

**Fordham Intellectual Property Law Institute
&
Emily C. & John E. Hansen Intellectual Property Institute**

**24th Annual Intellectual Property Law & Policy
Conference**

www.fordhamipconference.com

**Fordham Law School, New York, NY
Thursday and Friday, March 31 - April 1, 2016**

**Hugh C. Hansen
Director**

Learn Debate Have Fun

CONFERENCE PROGRAM

Subject to Change

Wednesday, March 30

Reception & Dinner for Faculty and Sponsors

Reception: Bateman Room at Fordham Law School

6:15 PM to 7:30 PM

Dinner: Constantino A/B/C at Fordham Law School

7:30 PM to 9:00 PM

Sponsored by:

Allen & Overy LLP

Thursday Morning, March 31

Continental Breakfast

Fordham Law School, Bateman Room
7:00 AM – 9:00 AM

Sponsored by:

Crowell & Moring LLP

Registration

Fordham Law School, Soden Lounge
7:00 AM – 8:00 AM

Please note: Doors to Constantino A/B/C will close at 8:00 AM.

Welcoming Remarks:

Thursday 8:00 AM – 8:05 AM
Constantino A/B/C

Prof. Hugh C. Hansen

Fordham University School of Law, New York

SESSION 1: Plenary Session

Thursday 8:10 AM – 1:00 PM
Constantino A/B/C
Overflow: MCR 1-01

1A. Copyright and Trademark: What Does the Future Hold?

Thursday 8:10 AM – 9:40 AM (90 minutes)
Constantino A/B/C
Overflow: MCR 1-01

Moderator:

Prof. Hugh C. Hansen

Fordham University School of Law, New York

(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:

Maria Martin-Prat

Head of Unit – Copyright, DG Connect, European Commission, Brussels
(up to 8 minutes)

Michele Woods

Director, Copyright Law Division, World Intellectual Property Organization, Geneva
Challenges and opportunities in the multilateral environment: Recent WIPO Experiences
· *Multilateral Treaty Developments at WIPO*
· *Developments on the Agenda of the Standing Committee on Copyright and Related Rights*
· *Where Can WIPO Make Progress?*
(up to 8 minutes)

Panel discussion: 10 minutes (speakers, panelists and members of the audience)

Maria Pallante

Register of Copyrights, U.S. Copyright Office, Washington, D.C.
The Copyright Office and the Future of Copyright
(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Dimitris Botis

Deputy Director for Legal Affairs, International Cooperation & Legal Affairs
Department (European Union Intellectual Property Office), Alicante
The future of the EU trademark system
(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Panelists:

Shira Perlmutter

Chief Policy Officer and Director for International Affairs, United States Patent and Trademark Office, Alexandria

Mark Seeley

Senior Vice President and General Counsel, Elsevier, Cambridge, MA

Antony Taubman

Director, Intellectual Property Division, World Trade Organization, Geneva

General discussion: 15 minutes (speakers, panelists and members of the audience)

1B. Patents: Outstanding Legal Issues & Challenges

Thursday 9:50 AM – 11:10 AM (85 minutes)

Constantino A/B/C

Overflow: MCR 1-01

Moderator:

Prof. Hugh C. Hansen

Fordham University School of Law, New York

(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:

Margot Fröhlinger

Principal Director, Patent Law and Multilateral Affairs, EPO, Munich

The Unitary Patent: Outstanding Legal Issues and Challenges

(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

John Alty

Chief Executive and Comptroller General, UK Intellectual Property Office, London

Patent law harmonization: closer than ever

This could be a make-or-break year for patent law harmonisation. This talk will explore why and outline the importance of aligning patent laws in major jurisdictions, recent co-ordinated efforts by both governments and industry to make progress, and why the next steps may be crucial.

(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Hon. Kathleen M. O'Malley

U.S. Court of Appeals for the Federal Circuit, Washington, D.C.

The Growing Interest In and Demands on the Federal Circuit

(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

David J. Kappos

Cravath, Swaine & Moore LLP, New York
Presidential Platform Strong IP Plank
(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Panelist:

Rt. Hon. Prof. Sir Robin Jacob

Faculty of Laws, University College London, London

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 20 minutes (speakers, panelists and members of the audience)

Break

11:10 AM – 11:35 AM

1C. Examination of TPP & TTIP

Thursday 11:35 AM – 1:00 PM (85 minutes)

Constantino A/B/C

Overflow: MCR 1-01

Moderator:

Prof. Hugh C. Hansen

Fordham University School of Law, New York

(up to 5 minutes to introduce the subject matter; intro of speakers –
just name and affiliation, please see bios in print materials and online.)

Speakers:

Probir J. Mehta

Acting Assistant U.S. Trade Representative for Intellectual Property and Innovation,
Office of the United States Trade Representative, Washington D.C.

(up to 12 minutes)

Pedro Velasco Martins

Deputy Head of Unit, Intellectual Property and Public Procurement, DG Trade,
European Commission, Brussels

(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Daren Tang

Chief Executive, Intellectual Property Office of Singapore, Singapore

TPP – Pragmatism, Principles and Predictions

How the structure of the TPP IP chapter and its drafting approach was shaped by the need to accommodate a group of countries that were politically, socially and economically diverse. Perspectives on how governments in Asia view IP's role within their economy, and how the TPP would interact and impact on the development of these views and regimes over the next decade. What implications would the rise of mega-regional FTAs like the TPP and RCEP have on IP norm-making at the multi-lateral level, within institutions like the WTO and WIPO, over the next 5 – 10 years.

(up to 8 minutes)

Barry B. Sookman

McCarthy Tétrault, Toronto

The intellectual property chapter of the TPP may be difficult for the public to understand and to form opinions about. It is even more challenging with the inaccurate descriptions and exaggerated predictions about what it actually requires of countries that decide to ratify the treaty. This can undermine sound public policy decision making. Debates about the IP provisions have also engendered questions about what types of IP protection best position smaller TPP countries to compete globally and whether TPP level IP protection helps or hinders local industries to develop and succeed. These issues have been at the forefront of debates about the TPP in Canada.

(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

James Love

Director, Knowledge Economy International, Washington D.C.

(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Panelists:

Aaron Cooper

Vice President, Strategic Policy Initiatives, BSA, Washington, D.C.

Stevan D. Mitchell

Director, Office of Intellectual Property Rights, International Trade Administration, Washington, D.C.

Steven M. Tepp

President & Chief Executive Officer, Sentinel Worldwide, Washington D.C.

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 15 minutes (speakers and members of the audience)

Lunch

1:00 PM – 2:30 PM

Landmarc @ Time Warner Center

10 Columbus Circle, 3rd Floor

(Enter at the corner of 60th & Broadway)

SESSION 2: PATENT & TRADE SECRETS LAW

Concurrent Session

Thursday 2:45 PM – 6:45 PM

Constantino A/B

2A. Remedies

Thursday 2:45 PM – 3:55 PM (70 minutes)

Constantino A/B

Moderator:

Patricia A. Martone

Law Office of Patricia A. Martone, New York

(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:

Carey R. Ramos

Quinn Emanuel Urquhart & Sullivan, LLP, New York

Cars, Cup Holders and Smartphones: Injunctions for Multi-Function Products.

The smartphone wars have presented the Federal Circuit with the opportunity to clear up the question of when the owner of a patent on a function of a multi-function product can obtain an injunction against the sale of the entire product. So is it clear yet?

(up to 7 minutes)

Panel discussion: 4 minutes (speakers, panelists and members of the audience)

Robert J. Goldman

Ropes & Gray LLP, East Palo Alto

Remedies: Damages: Getting to “yes.”

*In a series of decisions culminating in *Uniloc USA v. Microsoft* (2011), the Federal Circuit explained the types of proofs that were not permissible to establish damages for patent infringement. This has left open the question of what analyses the Federal Circuit would find acceptable. In a series of decisions in the past two years, the Court has begun to answer that question. See, e.g., *Commonwealth Scientific v. Cisco Systems* (2015). Has the Court given litigants and potential litigants enough guidance to value their patent rights, or has the Court set the evidentiary bar somewhere that the parties can never successfully reach?*

(up to 7 minutes)

Panel discussion: 4 minutes (speakers, panelists and members of the audience)

Tina Chappell

Associate General Counsel, Intel Corporation, Washington, D.C.
(up to 7 minutes)

Panel discussion: 4 minutes (speakers, panelists and members of the audience)

Panelists:

Nicholas P. Groombridge

Paul, Weiss, Rifkind, Wharton, & Garrison, New York

Brian H. Pandya

Wiley Rein LLP, Washington, D.C.

