to implement the OECD's work both on country-by-country reporting and on transfer pricing, where Rolfes said, "We have diligently guarded the arm's-length principle."

She said those working on the BEPS project have made important clarifications and improvements that are all in line with the arm's-length principle. "I think we are free to implement that through regulations and

in many cases I think our regulations are ahead of the mark, but we can do better," she said.

Addressing the BEPS work being done on hybrids, Rolfes said as a general matter, the U.S. needs legislation to "really, comprehensively get in line" with the OECD's work. That said, Rolfes noted, "there are some isolated situations of particular concern to the U.S. base where we're evaluating whether we have regulatory authority."

**Best Practices.** Rolfes stressed that in those areas that are expected to require domestic legislation, both in the U.S. and in other countries, action items are being written as best practices and options, rather than as requirements. "I don't think we're in any trouble in that regard," she said.

Pascal Saint-Amans, director of the OECD Centre for Tax Policy and Administration, reiterated that point.

Specifically, he said, action items on hybrids, controlled foreign corporations, interest deductibility and harmful tax practices will make clear that these items are intended to increase cooperation between countries and achieve "some better tax practices."

However, although the action item on revised nexus will take legislation to implement, the OECD expects that legislation to be "in accord with what has been agreed," Saint-Amans said.

**Nexus Requirements.** As part of a detailed discussion on patent boxes during the session, Jonathan Talisman of Capitol Tax Partners, Washington, said there is some concern on the Hill that the nexus requirements for patent boxes in the BEPS action item will require the location of jobs and research overseas.

This is also a concern with "some of the things going on in the transfer pricing area requiring the association of income with value creation," he said.

Saint-Amans said he was "surprised" at the idea that the action item on nexus will lead to job shifting because the OECD has crafted its approach requiring nexus "so that you have the jobs where the patent box is provided."

In fact, he said, the OECD's aim is to stop countries from adapting their patent boxes in such a way that they allow benefits for profits that are generated by activities that aren't performed in the country itself.

By ALISON BENNETT

To contact the reporter on this story: Alison Bennett in Washington at [abennett@bna.com](mailto:abennett@bna.com)

To contact the editor responsible for this story: Brett Ferguson at [bferguson@bna.com](mailto:bferguson@bna.com)

## Trademarks/Likelihood of Confusion

### 7th Cir. Affirms WD-40's Victory In 'Inhibitor' Trademark Dispute

■ **Holding:** The Seventh Circuit affirms a federal district court's award of summary judgment in favor of WD-40 on trademark claims by a company asserting rights in "The Inhibitor" trademark.

Popular rust-protection products company WD-40 did not use the term "Inhibitor" or a crosshairs design in a way that infringed the trademarks of another rust-proofing company, the U.S. Court of Appeals

for the Seventh Circuit ruled June 11 (*Sorensen v. WD-40 Co.*, 7th Cir., No. 14-3067, 6/11/15).

The appeals court affirmed lower court rulings that “Inhibitor” was not being used as a trademark in the name “WD-40 Specialist Long-Term Corrosion Inhibitor.”

Furthermore, the court affirmed that WD-40’s use of a crosshairs design element on its product packaging was not likely to cause confusion among consumers with respect to “The Inhibitor” rust-proofing goods.

**‘Inhibitor’ Goes Head-to-Head in Rustproofing Market.** Jeffrey Sorensen began using the name “The Inhibitor” in 1997 for rust-prevention products produced by his company, Van Patten Industries.

After 2010, Sorensen shut down Van Patten and moved the Inhibitor products to the Inhibitor Technology Corp. of Cherry Valley, Ill.

Sorensen holds a federal trademark registration for the term “The Inhibitor” and claims common law trademark rights in a logo incorporating a crosshairs design.

WD-40 Co. of San Diego originated in 1953 as the Rocket Chemical Co. It markets a range of popular rust-prevention products, solvents and lubricants.

In 2011, WD-40 began marketing a line of products under the name “Specialist,” one of which was the WD-40 Specialist Long-Term Corrosion Inhibitor. The packaging of each one of the products in the Specialist line also incorporated a crosshairs design.

Sorensen sued WD-40, alleging trademark infringement.

Judge Frederick J. Kapala of the U.S. District Court for the Northern District of Illinois found that WD-40’s use of the term “Inhibitor” was not a use in commerce as an indicator of the origin of the goods, that is, not a trademark use.

The district court also found that there was no likelihood of confusion caused by the use of the crosshairs design by WD-40. The court thus granted summary judgment in favor of WD-40. Sorensen appealed.

**No Trademark Use by WD-40 Found.** The appeals court affirmed the lower court’s rulings.

Turning first to the issue of the “Inhibitor” use, the appeals court ultimately agreed with the district court that WD-40’s use was not a trademark usage, but disagreed with most of the lower court’s reasons for reaching that conclusion.

For example, the court rejected the district court’s assertion that the of “Inhibitor” could not be a source indicator because “WD-40,” which also appeared on the label, was already a strong trademark.

However, ultimately, the court said that WD-40 was not using “Inhibitor” as a trademark for several other reasons, such as its relative lack of prominence, smaller size and “less attention-grabbing” presentation.

“Due to the word’s small size, plain color, and non-privileged placement on the bottle, we find that ‘inhibitor’ is not an ‘attention-getting symbol,’ and does not function as a source indicator,” the court concluded.

Furthermore, the court found that “inhibitor,” particularly in the phrase “corrosion inhibitor,” as it appeared on the label, was a descriptive fair use of the term.

The court also agreed with the lower court’s conclusion that the use of the crosshairs design on the WD-40 Specialist cans was not likely to create a likelihood of confusion with Sorensen’s products.

“Consumers looking at the entirety of the WD-40 labels would not think that the Specialist products come from the same source as Sorensen’s THE INHIBITOR line of products,” the court found.

The court’s opinion was authored by Judge Joel M. Flaum and joined by Judges William J. Bauer and Daniel A. Manion.

WD-40 was represented by Procopio, Cory, Hargreaves & Savitch LLP, San Diego. Sorensen was represented by Leydig, Voit & Mayer Ltd., Chicago.

BY ANANDASHANKAR MAZUMDAR

*Text is available at: [http://www.bloomberglaw.com/public/document/Sorensen\\_v\\_Wd40\\_Co\\_No\\_143067\\_2015\\_BL\\_184918\\_7th\\_Cir\\_June\\_11\\_2015\\_](http://www.bloomberglaw.com/public/document/Sorensen_v_Wd40_Co_No_143067_2015_BL_184918_7th_Cir_June_11_2015_)*

## Trademarks/Trade Dress

### **London Taxi Maker Cries Foul Over Rival’s Environmentally Friendly Cab Designs**

**T**he maker of London’s iconic black cabs sued companies building an environmentally friendly alternative, saying the similar design would confuse drivers and customers (*London Taxi Corp. v. Frazer Nash Research Ltd.*, EWHC (Ch), No. HC14B01502).

The London Taxi Co., a unit of Geely Automobile Holdings Ltd., said Frazer-Nash Research Ltd. and Ecotive Ltd.’s zero-emission Metrocab had infringed its trademark rights.

“It is actually all about the shape,” said Douglas Campbell, a lawyer for the cab-maker, at a London court hearing ahead of a November trial.

London Mayor Boris Johnson announced last year that all of the city’s new taxis should be zero-emission by 2018 as part of efforts to reduce pollution.

Geely is investing 250 million pounds sterling (\$387 million) in a new facility in Coventry to build greener versions of the black cab.

Frazer-Nash Research and Ecotive said last month they would start production on the new Metrocab in 2016, in partnership with privately held manufacturer Multimatic Holdings Inc.

The venture’s 50 million-pound factory will also be based near Coventry.

“The identity of the manufacturer of the car is a matter of supreme indifference to the passenger,” Frazer-Nash said in documents at the London court hearing, during which the London Taxi Co. asked the judge to approve a market survey for use in the trial.

Officials at the London Taxi Co. declined to comment. A spokesman for Frazer-Nash did not immediately respond to e-mail messages and phone calls seeking comment.

Drivers of black cabs must pass a four-year training program called “the knowledge” to demonstrate their understanding of the city’s 25,000 streets.

Each cab driver essentially runs a small business, buying or renting vehicles, licensed by London’s transport authority.

The London Taxi Co. manufactures the majority of black cabs. Frazer-Nash’s zero-emission Metrocab is currently undergoing trials in the city.

To contact the reporter on this story: Kit Chellel in London at [cchellel@bloomberglaw.com](mailto:cchellel@bloomberglaw.com)

To contact the editor responsible for this story: Anthony Aarons at [aaarons@bloomberg.net](mailto:aaarons@bloomberg.net)

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## *Copyrights/Licensing*

### **EU Sounds Sweet Note for Joint Venture's Cross-Border Licensing of Online Music**

**A**fter an in-depth investigation by its staff, the European Commission on June 16 authorized three music collecting societies to create a joint venture for multi-territorial online music licensing and copyright administration services.

The three parties to the proposed venture are:

- PRS for Music Ltd. of the United Kingdom;
- Föreningen Svenska Tonsättares Internationella Musikbyrå U.P.A., of Sweden, known as Stim; and
- Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte of Germany, known as Gema.

The commission conditioned its authorization on the fulfillment of “implementing commitments that will enable other players to compete with the joint venture in the provision of copyright administration services.”

Competition Commissioner Margrethe Vestager observed: “The proposed joint venture would make it easier for online music platforms such as iTunes, YouTube or Deezer to get the licenses they need to offer cross-border music services to consumers. The commission is satisfied that the commitments will ensure that other collecting societies can also compete and offer copyright administration services.”

**Parties, Markets.** PRSfM, a subsidiary of the Performing Right Society Ltd., manages the performing rights owned or controlled by PRS. It also manages the mechanical rights controlled by the Mechanical-Copyright Protection Society Ltd. Both PRS and MCPS are collecting societies for copyrights of authors of musical works.

Stim and Gema are collecting societies for music copyrights for Sweden and Germany, respectively.

The commission explained that, in addition to managing the copyrights of authors, performers and writers of musical works, collecting societies “grant licences on their behalf to users of musical works, monitor and detect these licenses’ unauthorized use, and collect and distribute to rightholders the revenue derived from the exploitation of their musical works.”

As a result, online platforms—including iTunes, Spotify, YouTube and Deezer—“must obtain licences for the music copyrights in order to distribute music to their customers and, in particular, obtain from rightholders both performing rights and mechanical rights.”

**Analysis.** The commission expressed concern that “the creation of the joint venture would make it more difficult for other collecting societies to offer copyright administration services by raising the barriers to entry and growth in this market.” As such, the commission focused its investigation on the impact of the joint venture on competition in the market for copyright administration services.

The joint venture is expected to provide copyright holders with several service—including:

- licensing music to online platforms; and
- provide copyright administration services to collecting societies and the so-called “Option 3 music publishers.”

The licenses will cover the combined music repertoire of PRSfM, Stim and Gema on a multi-territorial basis—thereby enabling use in several countries. Thus, a single license, will enable online platforms to obtain the rights for three repertoires and for all countries in which they operate. Currently, the agency pointed out, “online platforms need separate licences from each of PRSfM, STIM and GEMA.”

As to the copyright administration services, the agency reported that these services will include collecting and processing royalties from online platforms and providing database services. Option 3 publishers refer to the “large music publishers that have withdrawn the mechanical rights related to their Anglo-American repertoire from the collecting societies and have started to license these rights directly. These publishers rely on the collecting societies solely for administrative services.”

**Option 3 Publishers.** The commission had concerns about copyright administration services provided to Option 3 publishers—specifically, that the creation of the joint venture would make it more difficult for new players to enter the market or for existing competitors to expand.

The joint venture, the commission indicated, “could force Option 3 publishers to use only its services for copyright administration.”

Additionally, Option 3 publishers typically license performing rights together with their mechanical rights via a mandate granted to them by PRSfM. However, after the joint venture, the agency expressed concern that “PRSfM could have an increased incentive to push Option 3 publishers or their service providers who are not yet customers of the joint venture to purchase copyright administration services from the joint venture” because “PRSfM controls the performing rights that match the mechanical rights that Option 3 publishers have withdrawn from the collecting societies system and license directly.”

The agency described the copyright administration services as “a new product because they relate to multi-territorial licenses.” Until the advent of this joint venture, collecting societies have only administered each other’s repertoires for a single country; the collecting society’s home country. However, the commission noted, some collecting societies have either begun or are considering cooperation to provide copyright administration services to other, smaller collecting societies.

The commission expressed concern that the creation of the joint venture might thwart some of the existing cooperation initiatives or halt new cooperation initiatives from emerging. Since it would be able to bundle different types of copyright administration services, the joint venture could make it difficult for customers of its database to take their data to a competitor. Another concern is that the joint venture could require its customers not to source their copyright administration services from any other third party—thereby leading to

less competition and potentially higher prices for customers.

**Commitments.** The parties submitted a series of commitments designed to address the commission's concerns—including:

- PRSfM committed not to use its control over the performing rights that it manages to force “Option 3 publishers” or their service providers to purchase copyright administration services from the joint venture. The joint venture will allow other collecting societies and Option 3 publishers to choose which copyright administration services they want to use.

- the joint venture will offer key copyright administration services to other collecting societies on terms that are fair, reasonable and non-discriminatory when compared to the terms offered to its parents PRSfM, Stim and Gema. The joint venture also will facilitate the switching of collecting societies relying on the joint venture's copyright database to another provider of database services. Collecting societies can terminate their contract with the joint venture at any time.

- the joint venture will not enter into exclusive contracts with its customers for copyright administration services other than for database services.

The commitments submitted by the companies address these concerns, the commission concluded.

By CECELIA M. ASSAM

To contact the reporter on this story: Cecelia M. Assam in Washington at [cassam@bna.com](mailto:cassam@bna.com)

To contact the editor responsible for this story: Sheldon B. Richman at [srichman@bna.com](mailto:srichman@bna.com)

## Copyrights/Architectural Works

### **5th Cir. Affirms Copyright, Lanham Act Rulings in Texas Architectural Plan Dispute**

- **Holding:** *The Fifth Circuit affirms judgments on copyright and Lanham Act claims against an architectural design firm that had accused a client of conspiring with a former employee to poach his services.*

**A** federal district court did not err in ruling against a Lubbock, Texas, architectural design company on claims based on its allegation that a client conspired with a former employee to poach the employee's services away, the U.S. Court of Appeals for the Fifth Circuit ruled June 15 (*Hunn v. Dave Wilson Homes, Inc.*, 5th Cir., No. 13-11297, 6/15/15).

The appeals court affirmed the judgment on all counts, including allegations of copyright infringement and false designation of origin under federal law.

**Builder Hires Firm for Draftsman's Services.** Dan Wilson is a principal of Dan Wilson Homes Inc., Lubbock, Texas, a builder and seller of custom residential housing.

In 2010, Wilson engaged Hunn Designs LLC of Lubbock, an architectural design firm, to produce five plans, with the intent that Hunn's lead draftsman, Ben J. Lack, would produce the needed work based on specifications supplied by Wilson's clients.

In 2011, before the Wilson projects had been completed, Lack informed Marshall Hunn that he wanted to end his employment relationship with Hunn, but was willing to continue to work on the Wilson designs for his remaining two weeks of employment.

Hunn instead discharged Lack immediately and accused Lack and Wilson of having plotted to steal Lack's services from Hunn.

Wilson sought to have the work completed, but Hunn replied that his firm was busy working on other projects and could not say when Wilson's work would be completed. Wilson also claimed copyright interest in the designs.

Wilson made several offers of different kinds in order that the work could be completed, such as paying for Hunn to keep Lack on just to complete the work, or to have another architectural design firm complete it, but ensure that Wilson would retain the intellectual property rights.

Hunn rejected all the offers, stating only that his firm was busy with other work and could not say when the Wilson projects could be completed.

**Firm Makes Accusations of Conspiracy.** Wilson first tried to pay Hunn a pro-rated amount for the completed work and then tried to pay Hunn the full contract amount, but Hunn rejected both tenders and instead sued Wilson and Lack, alleging copyright infringement under the Copyright Act of 1976, unfair competition under the Lanham Trademark Act of 1946, violation of the Computer Fraud and Abuse Act, and breach of contract, conspiracy and several other claims under Texas state law.

Judge Sam R. Cummings of the U.S. District Court for the Northern District of Texas granted summary judgment in favor of Wilson and Lack on several of the claims, including the Lanham Act claim.

Following a bench trial, the district court then awarded judgment on the remaining claims, including the copyright claims. Hunn appealed both rulings.

**District Court Rulings Affirmed.** On appeal, the court first affirmed the district court's finding that Wilson had held an implied license to use the draft plans that Lack had already created and that Hunn had turned over to Wilson.

The court said that there were several cases in which an implied license had been found in the case of architectural designs, offering the example of *I.A.E., Inc. v. Shaver*, 74 F.3d 768 (7th Cir. 1996).

As in *Shaver*, the court noted, when Hunn had given Wilson copies of the draft designs, they were handed over “without any ‘written or orally communicated restrictions about limits on Dan Wilson's ability to use the delivered drawings.’ ”

When Hunn terminated Lack's employment immediately, he had demanded return of any paper copies of drafts, but had not made any instruction with respect to AutoCad software files on Lack's personal computer.

Hunn argued that even had there been an implied license with respect to the paper copies in Wilson's possession, there was no implied license covering the AutoCad files.

The court rejected this argument on the basis that the AutoCad files were identical to the paper copies. Furthermore, the court said, the copyright registrations held by Hunn applied only to the printouts—because that is what had been included in Hunn's registration

application to the Copyright Office—and not to the software files.

Hunn's Lanham Act claim of false designation of origin was based on the theory that when Wilson submitted the plans to the Lubbock municipal government, they failed to note the participation of Hunn Designs in their production.

The court affirmed the district court's finding that there could be no Lanham Act claim because there was no allegation that the act of submitting the plans to the Lubbock government had any effect on interstate commerce.

The court's ruling was authored by Judge Jennifer Walker Elrod and joined by Judge W. Eugene Davis.

Hunn was represented by the Bustos Law Firm P.C., Lubbock, Texas. Wilson was represented by McCleskey, Harriger, Brazill & Graf LLP, Lubbock. Lack was represented by Craig, Terrill, Hale & Grantham LLP, Lubbock.

BY ANANDASHANKAR MAZUMDAR

*Text is available at: [http://www.bloomberglaw.com/public/document/Hunn\\_v\\_Dan\\_Wilson\\_Homes\\_No\\_1311297\\_cw\\_No\\_1410365\\_2015\\_BL\\_188924\\_5](http://www.bloomberglaw.com/public/document/Hunn_v_Dan_Wilson_Homes_No_1311297_cw_No_1410365_2015_BL_188924_5)*

## Copyrights/Attorneys' Fees

### Court Orders Monster Energy to Pay \$670,000 of Beastie Boys' Legal Fees

**T**he maker of Monster energy drinks should pay \$670,000 of the legal fees incurred by the Beastie Boys after their successful copyright infringement lawsuit for unauthorized use of several of their recordings in a promotional video, the U.S. District Court for the Southern District of New York ruled June 15 (*Beastie Boys v. Monster Energy Co.*, S.D.N.Y., No. 1:12-cv-06065-PAE, 6/15/15).

The award is significantly less than the \$2.4 million in fees requested by the Beastie Boys, at least in part due to the court's conclusion that the rates the Beastie Boys had paid for the work of associate attorneys and litigation support staff were considerably higher than customary in New York.

**Monster Uses Beastie Mashup for Promo.** The Beastie Boys are a rap music group founded in 1981 in New York. As of 2013, the Beastie Boys had sold more than 20 million albums.

In 2009, the Beastie Boys had asked Zach Sciacca, who is a disc jockey and mashup artist known as "Z-Trip," to create a 23-minute long mix or mashup of several Beastie Boys recordings to promote their next album. He posted the mashup on his own website with permission from the Beastie Boys.

Monster Beverage Corp. of Corona, Calif., founded as Hansen's Juices in the 1930s, is a producer of several lines of juices, teas and sodas, including Monster Energy drinks.

Since their introduction in 2002, Monster Energy drinks have often been associated with "extreme" sports. In 2012, Monster hosted a snowboarding event in Canada called "Ruckus in the Rockies 2012," at which Z-Trip performed.

Following the snowboarding event, Monster created a promotional video using footage taken at the event

and downloaded the Beastie Boys mashup from Z-Trip's website for the soundtrack. In a brief e-mail exchange between Monster and Z-Trip, Z-Trip said that the video was "Dope!"

Monster then released the promotional video, which included the Beastie Boys mashup and also used the Beastie Boys' names. Monster's website also made the mashup available for download.

**Monster Tries to Pin Blame on Deejay.** The video and the mashup were also made available through the YouTube video-sharing website and other online outlets. The Beastie Boys sued, asserting claims of copyright infringement of the recordings and compositions, a claim under the Lanham Trademark Act of 1946 and a claim under N.Y. Civ. Rights Law § 51.

Monster then brought a third-party claim against Z-Trip. According to Monster, it had obtained permission from Z-Trip to use the recording. Monster alleged breach of contract and fraud, alleging that Z-Trip had falsely claimed that he had the right to license use of the track to Monster.

In 2013, the U.S. District Court for the Southern District of New York ruled that Monster could not reasonably have relied on Z-Trip's "Dope!" comment to conclude that he had the right to license the use of the recordings (87 PTCJ 57, 11/8/13).

In December, after a jury found willful infringement and awarded \$1.7 million to the Beastie Boys, the court ruled that this award was reasonable (89 PTCJ 381, 12/12/14).

In February, the district court imposed an injunction on Monster's use of the promotional video (89 PTCJ 1133, 2/27/15).

Then, the Beastie Boys moved for an award of attorneys' fees and costs totaling \$2.4 million.

**Reduced Fee Amount Awarded.** In addressing this motion, the court first found that Monster's conduct and legal positions throughout the proceedings had been objectively reasonable, except in one respect.

The court faulted Monster for refusing, "until the brink of trial, to concede that it had infringed the Beastie Boys' copyrights," and had instead continued to try to shift that liability to Z-Trip.

To the extent that this refusal resulted in increased costs on the Beastie Boys' part, the court found that recompense of their expenditures was justified.

However, there were several factors that justified reducing the amount of the compensation, the court said, including work by the Beastie Boys' counsel on unnecessary projects, excessive work by high-billing partners at their law firm, and excessive billing rates for associate attorneys and litigation staffers.

Taking all this into account, the court arrived at \$670,000 as a reasonable figure.

The court's ruling was issued by Judge Paul A. Engelmayer.

The Beastie Boys were represented by Sheppard, Mullin, Richter & Hampton LLP, New York. Monster was represented by Kane Kessler P.C., New York.

BY ANANDASHANKAR MAZUMDAR

*Text is available at: [http://www.bloomberglaw.com/public/document/Beastie\\_Boys\\_et\\_al\\_v\\_Monster\\_Energy\\_Company\\_Docket\\_No\\_112cv06065\\_4](http://www.bloomberglaw.com/public/document/Beastie_Boys_et_al_v_Monster_Energy_Company_Docket_No_112cv06065_4)*

*Copyrights/Copyright Office***Retirement Reveals Split in Copyright World Over Librarian of Congress Billington's Legacy**

**F**igures in the copyright world were sharply divided on the legacy of retiring Librarian of Congress James H. Billington.

Some observers who spoke to Bloomberg BNA praised Billington as a pioneer who has led the library into the Internet era.

But Billington also has his critics, who say he hasn't done enough to lead digitization efforts. Diverging views about the librarian's role in the copyright realm will carry over to whomever President Barack Obama taps to replace Billington.

"Jim Billington has blessed this nation for 28 years by serving as our librarian of Congress, and, except for perhaps some of the very earliest librarians, I think Jim has been the finest librarian that this nation has ever had at the helm of the Library of Congress," James P. Moran, legislative advisor at McDermott Will & Emery LLP, Washington, said.

Moran worked with the Library of Congress, and Billington, while serving as U.S. representative from Virginia from 1991 to 2015 and as a Senate Appropriations staffer in the late 1970s. He was also employed at the Library of Congress in the 1970s.

**High Praise.** It has been noted that under Billington's tenure, the library took the initiative to create the Thomas online legislative resource and other early efforts in the digital field, long before others had begun such efforts.

"There's so much I could say about what he has done in terms of opening up the world to knowledge and learning, and he has had translated virtually every major work of literature so that people all over the world are now able to connect through the internet to the greatest library on the planet," Moran said.

Billington was appointed librarian in 1987 by President Ronald W. Reagan. Prior to that he was director of the Woodrow Wilson International Center for Scholars.

Ralph Oman, a law professor at George Washington University, Washington, who served as register of copyrights from 1985 to 1994, also praised Billington's work.

"Dr. Billington is a visionary who, in the face of stiff institutional resistance to change from many of his veteran mossbacks, moved the Library of Congress into the digital age," Oman said in an e-mail message. "He instinctively spotted the revolutionary potential of the Internet, and found ways for the Library of Congress to exploit it."

