

Emily C. & John E. Hansen Intellectual Property Institute

**27th Annual Intellectual Property Law & Policy
Conference**

www.fordhamipinstitute.com

Fordham Law School, New York, NY
Thursday and Friday, April 25 – April 26, 2019

Hugh C. Hansen
Director

Learn Debate Have Fun

CONFERENCE PROGRAM

Subject to Change

Wednesday, April 24

Reception & Dinner for Faculty and Sponsors

Reception: Bateman Room, Fordham Law School

6:15 PM to 7:30 PM

Dinner: Costantino Room, Fordham Law School

7:30 PM to 9:30 PM

Sponsored by:

Allen & Overy LLP

Thursday, April 25

Continental Breakfast

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

Registration

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

Welcoming Remarks:

Thursday 8:00 AM – 8:15 AM
Costantino A/B/C

Matthew Diller

Fordham University School of Law, New York

SESSION 1: Plenary Sessions

Thursday 8:15 AM – 12:55 PM
Costantino A/B/C
Overflow: Moot Court Room 1-01

1A. Key Current IP Issues: Reflections & Analysis

Thursday 8:15 AM – 9:45 AM (90 minutes)
Costantino A/B/C
Overflow: Moot Court Room 1-01

Moderator:

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:

Bryan C. Zielinski

Pfizer Inc., New York

The Value of IP—Where Are We Headed?

The U.S. House and Senate have recently introduced a number of proposals that have the potential to impact innovative companies. This presentation will provide a brief overview of patent legislation being proposed by the 116th Congress and discuss the concerns legislators are attempting to address, the potential impact to research and development of medicines, and what this all means for continued innovation.

(up to 7 minutes)

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

Richard Arnold

Chancery Division, High Court, London

Website-blocking Injunctions

Website-blocking injunctions are an increasingly common remedy worldwide. This talk will focus on the two most recent developments in England and Wales: the decision of the Supreme Court on who bears the costs of implementation, and orders to block servers which stream broadcasts of live sporting events.

(up to 7 minutes)

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

David J. Kappos

Cravath, Swaine & Moore LLP, New York

Availability of Injunctions Against Infringement of U.S. Patents: Going, Going, Gone

A discussion of the deterioration in the availability of injunctions as a remedy for the infringement of U.S. patents post-*eBay*, and its root causes.

(up to 7 minutes)

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

Robin Jacob

Faculty of Laws, University College London, London

IP Exhaustion of Rights – Should Different Kinds of Rights Have Different Rules?

(up to 7 minutes)

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

Erich Andersen

Microsoft Corporation, Redmond

The Intersection of Intellectual Property Rights and Open Source - Changing Norms and Practices

(up to 7 minutes)

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

David Carson

U.S. Patent and Trademark Office, Alexandria

Copyright in the Supreme Court: Fourth Estate, Rimini Street, and Candidates for Certiorari

On March 4, the Supreme Court handed down decisions in two copyright cases: *Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC* and *Rimini Street, Inc. v. Oracle USA, Inc.*, resolving conflicts in the circuits over interpretation of two provisions in the Copyright Act. While both provisions could be characterized as procedural, both decisions have implications for the incentives and ability of copyright owners and alleged infringers to litigate. Did the Court get it right in these cases? What other cases are likely to be taken up by the Court?

(up to 7 minutes)

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

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

1B. IP – Past, Present & Future

Thursday 9:50 AM – 11:00 AM (70 minutes)

Costantino A/B/C

Overflow: Moot Court Room 1-01

Moderator:

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:

Thomas Kjellberg (invited)

Cowan, Liebowitz & Latman, P.C., New York

(up to 7 minutes)

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

Etienne Sanz de Acedo

International Trademark Association (INTA), New York

(up to 7 minutes)

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

Donald R. Dunner

Finnegan, Henderson, Farabow, Garrett & Dunner LLP, Washington, D.C.

Patent Eligibility: Coping with Alice, Mayo, Myriad, Bilski, et al.

A discussion on how the Courts and Congress are responding to the Supreme Court's jurisprudence on the patent eligibility issue.

(up to 7 minutes)

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

Nicholas Banasevic

DG Competition, European Commission, Brussels

(up to 7 minutes)

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

Panelists:

Brian Pandya

U.S. Department of Justice, Washington, D.C.