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 15 minutes (speakers, panelists and members of the audience)

Break

3:55 PM – 4:20 PM

2B. Trade Secrets

Thursday 4:20 PM – 5:40 PM (80 minutes)

Constantino A/B

Moderator:

John Richards

Ladas & Parry LLP, New York

(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online)

Speakers:

Paul Maier

Director, EU Observatory on Infringements of IP Rights (European Union Intellectual Property Office), Alicante

Latest developments in Trade Secrets in the EU

In November 2013 the EU Commission put forward its proposal for a Directive on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure. The final approval of this new directive is planned in the European Parliament this April. The text will thus have been adopted in less than 3 years which is comparatively rapid given the complexity of the matter and the controversies it brought with it. Many say this is long overdue though

given the importance of TS for businesses. Indeed, recent studies performed by the EU Observatory indicate that TS are one of the most importance protection mechanism for SMEs. The main features of the directive will be presented.”

(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelist and members of the audience)

James Pooley

James Pooley, A Professional Law Corporation, Silicon Valley

Ascendancy of Trade Secrets on Both Sides of the Atlantic

Efforts are underway on both sides of the Atlantic to strengthen trade secret remedies in response to growing industry demand. Are there lessons for the EU in the US experience? What would be the impact of a federal civil claim in the US?

The EU Directive on Trade Secrets is now being negotiated in the European Parliament. The politics are a bit challenging, and reflect the tension between a general, but abstract feeling that the EU is lacking in an increasingly important area (a feeling reinforced by industry) and the usual loss-of-sovereignty fears and lack of understanding at the political level about how IP actually works. In the meantime, the proposed amendment adding a civil claim to the Economic Espionage Act will be reconsidered in this Congress following the positive vote in the House IP subcommittee last year. There was some pointed controversy raised by opposition from a number of law professors, but the legislation looks likely to pass and could have some interesting consequences.

(up to 8 minutes)

Prof. Mark F. Schultz

Southern Illinois University School of Law, Carbondale

Building a Multilateral Dialogue on Best Practices for Reforming and Enforcing Trade Secret Laws

As trade secrets become more important and valuable, enforcement has become more global in nature. Trade secret protection increasingly requires trade secret owners to try to enforce their rights across several borders. The issues of state-sponsored economic espionage and systematic and sophisticated corporate espionage are difficult to address with a single countries domestic laws. These issues have not, and likely cannot be addressed in trade agreements, which deal with trade secrets at a high level. There is a nascent effort to encourage a multilateral, governmental dialogue about best practices for reforming national laws regarding trade secrets and coordinating enforcement activities.

(up to 7 minutes)

Panel discussion: 10 minutes (speakers, panelist and members of the audience)

James K. Stronski

Crowell & Moring LLP, New York

Criminal Prosecution of Trade Secret Theft Under the Economic Espionage Act, 18 USC 1831-37: a Trend in the Cybercrime Age.

Notably, this trend includes the successful prosecution by the U.S. Attorney for the Eastern District of Virginia of a South Korean textile conglomerate, the Kolon Group, for the theft of DuPont's Kevlar®-making trade secrets, resulting in April 2015 in guilty pleas, \$275 million in restitution to DuPont and additional criminal fines of \$85 million. Another example is the 2014 indictment of five alleged Chinese army hackers in the theft of Westinghouse Electric nuclear reactor plans and U.S. Steel secrets concerning international trade litigation. This is but one of several recent indictments involving foreign, mostly Chinese, entities, such as in early 2016, the case brought by the U.S. Attorney for the Eastern District of Pennsylvania charging two GlaxoSmithKline scientists with criminal trade secret theft for giving GSK trade secrets on a new cancer therapy to a Chinese entity. This trend is one that will continue because there is considerable interest and pressure to prosecute trade-secret theft, particularly that involving foreign actors and especially Chinese economic espionage. And in the right case, such as the Kolon case, pursuing the criminal case may be the best option to deter theft and get compensation.

(up to 7 minutes)

Panel discussion: 5 minutes (speakers, panelist and members of the audience)

Panelist:

Victoria A. Cundiff

Paul Hastings LLP, New York

Thomas D. Pease

Quinn Emanuel Urquhart & Sullivan, LLP, New York

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 13 minutes (speakers, panelist and members of the audience)

2C. U.S. Patent Law: Recent Developments

Thursday 5:45 PM – 6:55 PM (70 minutes)

Constantino A/B

Moderator:

Prof. Martin J. Adelman

The George Washington University Law School, Washington, D.C.

(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:

Dimitrios T. Drivas

White & Case LLP, New York

Current Developments in U.S. Patent Law

An overview of the developments since last year's conference and in particular patent cases decided and pending before the U.S. Supreme Court and important decision of the Federal Circuit.

(up to 25 minutes)

Panelists:

Nicholas P. Groombridge

Paul, Weiss, Rifkind, Wharton, & Garrison, New York

Matthew Siegal

Stroock & Stroock & Lavan LLP, New York

Peter B. Silverman

Kirkland & Ellis LLP, New York

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 30 minutes (speakers, panelists and members of the audience)

SESSION 3: COPYRIGHT LAW

Concurrent Session

Thursday 2:45 PM – 6:55 PM

MCR 1-01

3A. EU Copyright Reform & Digital Single Market

Thursday 2:45 PM – 4:00 PM (75 minutes)

MCR 1-01

Moderator:

Ted Shapiro

Wiggin, Brussels

(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:

Maria Martin-Prat

Head of Unit—Copyright, DG Connect, European Commission, Brussels
(up to 8 minutes)

Stanford McCoy

President & Managing Director, Motion Picture Association EMEA, Brussels
Europe’s Digital Single Market: Are Exclusive Rights in Danger
On December 9, the European Commission announced a package of copyright initiatives under the banner of the Digital Single Market. This talk analyzes key elements of the communication, spotting issues that may raise concerns or opportunities for those whose businesses and livelihoods rely on exclusive rights in the EU.
(up to 8 minutes)

Panel discussion: 10 minutes (speakers, panelists and members of the audience)

Tom Rivers

Copyright Consultant, London
A Private Copying Exception that Failed—the UK Case
Article 5 of the EU Information Society Directive of 2001 permits Member States to retain or introduce a private copying exception. However, the UK did not introduce such an exception until October 2014. The scope of the UK exception was extremely narrow because the government wished to be able to justify the fact that no compensation was payable under the exception. The Musicians’ Union and other rightsowners appealed for judicial review, and in July 2015 the court quashed the exception. This contribution analyses the reasons for the court’s decision and considers some of the possible consequences.
(up to 5 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Panelists:

John Alty

Chief Executive and Comptroller General, UK Intellectual Property Office, London

Carlo Scollo Lavizzari

Lenz Caemmerer, Basel

Dr. Eleonora Rosati

University of Southampton, e-LAWnora, and IPKat, London

Jerker Rydén

Senior Legal Advisor, National Library of Sweden, Stockholm

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 20 minutes (speakers, panelists and members of the audience)

Break

4:00 PM – 4:25 PM

3B. ISP Liability

Thursday 4:25 PM – 5:30 PM (65 minutes)

MCR 1-01

Moderator:

Nicholas Bartelt

Senior Fellow, Fordham IP Institute, New York

(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:

Karyn Temple Claggett

Associate Register of Copyrights and Director of Policy & International Affairs, United States Copyright Office, Washington, D.C.

ISP Safe Harbors—Time for a Change?

Many countries have considered various ways to address online infringement through methods aimed at facilitating cooperation between internet service providers (ISPs) and content creators. In the United States, this is done through the notice and take down system and limitations on remedies approach found in the Digital Millennium Copyright Act (DMCA). Since the DMCA's enactment in 1998, however, the online world has undergone massive changes, and some suggest that the DMCA is no longer working effectively either for rights holders or ISPs. The U.S. Copyright Office will discuss the new study it has initiated on this subject, and areas that may appear ripe for consideration in light of technological changes, case developments, and other international regimes.