Oman also noted Billington's support for his early efforts to convert the Copyright Office from a paper system to an electronic one, which Oman's successor, Marybeth Peters, eventually finished.

"Dr. Billington recognized the critical role the Library of Congress and the Copyright Office play in promoting open and informed dialogue in a free society, and he was a powerful voice in Washington, and around the world, as an inspiring prophet of the Information Age," Oman said.

**Pointed Criticism.** But not everyone is singing Billington's praises. Billington's critics say he hasn't done enough on the digital front.

There have been multiple criticisms of the Library of Congress's failure to update its record-keeping systems and establish digital databases that are accessible to those who need to use the library.

One of the latest such critiques came in March, when the Government Accountability Office issued a 133-page report concluding that the library had, among other things, failed to establish a strategic plan for its information technology infrastructure, had failed to "effectively manag[e]" its investments in IT, and had failed even to permanently fill the office of chief information officer since 2012.

Billington's administration of the library was criticized for failing to make digitization a priority despite two decades of urging.

The Copyright Office, a department of the Library of Congress, has also expressed frustration that it has been unable to act independently to address the digital infrastructure issues that it has identified as critical for serving the needs of the copyright community.

Technology issues include the creation and management of digitized versions of works deposited with the library and with the Copyright Office, the management of up-to-date data associated with such works, and the online availability of all such information.

Billington himself has been criticized specifically for failing to offer strong, central leadership at the library, especially with respect to technological matters.

"It's not a convincing defense of Billington to say that he himself is a good scholar, an inspiring figurehead, or a cultural leader, because his job is to be a librarian," James Grimmelman, a law professor at the University of Maryland, Baltimore, said in an e-mail, referring to ongoing digitization efforts. "A librarian who can't keep track of his collection isn't doing his job; a Librarian of Congress who doesn't work to acquire and safeguard the full range of material our society produces that's worth preserving isn't doing his job."

"The need for private-sector projects like the DPLA and Google Books is directly traceable to the massive public failure of the Library of Congress to lead," Grimmelman said, referencing private sector mass-digitization projects. "Billington turned the single most culturally important office in the country into a sinecure."

Copyright scholars expressed hopes that the next librarian would focus specifically on technology.

"Technology stewardship is a core competency for librarians," Grimmelman said. "The technologies change over time, but organizing and cataloguing is a crucial part of preserving and making accessible our intellectual and cultural heritage."

Some observers criticized Billington for failing to implement digital access to the Copyright Office's records, leading Register of Copyrights Maria A. Pallante to recommend making the Copyright Office—which currently resides within the library—an independent entity.

"Billington has not been as effective a leader for this world class library in this era of rapid technological change as would have been desirable," Pamela Samuelson, a law professor at the University of California, Berkeley, said in an e-mail message to Bloomberg BNA.

**Separation Anxiety.** Pallante has been urging the separation of the two entities so that the Copyright Office can be free to serve the needs of copyright owners and users of creative works.

She has also lamented the fact that, because of its secondary status within the Library of Congress, the Copyright Office has been unable to dedicate resources to the development of digital tools that would make it easier for people to identify copyright holders and seek to license their works.

The possibility of moving the office was first raised by Rep. Darrell Issa (R-Calif.) at an oversight hearing in September 2014 (88 PTCJ 1317, 9/26/14). The idea gained momentum in later congressional hearings (89 PTCJ 1129, 2/27/15), and Pallante first told Congress that the office should become an independent entity in a March 23 letter (89 PTCJ 1543, 4/3/15).

Pallante has said that the copyright-related priorities of the office are secondary to the Library of Congress's primary role, leaving the office unable to plan and execute reforms critical to supporting creators, consumers and technological innovation.

Pallante has also noted that the library's information technology was insufficient for the office's needs.

The GAO report corroborated Pallante's concerns, saying that the library's IT plan had "significant weaknesses across several areas" and that it did "not have the leadership needed to address these IT management weaknesses."

Reps. Thomas A. Marino (R-Pa.) and Judy M. Chu (D-Calif.) starting circulating on June 5 a draft of a proposed bill that would make the Copyright Office an independent agency (90 PTCJ 2329, 6/12/15).

Some observers hope that the next Librarian can do more to help the Copyright Office.

"The Obama Administration has shown more leadership in bringing highly talented technologists into government agencies than his predecessors, which bodes well for his selection of a new Librarian," Samuelson said. "It would be desirable to have a Librarian with some technical expertise as well as a scholarly reputation, which could perhaps help the Copyright Office acquire more technical sophistication in the reports they write."

One observer said that Billington's successor should re-examine the procedure for making exceptions to the anti-circumvention provisions of the Digital Millennium Copyright Act of 1998.

"I hope his replacement takes a hard look at the DMCA rulemaking process," Corynne McSherry, legal director at the Electronic Frontier Foundation, San Francisco, said in an e-mail. "It is unduly burdensome for the many folks who seek exemptions, and that burden is spreading as folks find themselves forced to request permission to do things as basic as repair their own cars and protect their privacy and security. The next Librarian could help lower that burden, and should."

BY BLAKE BRITAIN AND ANANDASHANKAR MAZUMDAR

Ralph Oman is a member of this publication's board of advisors.

## Copyrights/DMCA

### EBay Subpoena Valid Despite Removal Of Infringing Content Prior to Service

**A** subpoena on EBay Inc. to identify 61 users allegedly engaged in copyright infringement was valid and enforceable notwithstanding the fact that eBay had already taken down the allegedly infringing materials at the time the subpoena was served, the U.S. District Court for the Southern District of California held June 5 (*In re DMCA Subpoena to EBay, Inc.*, S.D. Cal., No. 3:15-cv-00922-BEN-MDD, 6/5/15).

Judge Mitchell D. Dembin said that Section 512(h) of the Digital Millennium Copyright Act expressly allows enforcement of a subpoena against a service provider even if it took prior action to remove or disable the allegedly infringing content in response to a DMCA notification.

Section 512(h) of the DMCA, 17 U.S.C. § 512(h), permits a copyright owner to request the issuance of a subpoena for identification of an alleged infringer. It provides that upon (11 PVL 1472, 10/1/12)(32 ITR 1026, 6/4/15)(103 International Trade Daily, 5/29/15) receipt of the subpoena, the service provider shall expeditiously disclose to the copyright owner the required information "regardless of whether the service provider responds to the notification."

**Response to Notification Irrelevant.** Plaintiff Barry Rosen obtained a subpoena against EBay Inc. to identify 61 users allegedly engaged in the infringement of his copyrighted works. EBay moved to quash the subpoena on the grounds that it had already removed the infringing material upon receipt of 92 earlier DMCA notifications.

In *Maximized Living Inc. v. Google Inc.*, No. 11-80061, 2011 BL 326594 (N.D. Cal. 2011), another federal district court in California ruled that a subpoena obtained against Google Inc. was unenforceable because the notification related to that subpoena was served after Google removed the allegedly infringing material. The subpoena power of Section 512(h) is limited to currently infringing activity, the *Maximized Living* court said, not former infringing activity that can no longer be removed or disabled.

Here, however, the court disagreed with eBay that the allegedly infringing material must remain available after receipt of notification. "Nothing in this subsection suggests that a provider that does respond to the notification by removing the allegedly infringing material need not respond to a subsequently served subpoena to identify the alleged infringer related to the notification," the court said.

Text is available at: [http://www.bloomberglaw.com/public/document/In\\_re\\_DMCA\\_Subpoena\\_to\\_eBay\\_Inc\\_No\\_15cv922BENMDD\\_2015\\_BL\\_178695\\_S](http://www.bloomberglaw.com/public/document/In_re_DMCA_Subpoena_to_eBay_Inc_No_15cv922BENMDD_2015_BL_178695_S).

## Copyrights/Infringement

### Live Nation Not Directly Liable for Alleged 'Big Pimpin' ' Copyright Infringement

**C**oncert promoting giant Live Nation was not directly responsible for any copyright infringement caused by Jay-Z's live performances of his allegedly infringing song "Big Pimpin'" at its shows, but may still be liable under a contributory or vicarious liability theory, the U.S. District Court for the Central District of California ruled June 8 (*Fahmy v. Live Nation Entm't, Inc.*, C.D. Cal., No. 2:15-cv-01158, 6/8/15).

The court partially granted Live Nation's motion to dismiss the complaint, which was filed by Osama Ahmed Fahmy, an heir to the composer of "Khosara, Khosara," whose copyright Fahmy claims was infringed by "Big Pimpin'."

Fahmy brought a related copyright infringement case in the same court in 2007 against Jay-Z himself, producer Timbaland and other songwriters, labels and publishing companies involved with creating the rapper's 2000 hit song.

That case recently survived a motion for summary judgment (90 PTCJ 2251, 6/5/15), and is set for trial on Oct. 13.

**No Direct, Maybe Secondary Liability.** Egyptian composer Baligh Hamdi co-wrote the song "Khosara, Khosara" around 1957. Osama Ahmed Fahmy—an heir to Fahmy and owner of some rights in "Khosara"—sued Jay-Z, Timbaland and others for sampling the song without Fahmy's permission in their 2000 hit "Big Pimpin'."

The extent of the rights Fahmy has in the song is at issue in the Jay-Z case.

Fahmy also sued concert promoter Live Nation Entertainment Inc., alleging direct, contributory and vicarious copyright infringement for allowing Jay-Z to play "Big Pimpin'" at shows presented by the company.

Live Nation moved for dismissal of all of the infringement claims under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. The court dismissed Fahmy's direct infringement claim, but allowed the contributory and vicarious infringement claims to continue.

The court dismissed the direct infringement claim because "a music venue proprietor may only be held secondarily liable for the infringement of an artist it hires," and that reasoning was "equally applicable where the defendant is alleged to be a venue proprietor and concert promoter."

"It makes sense for such a defendant to be held secondarily liable for the infringing performance of a musical artist it sponsors, as contributory or vicarious infringement is separate from and dependent on direct infringement," the court said. "It makes substantially less sense to hold the concert promoter directly liable along with the artist, where there would be no infringement without the artist's performance."

The court also ruled, however, that there was sufficient evidence to sustain Fahmy's contributory and vicarious infringement claims.

The court determined that the evidence, when viewed in the light most favorable to Fahmy, was enough to support his assertion that Live Nation knew of the al-

leged infringement—Live Nation was a "sophisticated business entity" and Fahmy's complaint was filed before the company signed a deal with Jay-Z—and materially contributed to it by booking shows where Jay-Z performed the song.

The court thus maintained the contributory infringement claim.

The court also said that there was enough evidence to support the assertion that Live Nation benefitted from Jay-Z's alleged infringement and had the right to supervise it, allowing the vicarious liability claim to continue because Live Nation profited from shows where "Big Pimpin'" was performed—saying also that "the hope and expectation that Jay-Z would perform "Big Pimpin'" drew a significant percentage of attendees to the concerts, thereby increasing [defendant's] profit"—and Live Nation never "attempt[ed] to stop or mitigate Jay-Z's infringement of Khosara, Khosara."

The district court therefore ruled that there was sufficient evidence for Fahmy's contributory and vicarious infringement claims to survive Live Nation's Rule 12(b)(6) motion to dismiss.

Judge Christina A. Snyder wrote the opinion.

Fahmy was represented by Jonathan L. Gottfried of Browne George Ross LLP, Los Angeles. Live Nation was represented by Sandra A. Crawshaw-Sparks of Proskauer Rose LLP, Los Angeles.

*Text is available at: <http://pub.bna.com/ptcj/fahmylivenation.pdf>.*

## Copyrights/Cybersquatting

### ISP Acted in Concert with Grooveshark Operators By Providing Internet Access

**C**loudFlare Inc., the domain name service provider for a new Grooveshark website, was in active concert with the site's operators because it provided access and performance solutions to Grooveshark's new domain notwithstanding receipt of notice of a temporary restraining order, the U.S. District Court for the Southern District of New York held June 3 (*Arista Records LLC v. Tkach*, 2015 BL 182234, S.D.N.Y., No. 1:15-cv-03701, 6/3/15).

The court rejected the ISP's arguments that it lacked a motive to assist in violating the order and that complying with the injunction would not preclude all access to the cloned Grooveshark site, in a decision enforcing the temporary restraining order and an existing preliminary injunction against CloudFlare.

"For the purpose of determining whether CloudFlare is in active concert or participation with the Defendants, it is not determinative that CloudFlare's services are automated, that CloudFlare lacks a specific desire or motivation to help the Defendant's violate the injunction, or that the Grooveshark sites would continue to exist even without CloudFlare's assistance," the court said.

Rule 65 of the Federal Rules of Civil Procedure provides that an injunction binds the parties, the parties' agents, and other persons who are in active concert or participation with them.

"Active concert or participation" exists if the third party had actual knowledge of the injunction and violated it for the benefit of a party subject to the order.

**New Grooveshark Domains Launched.** In September 2014, nine record companies brought a copyright infringement action against online music-sharing service Grooveshark, alleging that it had illegally provided users with access to a comprehensive library of copyrighted sound recordings.

Escape Media Group Inc., the company operating Grooveshark, was liable for copyright infringement, the district court held, based on undisputed evidence that it instructed its employees to upload copyrighted music onto the website's servers. *UMG Recording Inc. v. Escape Media Grp Inc.*, No. 1:11-cv-08407-TPG, 112 U.S.P.Q.2d 1560 (S.D.N.Y. 2014) (88 PTCJ 1389, 10/3/14).

Despite this order, Grooveshark remained active until April 30, 2015, after the parties reached a settlement agreement whereby Escape Media would immediately remove all copyrighted works and cease operation of the site.

Three separate consent judgments were entered, providing the record labels with permanent injunctive relief and monetary damages of \$50 million and \$25 million.

Days later, a Grooveshark fan who had backed up 90 percent of the site's content prior to its shutdown launched clone versions of Grooveshark on the grooveshark.io and grooveshark.pw domains.

The record companies subsequently filed a complaint May 12 against the operators of the new Grooveshark and obtained a TRO enjoining them and "any persons acting in concert or participation with them or third parties providing services used in connection with Defendants' operations" from using and operating the domains.

The record companies successfully served the TRO on the registrar of the two domain names, but the website operators responded by registering additional domain names under several other registrars.

The record companies decided to then serve the TRO on CloudFlare, an ISP that provided access to the new Grooveshark under the grooveshark.li domain.

On June 1, the court entered a preliminary injunction against the new Grooveshark operators.

**CloudFlare's Services Not Passive.** The court rejected CloudFlare's assertion that it was not in active concert or participation with the new Grooveshark operators because it "passively" served the domain name at issue.

CloudFlare had knowledge of the TRO, the court said, and it nonetheless permitted the creation of a free account that configured the grooveshark.li domain name to use its services.

Connecting users to the cloned rooveshark website benefited the defendants and fundamentally assisted them in violating the injunction, the court said, because without its services users would not be able to connect to the site unless they knew the specific IP address for it.

Internet service providers have had mixed luck on such questions in federal courts.

*Blockowicz v. Williams*, 630 F.3d 563 (7th Cir. 2010), held that an injunction was not enforceable against a third party ISP that had refused to remove allegedly defamatory content posted by enjoined individuals because the ISP had merely entered into a contract with the individuals long before the injunction was issued.

In this case, however, the court found that CloudFlare had allowed the registration of a Grooveshark domain name after receiving notice of the TRO.

The court also said that aside from connecting users to the cloned Grooveshark site, CloudFlare's services went beyond the passive hosting of an infringing website by ensuring faster load times and optimal website performance.

**Inaccessibility Not Required.** The court also rejected CloudFlare's argument that complying with the TRO and preliminary injunction would be futile because another third-party service provider could provide the same service to keep grooveshark.li active. The record companies only needed to show that Cloudflare was in active concert with the website operators, not that the site would be inaccessible but for its services, the court said.

"Just because another third party could aid and abet the Defendants in violating the injunction does not mean that CloudFlare is not doing so," the court said.

The court's ruling was issued by Judge Alison J. Nathan.

Jenner & Block LLP represented the record companies. Goodwin Procter LLP represented CloudFlare Inc.

BY ALEXIS KRAMER

Full text at [http://www.bloomberglaw.com/public/document/Arista\\_Records\\_LLC\\_v\\_Tkach\\_No\\_15CV3701\\_AJN\\_2015\\_BL\\_182234\\_SDNY\\_Ju](http://www.bloomberglaw.com/public/document/Arista_Records_LLC_v_Tkach_No_15CV3701_AJN_2015_BL_182234_SDNY_Ju).

## Copyrights/Foreign Laws

### **Muzzling Hitler? Soon, German Copyright Law Won't Do the Trick**

**W**hen Peter McGee was barred from reprinting Nazi newspapers and "Mein Kampf" a few years ago, the law that ultimately kept him from using the material wasn't aimed at restricting hate speech. It was German copyright protections.

"We did not anticipate the draconian stance they took," said McGee, managing director of Albertas Ltd., a British publisher that was putting together a magazine series about World War II for sale in Germany. "It seemed a terrible overreaction."

While Nazi propaganda is available in many countries, German officials have used intellectual property law to limit circulation of "Mein Kampf," Nazi films, and books and newspapers from the era.

That tool will soon disappear: Copyrights in Germany expire after 70 years, so by next year most of the material will be in the public domain.

Concerned about a wave of reprints, German officials are seeking new ways of limiting publication of the virulently anti-Semitic writings of Adolf Hitler and his Third Reich henchmen like Heinrich Himmler—who also committed suicide in 1945—and Julius Streicher—who was executed in 1946.

Since the war, most of the rights have been held by the government of Bavaria. The state got assets of top Nazis—Hitler was a registered resident of the state of Bavaria—as well as publishing house Eher-Verlag, which distributed Nazi newspapers.

**Limiting Dissemination.** Over the years, the Bavarian government has tried to “prevent further spread of Nazi thought,” said Horst Wolf, a spokesman for the state’s Finance Ministry. “It’s our responsibility to victims of the Nazi regime.”

While there hasn’t been a blanket ban, the Bavarian government and the Murnau-Stiftung—a government-backed film foundation that holds the rights to Third Reich movies—have sought to control presentation of the material.

The Bavarian government has tolerated some annotated publications of excerpts from “Mein Kampf.”

In the 1990s they didn’t stop comedian Serdar Somuncu, who satirized the book by simply reading it on stage.

About 40 of the most notorious films such as “Jud Süß” (“The Jew Süss”) and “The Rothschilds” can be screened only when accompanied by lectures in a setting approved by the foundation.

With copyright enforcement no longer an option, justice ministers in Bavaria and other German states expect to keep a lid on publications by invoking rules against hate crimes and Nazi symbols.

The problem is that those rules require law-enforcement agencies to decide whether a book is meant to incite racial hatred or can be deemed art, legitimate academic research or journalism.

Copyright rules, by contrast, can be applied much more broadly.

**Obsolete Rules.** Scholars say the restrictions have outlived their usefulness because the material is readily available.

“Jud Süß” and similar films are on YouTube. Archive.org, a website based in the U.S., offers “Mein Kampf” in German and other languages, which the Bavarian government can’t stop because the book was licensed to publishers in the United States and the United Kingdom during the Nazi era.

Old copies of the book aren’t hard to find in Germany at antiquarian booksellers.

“It’s a totally paternalistic attitude to think you must protect the people from dangerous writings,” said Barbara Zehnpeffnig, a political science professor at Passau University. “Copyright law is aimed at protecting the author, but the Bavarians are using it to protect the audience from the author.”

**Annotated Edition.** One idea for controlling the debate was a critical edition of “Mein Kampf” by the Institut für Zeitgeschichte, a research center that studies the Third Reich.

It had been hoped that the annotated edition might prevent neo-Nazi groups from filling the void with their own publications.

However, two years ago, Bavarian officials decided that a state-backed edition of “Mein Kampf” would be inappropriate and halted their cooperation with the institute.

The group now plans to publish it on its own after the copyright lapses next year.

Meanwhile, in 2009, British publisher McGee had won a ruling against the state of Bavaria allowing him to reprint newspapers that had been published more than 70 years earlier.

While the Bavarian government’s “position was reasonable in the post-war period and maybe in the 1970s and 1980s,” McGee said the controls no longer made

sense. “In the 21st century,” he said, “it isn’t possible for the public not to have easy access to these publications.”

By KARIN MATUSSEK

To contact the reporter on this story: Karin Matussek in Berlin at [kmatussek@bloomberg.net](mailto:kmatussek@bloomberg.net)

To contact the editor responsible for this story: Anthony Aarons at [aaarons@bloomberg.net](mailto:aaarons@bloomberg.net)

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## *Copyrights/Orphan Works*

### **Copyright Office Announces Pilot Program, Draft Legislation on Orphan Works**

■ **Development:** *The Copyright Office is developing a pilot program and draft legislation for the mass digitization of orphan works with an extended collective licensing framework.*

**T**he Copyright Office is developing a pilot program and draft legislation for the mass digitization of orphan works, it announced in a request for comment published in the Federal Register June 9.

The request for comment follows the office’s June 4 recommendation of new legislation to allow more efficient use of orphan works—creative works whose owners cannot be located—in the office’s third report on the issue since 2006.

The legislation “would establish a legal framework known as extended collective licensing (ECL) for certain mass digitization activities that are currently beyond the reach of the Copyright Act,” the office said in the Federal Register notice.

The ECL pilot program “would enable users to digitize and provide access to certain works for research and education purposes under conditions to be agreed upon between rightsholders and user representatives,” the office said on its website.

The framework would allow collective management organizations to seek authorization from the register of copyrights to issue licenses on behalf of both members and non-members of the CMO for certain mass digitization activities.

Once authorized, a CMO would be entitled to negotiate royalty rates and terms with users seeking to digitally reproduce and provide online access to a collection or body of copyrighted works for the benefit of the public, a community, or other specified users.

CMOs would also be required to collect and distribute royalties to rightsholders and to conduct ownership searches for non-members from whom it had collected payments, and copyright owners would have the right to limit the grant of licenses or opt out of the system altogether.

The office said that the mass digitization and ECL framework would “help to facilitate the work of those who wish to digitize and provide full access to certain collections of books, photographs, or other materials for nonprofit educational or research purpose.”

Mass digitization has been a priority for the office for years, but there has been little movement on the matter

in Congress (83 PTCJ 956, 4/27/12; (83 PTCJ 221, 12/16/11).

Full text at <http://pub.bna.com/ptcj/80FR32614.pdf>.

## Legal Moves

### Personnel Changes at IP Law Firms, Organizations

The following changes in personnel and other news have been announced recently by prominent intellectual property law firms and other IP-related organizations:

- IP lawyer **Thomas J. Wrona** has left his position as senior counsel at **Amgen Inc.**, Seattle, for a position as special counsel at the IP law firm **Marshall, Gerstein & Borun LLP**, Chicago.

- IP litigator **Matthew J. Dowd** has left **Wiley Rein LLP**, Washington, for a partnership in the litigation and appellate practice at **Andrews Kurth LLP**, Washington.

- Trademark and patent lawyer **Joan T. Kluger** has left her position as co-chairwoman of the IP group at **Schnader Harrison Segal & Lewis LLP** and managing partner of the firm's Wilmington, Del., office for a partnership in the IP department at **Barnes & Thornburg LLP**, Wilmington.

- **James D. Darnley Jr.** has left his position as chief IP counsel at **Takeda Pharmaceutical Co./Millennium**

**Pharmaceuticals**, Cambridge, Mass., for a partnership in the IP department at **Honigman Miller Schwartz & Cohn LLP**, Kalamazoo, Mich.

- IP litigator **Dean A. Dickie** has left **Miller, Canfield, Paddock & Stone PLC**, Chicago, for a partnership in the litigation practice group at **Akerman LLP**, Chicago. Patent litigator **Ryan C. Williams** has accepted a position as an associate at the firm.

- Cleveland-based **Hahn Loeser & Parks LLP** has opened a new office in Chicago, the firm's eighth office. The Chicago office will be staffed by five partners in the firm's patent practice: **Steven E. Feldman**, **Daniel R. Cherry**, **Sherry L. Rollo**, **Robert M. Gould** and **Walter J. Kawula Jr.**

- IP lawyer **Jayne Partridge** has left **Norton Rose Fulbright LLP**, Houston, for a partnership at **Patterson & Sheridan LLP**, Houston.

- Patent lawyer **Paul M. Zagar** has left **McDermott Will & Emery LLP**, New York, for a partnership at **Blank Rome LLP**, New York. **Keith Lutsch**, **Russell T. Wong**, **J. David Cabello**, **Keith A. Rutherford** and **Lou Brucculeri** have left **Wong, Cabello, Lutsch, Rutherford & Brucculeri P.C.**, Houston, for partnerships in the IP practice at Blank Rome's Houston office. They are joined by 19 more lawyers from Wong Cabello.