(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Hon. Mr. Justice Birss

Chancery Division, High Court, London

Experience of web blocking in the UK

Website blocking orders may be one of the most controversial remedies available in intellectual property law. The theories of infringement on which many of these orders are based test the boundaries of tort law. This talk will discuss the recent

developments in the English courts with a focus on these theories and also address recent extensions to the jurisdiction and some practical problems.
(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Caleb Donaldson

Copyright Counsel, Google, Mountain View

Takedown Tightrope -- The competing demands of DMCA takedowns at scale
How does the DMCA takedown process play out under extreme circumstances? How best can we work together to fight piracy? Lessons from Google's vast and varied experience.

(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Panelists:

Eric C. Osterberg

Osterberg LLC, Boston

Barry B. Sookman

McCarthy Tétrault LLP, Toronto

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 15 minutes (speakers, panelists and members of the audience)

3C. U.S. Copyright Developments

Thursday 5:35 PM – 6:55 PM (80 minutes)

MCR 1-01

Moderator:

Michael Loney

Managing Intellectual Property, New York

(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speaker:

David A. Donahue

Fross Zelnick Lehrman & Zissu, P.C., New York

Copyright in Audiovisual Works After Garcia and 16 Casa Duce LLC
Recent decisions of the U.S. Court of Appeals for the Second and Ninth Circuits, respectively, addressed the question of who owns the copyright in a creative

contribution embodied within a collaborative audiovisual work in the absence of a work-for-hire agreement. I will discuss the policy reasons behind those decisions and how the decisions may influence future copyright ownership disputes involving works produced outside Hollywood.

(up to 6 minutes)

Prof. Susan Scafidi

Fordham University School of Law, New York

Varsity Brands

(up to 6 minutes)

Panel discussion: 10 minutes (speakers, panelists and members of the audience)

Shira Perlmutter

Chief Policy Office and Director for International Affairs, United States Patent and Trademark Office, Alexandria

(up to 8 minutes)

Prof. Sandra Aistars

George Mason University School of Law, Arlington

Why copyright office modernization would benefit individual authors

Modernizing the office could bring substantial improvements in how individual authors are able to protect and commercialize their copyrights through

1) improving the registration and recordation process so it encourages more authors to register their rights and 2) enabling a small claims adjudication process that encourages speedy and effective resolution of claims under \$30k. These improvements would in turn benefit the entire stakeholder community and the public at large by making information about the marketplace of copyrighted works more readily accessible and making copyright owners easier to find for those who wish to use their works. addressing small claims outside the federal courts would likewise benefit the public by lowering the costs of resolving claims and reducing the need to rely on statutory damages.

(up to 6 minutes)

Panel discussion: 7 minutes (speakers, panelists and members of the audience)

Prof. Ann Bartow

University of New Hampshire School of Law, Concord, NH

Copyright Misuse

Copyright Misuse is a doctrine aimed at punishing overreaching by copyright holders. This topic discusses recent copyright misuse cases in the United States and looks at the development of copyright misuse or similar constructs in select foreign

jurisdictions. Though rarely referenced by name in judicial opinions, the precepts of the copyright misuse doctrine find their way into a variety of cases in which it appears as though a plaintiff is using copyright laws to thwart competition rather than to protect original and creative works from infringement.
(up to 7 minutes)

Panelists:

Panelists to be Announced

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 15 minutes (speakers, panelists, and members of the audience)

SESSION 4: MULTILATERAL DEVELOPMENTS

Concurrent Session

Thursday 2:45 PM – 6:55 PM

Constantino C

4A. Multilateral Developments: WTO, WIPO, et al.

Thursday 2:45 PM – 4:15 PM (90 minutes)

Constantino C

Moderator:

Dr. Mihály Ficsor

Honorary President, Hungarian Copyright Council; International Legal Consultant, Budapest

(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:

Antony Taubman

Director, Intellectual Property Division, World Trade Organization, Geneva

TRIPS attains 21: age of majority, or time for early retirement?

Since the WTO TRIPS Agreement came into force 21 years ago, the black-letter text of the treaty has been more or less static, but its policy, technological and trade contexts have been thoroughly transformed - as has the very field of IP, along with its 'trade-relatedness.' Depending on how you count them, later bilateral and regional agreements treating the same territory as TRIPS number well into the hundreds. Was TRIPS the last IP treaty of the analogue age, or does it have enduring legitimacy and utility in a digital, pluralistic century? A member of the WTO Secretariat predictably opts for the latter....

(up to 8 minutes)

Panel discussion: 5 minutes (speakers and members of the audience)

Michele Woods

Director, Copyright Law Division, World Intellectual Property Organization, Geneva

Marrakesh Treaty Entry Into Force in 2016: What Happens Next?

- *Progress toward entry into force*
- *How does implementation work for a limitations and exceptions treaty?*
- *Cross-border challenges*

(up to 8 minutes)

Panel discussion: 5 minutes (speakers and members of the audience)

Weerawit Weeraworawit

Former Deputy Secretary-General of the National Human Rights Commission,
Bangkok, Thailand

Multilateral Treaties in a Hostile World: What Does the Future Hold?

(up to 8 minutes)

Panel discussion: 5 minutes (speakers and members of the audience)

Prof. Irene Calboli

Visiting Professor, Singapore Management University School of Law, Singapore;
Texas A&M University School of Law, Fort Worth

*Geographical Indications at the Crossroads of International Trade and Politics or
A CETA-Style Way Forward to Resolve the Controversy on Geographical
Indications?*

In 2015 and early 2016, the controversy on geographical indications (GIs) has taken a center stage in international trade negotiations, including in the Trans-Pacific Partnership Agreement (TPP) and the Transatlantic Trade and Investment Partnership (TTIP), and at the multilateral level with the adoption of the Geneva Act of the Lisbon Agreement in May 2015. In her presentation, Professor Calboli will argue in favor of a compromising solution to the GI controversy modelled after the Canada and European Union Comprehensive Economic and Trade Agreement (CETA). CETA, she will support, represents a win-win solution both for Canada and the European Union (EU) and a CETA-type solution should be adopted also as part of the negotiations between the EU and the United States in the TTIP, and in future trade negotiations including the regulation of GIs. Ultimately, finding a solution to the GI controversy has become imperative in international trades considering that GI protection is increasingly relevant, and supported, no longer only by the EU but also by many countries in Asia, South America, and Africa. Moreover, GIs will soon become more relevant beyond the agricultural and food sectors, as the proposal for protecting non-agricultural GIs currently pending in the EU demonstrates.

(up to 8 minutes)

Panel discussion: 5 minutes (speakers and members of the audience)

General discussion: 15 minutes (speakers and members of the audience)

Break

4:15 PM – 4:40 PM

4B. IP and the Political Landscape

Thursday 4:40 PM – 6:55 PM (135 minutes)
Constantino C

A. NEW PERILS OF TREATY IMPLEMENTATION

Moderator:

Steven J. Metalitz

Mitchell Silberberg & Knupp LLP, Washington, D.C.
(up to 5 minutes to introduce the subject matter, intro of speakers-just name and affiliation, please see bios in print materials and online.)

Speaker:

Shira Perlmutter

Chief Policy and Director for International Affairs, United States Patent and Trademark Office, Alexandria
(up to 8 minutes)

Commentator:

Prof. Justin Hughes

Loyola Law School, Los Angeles
(up to 5 minutes)

Panel discussion: 10 minutes (speakers, panelists, and members of the audience)

Speaker:

Howard P. Knopf

Marcena & Jarzyna LLP, Ottawa, Canada
(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists, and members of the audience)

Panelist:

James Love

Director, Knowledge Ecology International, Washington D.C.

Prof. Adam Mossoff

George Mason University School of Law, Washington, D.C.

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 13 minutes (speakers, panelists, and members of the audience)

Change of panel: 5 minutes

B. ASIA AND THE POLITICAL LANDSCAPE: A ROUNDTABLE DISCUSSION

Moderator:

Steven J. Metalitz

Mitchell Silberberg & Knupp LLP, Washington, D.C.
(up to 5 minutes to introduce the subject matter, intro of speakers-just name and affiliation, please see bios in print materials and online.)

Panelists:

Benjamin Bai

Allen & Overy LLP, Shanghai

Prof. Mark Cohen

Fordham University School of Law, New York

Weerawit Weeraworawit

Former Deputy Secretary-General of the National Human Rights Commission,
Bangkok, Thailand

Prof. Peter K. Yu

Texas A&M University School of Law, Fort Worth

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 25 minutes (panelists and members of the audience)

Change of panel: 5 minutes

C. IP AND THE POLITICAL LANDSCAPE: EUROPE

Moderator:

Steven J. Metalitz

Mitchell Silberberg & Knupp LLP, Washington, D.C.
(up to 5 minutes to introduce the subject matter, intro of speakers-just name and affiliation, please see bios in print materials and online.)

Speaker:

Anna Carboni

Redd Solicitors LLP, London

Brexit: what that would mean for the EUTM?

The UK will hold a referendum on June 23 to decide whether to stay in or leave the European Union. Up to 25% of voters are still undecided. A vote for Brexit will expel the UK from the newly-revamped EUTM system. There will have to be a mechanism

to split (old) EUTMs into a (new) EUTM plus a UKTM, but how much will that cost, and what if the registrations are over 5 years old and are un-used in the UK? Would this be the end of pan-EU injunctions out of the UK courts; and would case law eventually diverge? And what about the UK firms that have built their business off the back of the C/EUTM? Will they be able to negotiate a special exception to the usual representation rules before the EU IPO or will they have to rush to set up offices in the new EU or merge with local firms in order to continue? Presumably the UK IPO will be a winner – or will it, once it loses its contributions from the EU IPO? These are just some of the known unknowns, but what about the unknown unknowns....?
(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists, and members of the audience)

Panelists:

Dr. Mihály Ficsor

Honorary President, Hungarian Copyright Council; International Legal Consultant, Budapest

Lord Hoffmann

Queen Mary University of London, London

James Nurton

Managing Intellectual Property, London

David Por

Allen & Overy LLP, Paris

Prof. Peter Ruess

International School of Management, Frankfurt; Arnold Ruess, Düsseldorf

Ted Shapiro

Wiggin, Brussels

Justin Watts

Freshfields Bruckhaus Deringer LLP, London

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 25 minutes (speakers, panelists, and members of the audience)

Friday Morning, April 1

Continental Breakfast

Fordham Law School, Bateman Room/Soden Lounge
7:00 AM – 9:00 AM

Sunrise Seminars

I. Setting Patent Policy

Friday 7:30 AM – 8:50 AM (80 minutes)
Constantino A/B

Moderator:

David J. Kappos

Cravath, Swaine & Moore LLP, New York
(up to 5 minutes to introduce the subject matter; intro of speakers –
just name and affiliation, please see bios in print materials and online.)

Speakers:

Patricia A. Martone

Law Office of Patricia A. Martone, P.C.
When patent reform is driven by politics and not sound patent policy, the patent system suffers. This presentation will provide an overview of how and why recent patent reform in Congress, the United States Patent and Trademark Office and the Courts has damaged the United States patent system, sometimes unintentionally, to the detriment of inventors, corporations of every size, investors and even tax payers. The presentation will conclude by suggesting lessons learned and thoughts for going forward.
(up to 8 minutes)

Aaron Cooper

Vice President, Strategic Policy Initiatives, BSA, Washington, D.C.
Understanding the factors that drive patent legislation in Congress
Congress has taken significant steps toward amending the patent law in each of the last ten years. Soon after the six year process that led to enactment of the Leahy-Smith America Invents Act in 2011, a new push for legislation began. The House of

Representatives quickly passed the Innovation Act in 2013 with 325 votes and many predicted it would swiftly become law. This talk will identify (1) what motivates patent legislation in Congress, (2) why predictions that the Innovation Act would quickly get to the President's desk were wrong, and (3) what is next for patent legislation in the United States.

(up to 8 minutes)

Panel discussion: 10 minutes (panelists and members of the audience)

Hon. Sharon Prost

Chief Judge, U.S. Court of Appeals for the Federal Circuit, Washington, D.C.

Challenges Facing the Federal Circuit Over the Next Ten Years

(up to 8 minutes)

Panel discussion: 5 minutes (panelists and members of the audience)

Panelists:

Rt. Hon. Prof. Sir Robin Jacob

Faculty of Laws, University College London, London

Hon. Kathleen M. O'Malley

U.S. Court of Appeals for the Federal Circuit, Washington, D.C.

Margot Fröhlinger

Principal Director, Patent Law and Multilateral Affairs, EPO, Munich

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 25 minutes (speakers, panelists and members of the audience)

II. Industrial Policy & IP in China: The New Reality

Friday 7:30 AM – 8:50 AM (80 minutes)

MCR 1-01

Moderator:

Hon. Mr. Justice Birss

Chancery Division, High Court, London

(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:

Hon. Mr. Justice Birss

Chancery Division, High Court, London

Why engage with China on intellectual property?

In recent years the UK government has been sending a number of IP judges to China. There is an annual UK-China IP Symposium. I will describe the work that has been done, both in China and in the UK, to engage with the Chinese judicial system and try to answer the simple question – does it do any good?

(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Prof. Eleanor M. Fox

New York University School of Law, New York

When Royalty Rates Violate China's Anti-Monopoly Law: Global Repercussions of Divergent National Law

China has brought antitrust challenges to royalty rates charged for essential or important IP used in end products sold internationally. The relief required may be global. Is this initiative competition policy or industrial policy, or are the two bound together? What is legitimate and illegitimate industrial policy under the aegis of antitrust, and how should we handle the worldwide repercussions in the absence of international rules?

(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Prof. Mark Cohen

Fordham University School of Law, New York

(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Prof. Eric Priest

University of Oregon School of Law, Eugene, OR

Dawn of the Copyright Licensing Age in China's Music, Film, and Publishing Industries

(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Panelists:

Prof. Ann Bartow

University of New Hampshire School of Law, Concord, NH

Benjamin Bai

Allen & Overy, Shanghai

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 15 minutes (speakers, panelists and members of the audience)

1D. Views from the Judiciary

Friday 9:00 AM – 10:30 AM (90 minutes)

Constantino A/B

Overflow: MCR 1-01

Moderator:

Prof. Hugh C. Hansen

Fordham University School of Law, New York

(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Panelists:

Hon. Annabelle Bennett

Federal Court of Australia, Sydney

Hon. Mr. Justice Birss

Chancery Division, High Court, London

Hon. Mr. Justice Carr

Chancery Division, High Court, London

Hon. Dr. Klaus Grabinski

Federal Supreme Court, Karlsruhe

Hon. Koji Hasegawa

Tokyo District Court, IP Division, Tokyo

Lord Hoffmann

Queen Mary University of London, London

Rt. Hon. Prof. Sir Robin Jacob

Faculty of Laws, University College London, London

Hon. Rian Kalden

Court of Appeal of The Hague, The Hague

Hon. Maria Eugénia Martins de Nazaré Ribeiro

President of Chamber, General Court of the European Union, Luxembourg

Hon. Pauline Newman

U.S. Court of Appeals for the Federal Circuit, Washington, D.C.

Hon. Kathleen M. O'Malley

U.S. Court of Appeals for the Federal Circuit, Washington, D.C.

Hon. Sharon Prost

Chief Judge, U.S. Court of Appeals for the Federal Circuit, Washington, D.C.

Hon. Diane Wood

Chief Judge, U.S. Court of Appeals for the Seventh Circuit, Chicago

General discussion: 85 minutes (speakers, panelists and members of the audience)

Break

10:30 AM – 10:40 AM (Competition Track)

10:30 AM – 10:45 AM (Patent & Trademark Tracks)

Friday Morning, April 1

SESSION 5: PATENT LAW

Concurrent Session

Friday 10:45 AM – 1:10 PM

Constantino A/B

5A. Second Medical Use

Friday 10:45 AM – 11:50 AM (65 minutes)

Constantino A/B

Moderator/Speaker:

Brian Cordery

Bristows LLP, London

Introduction of Subject Matter

2015 witnessed many important developments in the field of second medical use patents in Europe. Pregabalin grabbed most of the headlines but there were important developments in the pemetrexed and zoledronic acid cases too. This brief presentation will not go into the facts of these cases but will address practical issues such as relief and steps that other stakeholders are now taking to ensure that the legal exclusivity for the protected indication is respected whilst the non-protected indications are open to competition.