*Suggestions for items to be included in this section can be sent to [ptcj@bna.com](mailto:ptcj@bna.com)*

# Special Report

## PATENTS

### LEGISLATION

Judiciary Committees in the House and Senate voted in favor of bills addressing “trolling” abuses in courts and at the Patent Trial and Appeal Board, as well as through vague or ambiguous “demand letters.” Bloomberg BNA compares provisions in each bill—they differ in key areas—viewed through the eyes of the patent bar and lobbying organizations.

## Patent Trolling Bills Moving in House and Senate to Revamp Infringement Litigation, PTAB Challenges

**A**lthough legislation aimed at reducing legal challenges to patent validity has gotten through the Judiciary committees in both the House and Senate, lawmakers are still working on changing the bills to win passage in their respective chambers. After that, members on both sides of Capitol Hill will have to find compromises on key provisions.

But it’s already clear that, if Congress does end up passing the legislation, it will make significant changes to how patent infringement claims are pursued. Both the House and Senate bills would mandate procedural changes for patent infringement lawsuits, as well as to the process by which the Patent Trial and Appeal Board conducts administrative challenges to patents, and put new curbs on the use of royalty demand letters.

The Senate’s Protecting American Talent and Entrepreneurship Act of 2015 (S. 1137) and the House’s Innovation Act (H.R. 9) are similar in many respects. But unlike the bicameral cooperation on the America Invents Act in 2011, House and Senate lawmakers appear to be heading to the floor with bills that have markedly different language in some key provisions.

The main issue lawmakers are trying to tackle with the legislation is so-called patent trolling, whereby some patent holders aggressively file infringement lawsuits in the hope that defendants will settle cases rather than go to trial. But there are also provisions to change PTAB procedures to make that process more favorable for patent holders, and ones intended to reduce the use of the royalty demand letters, which some patent holders have been sending to the customers of allegedly infringing compa-

nies, rather than the companies themselves, to try to extract payments.

### District Court Litigation

Generally, the court litigation-related changes called for in the bills are written to change the economics of trolling by making it more likely that an alleged infringer will stay in the case rather than cut losses and settle, regardless of the merits. The House and Senate bills contain language to address multiple stages of the legal process.

### Fee Shifting and Joinder.

The thorniest issue for lawmakers is deciding how to change patent law on who pays the costs of infringement cases. Language on that subject, the most contentious provision in both bills, would shift the economics of the trolling business model—assuming alleged infringers are confident of their cases. It is also the issue on which House and Senate lawmakers are farthest apart.

Under current law, Section 285 of the Patent Act, 35 U.S.C. § 285, district courts can award attorneys’ fees to the prevailing party when the case is “exceptional.” When the House bill was first drafted in 2013, the Federal Circuit’s standard for that finding was onerous—a rigid test requiring both objective baselessness and subjective bad faith.

The Supreme Court may have thought it was helping Congress out by broadening the appeals court’s standard in its 2014 decision in *Octane Fitness, LLC v. Icon Health & Fitness, Inc.*, 134 S. Ct. 1749, 2014 BL 118431, 110 U.S.P.Q.2d 1337 (2014) (88 PTCJ 28, 5/2/14),

which gave the word “exceptional” its ordinary meaning and substituted a “totality of the circumstances” test. But H.R. 9’s sponsors, at least, don’t think so.

Despite the protestations of H.R. 9’s primary sponsor, Rep. Robert W. Goodlatte (R-Va.), Section 3(b) of his bill clearly sets a presumption of “loser pays,” with the loser having the responsibility to show that “the position and conduct of the nonprevailing party or parties were reasonably justified in law and fact or that special circumstances (such as severe economic hardship to a named inventor) make an award unjust.”

In contrast, S. 1137, Section 7, says that the winner “shall bear the burden of demonstrating that the prevailing party is entitled to an award” of attorneys’ fees.

“Though the House Bill would make a difference in practice, it is unclear if the Senate bill would have much practical effect given the Supreme Court’s *Octane Fitness* decision,” Vinti said.

The AIPLA wrote to Goodlatte just before the House Judiciary Committee marked up his bill, saying “we are particularly disappointed that the Manager’s Amendment to H.R. 9 does not include improvements to the fee-shifting provision, such as the language of S. 1137.”

A second aspect of the fee shifting debate is a purported litigation abuse whereby a shell company—without the resources to pay should it lose—files lawsuits but leaves its parent company in the clear. Both bills include language requiring joinder of the parent or another entity able to pay the bill.

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**“[W]e are particularly disappointed that the Manager’s Amendment to H.R. 9 does not include improvements to the fee-shifting provision, such as the language of S. 1137.”**

—AIPLA JUNE 10 LETTER TO REP. GOODLATTE

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A consortium of pro-patentee groups—including the Association of American Universities, the Association of Public and Land-Grant Universities, the Innovation Alliance, the Medical Device Manufacturers Association and the National Venture Capital Association—clearly favor the Senate approach, saying in a June 11 statement that it “appropriately shields higher education institutions, university research foundations, and university inventors from joinder.”

In contrast, the groups said in the statement, “H.R. 9 does not appear to provide a clear explicit safe harbor. The limitations in H.R. 9 that follow the provision for ‘technology transfer organizations’ could strip the provision of any real meaning.”

Both bills also have large sections directing the Judicial Conference of the United States to implement case management changes. For example, they identify two types of discovery—“core documentary evidence” and “additional document discovery”—and ask the conference to define and create rules for when the latter should be made available and who should pay the cost for it.

To some extent, those directions give some flexibility in how courts will actually conduct litigation. However, in most cases, the bills set case management “rules of

procedure” for which the Judicial Conference can only describe the mechanics of implementing.

### **Plead Infringement With More Particularity**

To prevent vague and ambiguous claims of patent infringement, the bills—Section 3 of S. 1137 and Section 3(a) of H.R. 9—demand more detail in complaints than currently required. Under both bills, plaintiffs will have to be much more specific in their infringement claims, making lawsuits easier for defendants to manage than those with the more vague infringement claims that are typically made now.

“This would bring patent pleading requirements more in-line with what is required for other types of cases in federal court under the holdings of *Twombly* and *Iqbal*,” according to Baldassare Vinti of Proskauer Rose LLP in New York. “This change would allow defendants faced with frivolous patent infringement actions the opportunity to file early motions to dismiss before beginning costly discovery. On the other hand, if the case is not frivolous, specific pleadings will alert the accused infringer of the potential exposure it faces which, in turn, may lead to early settlement discussions.”

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**“Any meaningful patent litigation reform bill absolutely must include a strong provision on pleadings to level the playing field between plaintiffs and defendants.”**

—UNITED FOR PATENT REFORM COALITION STATEMENT

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Patent-rights stakeholders oppose the approach, arguing that they often don’t have adequate access to allegedly infringing products ahead of time to plead infringement with a great level of detail.

“This provision will have the unintended consequence of imposing massive costs and delays in patent cases, for the defendants it is intended to help as well as for the plaintiffs it targets,” Brian Pomper, executive director of the Innovation Alliance, said in a June 10 press release.

But legislators have argued that the requirements do not overly burden patent owners because each bill assumes plaintiffs will have the ability to amend complaints.

House lawmakers moderated the original requirements in H.R. 9 so that now it is more lenient than S. 1137. The Senate version requires “identification of each claim” allegedly infringed, but H.R. 9 now is more broadly worded to allow “identification of all claims necessary” to show the defendant what “is alleged to infringe any claim.”

Patent and Trademark Office Director Michelle K. Lee suggested during an April 14 House Judiciary Committee hearing that the bills should require only one claim and allow for discovery for any others, an issue that lawmakers brought up during the House markup to no avail. The primary lobbying group behind the legislation—the United for Patent Reform coalition—was opposed to House consideration of a possible amendment along those lines.

“Any meaningful patent litigation reform bill absolutely must include a strong provision on pleadings to level the playing field between plaintiffs and defendants,” coalition spokesperson Beth Provenzano, vice president of the National Retail Federation, said in a statement during the June 11 markup.

### Prevent Venue Forum Shopping

One of the issues House and Senate lawmakers must resolve is whether to tackle forum shopping. The House bill contains language intended to reduce the practice, but the Senate bill doesn't.

H.R. 9 Section 3(g) limits the venue where a domestic plaintiff may bring an infringement case. Besides venue based on the defendant's location, the patent owner would be limited to filing claims in courts in districts where the invention in question was conceived or where the patentee has a manufacturing presence.

“Proponents say the goal is to prevent non-practicing entities from shopping venues such as the Eastern District of Texas that are viewed as favorable merely by setting up a remote office in the venue,” Vinti said in an e-mail. “Indeed, the number of patent suits brought in that district is truly disproportional to the business activity there.”

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**“No longer will trolls be able to rent empty offices in small towns just to file their frivolous lawsuits in plaintiff-friendly courts.”**

—JON POTTER, APP DEVELOPERS ALLIANCE

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“No longer will trolls be able to rent empty offices in small towns just to file their frivolous lawsuits in plaintiff-friendly courts,” Jon Potter, president of the App Developers Alliance, said in a statement after the H.R. 9 markup.

### Let Manufacturer Take Over Customer Suit

Both bills include language that would allow manufacturers to assume the defense of infringement lawsuits filed against their customers.

The practice of targeting customers rather than manufacturers is prevalent in the court litigation context as well. This kind of “trolling” gives another reason why the term is not limited to bad actions by PAEs, since it can also be attributed to an operating company suing the customers of its competitor, possibly only to embarrass the competitor.

Here, the competitor could conceivably have an agreement with customers to indemnify them for patent infringement liability, but more often than not, the competitor simply wants to take over the litigation.

The problem in this area, though, is how to determine when a customer is using something arguably “off-the-shelf,” compared to customers that add value to what they receive from the manufacturer, such that the resulting product or process is what infringes.

The bills' sponsors in each chamber appear to be in sync on including the provision in any final bill, but getting the language right has been a leapfrogging exercise. That is, the first H.R. 9 version defined a “covered customer”—one whose suit should be stayed—in a way

that included original equipment manufacturers; the Senate specifically referred to “a retailer or end user.”

“While some clarification of the language may be needed, the language is moving in the right direction,” the American Intellectual Property Law Association said in a letter after seeing the latest S. 1137 version.

But H.R. 9 Section 5 was further modified and now is arguably slightly ahead of S. 1137 Section 4 in defining “covered product” with more particularity—“a product, system, service, component, material, or apparatus, or relevant part thereof.”

### Delay Discovery

One question on which House and Senate lawmakers appear to already agree is the delay of discovery in patent cases. As introduced, the House bill would have delayed discovery until after a *Markman* claim construction hearing.

After considerable negative reaction from stakeholders identifying several examples of why *Markman* would benefit from some discovery, the House brought Section 3(d) of H.R. 9 in line with Section 5 of S. 1137: The bills still would delay discovery, but only until after procedural motions to dismiss, sever parties or change venue were decided.

There is virtually no debate on this topic, now that the House bill has been modified.

### Identify Patent Ownership, Licensors

The two bills are in sync in intent—if not in language—on the issue of transparency. Both include language that attempts to prevent a patent-owning plaintiff from hiding other parties that may claim ownership or interest in the outcome of a case. Such a third party may have related patents or may already have a license with the alleged infringer's supplier, for example, resolving the lawsuit more quickly via settlement or dismissal.

The bills—Section 10 in S. 1137 and Section 4 in H.R. 9—punish violations of the real-party-in-interest disclosures required here by denying the plaintiff any opportunity to get attorneys' fees or enhanced damages for willfulness, or any other reason.

### PTAB Administration Challenges

Changes to the way the PTAB processes petitions seeking inter partes review, post-grant review and covered business method cancellation are in Section 11 in S. 1137 and Section 9 in H.R. 9 as recent additions to the legislation.

Two changes to PTAB rules and procedures were in the works prior to the first accounts of hedge fund “reverse trolling” that emerged. The bills are now in sync in important respects. Both would require the PTAB to use the *Phillips* claim construction standard that district courts use, instead of the “broadest reasonable interpretation” standard. And both would change an alleged “scrivener's error” in the text of the AIA, related to estoppel in post-grant review proceedings, so that a loser at the PTAB cannot raise in court “that the [patent] claim is invalid on any ground that the petitioner raised or reasonably could have raised during that post-grant review.”

Each bill also would allow for more evidence in PTAB trials. Beyond that, the bills diverge.

## Claim Amendments

The PTAB has made it virtually impossible in practice for patent owners to amend claims after the challenge has been made and the PTAB has decided it is more likely than not that at least one claim is in trouble. The AIA allowed for such a motion by the patentee, but the PTAB has accepted few such requests.

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**“I am disappointed to see the PTAB be a pawn in this chess game.”**

—NEIL SMITH OF RIMON LAW

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Section 11(a)(4)(A)(vii) of S. 1137 changes the claim amendment procedure in an effort to increase the chances of the patent owner succeeding. It forces *Phillips* claim construction instead of BRI and requires the patent holder to address specifically those grounds of unpatentability in the trial, rather than all possible grounds.

There is no comparable provision in H.R. 9.

“I am disappointed to see the PTAB be a pawn in this chess game,” Neil Smith of Rimon Law, Palo Alto, Calif., said in an e-mail. “Many of the changes suggested going toward both strengthening the Board and weakening it, are already being considered, or adopted by the Board, and as cases develop the Board has moved in the right direction.”

“I have a great deal of faith in the PTAB to do the right thing,” Smith said.

## Stopping Reverse Trolling

The Senate approach assumes that, if the rules and procedures of PTAB challenges are changed to be more pro-patentee, fewer challenges will succeed, and the potential for stock price change based on the simple filing of an IPR will disappear.

“The Senate bill, as amended, makes it explicit that patents are presumed valid, states that the PTAB has discretion not to institute reviews when doing so does not ‘serve the interest of justice,’ and would create sanctions for filing frivolous AIA petitions,” Vinti noted, clearly favoring that Congress do at least that much.

But Smith suggested that even the Senate version goes too far, saying, “I think as this sorts out, the market will see that the mere filing of a PTAB proceeding has little effect on stock price, and the attacks will be focused on real validity issues.”

If anything, though, H.R. 9 goes further. It creates a standing requirement for petitioners: No PTAB challenge by parties owning a related financial instrument or who have demanded a payment from the patent owner is allowed. This approach is more aligned with a separate bill in the Senate—the Strong Patent Act (S. 632)—than with S. 1137.

But sponsors of the Strong Patent Act—Sens. Christopher A. Coons (D-Del.) and Dick Durbin (D-Ill.)—tried without success to modify S. 1137 accordingly, throughout the Senate Judiciary Committee markup on the latter bill.

Though that may indicate a difficult issue to resolve, two possible solutions are still in play. First, the House could be persuaded to drop the standing requirement if

the Securities and Exchange Commission looks into the hedge fund abuse as within its purview.

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**“However, these reforms do not sufficiently address the growing abuses of the IPR system, and BIO cannot support legislation that does not include more meaningful changes to the IPR system.”**

—BIOTECHNOLOGY INDUSTRY ASSOCIATION

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“I am troubled by the possible ‘pump and dump’ stock manipulation going on, and I’m not a securities lawyer, but don’t we have the SEC to regulate that?,” Smith said. “There should be public notice of who is behind the filings and that they may be buying or selling short, and it appears this is happening.”

Second, both Judiciary committees promised to work on language that would take a different approach—exempting from IPR challenge the drug patents that the hedge funds have targeted, under the argument that the Hatch-Waxman Act has already identified the procedure for litigating challenges to patented drugs.

That may be all the Pharmaceutical Research and Manufacturers of America—which will not support any bill without an effort to stop reverse trolling—needs.

But apparently it was not enough for the Biotechnology Industry Organization.

“BIO appreciates the inclusion of some important reforms to the inter partes review (IPR) system of patent challenges at the U.S. Patent & Trademark Office (PTO),” it said in a post-markup statement. “However, these reforms do not sufficiently address the growing abuses of the IPR system, and BIO cannot support legislation that does not include more meaningful changes to the IPR system.”

## Covered Business Methods Expansion

The covered business method challenge option written into patent law by the AIA is set to expire in 2020, and that seems likely to remain the case, despite some lawmakers’ desire to broaden or extend it.

The program was designed to be temporary because the problem it was intended to solve—the easy granting of patents on financial services applications after allegedly faulty examination—mainly occurred during the late 1990s and early 2000s. The CBM provision sponsors envisioned that, by 2020, the bad patents would be cancelled.

However, Sen. Charles E. Schumer (D-N.Y.) and Rep. Darrell E. Issa (R-Calif.) are sponsors of each bill who have continually tried to either extend the program or make its reach—supposedly limited to patents on “financial services” but extended beyond that by the PTAB—broader. Both lawmakers are expected to keep trying to insert such language into the legislation.

## Consumer Fraud via Royalty Demand Letters

The demand-letter problem is easily the one that most stakeholders agree should be addressed. The dif-

ficulty is in describing a “bad faith” demand letter from “normal business communications” between a patent owner and a prospective licensee.

S. 1137, in Section 9, addresses the demand-letter problem, defining the characteristics of a letter sent in bad faith. Goodlatte did not include demand-letter language in his bill. A separate House bill (H.R. 2045), dubbed the Trol Act, has the same intention as the Senate bill.

If the Senate passes S. 1137 before the House acts, House lawmakers are likely to wrap the provisions of H.R. 2045 into H.R. 9 to bring it closer to the Senate bill.

The Trol Act is slightly more forgiving than S. 1137 Section 9 as to the detail that a demand-letter sender must include in the missive; fewer letters would be adjudged to be in bad faith.

But the bigger difference between the two is on enforcement.

Although Congress hasn’t acted on the issue yet, states are moving on it. About 20 states now have consumer fraud bills addressing this trolling abuse. That has led to a push by “normal” patent licensors for a national standard, and for language—included in S. 1137 but not H.R. 2045—confining enforcement powers to the Federal Trade Commission.

BY TONY DUTRA

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*H.R. 9 at <http://pub.bna.com/ptcj/HR9HJC15June11.pdf>.*

*S. 1137 at <http://pub.bna.com/ptcj/S1137SJC15June4.pdf>.*

*H.R. 2045 at <http://pub.bna.com/ptcj/HR2045Intro.pdf>.*

*S. 632 at [http://pub.bna.com/ptcj/STRONGAct\\_3March15.pdf](http://pub.bna.com/ptcj/STRONGAct_3March15.pdf).*

# Tables

## Supreme Court

### Supreme Court IP Case Developments

**A** chart summarizing the status of all IP-related cases before the U.S. Supreme Court during its current term.

#### Status of Supreme Court cert. petitions for 2014 term resolution, as of June 18, 2015.

Case	Type	Action	Status
<b>GRANTED</b>			
Commil USA, LLC v. Cisco Sys., Inc. No. 13-896	Patent	Petition 1/23/14 Response 3/31/14 SG brief 10/16/14 Supplemental 10/31/14 Reply 10/31/14 Granted 12/5/14 Petitioner brief 1/20/15 8 amicus briefs 1/27/15 Respondent brief 2/19/15 9 amicus briefs 2/26/15 Reply brief 3/20/15 Argued 3/31/15 Decided 5/26/15 (90 PTCJ 2164, 5/29/15)	6-2 reversal of Federal Circuit
Kimble v. Marvel Enters. Inc. No. 13-720	Patent	Petition 12/13/13 Response waived 1/13/14 Response requested 2/23/14 2 amicus briefs 2/24/14 Response 4/23/14 Reply 5/12/14 SG brief 10/30/14 Supplemental 11/7/14 Granted 12/12/14 Petitioner brief 1/28/15 11 amicus briefs 2/4/15 Respondent brief 2/27/15 2 amicus briefs 3/6/15 Reply brief 3/24/15 Argued 3/31/15 (89 PTCJ 1531, 4/3/15)	Awaiting decision
Teva Pharm. USA, Inc. v. Sandoz, Inc. No. 13-854	Patent	Petition 1/16/14 Response 2/5/14 Reply 2/26/14 Granted 3/31/14 Petitioner brief 6/13/14 8 amicus briefs 6/20/14 Respondent brief 8/11/14	7-2 reversal of Federal Circuit

**Status of Supreme Court cert. petitions for 2014 term resolution, as of June 18, 2015. – Continued**

<b>Case</b>	<b>Type</b>	<b>Action</b>	<b>Status</b>
		2 amicus briefs 8/18/14 Reply brief 9/10/14 Argued 10/15/14 Decided 1/20/15 (89 PTCJ 737, 1/23/15)	
B&B Hardware, Inc. v. Hargis Indus., Inc. No. 13-352	Trademark	Petition 9/18/13 Response 11/20/13 Reply 12/5/13 SG brief 5/23/14 Granted 7/1/14 Petitioner brief 9/4/14 4 amicus briefs 9/11/14 Respondent brief 10/24/14 2 amicus briefs 10/31/14 Reply brief 11/24/14 Argued 12/2/14 Decided 3/24/15 (89 PTCJ 1457, 3/27/15)	7-2 reversal of Eighth Circuit
Hana Fin., Inc. v. Hana Bank No. 13-1211	Trademark	Petition 4/7/14 Response 5/8/14 Granted 6/23/14 Petitioner brief 8/28/14 1 amicus brief 9/4/14 Respondent brief 10/20/14 2 amicus briefs 10/27/14 Reply brief 11/19/14 Argued 12/3/14 Decided 1/21/15 (89 PTCJ 740, 1/23/15)	9-0 affirmance of Ninth Circuit
<b>GRANTED, VACATED, REMANDED</b>			
CSR PLC v. Azure Networks, LLC No. 14-976	Patent	Petition 2/4/15 Response 3/4/15 Reply 3/25/15 In light of <i>Teva v. Sandoz</i> (89 PTCJ 1783, 4/24/15)	GVR 4/20/15
Gevo, Inc. v. Butamax Advanced Biofuels LLC No. 13-1286	Patent	Petition 4/22/14 Response 6/3/14 Reply 6/9/14 Was pending <i>Teva v. Sandoz</i> (89 PTCJ 801, 1/30/15)	GVR 1/26/15
Lighting Ballast Control LLC v. Universal Lighting Techs., Inc. No. 13-1536	Patent	Petition 6/20/14 Response 8/12/14 Reply 8/26/14 Was pending <i>Teva v. Sandoz</i> (89 PTCJ 801, 1/30/15)	GVR 1/26/15
Shire Dev., LLC v. Watson Pharm., Inc. No. 14-206	Patent	Petition 8/18/14 Response 9/22/14 Reply 10/6/14 Was pending <i>Teva v. Sandoz</i> (89 PTCJ 801, 1/30/15)	GVR 1/26/15

**Status of Supreme Court cert. petitions for 2014 term resolution, as of June 18, 2015. – Continued**

<b>Case</b>	<b>Type</b>	<b>Action</b>	<b>Status</b>
<b>CONFERENCE SCHEDULED</b>			
Google Inc. v. Oracle Am., Inc. No. 14-410	Copyright	Petition 10/6/14 6 amicus briefs 11/7/14 Response 12/8/14 Reply 12/23/14 1 amicus brief 12/8/14 CVSG 1/12/15 SG brief 5/27/14 (90 PTCJ 2171, 5/29/15)	Conference 6/25/18
Apotex Inc. v. UCB, Inc. No. 14-1304	Patent	Petition 4/30/15 Response waived 5/19/15 (90 PTCJ 1936, 5/8/15)	Conference 6/18/15
CardSoft, LLP v. VeriFone, Inc. No. 14-1160	Patent	Petition 3/23/15 Response 5/22/15 Reply 6/5/15 (89 PTCJ 1535, 4/3/15)	Conference 6/25/18
Google Inc. v. Vederi LLC No. 14-448	Patent	Petition 10/16/14 Response 11/19/14 1 amicus brief 11/19/14 Reply 12/3/14 CVSG 1/12/15 SG brief 5/19/15 (90 PTCJ 2166, 5/29/15)	Conference 6/18/15
Lucree v. United States No. 14-1340	Patent	Petition 5/8/15 Response waived 5/28/15 (90 PTCJ 2163, 5/29/15)	Conference 6/18/15
Ultramercial, LLC v. WildTangent, Inc. No. 14-1392	Patent	Petition 5/21/15 Response waived 6/1/15 (90 PTCJ 2241, 6/5/15)	Conference 6/25/18
Athena Cosmetics, Inc. v. Allergan, Inc. No. 13-1379	Unfair Competition	Petition 5/15/14 Response 7/18/14 Reply 8/5/14 CVSG 10/6/14 SG brief 5/26/15 Athena supplemental 6/8/15 (88 PTCJ 1481, 10/10/14)	Conference 6/25/15
<b>BRIEFING IN PROGRESS</b>			
DM Records, Inc. v. Isbell No. 14-1320	Copyright	Petition 5/1/15 Response 6/4/15 (90 PTCJ 2031, 5/15/15)	Reply due 6/18/15
Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A. No. 14-1473	Patent	Petition 6/10/15	Response due 7/17/15
Interval Licensing LLC v. AOL Inc. No. 14-1362	Patent	Petition 5/15/15 (90 PTCJ 2093, 5/22/15)	Response due 7/15/15