(up to 7 minutes)

Speakers:

Rt. Hon. Prof. Sir Robin Jacob

Faculty of Laws, University College London, London

What happens if you can't patent innovation – the case of pharmaceuticals

(up to 7 minutes)

Panel discussion: 5 minutes (speakers, panelist and members of the audience)

Hon. Rian Kalden

Court of Appeal of The Hague, The Hague

Claim construction of 2nd medical use claims

Should 2nd medical use claims and EPC 2000 claims have a different scope of protection or not?

(up to 6 minutes)

Marleen van den Horst

BarentsKrans, The Hague

Enforcing second medical use claims: what needs to be done?

Respecting valid patents rights is important, but enforcement should not lead to blocking free indications and result in abuse. Alternative solutions?

(up to 6 minutes)

Dr. Christine Kanz

HOYNG ROKH MONEGIER, Düsseldorf

Second Medical Use Claims – not a patent law issue?

Patent law may not be the solution to every aspect of enforcing second medical use claims. Regulatory law and the practice of tenders, prescriptions etc. also should provide solutions.

(up to 6 minutes)

Panel discussion: 15 minutes (speakers, panelist and members of the audience)

Panelists:

Mark Ridgway

Allen & Overy, London

Jürgen Dressel

Novartis Pharma AG, Basel

(Panelists have no individual time allocated; they take part in the general discussion.)

5B. Patent Potpourri

Friday 11:55 AM – 1:10 PM (75 minutes)

Constantino A/B

Moderator:

Justin Watts

Freshfields Bruckhaus Deringer LLP, London

(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:

Hon. Koji Hasegawa

Tokyo District Court, IP Division, Tokyo

Recent IP Litigation Practice in Japan

Procedure and practice in Japan are substantially different from those in the United States. We have no jury trials and judges play an active role in case management. I would like to describe the outline of how, when and what kind of remedies patentees can obtain based on recent cases at the Tokyo District Court.

(up to 7 minutes)

Panel discussion: 4 minutes (speakers, panelists and members of the audience)

Dr. Simon Holzer

Meyerlustenberger Lachenal, Zurich

Switzerland navigating through the European patent landscape

Switzerland's Swiss Patent Court started its work in 2012, taking over jurisdiction from 26 individual cantonal courts. Although Switzerland is not a member of the European Union and will not participate in the new Unified Patent Court (UPC) system it is very much influenced by the European patent case law as can be seen by the example of the Swiss interpretation of the doctrine of equivalence.

(up to 7 minutes)

Panel discussion: 4 minutes (speakers, panelists and members of the audience)

John Richards

Ladas & Parry LLP, New York

In Lexmark v Impression, the Federal Circuit en banc affirmed earlier controversial decisions in Mallickrod v. Medipart that breach of a restriction imposed by the patentee on the first purchaser of a patented item from the patentee could negate the normal application of the doctrine of patent exhaustion and in Fuji v. Jazz Photo that sales by the patentee outside the United States did not create an exhaustion within the United States. Both earlier decisions have been heavily criticized as ignoring the normal rule that once a chattel has been sold with full title, the purchaser can do what he or she wishes with that chattel because to hold otherwise would be a restraint on trade. On March 21, Impression filed a petition for certiorari. The presentation will consider the interaction between the patent law and doctrines relating to restraints on trade in the context of patent exhaustion.

(up to 7 minutes)

Panel discussion: 4 minutes (speakers, panelists and members of the audience)

Janet Freilich

Qualcomm Postdoctoral Fellow in Private Law and Intellectual Property, Harvard Law School, Cambridge

Pushing Patent Boundaries: An Empirical Assessment of How Patent Trolls and Other Litigants Use Patent Scope

This presentation will provide the first empirical assessment of whether NPE plaintiffs win using dependent or independent patent claims. Counter-intuitively, non-practicing entities are significantly more likely to win patent litigation using dependent claims, despite a reputation for abusing patent breadth. This suggests that NPEs strategically select patents squarely centered on the infringing behavior. The question raised, but not answered by this research, is how, if at all, current views about the role of NPEs should be recalibrated to take this empirical data into account.

(up to 7 minutes)

Panel discussion: 4 minutes (speakers, panelists and members of the audience)

Hon. Pauline Newman

U.S. Court of Appeals for the Federal Circuit, Washington, D.C.

(up to 7 minutes)

Generalist Judges and Specialized Agencies – Past, Present, and Future

Panel discussion: 4 minutes (speakers, panelists and members of the audience)

General discussion: 10 minutes (speaker, panelist and members of the audience)

SESSION 6: COMPETITION

Concurrent Session

Friday 10:40 AM – 1:10 PM

MCR 1-01

6A: Competition & IP

Friday 10:40 AM – 11:50 AM (70 minutes)

MCR 1-01

Moderator:

Prof. Hugh C. Hansen

Fordham University School of Law, New York

(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:

Renata B. Hesse

Deputy Assistant Attorney General, U.S. Department of Justice, Washington, D.C.
(up to 8 minutes)

Prof. William E. Kovacic

The George Washington University Law School, Washington D.C.
Department of Justice, Federal Trade Commission, and SEPs
(up to 8 minutes)

Panel discussion: 10 minutes (speakers, panelists and members of the audience)

Koren W. Wong-Ervin

Director, The Global Antitrust Institute, George Mason University School of Law,
Arlington
(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Panelists:

Hon. Annabelle Bennett

Federal Court of Australia, Sydney

Prof. Eleanor M. Fox

New York University School of Law, New York

Hon. Diane Wood

Chief Judge, U.S. Court of Appeals for the Seventh Circuit, Chicago

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 15 minutes (speakers, panelists and members of the audience)

6B. FRAND/Standard Essential Patents

Friday 11:55 AM – 1:10 PM (75 minutes)

MCR 1-01

Moderator:

Prof. Daryl Lim

The John Marshall Law School, Chicago
(up to 5 minutes to introduce the subject matter; intro of speakers –
just name and affiliation, please see bios in print materials and online.)

Speakers:

Prof. Norman V. Siebrasse

University of New Brunswick Law School, Fredericton

The Value of the Standard

It is a generally accepted principle that a FRAND royalty should reflect only the value of the patented feature, not the value of the standard itself. One well-known approach to determining the value of the patented feature is to assess what the incremental value of the patented technology was over the best alternative, before the standard was adopted. This presentation will suggest that this “incremental ex ante” approach does not provide an adequate incentive to invent, and it is preferable to allow the SEP holder to capture some part of the value arising from network effects when a standard is adopted.

(up to 8 minutes)

Panel discussion: 5 minutes (speaker and members of the audience)

Daniel Hermele

Qualcomm, London

The damaging effects of the IEEE-SA Patent Policy changes on open, FRAND-based standardization

On 15 March 2015, the Institute of Electrical and Electronic Engineers - Standards Association (IEEE-SA) brought into effect a new patent policy that has radically changed the meaning of Fair, Reasonable and Non-Discriminatory (FRAND) licensing assurances made by developers of IEEE standards for their patents essential to implement those standards. In a nutshell, the IEEE-SA patent policy changes make “FRAND” stand for “fragment and delay” by: i) fragmenting patent portfolio licensing by the developers of IEEE standards, and thereby ii) enabling implementers to delay from taking FRAND licenses while implementing those standards to the benefit of their businesses. This would deprive innovators of a fair return on their investments in developing IEEE standards, and has already had a negative impact on standards development at IEEE.

(up to 8 minutes)

Panel discussion: 5 minutes (speaker and members of the audience)

Prof. Rafal Sikorski

Adam Mickiewicz University in Poznań, Poznań

European Union Developments

(up to 8 minutes)

Panel discussion: 5 minutes (speaker and members of the audience)

Panelists:

Renata B. Hesse

Deputy Assistant Attorney General, U.S. Department of Justice, Washington, D.C.

Dina Kallay

Director, Intellectual Property & Competition, Ericsson, Washington, D.C.

Dr. Tobias Hahn

HOYNG ROKH MONEGIER, Düsseldorf

Cordula Tellmann-Schumacher

Arnold Ruess, Düsseldorf

Ari Laakkonen

Powell Gilbert LLP, London

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 20 minutes (speakers, panelists and members of the audience)

SESSION 7: TRADEMARK LAW AND ENFORCEMENT

Concurrent Session

Friday 10:45 AM – 1:10 PM

Constantino C

7A. U.S. Trademark Update

Friday 10:45 AM – 11:45 AM (60 minutes)

Constantino C

Moderator:

Zachary Slates

Assistant Director, Fordham Intellectual Property Institute, New York

(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:

Prof. Marshall Leaffer

Maurer School of Law, University of Indiana, Bloomington

U.S. TM Update

(up to 15 minutes)

Panel discussion: 10 minutes (speakers, panelist and members of the audience)

Hon. Susan M. Richey

Deputy Chief Administrative Trademark Judge, U.S. Patent and Trademark Office,
Alexandria
(up to 10 minutes)

Panel discussion: 5 minutes (speakers, panelist and members of the audience)

Panelists:

Daniel R. Bereskin, Q.C.

Bereskin & Parr LLP, Toronto

Laura Popp-Rosenberg

Fross Zelnick Lehrman & Zissu, P.C., New York

Prof. Peter Ruess

International School of Management, Frankfurt; Arnold Ruess, Düsseldorf

(Panelists have no individual time allocated; they take part in the general discussion.)

7B. Copyright & Trademark Enforcement

Friday 11:50 AM – 1:10 PM (80 minutes)

Constantino C

Moderator:

N. Cameron Russell

Executive Director, Center for Law and Information Policy, Fordham University
School of Law, New York

(up to 5 minutes to introduce the subject matter; intro of speakers –
just name and affiliation, please see bios in print materials and online.)

Speakers:

Paul Maier

Director, EU Observatory on Infringements of IP Rights (European Union Intellectual
Property Office), Alicante

***The New Transit Provision of Reg 2015/2424 on the EU Trademark: Necessary tool
or Governmental Overreaching?***

*The new provision is criticized as being insufficient by the right holders and on the
other hand many say that it is not compatible with the TRIPS – WTO provisions.
Transit is one of the main problems in the fight against trade in counterfeits. The
subject of the transit provision was one of the really controversial ones during the*

negotiations of the new regulation. The question is whether the result is a good one or not.

(up to 7 minutes)

Panel discussion: 4 minutes (speakers, panelists and members of the audience)

Gareth Dickson

Cooley LLP, London

UDRP and Other Acronyms: Reshaping Online Rights Protection Through ADR

The stability of the Uniform Domain Name Dispute Resolution Policy (UDRP) has enabled thousands of rights owners to protect their rights online. Whether that stability is in tension with—or even should foreclose—efforts to amend the UDRP is being debated at ICANN and will influence the future of online rights protection mechanisms. This talk will show rightsholders how they can, and why they must, be involved in that debate.

(up to 7 minutes)

Panel discussion: 4 minutes (speakers, panelists and members of the audience)

Matthew Dean Stratton

Corporate Counsel, Elsevier, New York

Global Anti-Piracy Strategies in the Digital Era

Piracy is a global and expanding threat for copyright industries. Strategic litigation, takedowns, and legislative efforts are essential, complementary components of an effective anti-piracy strategy.

(up to 7 minutes)

Panel discussion: 4 minutes (speakers, panelists and members of the audience)

Laura Popp-Rosenberg

Fross Zelnick Lehrman & Zissu, P.C., New York

Are Injunctions an Endangered Species in U.S. Trademark Enforcement?

Ever since the Supreme Court's decision in the patent case eBay v. MercExchange, LLC, 547 U.S. 388 (2006), injunctions have been increasingly difficult for trademark owners to procure, especially at the preliminary injunction stage, but also even after full judgment in the trademark owner's favor. The injunction landscape again possibly shifted with the Ninth Circuit's decision in La Quinta Worldwide LLC v. Q.R.T.M., S.A. de C.V., 762 F.3d 867 (9th Cir. Aug. 6, 2014), which held that the parties' coexistence in Mexico had to be factored into a weighing of the equities before an injunction could be granted in the U.S. Given the dual purpose of trademark law – to protect the public as well as the trademark owner's investment –

does it make sense that injunctions should no longer be a standard remedy in trademark cases? The answer is clearly “no.”
(up to 7 minutes)

Panel discussion: 4 minutes (speakers, panelists and members of the audience)

Folarin Williams

Chief Rotimi Williams’ Chambers, Lagos

The challenge of enforcing Intellectual Property rights in an emerging economy - a Nigerian Perspective

From the faking of Pharmaceutical products to the pirating of local films and music . The challenges that face the enforcement of intellectual property rights in Nigeria are immense. New solutions are required to bring about progress in the key economic areas that only survive when IP rights are respected.

(up to 7 minutes)

Panel discussion: 4 minutes (speakers, panelists and members of the audience)

Panelists:

Christian W. Liedtke

Acuminis PC, Costa Mesa

Dr. Marcus von Welser

Vossius & Partner, Munich

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 15 minutes (speakers, panelists and members of the audience)

SESSION 8: COMPETITION; PATENT LAW

Concurrent Session

Friday 2:45 PM – 6:55 PM

Constantino A/B

8A. Pharma, IP & Competition

Friday 2:45 PM – 3:40 PM (55 minutes)

Constantino A/B

Moderator:

Prof. Daryl Lim

The John Marshall Law School, Chicago

(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speaker:

David Por

Allen & Overy LLP, Paris

EU Developments

(up to 10 minutes)

Panel discussion: 5 minutes (speaker and members of the audience)

Prof. Scott Hemphill

New York University School of Law, New York

U.S. Developments

(up to 10 minutes)

Panel discussion: 5 minutes (speaker and members of the audience)

Panelists:

Logan M. Breed

Hogan Lovells, Washington, D.C.

Prof. William E. Kovacic

The George Washington University Law School, Washington, D.C.

Wolrad Waldeck

Freshfields Bruckhaus Deringer LLP, Düsseldorf

Koren W. Wong-Ervin

Director, The Global Antitrust Institute, George Mason University School of Law, Arlington

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 12 minutes (speakers, panelists and members of the audience)

8B. Unified Patent Court

Friday 3:45 PM – 5:00 PM (75 minutes)

Constantino A/B

Moderator:

David Perkins

JAMS International, London

(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:

Hon. Dr. Klaus Grabinski

Federal Supreme Court, Karlsruhe

Expert Evidence before the UPC – Common, Continental Law Style or the Best of Both Worlds?

(up to 10 minutes)

Panel discussion: 5 minutes (panelists and members of the audience)

Jan-Diederik Lindemans

Crowell & Moring LLP, Brussels

Will the Unified Patent Court be troll-proof?

Undoubtedly some forms of 'patent trolling' currently exist in Europe. Although it is unclear what the exact extent and impact of these practices is, it is clear that they are far less significant than in the United States. This is largely due to the characteristics of the existing European patent litigation system (a hotchpotch of applicable legal regimes, small(er) markets, no pan-European measures, etc.). UPC litigation will in many ways change the current system to resemble more U.S.-style patent litigation.

The question therefore arises: will the introduction of the UPC see an increase in U.S.-style patent trolling in Europe?

(up to 10 minutes)

Panel discussion: 5 minutes (panelists and members of the audience)

Miquel Montaña

Clifford Chance, Barcelona

IS SPAIN DIFFERENT?

·Will Spain remain outside of the European patent with unitary effect and the UPC, or finally join the project?

·Is the new Spanish Patent Act aligned with the standards of contemporary patent law?

(up to 10 minutes)

Panel discussion: 5 minutes (panelists and members of the audience)

Panelists:

John B. Pegram

Fish & Richardson, New York

David Rosenberg

VP, Corporate IP Policy, GSK, Brentford, UK

Justin Watts

Freshfields Bruckhaus Deringer LLP, London

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 17 minutes (speakers, panelists and members of the audience)

Break

5:00 PM – 5:25 PM

8C. Patentable Subject Matter

Friday 5:25 PM – 6:55 PM (90 minutes)

Constantino A/B

Moderator:

Trevor Cook

WilmerHale, New York

(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:

Lord Hoffmann

Queen Mary University of London, London

The US Preoccupation with Patentability after Alice

(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

James Moore Bollinger

Troutman Sanders LLP, New York

The Demise of Selected Software Patents in the Crucible of Prometheus / Alice Rulings

The unanimous decision by the Supreme Ct in CLS Bank v Alice nearly two years ago has quickly led to the invalidity of dozens of litigated patents on improper subject matter grounds. As this study confirms, this is the tip of the iceberg; in the current environment, nearly every software patent is now vulnerable to an “Alice” challenge; every computer related patent application faces a hostile examiner; and the asset value of existing software patents continue to plummet. We analyze the fundamental shift in select industries and note where the impact has been greatest and where, surprising, its impact has been more attenuated.