**Status of Supreme Court cert. petitions for 2014 term resolution, as of June 18, 2015. – Continued**

<b>Case</b>	<b>Type</b>	<b>Action</b>	<b>Status</b>
I/P Engine, Inc. v. AOL Inc. No. 14-1358	Patent	Petition 5/14/15 BPLA amicus brief 6/15/15 (90 PTCJ 2092, 5/22/15)	Response due 7/15/15
Key Lighting, Inc. v. Briese Lichttechnik Vertriebs GmbH No. 14-1416	Patent	Petition 5/27/15 (see this issue)	Response due 7/1/15
NetAirus Techs., LLC v. Apple, Inc. No. 14-1353	Patent	Petition 5/11/15 Response waived 6/15/15 (90 PTCJ 2094, 5/22/15)	Pending
Couture v. Playdom, Inc. No. 14-1428	Trademarks	Petition 5/30/15 (90 PTCJ 2328, 6/12/15)	Response due 7/6/15
<b>DENIED / DISMISSED</b>			
Conan Doyle Estate, Ltd. v. Klinger No. 14-316	Copyright	Petition 9/15/14 Response waived 10/7/14 (89 PTCJ 23, 11/7/14)	Denied 10/31/14
Inhale, Inc. v. Starbuzz Tobacco, Inc. No. 14-396	Copyright	Petition 8/28/14 Response 10/29/14 (89 PTCJ 382, 12/12/14)	Denied 12/8/14
Kienitz v. Sconnie Nation LLC No. 14-815	Copyright	Petition 1/12/15 Response waived 1/29/15 1 amicus brief 1/30/15 (89 PTCJ 1462, 3/27/15)	Denied 3/23/15
Kirby v. Marvel Characters Inc. No. 13-1178	Copyright	Petition 3/28/14 Response waived 4/24/14 Response requested 5/14/14 4 amicus briefs 6/13/14 Response 7/14/14 Reply 7/29/14 (88 PTCJ 1390, 10/3/14)	Dismissed 9/26/14
Moore v. Lightstorm Entm't, Inc. No. 14-1269	Copyrights	Petition 4/20/15 Response waived 4/30/15 (90 PTCJ 2172, 5/29/15)	Denied 5/26/15
Peary v. DC Comics No. 13-1523	Copyright	Petition 6/20/14 Response waived 7/1/14 2 amicus briefs 7/23/14 (88 PTCJ 1481, 10/10/14)	Denied 10/6/14
Pope v. James No. 14-1031	Copyright	Petition 2/17/15 Response 3/24/15 (90 PTCJ 1859, 5/1/15)	Denied 4/27/15
Segal v. Rogue Pictures No. 13-1425	Copyright	Petition 5/21/14 Response waived 7/8/14 (88 PTCJ 1481, 10/10/14)	Denied 10/6/14

**Status of Supreme Court cert. petitions for 2014 term resolution, as of June 18, 2015. – Continued**

<b>Case</b>	<b>Type</b>	<b>Action</b>	<b>Status</b>
Stan Lee Media, Inc. v. Pow! Entertainment, Inc. No. 14-1033	Copyright	Petition 2/12/15 Response waived 2/26/15 (89 PTCJ 1548, 4/3/15)	Denied 3/30/15
Advanced Biological Labs., SA v. SmartGene, Inc. No. 13-1299	Patent	Petition 4/24/14 Response waived 5/2/14 Response requested 6/2/14 Response 7/23/14 Reply 8/6/14 (88 PTCJ 1469, 10/10/14)	Denied 10/6/14
Albecker v. Contour Products, Inc. No. 14-860	Patent	Petition 1/14/15 No response recorded (89 PTCJ 1535, 4/3/15)	Denied 3/30/15
Allergan, Inc. v. Apotex Inc. No. 14-465	Patent	Petition 10/10/14 Response waived 11/21/14 (89 PTCJ 675, 1/16/15)	Denied 1/12/15
Apple, Inc. v. Ancora Techs., Inc. No. 14-469	Patent	Petition 10/20/14 Response 11/21/14 Reply 12/9/14 (89 PTCJ 675, 1/16/15)	Denied 1/12/15
Becton, Dickinson and Co. v. Retractable Techs., Inc. No. 14-850	Patent	Petition 1/16/15 Response waived 1/23/15 Response requested 2/10/15 Response 3/12/15 Reply 3/27/15 (89 PTCJ 1782, 4/24/15)	Denied 4/20/15
Braintree Labs., Inc. v. Novel Labs., Inc. No. 14-499	Patent	Petition 10/30/14 Response waived 11/5/14 (89 PTCJ 372, 12/12/14)	Denied 12/8/14
Bristol-Myers Squibb Co. v. Teva Pharms. USA, Inc. No. 14-886	Patent	Petition 1/20/15 3 amicus briefs 2/23/15 Response 4/1/15 Reply 4/14/15 (90 PTCJ 1937, 5/8/15)	Denied 5/4/15
Caluori v. One World Techs., Inc. No. 14-38	Patent	Petition 7/2/14 Response 8/13/14 Reply 8/26/14 (88 PTCJ 1469, 10/10/14)	Denied 10/6/14
CEATS, Inc. v. Continental Airlines, Inc. No. 14-681	Patent	Petition 12/4/14 Response 2/5/15 (89 PTCJ 1462, 3/27/15)	Denied 3/23/15
Cisco Sys., Inc. v. Commil USA, LLC No. 13-1044	Patent	Petition 2/27/14 Response 4/16/14 Reply 5/5/14 SG brief 10/16/14 Supplemental 10/31/14	Denied 12/1/14

**Status of Supreme Court cert. petitions for 2014 term resolution, as of June 18, 2015. – Continued**

<b>Case</b>	<b>Type</b>	<b>Action</b>	<b>Status</b>
		Reply 10/31/14 (89 PTCJ 305, 12/5/14)	
Classen Immunotherapies, Inc. v. Somaxon Pharm. No. 13-1508	Patent	Petition 6/11/14 Response waived 6/20/14 (88 PTCJ 1469, 10/10/14)	Denied 10/6/14
Consumer Watchdog v. Wis. Alumni Research Found. No. 14-516	Patent	Petition 10/31/14 Response 1/5/15 Reply 1/15/15 (89 PTCJ 1120, 2/27/15)	Denied 2/23/15
Conte v. Jakks Pac., Inc. No. 14-301	Patent	Petition 9/9/14 Response 10/14/14 (89 PTCJ 169, 11/21/14)	Denied 11/17/14
Cyclone Microsystems, Inc. v. Internet Machs. LLC No. 14-1043	Patent	Petition 2/23/15 (89 PTCJ 1203, 3/6/15)	Dismissed 6/5/15
Emerson Electric Co. v. U.S. District Court for the Eastern District of Texas No. 14-44	Patent	Petition 7/11/14 Response waived 7/24/14 (88 PTCJ 1469, 10/10/14)	Denied 10/6/14
EON Corp. IP Holdings, LLC v. Apple Inc. No. 14-978	Patent	Petition 2/12/15 Response waived 2/23/15 (89 PTCJ 1782, 4/24/15)	Denied 4/20/15
Gilead Scis., Inc. v. Natco Pharma Ltd. No. 14-647	Patent	Petition 11/28/14 1 amicus brief 12/29/14 Response 2/4/15 Reply 2/17/15 (89 PTCJ 1287, 3/13/15)	Denied 3/9/15
Glenmark Pharm. Inc. USA v. Sanofi-Aventis Deutschland GmbH No. 14-417	Patent	Petition 10/6/14 Response waived 11/6/14 (89 PTCJ 372, 12/12/14)	Denied 12/8/14
Hoffmann-La Roche Inc. v. Apotex Inc. No. 14-474	Patent	Petition 10/9/14 Response waived 11/17/14 (89 PTCJ 458, 12/19/14)	Denied 12/15/14
Internet Machs. LLC v. Cyclone Microsystems, Inc. No. 14-1088	Patent	Petition 2/23/15 (89 PTCJ 1454, 3/27/15)	Dismissed 6/5/15
Jaffe v. Samsung Elecs. Co. No. 13-1324	Patent	Petition 4/30/14 Response 7/2/14 Reply 7/15/14 (88 PTCJ 1469, 10/10/14)	Denied 10/6/14
K/S Himpp v. Hear-Wear Techs., LLC No. 14-744	Patent	Petition 12/23/14 Response waived 1/7/15 1 amicus brief 1/22/15 (89 PTCJ 1117, 2/27/15)	Denied 2/23/15
Madstad Eng'g, Inc. v. Lee	Patent	Petition 9/26/14	Denied 2/23/15

**Status of Supreme Court cert. petitions for 2014 term resolution, as of June 18, 2015. – Continued**

<b>Case</b>	<b>Type</b>	<b>Action</b>	<b>Status</b>
No. 14-366		Response 12/31/14 Reply 1/12/15 (89 PTCJ 1117, 2/27/15)	
Mirowski Family Ventures, LLC v. Medtronic, Inc. No. 14-137	Patent	Petition 8/6/14 Response waived 8/20/14 (88 PTCJ 1540, 10/17/14)	Denied 10/14/14
MRC Innovations, Inc. v. Hunter Mfg., LLP No. 14-5	Patent	Petition 7/1/14 Response 8/27/14 Reply 9/4/14 (88 PTCJ 1469, 10/10/14)	Denied 10/6/14
Packard v. Lee No. 14-655	Patent	Petition 12/2/14 Response 4/9/15 Reply 4/27/15 (90 PTCJ 2094, 5/22/15)	Denied 5/18/15
Porauto Industrial Co. v. U.S. Dist. Court for the Dist. of Nevada No. 14-338	Patent	Petition 9/18/14 Response waived 10/22/14 (89 PTCJ 304, 12/5/14)	Denied 12/1/14
Premium Balloon Accessories, Inc. v. Creative Ballons Mfg., Inc. No. 14-769	Patent Trade Dress	Petition 12/29/14 Response 1/30/15 (89 PTCJ 1294, 3/13/15)	Denied 3/9/15
Pronova BioPharma Norge AS v. Par Pharm. USA, Inc. No. 13-1251	Patent	Petition 4/16/14 Response 6/18/14 (88 PTCJ 1469, 10/10/14)	Denied 10/6/14
Scientific Plastic Prods., Inc. v. Biotage AG No. 14-1186	Patent	Petition 3/19/15 Response 4/27/15 Reply 5/12/15 (90 PTCJ 2243, 6/5/15)	Denied 6/1/15
SD-3C, LLP v. Oliver No. 14-641	Patent	Petition 12/1/14 1 amicus brief 1/5/15 Response requested 1/28/15 Response 2/27/15 Reply 3/17/15 (89 PTCJ 1623, 4/10/15)	Denied 4/6/15
Sigram Schindler Beteiligungsgesellschaft MBH v. Cisco Sys., Inc. No. 14-221	Patent	Petition 8/25/14 Responses waived 9/11/14 (88 PTCJ 1540, 10/17/14)	Denied 10/14/14
Sigram Schindler Beteiligungsgesellschaft MBH v. Lee No. 14-424	Patent	Petition 10/6/14 Response waived 10/28/14 (89 PTCJ 372, 12/12/14)	Denied 12/8/14
In re Singhal No. 14-722	Patent	Petition 12/16/14 No response recorded (89 PTCJ 1117, 2/27/15)	Denied 2/23/15
SnoWizard Holdings, Inc. v. S. Snow Mfg. Co.	Patent	Petition 12/1/14	Denied 2/23/15

**Status of Supreme Court cert. petitions for 2014 term resolution, as of June 18, 2015. – Continued**

<b>Case</b>	<b>Type</b>	<b>Action</b>	<b>Status</b>
No. 14-684		Response waived 12/27/14 (89 PTCJ 1117, 2/27/15)	
S. Elecs. Supply, Inc. v. Camsoft Data Sys., Inc. No. 14-628	Patent	Petition 11/25/14 Response 12/11/14 Reply 12/23/14 (89 PTCJ 731, 1/23/15)	Denied 1/20/15
STC.UNM v. Intel Corp. No. 14-717	Patent	Petition 12/16/14 (89 PTCJ 1535, 4/3/15)	Denied 3/30/15
StoneEagle Servs., Inc. v. Gillman No. 14-305	Patent	Petition 9/12/14 Response waived 10/7/14 (89 PTCJ 121, 11/14/14)	Denied 11/10/14
Stryker Corp. v. Hill-Rom Servs., Inc. No. 14-358	Patent	Petition 9/23/14 Response 10/27/14 (89 PTCJ 307, 12/5/14)	Denied 12/1/14
Takeda Pharm. Co. v. Zydus Pharm. USA, Inc. No. 14-217	Patent	Petition 8/22/14 Response 10/24/14 Reply 11/7/14 (89 PTCJ 307, 12/5/14)	Denied 12/1/14
Tse v. Google, Inc. No. 14-692	Patent	Petition 12/11/14 Response waived 12/29/14 (89 PTCJ 1117, 2/27/15)	Denied 2/23/15
Wilkins v. Gen. Elec. Co. No. 14-157	Patent	Petition 8/6/14 Response waived 8/26/14 (88 PTCJ 1469, 10/10/14)	Denied 10/6/14
Yufa v. Lockheed Martin Corp. No. 14-454	Patent	Petition 10/14/14 No response recorded (89 PTCJ 675, 1/16/15)	Denied 1/12/15
Yufa v. TSI, Inc. No. 14-1108	Patent	Petition 3/9/15 Response waived 3/23/15 (89 PTCJ 1782, 4/24/15)	Denied 4/20/15
Zoll Lifecor Corp. v. Philips Elecs. N. Am. Corp. No. 14-619	Patent	Petition 11/24/14 Response 1/12/15 Reply 1/26/15 (89 PTCJ 1117, 2/27/15)	Denied 2/23/15
Elec. Arts Inc. v. Hart No. 13-376 Elec. Arts Inc. v. Keller No. 13-377	Right of Publicity	Petition 9/23/13  Petition 9/23/13 Settlement proposed 5/30/14 (88 PTCJ 1480, 10/10/14)	Dismissed 9/30/14
Escamilla v. M2 Tech., Inc. No. 14-1012	Trademark	Petition 1/10/15 Response 3/23/15 Reply 4/8/15 (90 PTCJ 1859, 5/1/15)	Denied 4/27/15

**Status of Supreme Court cert. petitions for 2014 term resolution, as of June 18, 2015. – Continued**

<b>Case</b>	<b>Type</b>	<b>Action</b>	<b>Status</b>
Fortres Grand Corp. v. Warner Bros. Entm't Inc. No. 14-560	Trademark	Petition 11/12/14 Response waived 11/25/14 (89 PTCJ 681, 1/16/15)	Denied 1/12/15
Geller v. USPTO No. 14-175	Trademark	Petition 8/11/14 Response 11/10/14 (89 PTCJ 681, 1/16/15)	Denied 1/12/15
Gen. Cigar Co. v. Empresa Cubana Del Tabaco No. 14-512	Trademark	Petition 10/31/14 Response 1/23/15 Reply 2/10/15 (89 PTCJ 1127, 2/27/15)	Denied 2/23/15
Harp v. Saks Inc. No. 14-879	Trademark	Petition 11/3/14 Response waived 2/3/15 (89 PTCJ 1462, 3/27/15)	Denied 3/23/15
Herb Reed Entm't, LLC v. Florida Entm't Mgmt., Inc. No. 13-1271	Trademark	Petition 4/17/14 1 amicus brief 5/21/14 No response recorded (88 PTCJ 1481, 10/10/14)	Denied 10/6/14
Petroliam Nasional Berhad v. GoDaddy.com, Inc. No. 13-1255	Trademark	Petition 4/14/14 Response waived 5/19/14 Response requested 6/16/14 Response 8/6/14 Reply 9/18/14 (88 PTCJ 1481, 10/10/14)	Denied 10/6/14
S. Snow Mfg. Co. v. SnoWizard Holdings, Inc. No. 14-742	Trademark	Petition 12/1/14 Response waived 12/30/14 (89 PTCJ 1117, 2/27/15)	Denied 2/23/15
Specht v. Google, Inc. No. 14-427	Trademark	Petition 10/6/14 Response waived 10/29/14 (89 PTCJ 311, 12/5/14)	Denied 12/1/14
Foster v. Pitney Bowes Corp. No. 14-2	Trade Secrets	Petition 6/26/14 Response 7/29/14 Reply 8/13/14 (88 PTCJ 1481, 10/10/14)	Denied 10/6/14

Legislation**Legislation Developments**

**A** chart summarizing all of the pending and enacted Intellectual Property-related legislation in the current Congress.

**Pending and enacted IP legislation, 114th Congress as of June 17th, 2015.**

Bill Details	Summary / Status
<b>PATENTS</b>	
<p><b>Title or Subject:</b> Patents for Humanity Improvement Act (S. 1402).  <b>Sponsor:</b> Leahy; Grassley.  <b>Introduced:</b> 5/20/15.</p>	<p><b>Summary:</b> Would allow acceleration certificates awarded under the Patents for Humanity Program to be transferable.  <b>Last Action:</b> Introduced in Senate 5/20/15 (90 PTCJ 2160, 5/29/15).</p>
<p><b>Title or Subject:</b> Demand Letter Transparency Act of 2015 (H.R. 1896).  <b>Sponsor:</b> Polis.  <b>Introduced:</b> 4/20/15.</p>	<p><b>Summary:</b> Would make patent demand letters more detailed, and ramp up oversight, transparency and enforcement.  <b>Last Action:</b> Introduced in House 4/20/15.</p>
<p><b>Title or Subject:</b> Innovation Protection Act (H.R. 1832).  <b>Sponsor:</b> Conyers.  <b>Introduced:</b> 4/16/15.</p>	<p><b>Summary:</b> Would establish a “public enterprise fund” for the Patent and Trademark Office, and that fund, in turn, would be available for use by the agency “without fiscal year limitation.”  <b>Last Action:</b> Introduced in House 4/16/15 (89 PTCJ 1775, 4/24/15).</p>
<p><b>Title or Subject:</b> Grace Period Restoration Act (H.R. 1791; S. 926).  <b>Sponsor:</b>Sensenbrenner; Vitter; Baldwin.  <b>Introduced:</b> 4/14/15.</p>	<p><b>Summary:</b> Would override the Patent and Trademark Office’s interpretation of the America Invents Act that “effectively eliminates the grace period protection of public disclosures” made by patent applicants.  <b>Last Action:</b> Introduced 4/14/15 (89 PTCJ 1698, 4/17/15).</p>
<p><b>Title or Subject:</b> Targeting Rogue and Opaque Letters (TROL) Act (number forthcoming).  <b>Sponsor:</b> Terry.  <b>Introduced:</b> 4/9/15.</p>	<p><b>Summary:</b> Would provide that certain bad faith communications in connection with the assertion of a United States patent are unfair or deceptive acts or practices.  <b>Last Action:</b> Passed in Commerce Committee 4/29/15 (90 PTCJ 1852, 5/1/15).</p>
<p><b>Title or Subject:</b> To grant a Federal charter to the National Academy of Inventors (H.R. 849).  <b>Sponsor:</b> Ross.  <b>Introduced:</b> 3/16/15.</p>	<p><b>Summary:</b> To grant a federal charter to the National Academy of Inventors.  <b>Last Action:</b> Introduced in Senate 3/16/15.</p>
<p><b>Title or Subject:</b> Support Technology and Research for Our Nation’s Growth (STRONG) Patents Act (S. 632).  <b>Sponsor:</b> Coons.  <b>Introduced:</b> 3/3/15.</p>	<p><b>Summary:</b> Backed by opponents of the Innovation Act, would make no changes to Section 285 of the Patent Act but would curtail Patent Trial and Appeal Board challenges.  <b>Last Action:</b> Introduced in Senate 3/3/15 (89 PTCJ 1244, 3/6/15).</p>
<p><b>Title or Subject:</b> Promoting Automotive Repair, Trade, and Sales Act (S. 560; H.R. 1057).  <b>Sponsor:</b> Issa; Lofgren; Johnson; Sensenbrenner; Whitehouse; Hatch.  <b>Introduced:</b> 2/25/15.</p>	<p><b>Summary:</b> Would exempt automotive replacement parts manufacturers from design patent infringement liability 30 months after the first sale.  <b>Last Action:</b> Reintroduced in House and Senate 2/25/15 (89 PTCJ 1113, 2/27/15).</p>

**Pending and enacted IP legislation, 114th Congress as of June 17th, 2015. – Continued**

<b>Bill Details</b>	<b>Summary / Status</b>
<p><b>Title or Subject:</b> Orphan Product Extensions Now Accelerating Cures and Treatments Act of 2015 (H.R. 971).  <b>Sponsor:</b> Bilirakis.  <b>Introduced:</b> 2/13/15.</p>	<p><b>Summary:</b> To amend the Federal Food, Drug, and Cosmetic Act to authorize a 6-month extension of certain exclusivity periods in the case of approved drugs that are subsequently approved for a new indication to prevent, diagnose, or treat a rare disease or condition, and for other purposes.  <b>Last Action:</b> Introduced in House 2/13/15.</p>
<p><b>Title or Subject:</b> Innovation Act (H.R. 9); Patent Act (S. 1137).  <b>Sponsor:</b> Goodlatte; Grassley.  <b>Introduced:</b> 2/5/15.</p>	<p><b>Summary:</b> Covers a wide range of patent issues, with emphasis on curbing abusive patent legislation.  <b>Last Action:</b> Passed in Senate Judiciary with changes 6/4/15 (90 PTCJ 2241, 6/5/15) passed in House Judiciary with changes 6/11/15 (90 PTCJ 2320, 6/12/15).</p>
<p><b>Title or Subject:</b> Fair And Immediate Release of Generic Drugs Act (S. 131).  <b>Sponsor:</b> Vitter.  <b>Introduced:</b> 1/8/15.</p>	<p><b>Summary:</b> To amend the Federal Food, Drug, and Cosmetic Act to ensure that valid generic drugs may enter the market.  <b>Last Action:</b> Introduced in House 1/8/15.</p>
<b>COPYRIGHTS</b>	
<p><b>Title or Subject:</b> Copyright Office for the Digital Economy Act (number to be assigned).  <b>Sponsor:</b> Marino; Chu.  <b>Introduced:</b> 6/4/15.</p>	<p><b>Summary:</b> Would establish the United States Copyright Office as an independent agency  <b>Last Action:</b> Discussion draft released 6/4/15 (90 PTCJ 2329, 6/12/15)</p>
<p><b>Title or Subject:</b> Breaking Down Barriers to Innovation Act of 2015 (H.R. 1883; S. 990).  <b>Sponsor:</b> Polis; Wyden.  <b>Introduced:</b> 4/16/15.</p>	<p><b>Summary:</b> Would improve the process by which the Librarian of Congress considers requests for exemptions to section 1201(a)(1)(A) of title 17, United States Code, and to ease restrictions on the use of certain statutory exemptions to the Digital Millennium Copyright Act.  <b>Last Action:</b> Introduced in House 4/16/15 (89 PTCJ 1789, 4/24/15).</p>
<p><b>Title or Subject:</b> American Royalties Too Act of 2014 (H.R. 1881; S. 977).  <b>Sponsor:</b> Nadler; Baldwin, Markey.  <b>Introduced:</b> 4/16/15.</p>	<p><b>Summary:</b> Would give visual artists a portion of the proceeds of resales of their works by auction houses.  <b>Last Action:</b> Reintroduced in House 4/16/15 (89 PTCJ 1788, 4/24/15).</p>
<p><b>Title or Subject:</b> Fair Play Fair Pay Act of 2015 (H.R. 1733).  <b>Sponsor:</b> Nadler.  <b>Introduced:</b> 4/13/15.</p>	<p><b>Summary:</b> Would create recording artist performance rights and create royalty rights for pre-1972 sound recordings.  <b>Last Action:</b> Introduced in House 4/13/15 (89 PTCJ 1714, 4/17/15).</p>
<p><b>Title or Subject:</b> Songwriter Equity Act of 2015 (H.R. 1283; S. 662).  <b>Sponsor:</b> Collins; Hatch.  <b>Introduced:</b> 3/4/15.</p>	<p><b>Summary:</b> Would require federal rate courts to consider marketplace data when setting performance royalty rates and mechanical compulsory license rates.  <b>Last Action:</b> Introduced in House 3/4/15 (89 PTCJ 1376, 3/20/15).</p>
<p><b>Title or Subject:</b> Local Radio Freedom Act (H. Con. Res. 17; S. Con. Res. 4).  <b>Sponsor:</b> Conaway, Green; Barrasso, Heitkamp.  <b>Introduced:</b> 2/27/15.</p>	<p><b>Summary:</b> Opposes “any new performance fee, tax, royalty, or other charge” on local broadcast radio stations.  <b>Last Action:</b> Introduced in House and Senate 2/27/15.</p>