(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Prof. Joshua D. Sarnoff

DePaul University College of Law, Chicago

Patent Eligibility of BioPharma after Alice in light of Ariosa

This talk will address the current case law and PTO guidance, and where things are headed in the US for eligibility in this area (unlike in some other countries).

(up to 8 minutes)

Prof. Adam Mossoff

George Mason University School of Law, Washington, D.C.

Rescuing Innovation in the Life Sciences: A Path Forward Under the Mayo/Alice Test

Following the United States Supreme Court’s decisions in Mayo v. Prometheus (2012) and Alice Corp. v. CLS Bank (2014), patented innovation in the life sciences has been subjected to what is now known as the Mayo/Alice two-step test as to what counts as patentable subject matter under § 101 of the Patent Act. Unfortunately, courts and the U.S. Patent & Trademark Office have applied this test in a way that is both over-inclusive and indeterminate. This talk will discuss these problems of over-inclusiveness and indeterminacy in U.S. patentable subject matter jurisprudence in the life sciences and how the U.S. Supreme Court may fix these problems if it grants the petition for writ of certiorari in Ariosa v. Sequenom.

(up to 8 minutes)

Panel discussion: 10 minutes (speakers, panelists and members of the audience)

Hon. Annabelle Bennett

Former Justice, Federal Court of Australia, Sydney
Is Australia in Sync or the U.S. Out of Sync with the World?
(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Panelist:

Hon. William Chandler

Member, Board of Appeal, European Patent Office, Munich

Jim Coplit (invited)

Senior Counsel, MetLife, New York

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 20 minutes (speakers, panelists and members of the audience)

Closing Reception

Bateman Room, Fordham Law School

6:30 PM – 8:30 PM

Sponsored by

Bristows

SESSION 9: COPYRIGHT LAW

Concurrent Session

Friday 2:45 PM – 6:55 PM

MCR 1-01

9A. Music Licensing

Friday 2:45 PM – 3:55 PM (70 minutes)

MCR 1-01

Moderator:

Jacqueline C. Charlesworth

General Counsel and Associate Register of Copyrights, United States Copyright Office, Washington, D.C.

(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:

Prof. Irina D. Manta

Maurice A. Deane School of Law, Hofstra University, Hempstead, NY

A Sustainable Music Industry for the 21st Century

I plan to discuss how the separation between copyrights for compositions as opposed to public performances contributed to blanket licensing through royalty-collecting organizations like ASCAP and BMI, which — together with government intervention into pricing based on antitrust concerns via consent decrees — has led to an inflexible and tightly controlled market. I will cover how the focus on classifying streaming services like Pandora based simply on whether they are "interactive" or not relies on a misunderstanding of the substitution effects and hence decline in music sales that Pandora creates. Eliminating compulsory licenses would allow individual songwriters to set their own prices and negotiate with streaming services, including in ways that would enable price differentiation grounded in factors such as song popularity. I will argue that giving songwriters the same control that copyright owners outside the music context already possess will ensure songwriters' ability to continue providing the public with the works it loves.

(up to 7 minutes)

Panel discussion: 4 minutes (speakers, panelists and members of the audience)

Richard Reimer

Senior Vice President, Business and Legal Affairs, ASCAP, New York

Collective Licensing of Music Rights in 2016 – Challenges and Opportunities

A brief description of historical collective licensing practises for music composition and recording rights contrasted with the fast-changing licensing landscape as it exists

today, both in the US and abroad. In addition, a summary of current performing rights licensing issues, including an update on the on-going efforts to modify the ASCAP and BMI Consent Decrees; the modifications being sought; and why these modifications are necessary.

(up to 7 minutes)

Panel discussion: 4 minutes (speakers, panelists and members of the audience)

Joseph R. Wetzel

King & Spalding, San Francisco

Why everything you just heard is wrong: the licensee's perspective

(up to 7 minutes)

Panel discussion: 4 minutes (speakers, panelists and members of the audience)

Panelists:

David O. Carson

Senior Counsel and Head of Copyright Policy Team, Office of Policy and External Affairs, United States Patent and Trademark Office, Alexandria

Richard Pfohl

General Counsel, CONNECT music licensing, Toronto

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 20 minutes (speakers, panelists and members of the audience)

Break

3:55 PM – 4:20 PM

9B. Copyright Potpourri

Friday 4:20 PM – 5:50 PM (90 minutes)

MCR 1-01

Moderator:

David O. Carson

Senior Counsel and Head of Copyright Policy Team, Office of Policy and External Affairs, United States Patent and Trademark Office, Alexandria

(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:

Prof. Pamela Samuelson

University of California, Berkeley, School of Law, Berkeley

Dispelling Several Myths About Copyright's Merger Doctrine

There is more substance in the US copyright law's merger doctrine than just the notion that infringement should not be found when there is only one or a very small number of ways to express an idea. This talk will identify and then dispel several myths about the merger doctrine, including that it should be understood only as a defense to infringement and not as a basis for invalidating a copyright.

(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Joshua L. Simmons

Kirkland & Ellis LLP, New York

Copyright in Computer Programs: A Sea Change or Business As Usual?

After the Supreme Court's decision in Alice Corp. v. CLS Bank Int'l and concomitant changes at the U.S. Patent and Trademark Office, software developers are returning to copyright as one of the primary means of protecting their innovations. For some, this development coupled with the low threshold for copyright protection raises alarms, prompting the reemergence of old debates. For others, it is the natural resumption of copyright's important role in protecting computer programs. This talk will discuss the threshold for copyright protection as it applies to computer programs and consider whether recent court decisions are consistent or out-of-step with established copyright case law.

(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Dr. Mihály Ficsor

Honorary President, Hungarian Copyright Council; International Legal Consultant, Budapest

GEMA v. REHA Training: a chance for corrections and consolidation of the CJEU's case law on the right of communication to the public

As the ALAI Executive Committee has pointed out, the introduction of the criterion of "new public" in SGAE – with dubious accordance with the Berne Convention – has somewhat derailed the development of the CJEU's case law on the right of communication to the public. There have been attempts of corrections, through the criteria of "specific technical means" and "restricted access", in TvCatchup and Svensson, respectively. In the SCF judgment, however, beyond the "new public" theory, further controversial criteria appeared. The questions submitted for preliminary ruling in the GEMA v. REHA Training case, with frequent reference

to SCF, amounted to a request for a concise clarification of the various criteria. The presentation discusses how this case might be used for further corrections and consolidation of the CJEU case law. If the Court acts as suggested in the February 2016 opinion of the Advocate General, there is chance for this.
(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Prof. Cheryl Foong

Curtin Law School, Perth

Making Copyright Content Available in the Cloud: Revisiting Optus TV and Aereo
In the digital environment, the commercialization of copyright content is increasingly led by access to content, rather than the provision of copies. In this context recent cases have put into question the proper interpretation and scope of the making available right set out in the WIPO Internet Treaties. These uncertainties have been recognized in the US Copyright Office's recent report on the right. This presentation reviews the disparate judicial approaches in the US and Australia, and considers how courts could begin to build a coherent legal doctrine around the making available right.
(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Mark Seeley

Senior Vice President & General Counsel, Elsevier, Cambridge, MA

Innovation and Copyright in Science

We often hear that content availability on the Internet has meant that we now drown in information overflow, yet researchers in science report that since science journals have moved online they are accessing & reading 50% more journal articles per year. Researchers are able to link from reference to reference, and now increasingly to data sources and data citations. Researchers are using more technical tools to facilitate this, from semantic web technologies to text and data mining. Copyright incentives play a major role in such innovation, notwithstanding the growth of "Open Access" with supply-side author payments and free online access for users.
(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Panelists:

Jennifer L. Pariser

Executive Director of Academic Outreach, MPAA, New York

Dr. Eleanora Rosati

University of Southampton, e-LAWnora, and IPKat, London
Benoit Van Asbroeck
Bird & Bird, Brussels

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 10 minutes (speakers, panelists and members of the audience)

9C. Fair Use

Friday 5:55 PM – 6:55 PM (60 minutes)

MCR 1-01

Moderator:

Prof. Jane C. Ginsburg

Columbia Law School, New York

(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:

Prof. Justin Hughes

Loyola Law School, Los Angeles

Fair Use and Its Politics – at Home and Abroad

A practitioner talks about how fair use works in actual practice, in advising clients and in shaping products and services. Fair use is not an academic doctrine, to be excavated from court opinions like an archeological dig. Rather, as the originators of fair use (the English common law judges) and later Congress intended, it is a living, evolving set of principles furthering the broad purposes of copyright law.