**Pending and enacted IP legislation, 114th Congress as of June 17th, 2015. – Continued**

<b>Bill Details</b>	<b>Summary / Status</b>
<p><b>Title or Subject:</b> You Own Devices Act (H.R. 862).  <b>Sponsor:</b> Farenthold, Polis.  <b>Introduced:</b> 2/11/15.</p>	<p><b>Summary:</b> Would ensure that consumers can sell or give away their digital devices regardless of copyright restrictions placed on the software required to run them.  <b>Last Action:</b> Introduced in House 2/11/15.</p>
<p><b>Title or Subject:</b> Copyright and Marriage Equality Act (S. 23; H.R. 238).  <b>Sponsor:</b> Leahy.  <b>Introduced:</b> 1/6/15.</p>	<p><b>Summary:</b> Would amend federal copyright law to revise the definition of “widow” or “widower” for purposes of provisions concerning the transfer of a copyright to an author’s spouse or other next of kin following the author’s death.  <b>Last Action:</b> Introduced in Senate 1/6/15 (89 PTCJ 618, 1/9/15); introduced in House 1/9/15.</p>
<b>TRADEMARKS, COUNTERFEITING, AND ENFORCEMENT</b>	
<p><b>Title or Subject:</b> No Stolen Trademarks Honored in America Act (S. 757; H.R. 1627).  <b>Sponsor:</b> Nelson; Issa.  <b>Introduced:</b> 3/17/15.</p>	<p><b>Summary:</b> To modify the prohibition on recognition by United States courts of certain rights relating to certain marks, trade names, or commercial names.  <b>Last Action:</b> Introduced in Senate 3/17/15; introduced in House 3/25/15.</p>
<p><b>Title or Subject:</b> Cuba Reconciliation Act (H.R. 735).  <b>Sponsor:</b> Serrano.  <b>Introduced:</b> 2/4/15.</p>	<p><b>Summary:</b> To repeal the trade embargo on Cuba.  <b>Last Action:</b> Introduced in House 2/4/15.</p>
<p><b>Title or Subject:</b> Non-Disparagement of Native American Persons or Peoples in Trademark Registration Act of 2015 (H.R. 684).  <b>Sponsor:</b> Honda.  <b>Introduced:</b> 2/3/15.</p>	<p><b>Summary:</b> To amend the Trademark Act of 1946 to conclusively presume that a mark that uses the term “redskin” or any derivation of that term consists of matter which may disparage persons if it has been, is, or is intended to be used in commerce in connection with references to or images of Native Americans; or the USPTO determines that the term as included in the mark is commonly understood to refer to Native Americans.  <b>Last Action:</b> Introduced in House 2/3/15.</p>
<p><b>Title or Subject:</b> Promoting American Agricultural and Medical Exports to Cuba Act of 2015 (H.R. 635).  <b>Sponsor:</b> Rangel.  <b>Introduced:</b> 2/2/15.</p>	<p><b>Summary:</b> To promote American agricultural and medical exports to Cuba.  <b>Last Action:</b> Introduced in House 2/2/15.</p>
<p><b>Title or Subject:</b> To amend the Trademark Act of 1946 to provide for the registration of marks consisting of a flag, coat of arms, or other insignia of the United States, or any State or local government, and for other purposes (S. 328).  <b>Sponsor:</b> Klobuchar.  <b>Introduced:</b> 2/2/15.</p>	<p><b>Summary:</b> To amend the Trademark Act of 1946 to provide for the registration of marks consisting of a flag, coat of arms, or other insignia of the United States, or any State or local government, and for other purposes.  <b>Last Action:</b> Introduced in Senate 2/2/15.</p>
<p><b>Title or Subject:</b> Free Trade With Cuba Act (H.R. 403).  <b>Sponsor:</b> Rangel.  <b>Introduced:</b> 1/16/15.</p>	<p><b>Summary:</b> To lift the trade embargo on Cuba, and for other purposes.  <b>Last Action:</b> Introduced in House 1/16/15.</p>
<p><b>Title or Subject:</b> United States-Cuba Normalization Act of 2015 (H.R. 274).  <b>Sponsor:</b> Rush.  <b>Introduced:</b> 1/12/15.</p>	<p><b>Summary:</b> To lift the trade embargo on Cuba, and for other purposes.  <b>Last Action:</b> Introduced in House 1/12/15.</p>

**Pending and enacted IP legislation, 114th Congress as of June 17th, 2015. – Continued**

<b>Bill Details</b>	<b>Summary / Status</b>
<p><b>Title or Subject:</b> Foreign Counterfeit Merchandise Prevention Act (H.R. 236).  <b>Sponsor:</b> Poe.  <b>Introduced:</b> 1/9/15.</p>	<p><b>Summary:</b> To provide for the exchange of information related to trade enforcement, and for other purposes.  <b>Last Action:</b> Introduced in House 1/9/15.</p>
<b>RIGHT OF PUBLICITY</b>	
<p><b>Title or Subject:</b> To establish a commission to identify and examine issues of national concern related to the conduct of intercollegiate athletics, to make recommendations for the resolution of the issues, and for other purposes (H.R. 275).  <b>Sponsor:</b> Rush.  <b>Introduced:</b> 1/12/15.</p>	<p><b>Summary:</b> Would establish a commission to identify and examine issues of national concern related to the conduct of intercollegiate athletics, to make recommendations for the resolution of the issues, and for other purposes.  <b>Last Action:</b> Referred to House Education and the Workforce Committee.</p>

Regulation**Agency Developments**

**P**roposed rule changes, final rules and other noteworthy developments in fiscal year 2015 in the PTO, Copyright Office, FTC, ITC and U.S. Trade Representative as of June 17, 2015.

**Patent and Trademark Office**

<b>TOPIC</b>	<b>DESCRIPTION</b>	<b>ACTIONS</b>	<b>NOTES</b>
<b>Extension of the Extended Missing Parts Pilot Program</b>	PTO extends a program allowing patent applicants to extend the “provisional” period of their applications in limited circumstances.	Program extended 1/6/14: 79 Fed. Reg. 642 (87 PTCJ 495, 1/10/14); program extended 1/13/15: 80 Fed. Reg. 1,624 (89 PTCJ 671, 1/16/15).	First devised in 2010, is now extended until 12/31/15.
<b>Matters Related to First Inventor To File</b>	The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/ or continuing information collections.	Notice published 6/9/15: 80 Fed. Reg. 32,539.	Comments due 8/10/15.
<b>Expedited Patent Appeal Pilot</b>	The PTO is providing a temporary basis (the Expedited Patent Appeal Pilot) under which an appellant may have an ex parte appeal to the PTAB accorded special status if the appellant withdraws the appeal in another application in which an ex parte appeal is also pending before the Board.	Notice published 6/15/15: 80 Fed. Reg. 34,145.	Effective 6/19/15.
<b>Changes in Requirements for Collective Trademarks and Service Marks, Collective Membership Marks, and Certification Marks</b>	The PTO is amending the rules related to collective marks and certification marks to clarify application requirements, allegations of use requirements, multiple-class application requirements, and registration maintenance requirements for such marks.	Notice published 6/11/15: 80 Fed. Reg. 33,170.	Notice published 6/11/15.
<b>Request for Comments on Enhancing Patent Quality</b>	The PTO is seeking public input and guidance to direct its continued efforts towards enhancing patent quality	Comments requested 2/5/15: 80 Fed. Reg. 6,475 (89 PTCJ 886, 2/6/15); comment period extended 5/11/15: 80 Fed. Reg. 26,914.	Comments due 5/20/15.
<b>Amendments to the Rules of Practice for Trials Before the Patent Trial and Appeal Board</b>	This final rule amends the existing consolidated set of rules relating to the United States Patent and Trademark Office (Office or USPTO) trial practice for inter partes review, post-grant review, the transitional program for covered business method patents, and derivation proceedings that implemented provisions of the Leahy-Smith America Invents Act (“AIA”) providing for trials before the Office.	Notice published 5/19/15: 80 Fed. Reg. 28,561(90 PTCJ 2092, 5/22/15); corrected 6/16/15: 80 Fed. Reg. 34,318.	Notice published 5/19/15.

**Patent and Trademark Office – Continued**

<b>TOPIC</b>	<b>DESCRIPTION</b>	<b>ACTIONS</b>	<b>NOTES</b>
<b>National Medal of Technology and Innovation Nomination Evaluation Committee Meeting</b>	The National Medal of Technology and Innovation (NMTI) Nomination Evaluation Committee will meet in closed session on Tuesday, May 19, 2015 to discuss the relative merits of persons, teams, and companies nominated for the 2013 and 2014 NMTI.	Notice published 5/8/15: 80 Fed. Reg. 26,547.	Meeting to be held 5/19/15.
<b>Proposed Revision of a Currently Approved Information Collection; Comment Request; Post Registration (Trademark Processing)</b>	PTO invites the general public and other Federal agencies to comment on proposed and/ or continuing information collections.	Notice published 3/20/15: 80 Fed. Reg. 14,970.	Comments due 5/19/15.
<b>Proposed Revision of a Currently Approved Information Collection; Comment Request; Trademark Petitions</b>	PTO invites the general public and other Federal agencies to comment on proposed and/ or continuing information collections.	Notice published 3/20/15: 80 Fed. Reg. 14,968.	Comments due 5/19/15.
<b>Patent Reexaminations</b>	PTO invites the general public and other Federal agencies to comment on proposed and/ or continuing information collections.	Notice published 3/20/15: 80 Fed. Reg. 14,941.	Comments due 5/19/15.
<b>Post Patent Provisions of the Leahy-Smith America Invents Act</b>	PTO invites the general public and other Federal agencies to comment on proposed and/ or continuing information collections.	Notice published 3/20/15: 80 Fed. Reg. 14,910.	Comments due 5/19/15.
<b>Proposed Collection; Comment Request; “Fee Deficiency Submissions”</b>	PTO invites the general public and other Federal agencies to comment on proposed and/ or continuing information collections.	Notice published 3/20/15: 80 Fed. Reg. 14,909.	Comments due 5/19/15.
<b>Change to Internet Usage Policy To Permit Oral Authorization for Video Conferencing Tools by Patent Examiners</b>	PTO is updating its Internet usage policy by modifying the authorization requirements to now permit oral authorization for video conferencing tools, such as WebEx, to be provided by the patent applicant/practitioner to patent examiners before an interview is conducted.	Notice published 4/29/15: 80 Fed. Reg. 23,787.	Notice published 4/29/15.
<b>Changes To Implement the Hague Agreement Concerning International Registration of Industrial Designs</b>	PTO is revising the rules of design patent practice to implement title I of the PLTIA.	Notice published 4/2/15: 80 Fed. Reg. 17,918.	Notice published 4/2/15.
<b>Public Meeting on Facilitating the Development of the Online Licensing Environment for Copyrighted Works</b>	PTO is holding a meeting about how the Federal Government can facilitate the further development of a robust online licensing environment.	Notice published 3/13/15: 80 Fed. Reg. 13,325.	Meeting to be held 4/1/15.
<b>2014 Interim Guidance on Patent Subject Matter Eligibility</b>	The PTO has prepared interim guidance for use by examiners in determining subject matter eligibility under 35 U.S.C. 101 in view of recent decisions by the Supreme Court.	Guidance published 12/16/14: 79 Fed. Reg. 74,618(89 PTCJ 454, 12/19/14).	Comments due 3/16/15.

**Patent and Trademark Office – Continued**

<b>TOPIC</b>	<b>DESCRIPTION</b>	<b>ACTIONS</b>	<b>NOTES</b>
<b>Proposed Collection; Comment Request; “Rules for Patent Maintenance Fees”</b>	PTO invites the general public and other Federal agencies to comment on proposed and/or continuing information collections.	Comments requested 3/2/15: 80 Fed. Reg. 11,178.	Comments requested 3/2/15.
<b>Notice of Roundtable and Request for Comments on Domestic and International Issues Related to Privileged Communications Between Patent Practitioners and Their Clients</b>	The PTO is seeking input on issues regarding protections from disclosure for communications between patent applicants and their advisors.	Comments requested 1/26/15: 80 Fed. Reg. 3,953.	Roundtable 2/18/15.
<b>Miscellaneous Changes to Trademark Rules of Practice and the Rules of Practice in Filings Pursuant to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks</b>	The PTO is revising the Trademark Rules of Practice and the Rules of Practice in Filings Pursuant to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks to benefit the public by providing greater clarity as to certain requirements.	Comments requested 1/16/15: 80 Fed. Reg. 2,303.	Rule effective 2/17/15.
<b>Submission for OMB Review; Comment Request; “Patent and Trademark Resource Centers Metrics”</b>	The PTO will submit to the OMB for clearance a proposal for collection of information about Patent and Trademark Resource Centers Metrics.	Notice published 2/2/15: 80 Fed. Reg. 5,520.	Notice published 2/2/15.
<b>Recording Assignments</b>	The PTO, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995.	Comments requested 12/2/14: 79 Fed. Reg. 71,397.	Comments due 2/2/15.
<b>Submission for OMB Review; Comment Request; Fastener Quality Act Insignia Recordal Process</b>	The PTO will submit the proposal Fastener Quality Act Insignia Recordal Process for clearance to the OMB.	Notice published 1/28/15: 80 Fed. Reg. 4,548.	Notice published 1/28/15.
<b>Submission for OMB Review; Comment Request; Patent Prosecution Highway (PPH) Program</b>	The PTO will submit to the Office of Management and Budget (OMB) for clearance a proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 35).	Comments requested 1/27/15: 80 Fed. Reg. 4,254.	Comments requested 1/27/15.
<b>Request for Comments and Notice of Roundtable on USPTO Use of Crowdsourcing To Identify Relevant Prior Art</b>	The PTO is announcing a Dec. 2, 2014 roundtable and requesting written comments on PTO use of crowdsourcing to identify relevant prior art.	Comments requested 11/12/14: 79 Fed. Reg. 67,159; comment period extended 12/9/14.	Comments due 1/13/15.
<b>Notice of Public Meeting on Trade Secret Topics</b>	In pursuit of the goals of the Administration Strategy through information sharing and discussion, the PTO will hold a public symposium on issues relevant to the protection of trade secrets.	Symposium announced 12/15/14: 79 Fed. Reg. 74,068.	Symposium scheduled for 1/8/15.

**Patent and Trademark Office – Continued**

<b>TOPIC</b>	<b>DESCRIPTION</b>	<b>ACTIONS</b>	<b>NOTES</b>
<b>Reduction of Fees for Trademark Applications and Renewals</b>	The PTO is amending its regulations to reduce certain trademark fees, as authorized by the AIA.	Notice published 12/16/14: 79 Fed. Reg. 74,633.	Notice published 12/16/14.
<b>Grant of Interim Extension of the Term of U.S. Patent No. 5,496,801; Recombinant Human Parathyroid Hormone</b>	The PTO has issued an order granting interim extension under 35 U.S.C. 156(d)(5) for a one-year interim extension of the term of U.S. Patent No. 5,496,801.	Notice published 12/10/14: 79 Fed. Reg. 73,279.	Notice published 12/10/14.
<b>Grant of Interim Extension of the Term of U.S. Patent No. 5,693,323; Recombinant Humanized Monoclonal Antibody</b>	The PTO has issued an order granting interim extension under 35 U.S.C. 156(d)(5) for a one-year interim extension of the term of U.S. Patent No. 5,693,323.	Notice published 12/10/14: 79 Fed. Reg. 73,279.	Notice published 12/10/14.
<b>Notice on Roundtable on International Harmonization of Substantive Patent Law</b>	Stakeholder input sought on patent examination-related issues where U.S. procedures differ from foreign office parallels.	Roundtable announced 9/18/14: 79 Fed. Reg. 56,070 (88 PTCJ 1264, 9/19/14).	Roundtable scheduled for 11/19/14.
<b>Changes To Permit Delayed Submission of Certain Requirements for Prioritized Examination</b>	The PTO determined that the time period for meeting the identified requirements could be expanded and still enable the office to timely examine the patent application	Rule published 11/14/14: 79 Fed. Reg. 68,124.	Rule effective 11/14/14.
<b>Changes to Continued Prosecution Application Practice</b>	The PTO revised the rules pertaining to continued prosecution applications to permit the filing of a continued prosecution application even if the prior nonprovisional application does not contain the inventor's oath or declaration.	Rule published 11/14/14: 79 Fed. Reg. 68,121.	Rule effective 11/14/14.
<b>Extension of Period for Comments on Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board</b>	In June, the PTO issued a request for comments on potential ways to change its trial proceedings after 18 months' experience with inter partes review and covered business method challenges at the Patent Trial and Appeal Board. 79 Fed. Reg. 36,474 (88 PTCJ 663, 7/11/14).	Deadline extended 9/23/14: 79 Fed. Reg. 56,776 (88 PTCJ 1360, 9/26/14).	Deadline was extended to 10/16/14.
<b>Changes To Facilitate Applicant's Authorization of Access to Unpublished U.S. Patent Applications by Foreign Intellectual Property Offices</b>	PTO is proposing to amend its rules of practice to include a specific provision by which an applicant can authorize the office to give a foreign IP office access to all or part of the file contents of an unpublished U.S. patent application in order to satisfy a requirement for information imposed on a counterpart application filed with the foreign intellectual property office.	Notice published 7/2/14: 79 Fed. Reg. 40,035 (88 PTCJ 757, 7/18/14).	Comment period ended 9/9/14.

### Copyright Office and Copyright Royalty Board

TOPIC	DESCRIPTION	ACTIONS	NOTES
<b>Mass Digitization Pilot Program; Request for Comments</b>	The U.S. Copyright Office is developing a limited pilot program and corresponding draft legislation that would establish a legal framework known as extended collective licensing for certain mass digitization activities that are currently beyond the reach of the Copyright Act.	Notice published 6/9/15: 80 Fed. Reg. 32,614	Comments due 8/10/15.
<b>In re Distribution of Cable Royalty Funds; In re Distribution of Satellite Royalty Funds</b>	The Copyright Royalty Board announces the commencement of proceedings to determine distribution of 2013 royalties deposited with the Copyright Office under the cable service statutory license and the satellite carrier statutory license.	Notice published 6/5/15: 80 Fed. Reg. 32,182	Petitions due 7/6/15.
<b>Scope of the Copyright Royalty Judges' Continuing Jurisdiction</b>	The Copyright Office referred novel material questions of substantive law to the Register of Copyrights for resolution. Those questions concerned the scope of the CRJs' authority, under the statutory grant of continuing jurisdiction over ratemaking determinations, to issue a clarifying interpretation of regulations adopted pursuant to such a determination.	Notice published 5/4/15: 80 Fed. Reg. 25,333	Notice published 5/4/15.
<b>Copyright Protection for Certain Visual Works</b>	The Copyright Office is reviewing how certain visual works, particularly photographs, graphic artworks, and illustrations, are monetized, enforced, and registered under the Copyright Act.	Notice published 4/24/15: 80 Fed. Reg. 23,054	Notice published 4/24/15.
<b>Distribution of the 2013 Digital Audio Recording Technology Royalty Funds</b>	The Copyright Royalty Board is announcing the commencement of a proceeding to determine the distribution of the digital audio recording technology royalty fees in the 2013 Sound Recordings Fund (Copyright Owners and Featured Recording Artists Subfunds).	Notice published 3/24/15: 80 Fed. Reg. 15,632	Petitions to participate due 4/23/15.
<b>Cost of Living Adjustment to Satellite Carrier Compulsory License Royalty Rates</b>	The Copyright Royalty Judges announce a cost of living adjustment (COLA) of 1.7% in the royalty rates satellite carriers pay for a compulsory license under the Copyright Act	Notice published 4/22/15: 80 Fed. Reg. 22,417	Notice published 4/22/15.
<b>Determination of Royalty Rates for Secondary Transmissions of Broadcasts by Satellite Carriers and Distributors</b>	The Copyright Royalty Judges announce commencement of a proceeding to determine rates for the satellite carrier statutory license described in section 119 of the Copyright Act for the license period January 1, 2015, through December 31, 2019.	Notice published 3/30/15: 80 Fed. Reg. 16,702; withdrawn 4/22/15: 80 Fed. Reg. 22,563.	Notice withdrawn 4/22/15.

**Copyright Office and Copyright Royalty Board – Continued**

<b>TOPIC</b>	<b>DESCRIPTION</b>	<b>ACTIONS</b>	<b>NOTES</b>
<b>Notice of Public Hearings: Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies</b>	The Copyright Office will be holding public hearings as part of the sixth triennial rulemaking proceeding under the Digital Millennium Copyright Act (“DMCA”) concerning possible exemptions to the DMCA’s prohibition against circumvention of technological measures that control access to copyrighted works	Notice published 4/10/15: 80 Fed. Reg. 19,255	Requests to testify due 4/20/15. Public hearings 5/19/15 - 5/29/15.
<b>Digital Performance Right in Sound Recordings and Ephemeral Recordings</b>	The Copyright Royalty Judges are publishing for comment proposed regulations governing the rates and terms for the digital performances of sound recordings by certain public radio stations and for the making of ephemeral recordings necessary to facilitate those transmissions for the period commencing January 1, 2016, and ending on December 31, 2020.	Comments requested 3/26/15: 80 Fed. Reg. 15,958.	Comments due 4/16/15.
<b>Distribution of 2013 Cable Royalty Funds</b>	The Copyright Royalty Judges solicit comments on a motion of Phase I claimants for partial distribution of 2013 cable royalty funds	Comments requested 3/4/15: 80 Fed. Reg. 11,690	Comments due 4/3/15.
<b>Determination of Royalty Rates for Secondary Transmissions of Broadcasts by Satellite Carriers and Distributors</b>	The Copyright Royalty Judges announce commencement of a proceeding to determine rates for the satellite carrier statutory license described in section 119 of the Copyright Act for the license period January 1, 2015, through December 31, 2019.	Notice published 3/30/15: 80 Fed. Reg. 16,702.	Notice published 3/30/15.
<b>Distribution of 1998 and 1999 Cable Royalty Funds</b>	The Copyright Royalty Judges announce the final Phase II distribution of cable royalty funds for the year 1999.	Notice published 3/13/15: 80 Fed. Reg. 13,423	Notice published 3/13/15.
<b>Distribution of 2013 Satellite Royalty Funds</b>	The Copyright Royalty Judges solicit comments on a motion of Phase I claimants for partial distribution of 2013 satellite royalty funds.	Comments requested 2/11/15: 80 Fed. Reg. 7,646	Comments due 3/13/15.
<b>Digital Performance Right in Sound Recordings and Ephemeral Recordings for a New Subscription Service</b>	The Copyright Royalty Judges are publishing for comment proposed regulations that would set the royalty rates and terms for the digital transmission of sound recordings by new subscription services and for the making of ephemeral recordings necessary to facilitate those transmissions for the period commencing January 1, 2016, and ending on December 31, 2020	Comments requested 1/15/15: 80 Fed. Reg. 2,065.	Comments due 2/17/15.

**Copyright Office and Copyright Royalty Board – Continued**

<b>TOPIC</b>	<b>DESCRIPTION</b>	<b>ACTIONS</b>	<b>NOTES</b>
<b>Notice of Intent to Audit</b>	The Copyright Royalty Judges announce receipt of two notices of intent to audit the 2011, 2012, and 2013 statements of account submitted by iHeartMedia, Inc. and CBS Radio Inc. concerning royalty payments each made pursuant to two statutory licenses.	Notice published 1/21/15: 80 Fed. Reg. 2,974	Notice published 1/21/15.
<b>Notice of Intent to Audit</b>	The Copyright Royalty Judges announce receipt of a notice of intent to audit the 2011, 2012, and 2013 statements of account submitted by Live365, Inc. concerning the royalty payments it made pursuant to two statutory licenses.	Notice published 1/21/15: 80 Fed. Reg. 2,974	Notice published 1/21/15.
<b>Notice Announcing Commencement of Distribution Proceedings With Request for Petitions To Participate</b>	The Copyright Royalty Judges announce the commencement of proceedings to determine distribution of 2010, 2011, and 2012 royalties deposited with the Copyright Office under the cable service statutory license and the satellite carrier statutory license.	Petitions requested 12/22/14: 79 Fed. Reg. 76,396	Comments due 1/21/15.
<b>Distribution of 2013 Cable and Satellite Royalty Funds</b>	The Copyright Royalty judges are soliciting comments regarding whether controversies exist among claimants to the 2013 cable and satellite television retransmission royalty funds about how the funds should be distributed.	Comments requested 12/22/14: 79 Fed. Reg. 76,396	Comments due 1/21/15.
<b>Notice of Intent to Audit</b>	The Copyright Royalty Judges announce receipt of a notice of intent to audit the 2011, 2012, and 2013 statements of account of Galaxie concerning the royalty payments its New Subscription Service made pursuant to two statutory licenses.	Notice published 1/20/15: 80 Fed. Reg. 2,744	Notice published 1/20/15.
<b>Notice of Intent to Audit</b>	The Copyright Royalty Judges announce receipt of three notices of intent to audit the 2011, 2012, and 2013 statements of account submitted by 98frogfm.com, Christmas Music 24/7, and ZadioRadio concerning the royalty payments each made by each pursuant to two statutory licenses.	Notice published 1/20/15: 80 Fed. Reg. 2,744	Notice published 1/20/15.
<b>Notice of Intent to Audit</b>	The Copyright Royalty Judges announce receipt of a notice of intent to audit the 2011, 2012, and 2013 statements of account submitted by Galaxie concerning the royalty payments its Business Establishment Service made pursuant to two statutory licenses.	Notice published 1/20/15: 80 Fed. Reg. 2,745	Notice published 1/20/15.
<b>Compendium of U.S. Copyright Office Practices</b>	The Office announced the release of its administrative manual, The Compendium of U.S. Copyright Office Practices, Third Edition.	Notice published 12/31/14: 79 Fed. Reg. 78,911	Compendium available online 12/22/14.

**Copyright Office and Copyright Royalty Board – Continued**

<b>TOPIC</b>	<b>DESCRIPTION</b>	<b>ACTIONS</b>	<b>NOTES</b>
<b>Digital Performance Right in Sound Recordings and Ephemeral Recordings</b>	The Copyright Royalty judges are publishing for comment proposed regulations governing the rates and terms for the digital performances of sound recordings by noncommercial educational webcasters and for the making of ephemeral recordings necessary for the facilitation of such transmissions for the period commencing Jan. 1, 2016, and ending on Dec. 31, 2020.	Comments requested 11/5/14: 79 Fed. Reg. 65,609.	Comments due 12/22/14.
<b>Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities</b>	The Copyright Royalty judges announce a cost of living adjustment of 2 percent in the royalty rates that educational institutions pay for use of music in the SESAC repertory for the statutory license under the Copyright Act for noncommercial broadcasting.	Rule published 12/2/14: 79 Fed. Reg. 71,319.	Rule published 12/2/14.
<b>Verification of Statements of Account Submitted by Cable Operators and Satellite Carriers</b>	The Copyright Office is adopting a final rule that establishes a new regulation allowing copyright owners to audit the statements of account that cable operators and satellite carriers file with the office reflecting royalty payments due for secondary transmissions of copyrighted broadcast programming made pursuant to statutory licenses.	Notice published 11/18/14: 79 Fed. Reg. 68,623.	Notice published 11/18/14.
<b>Fees for Submitting Corrected Electronic Title Appendices</b>	The Copyright Office recently adopted amended regulations to allow remitters to submit title lists in electronic format when recording documents that reference 100 or more titles. The office is amending its regulations to set that fee at a rate of \$7 per corrected title.	Notice published 11/18/14: 79 Fed. Reg. 68,622.	Notice published 11/18/14.
<b>Mechanical and Digital Phonorecord Delivery Compulsory License</b>	The Copyright Office has adopted a final rule on accounting for and paying royalties in connection with the mechanical license for sound recordings of musical works.	Rule adopted 9/18/14: 79 Fed. Reg. 56,190 (88 PTCJ 1264, 9/19/14).	Effective date 11/17/14.
<b>Distribution of 2013 DART Sound Recordings Fund Royalties</b>	The Copyright Royalty judges are soliciting comments on a motion for partial distribution in connection with 2013 DART Sound Recordings Fund royalties.	Comments requested 10/16/14: 79 Fed. Reg. 60,185 (88 PTCJ 1717, 10/31/14).	Comments due 11/5/14.
<b>Digital Performance Right in Sound Recordings and Ephemeral Recordings</b>	The Copyright Royalty judges are announcing their final determination upholding the validity and application of the \$500 minimum fee for noncommercial webcasters for the licensing period 2006 through 2010.	Final determination 10/31/14: 79 Fed. Reg. 64,669.	Final determination 10/31/14.
<b>Distribution of 2012 Cable and Satellite Royalty Funds</b>	The Copyright Royalty judges are soliciting comments on a motion of Phase I claimants for partial distribution in connection with the 2012 cable and satellite royalty funds.	Comments requested 10/1/14: 79 Fed. Reg. 59,306 (88 PTCJ 1411, 10/3/14).	Comment period ended 10/31/14.

### Copyright Office and Copyright Royalty Board – Continued

TOPIC	DESCRIPTION	ACTIONS	NOTES
<b>Study on the Right of Making Available</b>	The office is undertaking a study at the request of Congress to assess the state of U.S. law recognizing and protecting “making available” and “communication to the public” rights for copyright holders.	Comments requested and roundtable announced 2/25/14: 79 Fed. Reg. 10,571(87 PTCJ 959, 2/28/14); Room change 4/29/14: 79 Fed. Reg. 24,019 (88 PTCJ 44, 5/2/14); Additional comments requested 7/10/14: 79 Fed. Reg. 41,309 (88 PTCJ 757, 7/18/14); Comment period extended 8/1/14: 79 Fed. Reg. 44,871 (88 PTCJ 934, 8/8/14).	Additional comment period ended 9/15/14.

### Federal Trade Commission

TOPIC	DESCRIPTION	ACTIONS	NOTES
<b>Novartis AG; Analysis of Proposed Consent Orders To Aid Public Comment</b>	The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition	Comments requested 3/2/15: 80 Fed. Reg. 11,202.	Comments due 3/25/15.
<b>Sun Pharmaceutical Industries Ltd., Ranbaxy Laboratories Ltd., and Daiichi Sankyo Co., Ltd.; Analysis of Proposed Consent Orders To Aid Public Comment</b>	The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition.	Comments requested 2/6/15: 80 Fed. Reg. 6,718.	Comments due 3/3/15.
<b>Focus Education, LLC; Analysis of Proposed Consent Order To Aid Public Comment</b>	The consent agreement in this matter settles alleged violations of federal law prohibiting deceptive acts or practices.	Comments requested 1/28/15: 80 Fed. Reg. 4,575.	Comments due 2/20/15.
<b>Sony Computer Entertainment America LLC; Analysis of Proposed Consent Order To Aid Public Comment</b>	Soliciting public comments on a consent agreement settling alleged violations of federal law prohibiting unfair or deceptive acts or practices.	Comments requested 12/2/14: 79 Fed. Reg. 71,424.	Comments due 12/29/14.
<b>Deutsch LA, Inc.; Analysis of Proposed Consent Order To Aid Public Comment</b>	Soliciting public comments on a consent agreement settling alleged violations of federal law prohibiting unfair or deceptive acts or practices.	Comments requested 12/2/14: 79 Fed. Reg. 71,421.	Comments due 12/29/14.
<b>MPHJ Technology Investments, LLC, Jay Mac Rust, and Farney Daniels, P.C.; Analysis To Aid Public Comment</b>	Soliciting public comments on a consent agreement settling alleged violations of federal law prohibiting unfair or deceptive acts or practices.	Comments requested 11/13/14: 79 Fed. Reg. 67,435.	Comments due 12/8/14.

<b>International Trade Commission</b>			
<b>TOPIC</b>	<b>DESCRIPTION</b>	<b>ACTIONS</b>	<b>NOTES</b>
<b>Certain Optical Disc Drives, Components Thereof, and Products Containing the Same</b>	ITC has determined to review the presiding ALJ's initial determination granting respondents' motion to terminate the above referenced investigation based on the lack of standing of complainant Optical Devices LLC of Peterborough, N.H.	Notice published 12/10/14: 79 Fed. Reg. 73,335; termination under review 6/15/15: 80 Fed. Reg. 34,172.	Termination under review 6/15/15.
<b>Certain Automated Teller Machines and Point of Sale Devices and Associated Software Thereof; Institution of Investigation</b>	A complaint was filed with the U.S. International Trade Commission on May 4, 2015, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Global Cash Access, Inc. of Las Vegas, Nevada.	Notice published 6/9/15: 80 Fed. Reg. 32,605.	Notice published 6/9/15.
<b>Overview of Cuban Imports of Goods and Services and Effects of U.S. Restrictions</b>	The Commission will conduct an investigation and provide a report that provides an overview of recent and current trends in Cuban imports of goods and services.	Notice published 2/4/15: 80 Fed. Reg. 6,137; hearing moved to 6/2/15: 80 Fed. Reg. 11,689 .	Public hearing 6/2/15.
<b>Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest</b>	ITC has received a complaint entitled Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing Same, DN 3067.	Notice published 5/7/15: 80 Fed. Reg. 26,294; comments solicited 5/27/15: 80 Fed. Reg. 30,265.	Comments solicited 5/27/15.
<b>Certain Touchscreen Controllers and Products Containing the Same; Institution of Investigation</b>	The Commission has instituted an investigation of alleged violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain touchscreen controllers and products containing the same.	Notice published 5/26/15: 80 Fed. Reg. 30,093.	Notice published 5/26/15.
<b>Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest</b>	ITC has received a complaint entitled Certain Recombinant Factor VIII Products, DN 3065.	Notice published 4/23/15: 80 Fed. Reg. 22,741; investigation instituted 5/22/15: 80 Fed. Reg. 29,745.	Investigation instituted 5/22/15.
<b>Certain Snowmobiles With Engines Having Exhaust Temperature Controlled Engine Technology and Components Thereof</b>	ITC has received an infringement complaint on behalf of Arctic Cat Inc. concerning the importation of certain snowmobiles with engines having exhaust temperature-controlled engine technology and components thereof.	Notice published 12/24/14: 79 Fed. Reg. 77,526; investigation terminated 5/21/15: 80 Fed. Reg. 29,336.	Investigation terminated 5/21/15.
<b>Certain Vision-Based Driver Assistance System Cameras and Components Thereof; Notice of Request for Statements on the Public Interest</b>	The presiding ALJ has issued a Final Initial Determination and Recommended Determination on Remedy and Bonding in the above captioned investigation.	Notice published 5/8/15: 80 Fed. Reg. 26,586.	Notice published 5/8/15.
<b>Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest</b>	ITC has received a complaint entitled Certain Automated Teller Machines and Point of Sale Devices and Associated Software Thereof, DN 3068; the Commission is soliciting comments.	Notice published 5/8/15: 80 Fed. Reg. 26,585.	Notice published 5/8/15.

**International Trade Commission – Continued**

<b>TOPIC</b>	<b>DESCRIPTION</b>	<b>ACTIONS</b>	<b>NOTES</b>
<b>Certain 3G Mobile Handsets and Components Thereof, Notice of Request for Statements on the Public Interest</b>	ITC is soliciting comments on public interest issues raised by the RD issued in the original investigation on August 14, 2009.	Notice published 5/7/15: 80 Fed. Reg. 26,295.	Notice published 5/7/15.
<b>Certain Novelty Glasses; Certain Coin Operated Audio Visual Games and Components Thereof; Certain Coin Operated Audio Visual Games and Components Thereof (Viz., Rally-X and Pac-Man); Certain Cube Puzzles; Certain Strip Lights; Certain Novelty Teleidoscopes; Notice of Commission Determination To Rescind Three Exclusion Orders and To Modify Three Exclusion Orders</b>	ITC has determined to rescind the exclusion orders issued in the listed investigations.	Notice published 5/5/15: 80 Fed. Reg. 25,712.	Notice published 5/5/15.
<b>Certain Hemostatic Products and Components Thereof; Commission Determination Not To Review an Initial Determination Granting a Motion To Terminate the Investigation on the Basis of Settlement; Termination of the Investigation</b>	ITC has determined not to review an initial determination issued by the presiding administrative law judge on April 2, 2015, granting complainants' motion to terminate the above-identified investigation on the basis of settlement.	Notice published 5/1/15: 80 Fed. Reg. 24,967.	Notice published 5/1/15.
<b>Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest</b>	ITC has received a complaint entitled Certain Protective Cases for Electronic Devices and Components Thereof, DN 3064	Notice published 3/17/15: 80 Fed. Reg. 13,891; investigation instituted 4/30/15: 80 Fed. Reg. 24,276.	Investigation instituted 4/30/15.
<b>Certain Crawler Cranes and Components Thereof; Commission's Final Determination; Issuance of a Limited Exclusion Order and Cease and Desist Order; Termination of the Investigation</b>	ITC has found a violation of section 337 in this investigation and has (1) issued a limited exclusion order prohibiting importation of certain crawler cranes and components thereof and (2) issued a cease and desist order directed to the domestic respondent.	Notice published 4/22/15: 80 Fed. Reg. 22,549.	Notice published 4/22/15.
<b>Certain Opaque Polymers</b>	ITC is intervening in an investigation and reviewing an initial determination issued by the presiding ALJ finding respondents to be in default as a sanction for discovery abuse and ordering monetary sanctions.	Notice published 12/22/14: 79 Fed. Reg. 76,368; violation found, investigation terminated 4/22/15: 80 Fed. Reg. 22,548.	Investigation terminated 4/22/15.

**International Trade Commission – Continued**

TOPIC	DESCRIPTION	ACTIONS	NOTES
<b>Certain Sulfentrazone, Sulfentrazone Compositions, and Processes for Making Sulfentrazone; Notice of Request for Statements on the Public Interest</b>	ALJ has issued a Recommended Determination on Remedy and Bonding in the above-captioned investigation. Although the ALJ found no violation of section 337, the ALJ recommends that, in the event that the Commission determines to reverse the finding of no violation, a limited exclusion order should be directed against the respondents with respect to U.S. Patent No. 7,169,952.	Notice published 4/20/15: 80 Fed. Reg. 21,762.	Notice published 4/20/15.
<b>Certain Soft-Edged Trampolines and Components Thereof</b>	The Commission has determined to review-in-part the final initial determination issued by the presiding ALJ in the above-captioned investigation on December 5, 2014	Notice published 2/11/15: 80 Fed. Reg. 7,631; no violation found 4/10/15: 80 Fed. Reg. 19,354.	No violation found 4/10/15.
<b>Certain Wireless Standard Compliant Electronic Devices, Including Communication Devices and Tablet Computers; Institution of Investigation</b>	Complaint was filed with ITC on behalf of Ericsson Inc. of Plano, Texas and Telefonaktiebolaget LM Ericsson of Sweden	Notice published 4/3/15: 80 Fed. Reg. 18,255.	Notice published 4/3/15.
<b>Certain Electronic Devices, Including Wireless Communication Devices, Computers, Tablet Computers, Digital Media Players, and Cameras; Institution of Investigation</b>	Complaint was filed with ITC on behalf of Ericsson Inc. of Plano, Texas and Telefonaktiebolaget LM Ericsson of Sweden	Notice published 4/3/15: 80 Fed. Reg. 18,254.	Notice published 4/3/15.
<b>Certain Lithium Metal Oxide Cathode Materials, Lithium-Ion Batteries for Power Tool Products Containing the Same, and Power Tools Products With Lithium-Ion Batteries Containing Same; Institution of Investigation</b>	Complaint was filed with ITC on behalf of BASF Corporation of Florham Park, New Jersey and UChicago Argonne LLC of Lemont, Ill.	Notice published 3/30/15: 80 Fed. Reg. 16,695.	Notice published 3/30/15.
<b>Certain Loom Kits for Creating Linked Articles: Commission Determination To Review an Initial Determination in Part and, on Review, To Affirm a Finding of Violation With Modifications; Request for Written Submissions on Remedy, the Public Interest, and Bonding</b>	ITC has determined to review-in-part an ID issued by the presiding ALJ in the above-captioned investigation.	Notice published 3/26/15: 80 Fed. Reg. 16,023.	Notice published 3/26/15.

**International Trade Commission – Continued**

<b>TOPIC</b>	<b>DESCRIPTION</b>	<b>ACTIONS</b>	<b>NOTES</b>
<b>Certain Silicon Microphone Packages and Products Containing Same; Commission Determination To Grant the Joint Motion To Terminate the Investigation on the Basis of Settlement; Termination of Investigation</b>	ITC has determined to grant the joint motion to terminate the abovereferenced investigation based upon settlement.	Notice published 3/20/15: 80 Fed. Reg. 15,033.	Notice published 3/20/15.
<b>Certain Electronic Products, Including Products With Near Field Communication (“NFC”) System-Level Functionality and/or Battery Power-Up Functionality, Components Thereof, and Products Containing Same; Institution of Investigation</b>	A complaint was filed with ITC on behalf of NXP B.V. of The Netherlands and NXP Semiconductors USA, Inc. of San Jose, Calif.	Notice published 3/19/15: 80 Fed. Reg. 14,406.	Notice published 3/19/15.
<b>Certain Television Sets, Television Receivers, Television Tuners, and Components Thereof, Capabilities and Components Thereof; Request for Statements on the Public Interest</b>	ITC has determined that the presiding ALJ has issued a Final Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond in the above captioned investigation.	Notice published 3/18/15: 80 Fed. Reg. 14,161.	Notice published 3/18/15.
<b>Certain Non-Volatile Memory Chips and Products Containing the Same; Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on a Settlement Agreement</b>	ITC has determined not to review an initial determination granting a joint motion to terminate the above-captioned investigation based on a settlement agreement.	Notice published 3/18/15: 80 Fed. Reg. 14,160.	Notice published 3/18/15.
<b>Certain Audio Processing Hardware and Software and Products Containing Same; Institution of investigation</b>	A complaint was filed with the ITC on February 9, 2015, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Andrea Electronics Corp.	Notice published 3/18/15: 80 Fed. Reg. 14,159.	Notice published 3/18/15.
<b>Certain Toy Figurines and Toy Sets Containing the Same Certain Flash Memory Chips and Products Containing the Same Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation in Its Entirety Based Upon Settlement; Termination of the Investigation</b>	A complaint was filed with the ITC on February 6, 2015, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of LEGO.	Notice published 3/16/15: 80 Fed. Reg. 13,629.	Notice published 3/16/15.

**International Trade Commission – Continued**

<b>TOPIC</b>	<b>DESCRIPTION</b>	<b>ACTIONS</b>	<b>NOTES</b>
<b>Certain Flash Memory Chips and Products Containing the Same Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation in Its Entirety Based Upon Settlement; Termination of the Investigation</b>	ITC has determined not to review an initial determination of the presiding administrative law judge granting a joint motion by complainant and respondents to terminate the investigation in its entirety based upon settlement.	Notice published 3/16/15: 80 Fed. Reg. 13,629.	Notice published 3/16/15.
<b>Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest</b>	ITC has received a complaint entitled Certain Variable Valve Actuation Devices and Automobiles Containing the Same, DN 3063	Notice published 3/16/15: 80 Fed. Reg. 13,630.	Notice published 3/16/15.
<b>Certain Devices Containing Non-Volatile Memory and Products Containing the Same; Commission's Determination Not To Review an Initial Determination Terminating the Investigation; Termination of the Investigation</b>	ITC has determined not to review the presiding administrative law judge's ID granting a joint motion to terminate the investigation.	Notice published 3/6/15: 80 Fed. Reg. 12,205; investigation terminated 3/9/15: 80 Fed. Reg. 12,522.	Notice published 3/9/15.
<b>Certain Consumer Electronics With Display and Processing Capabilities; Notice of Commission Determination To Grant a Joint Motion To Terminate the Investigation on the Basis of a Settlement Agreement; Termination of Investigation</b>	ITC has determined to grant the joint motion to terminate the above captioned investigation based upon a settlement agreement.	Notice published 3/5/15: 80 Fed. Reg. 12,035.	Notice published 3/5/15.
<b>Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest</b>	ITC has received a complaint entitled Certain Electronic Devices, Including Wireless Communication Devices, Computers, Tablet Computers, Digital Media Players, and Cameras, DN 3060.	Notice published 3/4/15: 80 Fed. Reg. 11,688.	Notice published 3/4/15.
<b>Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest</b>	ITC has received a complaint entitled Certain Wireless Standard Compliant Electronic Devices, Including Communication Devices and Tablet Computers, DN 3061.	Notice published 3/4/15: 80 Fed. Reg. 11,687.	Notice published 3/4/15.

**International Trade Commission – Continued**

<b>TOPIC</b>	<b>DESCRIPTION</b>	<b>ACTIONS</b>	<b>NOTES</b>
<b>Certain Light Reflectors and Components, Packaging, and Related Advertising Thereof; Notice of Commission Determination Not To Review Initial Determinations Granting Motions To Terminate the Investigation as to the Remaining Respondents; Termination of the Investigation in Its Entirety</b>	ITC will not review an initial determination of the presiding ALJ granting complainant's motion to terminate the investigation in its entirety based on a settlement agreement	Notice published 2/27/15: 80 Fed. Reg. 10,713.	Notice published 2/27/15.
<b>Certain Vision-Based Driver Assistance System Cameras and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Granting Complainant's Motion To Terminate the Investigation Based on a Withdrawal of Complaint</b>	ITC will not review an initial determination of the presiding ALJ granting complainant's motion to terminate the investigation in its entirety based on a withdrawal of complaint.	Notice published 2/26/15: 80 Fed. Reg. 10,512.	Notice published 2/26/15.
<b>Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest</b>	ITC has received a complaint entitled Certain Lithium Metal Oxide Cathode Materials, Lithium-Ion Batteries Containing Same, and Products with Lithium-Ion Batteries Containing Same, DN 3058.	Notice published 2/25/15: 80 Fed. Reg. 10,161.	Notice published 2/25/15.
<b>Certain Light-Emitting Diode Products and Components Thereof Institution of Investigation</b>	ITC received a complaint alleging illegal importation and sale of certain light-emitting diode products and components thereof.	Notice published 2/18/15: 80 Fed. Reg. 8,685.	Notice published 2/18/15.
<b>Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest</b>	ITC has received a complaint entitled Certain Audio Processing Hardware and Software and Products Containing Same, DN 3055.	Notice published 2/17/15: 80 Fed. Reg. 8,346.	Notice published 2/17/15.
<b>Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest</b>	ITC has received a complaint entitled Certain Electronic Products, Including Products with Near Field Communication ("NFC") System-Level Functionality and/or Battery Power-Up Functionality, Components Thereof, and Products Containing Same, DN 3056.	Notice published 2/17/15: 80 Fed. Reg. 8,345.	Notice published 2/17/15.

**International Trade Commission – Continued**

<b>TOPIC</b>	<b>DESCRIPTION</b>	<b>ACTIONS</b>	<b>NOTES</b>
<b>Certain Laser Abraded Denim Garments; Notice of Commission Decision Amending the Notice of Investigation and Extending the Target Date</b>	ITC has determined not to review the presiding ALJ's initial determination granting a motion to amend the complaint and notice of investigation to add new respondents, and to extend the target date for completion of the above-captioned investigation by four months.	Notice published 2/13/15: 80 Fed. Reg. 8,108.	Notice published 2/13/15.
<b>Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest</b>	ITC has received a complaint entitled Certain Toy Figurines and Toy Sets Containing the Same, DN 3054.	Notice published 2/12/15: 80 Fed. Reg. 4,945.	Notice published 2/12/15.
<b>Certain Multiple Mode Outdoor Grills and Parts Thereof; Commission's Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and Cease and Desist Orders; Termination of the Investigation</b>	The Commission has found a violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the unlawful importation, sale for importation, and sale after importation by respondents	Notice published 2/9/15: 80 Fed. Reg. 7,033.	Notice published 2/9/15.
<b>Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest</b>	ITC has received a complaint entitled Certain Audio Processing Hardware and Software and Products Containing Same, DN 3053; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing.	Notice published 1/29/15: 80 Fed. Reg. 4,945.	Notice published 1/29/15.
<b>Certain Ink Cartridges and Components Thereof: Institution of Investigation</b>	Notice is hereby given that a complaint was filed with the ITC on December 23, 2014, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Epson Portland Inc. of Hillsboro, Ore.; Epson America, Inc. of Long Beach, Calif.; and Seiko Epson Corporation of Japan.	Notice published 1/27/15: 80 Fed. Reg. 4,314.	Notice published 1/27/15.
<b>Certain Network Devices, Related Software and Components Thereof (I); Institution of Investigation</b>	Notice is hereby given that a complaint was filed with the ITC on December 19, 2014, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Cisco Systems, Inc. of San Jose, Calif.	Notice published 1/27/15: 80 Fed. Reg. 4,314.	Notice published 1/27/15.
<b>Certain Network Devices, Related Software and Components Thereof (II); Institution of Investigation</b>	Notice is hereby given that a complaint was filed with the ITC on December 19, 2014, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Cisco Systems, Inc. of San Jose, Calif.	Notice published 1/27/15: 80 Fed. Reg. 4,313.	Notice published 1/27/15.
<b>Certain Light-Emitting Diode Products and Components Thereof</b>	ITC has received a complaint, and is soliciting comments on any public interest issues raised by the complainant or the complaint's filing.	Notice published 1/16/15: 80 Fed. Reg. 2,442.	Notice published 1/16/15.