(up to 8 minutes)

Panelists:

Fiona Phillips

Executive Director, Australian Copyright Council, Sydney

Prof. Coenraad Visser

University of South Africa, Pretoria

Panel discussion: 10 minutes (speakers, panelists and members of the audience)

Panelists:

Prof. Jane C. Ginsburg

Columbia Law School, New York

Hon. Pierre N. Leval

U.S. Court of Appeals for the Second Circuit, New York
William F. Patry
Google, New York

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 30 minutes (speakers, panelists and members of the audience)

Closing Reception

Bateman Room, Fordham Law School
6:30 PM – 8:30 PM

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SESSION 10: TRADEMARK LAW

Concurrent Session

Friday 2:45 PM – 6:45 PM

Constantino C

10A. Trademark Protection including Trade Dress

Friday 2:45 PM – 4:05 PM (80 minutes)

Constantino C

Moderator:

Sven Schonhofen

Fordham IP Institute, New York; Olswang Germany LLP, Munich
(up to 5 minutes to introduce the subject matter; intro of speakers –
just name and affiliation, please see bios in print materials and online.)

Speakers:

Hon. Mr. Justice Carr

Chancery Division, High Court, London

Blurring the distinctiveness and tarnishing the reputation of trade marks in the absence of likelihood of confusion

(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Anderson J. Duff

Manatt, Phelps & Phillips, LLP, New York

Trade Dress in the US: The Converse & Gucci Sagas

The general trend right now of parties attempting to protect product design trade dress in questionable cases.

(up to 8 minutes)

Jeffery A. Handelman

Brinks, Gilson & Lione, Chicago

Trade Dress and Design Patent Protection in the Wake of Apple v. Samsung

In Apple v. Samsung, the Federal Circuit held that Apple's iPhone trade dress was invalid as functional, but found that Apple's design patents – which cover virtually the same designs – were valid and infringed. By upholding the validity of Apple's design patents, did the Federal Circuit give Apple exclusive rights in functional design features? The Federal Circuit also affirmed a damage award that covered Samsung's entire profit on its infringing smartphones, rather than limiting damages to the portion of Samsung's profit that was attributable to the infringing designs. Was this award proper, or did it go too far?

(up to 8 minutes)

Panel discussion: 10 minutes (speakers, panelists and members of the audience)

Prof. Peter Ruess

International School of Management, Frankfurt; Arnold Ruess, Düsseldorf
Cross-Over Collision in Trademark Law: Infringing a word by pictures or shapes? The Federal Supreme Court in Germany had to decide whether a word could be infringed by the shape allegedly depicting that word. But does a shape really and clearly depict one term and one term only? The presentation will explain the Haribo v. Lindt decision and lessons learned.

(up to 8 minutes)

Panel discussion: 5 minutes (speakers, panelists and members of the audience)

Panelists:

Christian W. Liedtke

acuminis pc, Costa Mesa

Eric A. Prager

K&L Gates, New York

Prof. Spyros Maniatis

Queen Mary University of London, London

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 15 minutes (speakers, panelist and members of the audience)

Break

4:05 PM – 4:30 PM

10B. Global Trademark Update, including EU Trademark Reform

Friday 4:30 PM – 5:40 PM (70 minutes)

Constantino C

Moderator:

James Nurton

Managing Intellectual Property, London

(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:

Hon. Maria Eugénia Martins de Nazaré Ribeiro

President of Chamber, General Court of the European Union, Luxembourg

The Territorial Issue in Case-law Dealing with Distinctive Character of Community Trade Marks Acquired Through use in the European Union

The aim of my presentation is to discuss the development of the territorial issue concerning the distinctive character of Community trade marks acquired through use in the European Union. Additionally, the case-law developed with regards to cases dealing with issues of genuine use and reputation could also be considered for discussion.

(up to 10 minutes)

Hon. Gordon Humphreys

Chairperson of the Fifth Board of Appeal, European Union Intellectual Property Office, Alicante

Eclectic Views from the Frontline: Are EUIPO's Boards of Appeal Getting it Right?

Last year the Boards of Appeal notified over 2,900 decisions. Based on past statistics, only about 12% of those decisions are expected to be appealed to the GCEU. That means that the Boards are often likely to have the last word on controversial matters of EU trade mark law such as shape marks, personal names, weak marks, public policy and morality, conflicts with geographical indications and minority languages - to name but a few. This presentation will discuss some of the Boards' decisions in the 'twilight zone' of trade mark law, where either the case has not gone further or the Court has provided constructive criticism, and answer the fundamental question of whether justice is being served.

(up to 7 minutes)

Panel discussion: 7 minutes (speakers, panelist and members of the audience)

James Nurton

Managing Intellectual Property, London

EU Trademark Reform

(up to 7 minutes)

Panel discussion: 4 minutes (speakers, panelist and members of the audience)

Prof. Kimberlee Weatherall

Sydney Law School, University of Sydney, Sydney

Measuring Consumer Confusion in Litigation: What's the Problem with Surveys?

In theory, infringement in trade mark law and consumer protection law turns, in part, on consumer responses to trade marks. It is difficult, however, especially outside the US, to convince courts to pay regard to empirical tests of consumer responses. The

author has been conducting joint work with cognitive psychologists in particular to see whether there are better ways to test trade mark questions empirically, and will discuss the project in this session.

(up to 7 minutes)

Panelist:

Dimitris Botis

Deputy Director for Legal Affairs, International Cooperation & Legal Affairs
Department (European Union Intellectual Property Office), Alicante

Prof. Spyros Maniatis

Queen Mary University of London, London

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 15 minutes (speakers, panelist and members of the audience)

***10C. Disparaging, Scandalous and Immoral Trademarks –
Trademark Law and the First Amendment Roundtable***

Friday 5:45 PM – 6:55 PM (70 minutes)

Constantino C

Moderator:

Prof. Hugh C. Hansen

Fordham University School of Law, New York

(up to 5 minutes to introduce the panelists –

just name and affiliation, please see bios in print materials and online.)

Speakers:

Magdalena Berger

Platz-IP, New York

Overview over recent case law on disparaging trademarks and first amendment issues

(up to 8 minutes)

Prof. Megan M. Carpenter

Texas A&M University School of Law, Forth Worth

An Empirical Study of Scandalous Trademarks

The Lanham Act bars registration for trademarks that are “scandalous” and

“immoral.” While much has been written on the morality provisions in the Lanham

Act, this piece is the first scholarly project that engages an empirical analysis of the

Section 2(a) rejections based on scandalousness; it contains a look behind the scenes

at how the morality provisions are applied throughout the trademark registration process. This study analyzes which marks are being rejected, what evidence is being used to reject them, and who the applicants are. Our data pays particularly close attention to the evidence used to determine whether a mark is scandalous. We also consider whether this bar is effective at removing these marks from the consumer marketplace.

(up to 8 minutes)

Panel discussion: 7 minutes (speakers, panelist and members of the audience)

Lee Rowland

Senior Staff Attorney, American Civil Liberties Union, New York
(up to 8 minutes)

Prof. Christine Haight Farley

American University Washington College of Law, Washington, D.C.
(up to 8 minutes)

Panelist:

Hon. Gordon Humphreys

Chairperson of the Fifth Board of Appeal, European Union Intellectual Property Office, Alicante

(Panelists have no individual time allocated; they take part in the general discussion.)

General discussion: 17 minutes (speakers, panelists and members of the audience)

Closing Reception

Bateman Room, Fordham Law School

6:30 PM – 8:30 PM

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