**International Trade Commission – Continued**

<b>TOPIC</b>	<b>DESCRIPTION</b>	<b>ACTIONS</b>	<b>NOTES</b>
<b>Summary of Commission Practice Relating to Administrative Protective Orders</b>	ITC has released its annual report on the status of its practice with respect to violations of its administrative protective orders.	Notice published 1/13/15: 80 Fed. Reg. 1,664.	Notice published 1/13/15. Report available at <a href="http://www.usitc.gov">http://www.usitc.gov</a> .
<b>Certain Wireless Headsets; Institution of Investigation Pursuant to 19 U.S.C. 1337</b>	A complaint filed with ITC on Dec. 8, 2014 was supplemented Dec. 24, and an investigation was instituted Jan. 7, 2015.	Notice published 1/13/15: 80 Fed. Reg. 1,663.	Investigation instituted 1/7/15.
<b>Certain Wireless Headsets</b>	ITC has received a complaint entitled Certain Wireless Headsets, DN 3044, and the commission is soliciting comments on any public interest issues raised by the complaint.	Notice published 12/12/14: 79 Fed. Reg. 73,901.	Comments due 12/20/14.
<b>Certain Lithium Silicate Materials and Products Containing the Same</b>	ITC has determined not to review an initial determination granting a joint motion to terminate the investigation based on a settlement agreement.	Notice published 12/15/14: 79 Fed. Reg. 74,113.	Notice published 12/15/14.
<b>Certain Three-Dimensional Cinema Systems and Components Thereof</b>	ITC has received a complaint alleging infringement of U.S. Patent Nos. 7,905,602; 8,220,934; 7,857,455; and 7,959,296, based upon the importation into the U.S., the sale for importation, and the sale within the U.S. after importation of certain three-dimensional cinema systems and components thereof	Notice published 12/12/14: 79 Fed. Reg. 73,902.	Notice published 12/12/14.
<b>Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same</b>	ITC has given notice that a complaint was filed on Nov. 5, 2014, on behalf of PPC Broadband Inc. of East Syracuse, N.Y.	Notice published 12/10/14: 79 Fed. Reg. 73,336.	Notice published 12/10/14.
<b>Certain Antivenom Compositions and Products Containing the Same</b>	ITC has determined not to review an initial determination issued by the presiding ALJ on Nov. 13, 2014, terminating the investigation based on a settlement agreement.	Notice published 12/10/14: 79 Fed. Reg. 73,336.	Notice published 12/10/14.
<b>Certain Archery Products and Related Marketing Materials</b>	ITC has issued a limited exclusion order against certain archery products and related marketing materials of Ningbo Topoint Outdoor Sports Co., and the investigation has been terminated.	Notice published 12/9/14: 79 Fed. Reg. 73,101.	Notice published 12/9/14.
<b>Circular Welded Carbon-Quality Steel Pipe From India, Oman, the United Arab Emirates, and Vietnam</b>	ITC gives notice of the court-ordered remand of its final determinations in the countervailing duty investigations of circular welded carbon-quality steel pipe from India, Oman and the United Arab Emirates and the antidumping duty investigations of CWP from India, Oman, the UAE and Vietnam.	Notice published 12/8/14: 79 Fed. Reg. 72,699.	Notice published 12/8/14.

**International Trade Commission – Continued**

<b>TOPIC</b>	<b>DESCRIPTION</b>	<b>ACTIONS</b>	<b>NOTES</b>
<b>Certain Wireless Devices</b>	The ITC has received a complaint entitled Certain Wireless Devices, Including Mobile Phones and Tablets III, DN 3043, and solicits comments relating to the public interest accordingly.	Notice published 12/1/14: 79 Fed. Reg. 71,124.	Notice published 12/1/14.
<b>Certain Silicon Microphone Packages and Products Containing Same</b>	The ITC has determined to review in part the final initial determination issued by the presiding ALJ finding a violation of Section 337, and published a schedule for filing written submissions on the issues under review and on remedy, the public interest and bonding.	Notice published 11/13/14: 79 Fed. Reg. 67,446.	Reply submissions due 12/1/14.
<b>Certain Graphics Processing Chips, Systems on a Chip, and Products Containing the Same</b>	The ITC has received a complaint entitled Certain Graphics Processing Chips, Systems on a Chip, and Products Containing the Same, DN 3042, and solicits comments relating to the public interest accordingly.	Notice published 11/28/14: 79 Fed. Reg. 70,895.	Notice published 11/28/14.
<b>Certain Windshield Wipers and Components Thereof</b>	The ITC instituted investigation of a complaint filed on Oct. 15, 2014 on behalf of Valeo North America Inc. of Troy, Mich. and Delmex de Juarez S. de R.L. de C.V. of Mexico.	Notice published 11/21/14: 79 Fed. Reg. 69,525.	Notice published 11/21/14.
<b>Certain Noise Cancelling Headphones and Components Thereof</b>	The ITC has determined not to review the presiding administrative law judge's initial determination terminating the investigation based on a settlement agreement.	Notice published 11/20/14: 79 Fed. Reg. 69,129.	Notice published 11/20/14.
<b>Certain Integrated Circuits and Products Containing the Same</b>	The ITC has determined not to review the presiding administrative law judge's initial determination terminating the investigation based on a settlement agreement.	Notice published 11/20/14: 79 Fed. Reg. 69,128.	Notice published 11/20/14.
<b>Certain Footwear Products</b>	The ITC has received a complaint on behalf of Converse Inc. of North Andover, Mass., and solicits comments relating to the public interest accordingly.	Notice published 11/17/14: 79 Fed. Reg. 68,482; ITC declines to review New Balance intervention 2/24/15:80 Fed. Reg. 9,748 .	Notice published 11/17/14.
<b>Certain Snowmobiles with Engines Having Exhaust Temperature-Controlled Engine Technology and Components Thereof</b>	The ITC has received a complaint entitled Certain Snowmobiles with Engines Having Exhaust Temperature-Controlled Engine Technology and Components Thereof, DN 3039, and solicits comments relating to the public interest accordingly.	Notice published 11/17/14: 79 Fed. Reg. 68,480.	Notice published 11/17/14.
<b>Certain Three-Dimensional Cinema Systems and Components Thereof</b>	The ITC has received a complaint entitled Certain Three-Dimensional Cinema Systems and Components Thereof, DN 3040, and solicits comments relating to the public interest accordingly.	Notice published 11/17/14: 79 Fed. Reg. 68,480.	Notice published 11/17/14.
<b>Certain Cases for Portable Electronic Devices</b>	The ITC has determined to terminate an advisory opinion proceeding in the above-captioned investigation.	Notice published 11/14/14: 79 Fed. Reg. 68,299.	Notice published 11/14/14.

### International Trade Commission – Continued

TOPIC	DESCRIPTION	ACTIONS	NOTES
<b>Certain Earpiece Devices Having Positioning and Retaining Structure and Components Thereof</b>	The ITC has determined not to review the presiding administrative law judge's initial determination terminating the investigation based on a settlement agreement.	Notice published 11/14/14: 79 Fed. Reg. 68,298.	Notice published 11/14/14.
<b>Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same</b>	The ITC has received a complaint entitled Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same, DN 3038, and solicits comments relating to the public interest accordingly.	Notice published 11/12/14: 79 Fed. Reg. 67,191.	Notice published 11/12/14.
<b>Certain Personal Transporters, Components Thereof, and Manuals Therefor</b>	The commission instituted investigation of a complaint filed on Sept. 9, 2014, on behalf of Segway Inc. of Bedford, N.H., and DEKA Products Limited Partnership of Manchester, N.H.	Notice published 11/10/14: 79 Fed. Reg. 66,739.	Notice published 11/10/14.

### U.S. Trade Representative

TOPIC	DESCRIPTION	ACTIONS	NOTES
<b>2015 Special 301 Review: Identification of Countries Under Section 182 of the Trade Act of 1974</b>	Request for public comment and announcement of public hearing.	Comments requested 12/29/14: 79 Fed. Reg. 78,133.	Comments due 2/6/15; hearing 2/24/15.

### Department of Commerce

TOPIC	DESCRIPTION	ACTIONS	NOTES
<b>BE-125: Quarterly Survey of Transactions in Selected Services and Intellectual Property With Foreign Persons</b>	BEA is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons (BE-125).	Survey announced 3/9/15: 80 Fed. Reg. 12,447.	Survey announced 3/9/15; reports due to BEA 45 days after end of fiscal quarter, except for final quarter of fiscal year when must be filed within 90 days.

Trademarks**Trademark Trial and Appeal Board Update**

**T**his table summarizes the precedential rulings of the Trademark Trial and Appeal Board between Jan. 1 and June 17, 2015.

**T.T.A.B. Precedential Rulings: Jan. 1 - June 17, 2015**

<b>Case Name</b>	<b>Type of Proceeding</b>	<b>Issue</b>	<b>Outcome</b>	<b>Rationale</b>	<b>Relevant Lanham Act Provision(s)</b>
<i>N.Y. Yankees P'ship v. IET Prods. &amp; Servs., Inc.</i> , No. 91189692 (90 PTCJ 2022, 5/15/15) (T.T.A.B. 2015)	Opposition	Whether a New York company's attempt to register "The House That Juice Built" and a so-called parody of the New York Yankees' baseball-bat-and-top-hat logo using a syringe instead of a bat diluted the Yankees' trademark rights.	Opposition sustained	Trademark fair use does not include the concept of "parody trademarks," and the mark diluted the Yankees' trademark rights.	Section 43(c)(3), 15 U.S.C. § 1125(c)(3)(A).
<i>In re Meridian Rack &amp; Pinion</i> , No. 85504151 (89 PTCJ 1786, 4/24/15) (T.T.A.B. 2015)	Refusal to register	Whether "buyautoparts.com" is generic.	Refusal to register upheld	Buyautoparts.com is generic, and the ".com" portion of the mark does not make it distinctive.	Section 23, 15 U.S.C. 1091
<i>In re Hughes Furniture Indus., Inc.</i> , No. 85627379 (89 PTCJ 1541, 4/3/15) (T.T.A.B. 2015)	Refusal to register	Whether there is a likelihood of confusion between "Hughes Furniture" and a "Bradley Hughes" registration for furniture.	Refusal to register upheld	The board refused to look at marketplace use to limit the scope of goods and services listed in the registration and on the application.	Section 2(d), 15 U.S.C. 1052(d)
<i>ProMark Brands Inc. v. GFA Brands, Inc.</i> , No. 91194974 (89 PTCJ 1540, 4/3/15) (T.T.A.B. 2015)	Opposition	Whether there is a likelihood of confusion between a "Smart Balance" line of margarine substitutes and "Smart Ones" line of foods.	Opposition dismissed	There is no likelihood of confusion between the two brands.	Section 2(d), 15 U.S.C. 1052(d)
<i>In re House Beer, LLC</i> , No. 85684754 (89 PTCJ 1541, 4/3/15) (T.T.A.B. 2015)	Refusal to register	Whether the examiner's incorrect determination of the priority timing of two applications justified overturning a refusal to register	Refusal affirmed	The incorrect determination was not sufficient to justify overturning the refusal.	Trademark Rule 2.75
<i>In re Brack</i> , No. 85483943 (89 PTCJ 1542, 4/3/15) (T.T.A.B. 2015)	Refusal to register	Whether the failure to sign and verify an application justified refusal.	Refusal affirmed	The failure to sign and verify the application justified refusal.	Section 1(b), 15 U.S.C. 1051(b)

**T.T.A.B. Precedential Rulings: Jan. 1 - June 17, 2015 – Continued**

<b>Case Name</b>	<b>Type of Proceeding</b>	<b>Issue</b>	<b>Outcome</b>	<b>Rationale</b>	<b>Relevant Lanham Act Provision(s)</b>
<i>In re Beck</i> , No. 85767380 (89 PTCJ 1456, 3/27/15) (T.T.A.B. 2015)	Refusal to register	Whether the phrase “Porno Jesus” is disparaging.	Refusal affirmed	“Porno Jesus” would be disparaging to a substantial composite of American Christians.	Section 2(a), 15 U.S.C. 1052(a)
<i>In re Frankish Enters. Ltd.</i> , No. 85494703 (89 PTCJ 1210, 3/6/15) (T.T.A.B. 2015)	Refusal to register	Whether a dinosaur design on a monster truck was inherently distinctive and thus could function as protectable trade dress for monster truck services.	Refusal reversed	The design was inherently distinctive and thus could function as protectable trade dress for monster truck services.	Trademark Rule 2.51(a)
<i>Fiserv, Inc. v. Elec. Transaction Sys. Corp.</i> , No. 91214266 (89 PTCJ 1209, 3/6/15) (T.T.A.B. 2015)	Opposition	Whether “Pmoney” and “Popmoney” marks used for “identical-in-part” services are similar enough to cause a likelihood of confusion.	Opposition sustained	“Pmoney” and “Popmoney” marks used for “identical-in-part” services were similar enough to cause a likelihood of confusion under a lowered standard.	Section 2(d), 15 U.S.C. 1052(d)
<i>In re Nieves &amp; Nieves LLC</i> , Nos. 85179243; 85179263, (89 PTCJ 900, 2/6/15) (T.T.A.B. 2015)	Refusal to register	Whether a refusal to register “Princess Kate” and “Royal Kate” as trademarks was appropriate.	Refusal to register upheld	The refusal was appropriate, because the marks falsely suggested a connection with Kate Middleton.	Section 2(a), 15 U.S.C. 1052(a)
<i>Ava Ruha Corp. v. Mother’s Nutritional Ctr., Inc.</i> , No. 92056067, (89 PTCJ 893, 2/6/15) (T.T.A.B. 2015)	Cancellation	Whether laches bars a cancellation claim brought more than three years after relevant trademark applications were published for opposition.	Cancellation denied	Progressive encroachment claims will not be successful unless the “encroached” territory is beyond the scope of the registration.	Section 19, 15 U.S.C. 1069
<i>Entravision Comm’ns Corp. v. Liberman Television LLC</i> , No. 91188847 (89 PTCJ 815, 1/30/15) (T.T.A.B. 2015)	Motion to substitute	Whether a party can substitute a new expert witness following the expert disclosure deadline, when the previous expert had moved to a job that prohibited employees from testifying as expert witnesses.	Motion granted	Substitution was substantially justified and harmless.	Fed. R. Civ. P. 37
<i>In re Thor Tech, Inc.</i> , No. 85667188 (89 PTCJ 814, 1/30/15) (T.T.A.B. 2015)	Refusal to register	Whether two identical “Terrain” marks for towable trailers and trucks created a likelihood of confusion	Refusal reversed	There is no likelihood of confusion between two identical “Terrain” marks for towable trailers and trucks because the two types of goods are distinct within their industries.	Section 2(d), 15 U.S.C. 1052(d)

Hatch-Waxman**Hatch-Waxman Litigation Update**

**T**he Drug Price Competition and Patent Term Restoration Act of 1984, more commonly known as the Hatch-Waxman Act, amended the Federal Food, Drug, and Cosmetic Act and the Patent Act in order to speed the introduction of lower-cost generic drugs into the marketplace, while at the same time preserving the rights of pharmaceutical patentees and compensating them for market time lost satisfying the U.S. Food and Drug Administration's (FDA) safety and efficacy requirements.

The Hatch-Waxman Act establishes a mechanism for prospective manufacturers of a generic drug to challenge an extant patent covering an FDA-approved drug by filing an Abbreviated New Drug Application (ANDA) with a so-called "Paragraph IV" certification setting forth the basis for challenging the patent. See 21 U.S.C. §§ 355(j), 355(j)(2)(A)(vii)(IV). A Paragraph IV certification constitutes technical infringement of the patent (see 35 U.S.C. § 271(e)(2)), triggering a 45-day period during which the patentee can, by filing suit against the generic manufacturer, invoke a statutory 30-month stay of approval of the ANDA drug. 21 U.S.C. § 355(j)(5)(B)(iii).

Following are court complaints collected during the period of June 10 - 17, 2015.

**Recent Hatch-Waxman Filings**

<b>Matter</b>	<b>NDA Holder / Licensee(s)</b>	<b>ANDA Filer</b>	<b>Patent(s)</b>	<b>Brand Name</b>
<i>Par Pharmaceutical Inc. v. Breckenridge Pharmaceutical Inc.</i> , No. 1:15-cv-00486, Complaint (D. Del. June 12, 2015)	Par Pharmaceutical Inc.; Alkermes Pharma Ireland Ltd.	Breckenridge Pharmaceutical Inc.; TWi Pharmaceuticals Inc.; TWi Pharmaceuticals USA Inc.	U.S. Patent No. 9,040,088 (megestrol)	MEGACE ES (appetite stimulant)
<i>Reckitt Benckiser Pharmaceuticals Inc. v. Alvogen Pine Brook Inc.</i> , No. 1:15-cv-00477, Complaint (D. Del. June 10, 2015)	Reckitt Benckiser Pharmaceuticals Inc.; RB Pharmaceuticals Ltd.; MonoSol Rx LLC	Alvogen Pine Brook Inc.	U.S. Patent Nos. 8,017,150; 8,475,832; 8,603,514; 8,900,497; 8,906,277 (buprenorphine)	SUBOXONE (chronic pain)
<i>Novartis Pharmaceuticals Corp. v. Par Pharmaceutical Inc.</i> , No. 1:15-cv-00475, Complaint (D. Del. June 10, 2015)	Novartis Pharmaceuticals Corp.; Novartis AG	Par Pharmaceutical Inc.	U.S. Patent No. 9,006,224 (everolimus)	AFINITOR (breast cancer)
<i>Novartis Pharmaceuticals Corp. v. Roxane Laboratories Inc.</i> , No. 1:15-cv-00474, Complaint (D. Del. June 10, 2015)	Novartis Pharmaceuticals Corp.; Novartis AG	Roxane Laboratories Inc.	U.S. Patent Nos. 8,410,131; 9,006,224 (everolimus)	AFINITOR (breast cancer)

# Calendar

**June 21-24, 2015.** 2015 ACPC Summer Meeting. Ritz-Carlton Lake Tahoe, Truckee, Calif.

Sponsored by the Association of Corporate Patent Counsel, Minneapolis. E-mail [info@acpcnet.org](mailto:info@acpcnet.org), or go to <http://www.acpcnet.org>.

**June 23, 2015.** Intellectual Property Litigation Committee Meeting: Open to Member and Non-Member, Free. Ulmer & Berne LLP, 600 Vine St., Cincinnati.

Sponsored by the Cincinnati Bar Association. Call 513-381-8213, e-mail [info@cincybar.org](mailto:info@cincybar.org), or go to <http://www.cincybar.org>.

**June 23, 2015.** IP Defense: New York 2015. Affinia Manhattan Hotel, 371 7th Ave., New York.

Organized by Centerforce, Brooklyn, N.Y. Announced by the Intellectual Property Society. E-mail [info@centerforceusa.com](mailto:info@centerforceusa.com), [admin@ipsociety.net](mailto:admin@ipsociety.net), or go to <http://ipsociety.net/event/ip-defense-new-york-2015/>.

**June 23-26, 2015.** Post-Grant Bootcamp. 8110 Gatehouse Road, Falls Church, Va.

Sponsored by Birch Stewart Kolasch Birch LLP. Includes an overview of patent infringement issues, and mock conference calls with Administrative Patent Judges. Call 703-205-8000, or go to <http://www.bsksb.com/seminars>.

**June 24, 2015.** Navigating the Copyright Issues of a Mobile App. Location TBD, Atlanta.

Sponsored by the State Bar of Georgia Intellectual Property Section. Atlanta. Call 404-527-8700, or go to <http://georgiaip.org/event>.

**June 24-27, 2015.** 2015 Bench and Bar Program: The Changing Practice Landscape. St. Regis Monarch Beach Resort, Dana Point, Calif.

Sponsored by the Federal Circuit Bar Association, 1620 I St., NW, Washington. Call 202-466-3923, or go to <http://www.fedcirbar.org>.

**June 22-July 3, 2015.** WIPO-University of Geneva Summer School on Intellectual Property, WIPO Headquarters, and at University of Geneva Law School, Geneva, Switzerland.

Co-sponsored by the World Intellectual Property Organization and the University of Geneva. E-mail [summerschool.geneva@wipo.int](mailto:summerschool.geneva@wipo.int), [Esther.Pralong-Wild@unige.ch](mailto:Esther.Pralong-Wild@unige.ch), or [gss@unige.ch](mailto:gss@unige.ch), or go to <http://www.genevasummerschools.ch/courses-2015> or <http://www.wipo.int>.

**June 25-26, 2015.** Luxury Brands Symposium: The Protection of Luxury Brands in a Fast Moving World. Hotel Baur au Lac Talstrasse 1, 8022 Zurich, Switzerland.

Sponsored by Marques. Issues include Counterfeiting, and Brand Protection of Famous Trademarks. E-mail [info@marques.org](mailto:info@marques.org), or go to <http://www.marques.org>.

**June 29-July 17, 2015.** Intellectual Property Summer Program: Training for Practice, PIJIP Summer Session. Geneva.

Sponsored by American University Washington College of Law, Washington. Call 202-274-4000, or go to <https://www.wcl.american.edu/pijip/go/resources-for-students/summer-session>.

**July 6-8, 2015.** 7th Annual Conference on Innovation and Communications Law, School of Law, Xiamen University, China.

Co-sponsored by the Intellectual Property Law Center, Drake University Law School, University of Turku Faculty of Law, University of Louisville Brandeis School of Law, Michigan State University College of Law and the IPR University Center in Finland. E-mail Professor Peter Yu at [peter.yu@drake.edu](mailto:peter.yu@drake.edu), or go to <http://www.law.drake.edu/clinicsCenters/ip>.

**July 7-8, 2015.** IIPLA Mid-Year Meeting 2015: Integrating IP Into the Changing International Landscape, London.

Organized by the International Intellectual Property Law Association. E-mail Nancy Paul at [media@iipla.org](mailto:media@iipla.org), or go to <http://www.rsc.org/events/detail/12150/IIPLA%20Mid-Year%20Meet%202015>.

**July 10, 2015.** 2015 Boston Patent Law Association IP Case Law Club Meeting. TBA, Mass.

Sponsored by the Boston Patent Law Association, Quincy, Mass. "Re: Current case law pertaining to protection and exploitation of intellectual property." E-mail co-chairs of BPLA Case Law Committee, Leslie Meyer-Leon at [lmeyer-leon@iplegalstrategies.com](mailto:lmeyer-leon@iplegalstrategies.com) or David Thibodeau at [djt@c-m.com](mailto:djt@c-m.com), or [caselaw@bpla.org](mailto:caselaw@bpla.org), or go to <http://www.bpla.org>.

**July 12-17, 2015.** PTO 2nd Annual National Summer Teacher Institute on Innovation, STEM, and Intellectual Property, Dallas.

Sponsored by the U.S. Patent and Trademark Office, Alexandria, Va. "Open to teachers nationwide: This multi-day professional development training opportunity is designed to help middle and high school teachers incorporate concepts of making, inventing, and intellectual property creation and protection into classroom instruction." Go to <http://www.uspto.gov/learning-and-resources/outreach-and-education/national-summer-teacher-institute-innovation-stem-and>.

**July 14, 2015.** Hot Topics in Trademark NYIPLA CLE Seminar. The Princeton Club, 15 West 43rd St., New York.

Sponsored by The New York Intellectual Property Law Association Trademark Law & Practice Committee. E-mail [admin@nyipla.org](mailto:admin@nyipla.org), or go to <http://www.nyipla.org>.

**July 16-17, 2015.** State Bar of Wisconsin 10th Annual Door County Intellectual Property Academy 2015. Stone Harbor Resort and Conference Center, Sturgeon Bay, Wis.

Sponsored by the State Bar of Wisconsin, special CLE event. Madison, Wis. Call 800-728-7788 (nationwide), e-mail [service@wisbar.org](mailto:service@wisbar.org), or go to <http://www.wisbar.org>.

**July 22-24, 2015.** Intellectual Property: From Fundamentals to Enforcement: Innovative and cutting edge look at IP. Seattle University, Sullivan Hall, Seattle.

Sponsored by Seattle University School of Law. Call 206-398-4092, e-mail [cle@seattleu.edu](mailto:cle@seattleu.edu), [oneilr@seattleu.edu](mailto:oneilr@seattleu.edu), or go to <http://www.law.seattleu.edu> or <https://www.regonline.com>.

**July 22-24, 2015.** Openness and Intellectual Property, ISHTIP 7th Annual Workshop 2015. University of Pennsylvania, 3340 Walnut St., Philadelphia.

Sponsored by the International Society for the History and Theory of Intellectual Property; and the Cinema Studies Program, University of Pennsylvania. Call Cinema Studies Program, 215-898-8782, proposed paper abstracts to [ISHTIP2015@sas.upenn.edu](mailto:ISHTIP2015@sas.upenn.edu), questions to Peter Decherney, [decherney@sas.upenn.edu](mailto:decherney@sas.upenn.edu), or go to <http://www.ishtip.org>, or <http://www.upenn.edu/>.

**July 23-24, 2015.** Advanced Patent Litigation Course, Four Seasons Resort & Club Dallas at Las Colinas, Irving, Texas.

Sponsored by the TexasBarCLE. Call 800-205-2222, ext. 1574, or go to <http://www.texasbarcle.com/CLE/COSearchResults.asp>.

**July 27-31, 2015.** LES University. Chicago.

Sponsored by the Licensing Executives Society, U.S. and Canada; Mount Laurel, N.J. Call 856-437-4752, e-mail [info@les.org](mailto:info@les.org), or go to <http://www.lesusacanada.org/education>.

**July 29, 2015.** IIPLA Global IP Summit 2015. London.

Organized by the International Intellectual Property Law Association. Go to <http://www.iipla.org/event/iipla-global-ip-summit-2015-london>.

**July 30-Aug. 2, 2015.** 2015 ABA Annual Meeting: IPCentral. InterContinental Hotel, Chicago.

Sponsored by the American Bar Association Section of Intellectual Property Law. Go to [http://www.americanbar.org/groups/intellectual\\_property\\_law/events\\_cle/annual-2015.html](http://www.americanbar.org/groups/intellectual_property_law/events_cle/annual-2015.html).

**Aug. 6-7, 2015.** 15th Annual Intellectual Property Scholars Conference. DePaul University College of Law, 25 E. Jackson Blvd., Chicago.

Co-sponsored by the Center for Intellectual Property Law and Information Technology (CIPLIT), DePaul University College of Law; Berkeley Center for Law and Technology, Boalt Hall School of Law; Benjamin N.

Cardozo School of Law, Yeshiva University; Stanford Program in Law, Science and Technology, Stanford Law School. DePaul University College of Law. Call 312-362-8701, e-mail [lawinfo@depaul.edu](mailto:lawinfo@depaul.edu), or go to <http://www.law.depaul.edu>.

**Aug. 8, 2015.** 18th Annual SFIPLA Bay Area Job Fair, University of California Hastings College of Law, San Francisco.

Sponsored by the San Francisco Intellectual Property Association. E-mail [info@sfipla.com](mailto:info@sfipla.com), or go to: <http://sfipla.com/events/18th-Annual-sfipla-bay-area-job-fair>.

**Aug. 12-14, 2015.** Patent Law Seminar. Townhouse Office of Chisum.com, Columbia City, Seattle.

Sponsored by Chisum Patent Academy, Seattle. Call 855-324-4786, e-mail [info@chisum.com](mailto:info@chisum.com), or go to <http://www.chisum-patent-academy.com>.

**Aug. 17, 2015.** Intellectual Property Section Meeting. Orange County Bar Association, 4101 Westerly Place, Newport Beach, Calif.

Sponsored by the Orange County Bar Association, Newport Beach, Calif. Call 949-440-6700, e-mail [info@ocbar.org](mailto:info@ocbar.org), or go to <http://www.ocbar.org/Events/AllEvents.aspx>.

**Aug. 28, 2015.** IEEE-USA Intellectual Property Committee Meeting. IEEE-USA, 2001 L St. NW, Washington

Sponsored by the Institute of Electrical and Electronics Engineers. Call 202-785-0017, e-mail [ieeeusa@ieee.org](mailto:ieeeusa@ieee.org), or go to <https://www.ieeeusa.org>.

**Sept. 6-8, 2015.** LES Scandinavia Annual Conference 2015, Karl Johans Gate, Grand Hotel, Oslo, Norway.

Sponsored by Licensing Executives Society International. E-mail [secretariat@les-scandinavia.org](mailto:secretariat@les-scandinavia.org), or go to <http://lesscandinavia2015.org>.

**Sept. 10, 2015.** Mining Data and Privacy: A Primer. ISBA Regional Office, 20 S. Clark St., Chicago.

Sponsored by the Illinois State Bar Association. Call 800-252-8908, e-mail [tbordenkircher@isba.org](mailto:tbordenkircher@isba.org), go to <https://www.isba.org/node/55185/register> or <http://www.isba.org/cle>.

**Sept. 15-17, 2015.** World Intellectual Property Forum: IP as a Commercial Tool in Designing the Future. Bangkok.

Hosted by Intellectual Professionals LLP, based in India, in cooperation with the American Chamber of Commerce in Thailand, Singapore International Arbitration Centre, Asia Pacific Intellectual Capital Centre, the European Association for Business and Commerce in Thailand, the Office for Harmonization in the Internal Market, EU-Asean Project on the Protection of Intellectual Property Rights, Indian National Bar Association, Society of Indian Law Firms and the Patent Agents Association. E-mail [info@ipllp.in](mailto:info@ipllp.in), or go to <http://ipllp.in>

**Sept. 15-18, 2015.** 29th Marques Annual Conference. Vienna, Austria.

Sponsored by Marques. E-mail [info@marques.org](mailto:info@marques.org), or go to <http://www.marques.org/>.

**Sept. 16, 2015.** ABA-IPL Trademark Day: Behind the Scenes at the USPTO. PTO Headquarters, 600 Dulany St., Alexandria, Va.

Co-sponsored by the American Bar Association Section of Intellectual Property Law and the PTO. Go to <http://shop.americanbar.org> or [http://www.americanbar.org/groups/intellectual\\_property\\_law](http://www.americanbar.org/groups/intellectual_property_law).

**Sept. 17, 2015.** Global Intellectual Property Protection Strategy. New York.

Co-sponsored by Global Intellectual Property Protection; Joint Program with World Intellectual Property Organization. Go to <http://www.nyipla.org>.

**Sept. 17-18, 2015.** ICLE's 41st Annual Intellectual Property Law Institute. Westin Book Cadillac, 1114 Washington Blvd., Detroit.

Co-sponsored by the Intellectual Property Law Section, and the Institute of Continuing Legal Education, State Bar of Michigan, Lansing, Mich. Call 877-229-4350, e-mail [icle@umich.edu](mailto:icle@umich.edu), or go to <http://www.icle.org>, or <http://michbar.org>.

**Sept. 17-18, 2015.** Thomas Edison Innovation Fellowship Meeting (Invitation Only). George Mason University School of Law, Arlington, Va.

Sponsored by the George Mason University School of Law Center for Protection of Intellectual Property, 3301 Fairfax Drive, Suite 216, Arlington, Va. E-mail [cpip@gmu.edu](mailto:cpip@gmu.edu), or go to <http://cpip.gmu.edu>.

**Sept. 18, 2015.** Intellectual Property Under Attack: How to Ensure That Your Company Is Taking the Right Steps to Mitigate Risk of Weakening or Loss of IP Rights in 2015! MasterCard Worldwide, 2000 Purchase St., Purchase, N.Y.

Sponsored by the Metropolitan Corporate Counsel, Mountainside, N.J., and the Westchester County NY/Southern Conn. Chapter of the Association of Corporate Counsel. Call 908-654-4840, or 203-461-9004, e-mail [info@metrocorpconsult.com](mailto:info@metrocorpconsult.com) or [wesfacca@wesfacca.com](mailto:wesfacca@wesfacca.com), or go to <http://www.metrocorpconsult.com>.

**Sept. 18-19, 2015.** 2015 IP Institute. Amelia Island, Fla.

Sponsored by the State Bar of Georgia Intellectual Property Section. Atlanta. Call 404-527-8700, or go to <http://georgiaaip.org/event/2015-intellectual-property-law-institute-save-the-date/>.

**Sept. 18-19, 2015.** Virginia State Bar 27th Annual Intellectual Property Fall CLE Weekend Seminar. Embassy Suites, 1900 Diagonal Rd., Alexandria, Va.

Sponsored by the Virginia State Bar Intellectual Property Law Section. Richmond, Va. Call 804-775-0500, or go to <http://www.vsb.org/site/sections>.

**Sept. 20-22, 2015.** IP Law Summit 2015. Trump National Doral, Miami.

Sponsored by Marcus Evans Inc., Summits Division North America, NBC Tower, Chicago. Call David Drey, 312-476-9918, e-mail [webenquiries@marcusevansbb.com](mailto:webenquiries@marcusevansbb.com), or go to <http://www.iplawsummit.com>.

**Sept. 24-25, 2015.** 2015 McDermott 4th Annual Intellectual Property Symposium. Hotel del Coronado, San Diego.

Sponsored by McDermott Will and Emery, Washington. Call 202-756-8225, e-mail [twyse@mwe.com](mailto:twyse@mwe.com), or go to <http://www.mwe.com/2015IPSymposium>.

**Sept. 26-27, 2015.** Innovation Festival 2015. National Museum of American History, Washington.

Co-sponsored by the Smithsonian and the U.S. Patent and Trademark Office. E-mail [InnovationFestival@uspto.gov](mailto:InnovationFestival@uspto.gov), or go to <http://www.uspto.gov/patent/initiatives/innovation-festival-2015>.

**Sept. 27-29, 2015.** International Property Owners Association 2015 Annual Meeting. Hyatt Regency Hotel, Chicago.

Sponsored by the IPO, Washington. Call 202-507-4500, e-mail [info@ipo.org](mailto:info@ipo.org), or go to <http://www.ipo.org>.

**Sept. 28-30, 2015.** Intellectual Property in the Global Marketplace. Copenhagen.

Sponsored by Global Patent Congress. Go to <http://www.patentcongress.com>.

**Sept. 28-Oct 9, 2015.** Advanced Patent and Licensing Seminar. 8110 Gatehouse Road, Falls Church, Va.

Sponsored by Birch Stewart Kolasch Birch LLP. Call 703-205-8000, or go to <http://www.bskb.com/seminars>.

**Sept. 30-Oct. 1, 2015.** Center for the Protection of Intellectual Property Fall Conference. George Mason University School of Law, Arlington, Va.

Sponsored by the George Mason University School of Law CPIP, 3301 Fairfax Drive, Suite 216. Arlington, Va. E-mail [cpip@gmu.edu](mailto:cpip@gmu.edu), or go to <http://cpip.gmu.edu>.

**Sept. 30-Oct. 2, 2015.** AIPF 2015 Annual Meeting. Cross Border IP: Globalization of IP Rights and Protections, Omni King Edward Hotel, Toronto.

Sponsored by the Association of Intellectual Property Firms. Fort Lee, N.J. Call 201-403-0927, e-mail [admin@aipf.com](mailto:admin@aipf.com), or go to <http://www.aipf.com/event-1861282>.

**Sept. 30-Oct. 2, 2015.** Pharmaceutical Trademarks Group 91st Conference. Warsaw, Poland.

Sponsored by the Pharmaceutical Trademarks Group, a Non-Profit. London. Go to <http://www.ptmg.org>.

**Sept. 30-Oct. 2, 2015.** LES Asia Pacific Regional Conference 2015. Doubletree Hilton, Kuala Lumpur, Malaysia.

Sponsored by the Licensing Executives Society of Malaysia. E-mail [secretariat@lesm.org.my](mailto:secretariat@lesm.org.my), or go to <http://www.lesm.org.my/v4/>.

**Oct. 1-3, 2015.** 2015 Taipei International Invention Show and Technomart, Inst 2015. Taipei World Trade Center, Taipei City, Taiwan.

Sponsored by Taiwan External Trade Development Council (Taitra). Contact Alvin Hu, e-mail [invent@taitra.org.tw](mailto:invent@taitra.org.tw), or go to [http://www.chinaexhibition.com/trade\\_events/7301-INST\\_2015\\_-\\_2015\\_Taipei\\_International\\_Invention\\_Show\\_and\\_Technomart.html](http://www.chinaexhibition.com/trade_events/7301-INST_2015_-_2015_Taipei_International_Invention_Show_and_Technomart.html).

**Oct. 2, 2015.** Florida Inventors Hall of Fame Ceremony and Gala. University of South Florida, Tampa, Fla.

Sponsored by the Florida Inventors Hall of Fame. Email [info@FloridaInvents.org](mailto:info@FloridaInvents.org), go to <http://www.floridainvents.org>, or [www.usf.edu](http://www.usf.edu).

**Oct. 5-14, 2015.** Assemblies of the Member States of WIPO: Fifty-Fifth Series of Meetings. WIPO Headquarters, Geneva, Switzerland.

Sponsored by the World Intellectual Property Organization. Geneva, Switzerland. E-mail [assemblies.registration@wipo.int](mailto:assemblies.registration@wipo.int), or go to <http://www.wipo.int>.

**Oct. 7, 2015.** All Ohio Annual Institute on Intellectual Property (Cincinnati). Sharonville Convention Center, 11355 Chester Rd., Cincinnati.

Sponsored by the Cincinnati Bar Association, CLE Dept., Cincinnati. Call 513-699-4028, e-mail [info@cincybar.org](mailto:info@cincybar.org), or go to <http://www.cincybar.org>.

**Oct. 8, 2015.** All Ohio Annual Institute on Intellectual Property (Cleveland). Marriott Downtown at Key Center, 127 Public Square, Cleveland.

Sponsored by the Cincinnati Bar Association, CLE Dept., Cincinnati. Call 513-699-4028, e-mail [info@cincybar.org](mailto:info@cincybar.org), or go to <http://www.cincybar.org>.

**Oct. 8, 2015.** IP Speaker Series, University of San Diego School of Law. Warren Hall Faculty Reading Room, San Diego.

Sponsored by the University of San Diego School of Law. E-mail Trang Pham, [tpham@sandiego.edu](mailto:tpham@sandiego.edu), 619-260-4208, e-mail oliar@virginia.edu, 434-924-3219, or go to <http://www.sandiego.edu/law/centers> or <http://www.law.virginia.edu>.

**Oct. 8-9, 2015.** Intellectual Property Conference for Legal Professionals. Westin Annapolis, Annapolis, Md.

Sponsored by the Association of Legal Administrators. 870 W. Bryn Mawr Ave., Chicago. Call 847-267-1252, or go to <http://www.alanet.org>.

**Oct. 10-14, 2015.** AIPPI World Congress. Windsor Barra Hotel and Congressos, Rio de Janeiro.

Sponsored by the International Association for the Protection of Intellectual Property, Association Internationale Pour la Protection de la Propriete Intellectuelle (AIPPI). AIPPI General Secretariat, Zurich. E-mail [events@aippi.org](mailto:events@aippi.org), [mail@aippi.org](mailto:mail@aippi.org), or go to <https://www.aippi.org/>, or <https://www.aippi.org/MeetingMainPage.html>.

**Oct. 12-13 2015.** London IP Summit 2015: IP at the Heart of Your Business. London Stock Exchange, 10 Paternoster Square, London.

Organised by IPR Connections Ltd. The Plaza 535 King's Road, London. E-mail [info@iprconnections.com](mailto:info@iprconnections.com), go to <http://www.londonipsummit.com>.

**Oct. 12-14, 2015.** PIUG 2015 Northeast Conference. The Heldrich Hotel, New Brunswick, N.J.

Sponsored by the Patent Information Users Group. Newark, Del. E-mail [PIUGinfo@piug.org](mailto:PIUGinfo@piug.org), or go to <http://www.piug.org>.

**Oct. 13-19, 2015.** Patent Resources Group Fall Advanced Courses Program, Hyatt Regency Tamaya, Santa Ana Pueblo, Albuquerque.

Sponsored by the Patent Resources Group, 1725 Jamieson Ave., Alexandria, Va. Call 703-682-4860, e-mail [registrar@patentresources.com](mailto:registrar@patentresources.com), or go to <http://www.patentresources.com>.

**Oct. 18-21, 2015.** 2015 ACC Annual Meeting: Where-In-House Counsel Connect, "View the Intellectual Program Sessions," John B. Hynes Veterans Memorial Convention Center, 900 Boylston St., Boston.

Sponsored by the Association of Corporate Counsel, 1025 Conn. Ave., Washington. Call 202-293-4103, Ext. 451, e-mail [education@acc.com](mailto:education@acc.com) or [cc-cpd@acc.com](mailto:cc-cpd@acc.com), or go to <http://www.acc.com>.

**Oct. 19, 2015.** Intellectual Property Section Meeting. Orange County Bar Association, 4101 Westerly Place, Newport Beach, Calif.

Sponsored by the Orange County Bar Association. Newport Beach, Calif. Call 949-440-6700, e-mail [info@ocbar.org](mailto:info@ocbar.org), or go to <https://www.ocbar.org/Events>.

**Oct. 21-23, 2015.** IACC 2015 Annual Fall Conference. Denver.

Sponsored by the International AntiCounterfeiting Coalition, Washington. Call 202-223-6667, e-mail [IACC@iacc.org](mailto:IACC@iacc.org), or go to <http://www.iacc.org>.

**Oct. 22-24, 2015.** AIPLA 2015 Annual Meeting, Washington.

Sponsored by the American Intellectual Property Law Association, Arlington, Va. E-mail [aipla@aipla.org](mailto:aipla@aipla.org), or go to <http://www.aipla.org>.

**Oct. 23, 2015.** Intellectual Property Law Conference. Las Vegas.

Sponsored by the State Bar of Nevada Intellectual Property Law Section. Las Vegas. Go to <http://www.nvbar.org>.

**Oct. 25-28, 2015.** Licensing Executives Society 2015 Annual Meeting. Marriott Marquis, New York.

Sponsored by LES U.S.A. and Canada Inc., Mount Laurel, N.J. E-mail [info@les.org](mailto:info@les.org) or [meetings@les.org](mailto:meetings@les.org), call 856-437-4752, or go to <http://www.lesusacanada.org>.

**Oct. 26, 2015.** World Sport Law & IP Forum. London Stock Exchange, 10 Paternoster Square, London.

Organized by IPR Connections Ltd. The Plaza, 535 King's Road, London. E-mail [info@iprconnections.com](mailto:info@iprconnections.com), go to <http://www.worldsportip.com>.

**Oct. 27-28, 2015.** 2015 Corporate IP Institute. Georgia State University Student Center, Atlanta.

Co-sponsored by Georgia State University College of Law and the J. Mack Robinson College of Business, Atlanta. Call Communications, 404-413-9050, e-mail [lawcommunications@gsu.edu](mailto:lawcommunications@gsu.edu), [w Cromwell@gsu.edu](mailto:w Cromwell@gsu.edu), [jfrankling@gsu.edu](mailto:jfrankling@gsu.edu), or go to <http://law.gsu.edu/centers/intellectual-property/corporate-institute>.

**Oct. 28-30, 2015.** Women, Influence and Power in Law Conference. Capital Hilton, Washington.

Sponsored by Summit Professional Networks. Call 888-608-6754, e-mail [summitevents@SummitProNets.com](mailto:summitevents@SummitProNets.com), or go to <http://www.wiplevent.com>.

**Oct. 29-30, 2015.** Research Symposium on Patent Valuation (Invitation Only). Scottsdale, Ariz.

Sponsored by the George Mason University School of Law Center for Protection of Intellectual Property, Arlington, Va. E-mail [cpip@gmu.edu](mailto:cpip@gmu.edu), go to <http://cpip.gmu.edu>.

**Nov. 4-6, 2015.** 2015 Patent Information Fair & Conference. Science Museum, Kitanomaru Park, Tokyo.

Co-sponsored by the Japan Institute for Promoting Invention and Innovation; and the Japan Patent Information Organization, Fuji Sankei Business, Sankei Shimbun Co. E-mail [pif@t-c-s.co.jp](mailto:pif@t-c-s.co.jp), or go to <http://www.pifc.jp/eng>.

**Nov. 5-6, 2015.** 20th Annual Advanced Patent Law Institute. Four Seasons Hotel, 98 San Jacinto, Austin, Texas.

Sponsored by the University of Texas School of Law, Continuing Legal Education, Austin, Texas. Call 512-475-6700, e-mail [service@utcle.org](mailto:service@utcle.org), or go to <http://utcle.org/conferences>.

**Nov. 9-13, 2015.** Patent Bar Review Course. Hilton Los Angeles North, Glendale, Calif.

Sponsored by the Patent Resources Group, 1725 Jamieson Ave., Alexandria, Va. Call 703-682-4860, e-mail [registrar@patentresources.com](mailto:registrar@patentresources.com), or go to <http://www.patentresources.com>.

**Nov. 10-12, 2015.** Patent Information Conference 2015, an Event for Patent Information Professionals. Copenhagen.

Co-sponsored by the European Patent Office and the Danish Patent and Trademark Office. Training Courses Nov. 9, 2015. Go to <http://www.epo.org>, or <http://www.dkpto.org>.

**Nov. 11, 2015.** One-Day Patent CLE Seminar. Princeton Club, New York.

Sponsored by the N.Y. Intellectual Property Association. New York. Call 201-461-6603, e-mail [admin@nyipla.org](mailto:admin@nyipla.org), or go to <http://www.nyipla.org>.

**Nov. 11, 2015.** Meet the Judges [that regularly render judgements in trademark matters]. The Hague, The Netherlands.

Sponsored by Marques. E-mail [info@marques.org](mailto:info@marques.org), or go to <http://www.marques.org/>.

**Nov. 11-12, 2015.** IP Counsel Exchange on Post-Grant Patent Challenges at the PTAB: Philadelphia Edition, "A Strategic Guide to Effectively Challenging or Defending Patent Validity at the Patent Trial and Appeal Board." Philadelphia.

Sponsored by Momentum Event Group, 150 West 95th St., New York. Call 646-807-8555, in-house counsel e-mail [Chip@momentumevents.com](mailto:Chip@momentumevents.com); others e-mail Alexandra Iyer at [Alexandra@momentumevents.com](mailto:Alexandra@momentumevents.com), or go to <http://momentumevents.com>.

**Nov. 12-13, 2015.** 53rd Annual R&D 100 Awards. Caesars Palace, Las Vegas.

Sponsored by R&D 100. 100 Enterprise Drive, Suite 600, Rockaway, N.J., E-mail [RDeditors@advantagemedia.com](mailto:RDeditors@advantagemedia.com), or go to <http://www.rd100awards.com>.

**Nov. 12-13, 2015.** WIPO Advanced Workshop on Domain Name Dispute Resolution: Update on Precedent and Practice. Geneva.

Sponsored by the World Intellectual Property Organization, Geneva. E-mail [arbitr.meetings@wipo.int](mailto:arbitr.meetings@wipo.int), or go to <http://www.wipo.int/amc>.

**Nov. 12-13, 2015.** WIPO Mediation and Arbitration Workshops. Palo Alto, Calif.

Sponsored by the World Intellectual Property Organization, Geneva. E-mail [arbitr.meetings@wipo.int](mailto:arbitr.meetings@wipo.int), go to <http://www.wipo.int>.

**Nov. 12-14, 2015.** 2015 IP Institute Intellectual Property Vanguard Awards Luncheon. The Westin Mission Hills Golf Resort and Spa, 71333 Dinah Shore Drive, Rancho Mirage, Calif.

Sponsored by the State Bar of California Intellectual Law Section. Call 888-800-3400, e-mail [feedback@calbar.ca.gov](mailto:feedback@calbar.ca.gov), or to submit nominations, call 415-538-2368, e-mail [Theresa.Raglan@calbar.ca.gov](mailto:Theresa.Raglan@calbar.ca.gov), or go to <http://ipsection.calbar.ca.gov>.

**Nov. 13, 2015.** IEEE-USA Intellectual Property Committee Meeting. IEEE-USA, 2001 L St. NW, Washington.

Sponsored by the Institute of Electrical and Electronics Engineers Inc. Call 202-785-0017, e-mail [ieeusa@ieee.org](mailto:ieeusa@ieee.org), or go to <https://www.ieeeusa.org>.

**Dec. 2, 2015.** Music, Property and Law, Pre-Conference Symposium. University of Texas at Austin.

Sponsored by the Society for Ethnomusicology. Indiana University, Bloomington, Indiana. E-mail [semconf@indiana.edu](mailto:semconf@indiana.edu) or [semexec@indiana.edu](mailto:semexec@indiana.edu), or go to <http://lawlit.blogspot.com/2015/02/cfp-pre-conference-symposium-at-ut.html> or <http://www.ethnomusicology.org>. Call for papers: send 250-word abstracts to Veit Erlmann, [erlmann@utexas.edu](mailto:erlmann@utexas.edu).

**Dec. 2-3, 2015.** IP Counsel Exchange on Post-Grant Patent Challenges at the Patent Trial and Appeal Board: Austin Edition, "A Strategic Guide to Effectively Challenging or Defending Patent Validity at the PTAB." Austin, Texas.

Sponsored by Momentum Event Group, 150 West 95th St., New York. Call 646-807-8555, in-house counsel e-mail [Chip@momentumevents.com](mailto:Chip@momentumevents.com); others e-mail Alexandra Iyer at [Alexandra@momentumevents.com](mailto:Alexandra@momentumevents.com), or go to <http://momentumevents.com>.

**Dec. 3-4, 2015.** Business of IP Asia Forum. Hilton, Hong Kong.

Jointly organised by the HKSAR Government, Hong Kong Trade Development Council and Hong Kong Design Centre. E-mail [bipasia@hktdc.org](mailto:bipasia@hktdc.org), or go to <http://bipasiaforum.com/en/index.htm>.