TBA

(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

11:00 AM – 11:25 AM

1C. Government Leaders' Perspectives on IP

Thursday 11:25 AM – 12:55 AM (90 minutes)

Costantino A/B/C

Overflow: Moot Court Room 1-01

Moderator:

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:

Andrei Iancu

U.S. Patent and Trademark Office, Alexandria

(up to 7 minutes)

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

Paul Michel

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

(up to 7 minutes)

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

Karyn A. Temple

U.S. Copyright Office, Washington, D.C.

New Era in Copyright Legislation?

(up to 7 minutes)

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

Maria Martin-Prat

DG Trade, European Commission, Brussels

(up to 7 minutes)

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

Andrew C. Finch

Antitrust Division, U.S. Department of Justice, Washington, D.C.

Antitrust and IP: Where Are We and Where Are We Going?

(up to 7 minutes)

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

Marco Giorello

DG CONNECT, European Commission, Brussels

Europe's Copyright Reform. The Final Outcome.

After three years of intense negotiations the new EU copyright directive was finally approved. The stated objective of the new Directive was to modernise the copyright rules to respond to the challenges and opportunities of the digital economy and facilitate the emergence of a European digital single market. New rules such as the introduction of a new neighbouring right for press publishers or the new liability regime of certain major user-uploaded platforms introduce novelties in the European

copyright framework which may now foster the copyright debate in other regions of the world. What changes the new directive brings about for the copyright value chain, rightholders and consumers? Is the final result a balanced outcome of the different interests? What does the European reform tell us about our ability to regulate the internet?

(up to 7 minutes)

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

General discussion: 10 minute (speakers, panelists 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 LAW

Concurrent Session

Thursday 2:45 PM – 6:35 PM

Costantino A/B

2A. PTAB

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

Costantino A/B

Moderator:

Robert J. Goldman

Ropes & Gray LLP (Ret.), Silicon Valley

(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:

Vanessa Bailey

Intel Corporation, Washington, D.C.

Fostering Innovation Through IPRs: The Corporate Perspective

In 2011 Congress passed the America Invents Act (AIA), which established an important process – *inter partes* review (IPR) at the USPTO to weed out bad patents and reduce costly litigation. Without this mechanism, small businesses cannot effectively defend themselves against costly infringement actions involving questionable patents. These “bad patents” have hurt both the reputation of the US patent system and have hurt US businesses across all sectors and all sizes by draining precious resources away from job creation and the development of new products and services. We will discuss these negative effects of poor quality patents and bust some myths associated with the IPR process.

(up to 7 minutes)

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

Patricia A. Martone

Law Office of Patricia A. Martone, P.C., New York

Director Iancu Changes the Rules for IPR’s. Do the Changes Matter, and If So, to Whom?

In response to continual complaints that IPR proceedings are unfairly biased against patent owners, as well as to implement the Supreme Court ruling in *SAS Institute Inc. v. Iancu*, 584 U.S. __ (Sup. Ct. 2018), Director Iancu has made changes to the patent office rules governing IPR’s, including institution decisions, claim construction and trial and proposed new rules for claim amendments. But these efforts to increase fairness, transparency and balance can have limited effect given the statutory framework for IPR’s. This presentation will focus on some of the key rule changes, how they impact key stakeholders, and whether the changes move IPR’s more towards a litigation procedure and away from the administrative correction procedure that formed the basis of the Supreme Court’s decision sustaining the constitutionality of the IPR proceeding in *Oil States Energy Services, LLC v. Green’s Energy Group, LLC*, 584 U.S. __ (Sup. Ct. 2018).

(up to 7 minutes)

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

George E. Badenoch

Hunton Andrews Kurth LLP, New York

Standing, Privity and Estoppel in Inter Partes Review (“IPR”) Proceedings

The America Invents Act (“AIA”) allows any “person who is not the owner” to challenge patent validity before the Patent Trial and Appeal Board (“PTAB”). See 35 U.S.C. Section 311. This procedure was intended as a faster and more economical alternative to court proceedings for challenging patent validity. However, the lack of any requirement that the petitioner be accused or threatened with infringement, or otherwise have judicial “standing,” has led to unforeseen problems including

questionable business models, and attempts to protect patent owners by awkwardly expanding the concepts of privity and estoppel.
(up to 7 minutes)

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

Brian P. Murphy

Haug Partners LLP, New York

Dueling Banjos – When Does a PTAB Invalidity Decision Unwind a District Court Infringement Judgment?

Different standards of validity, burdens of proof, and appellate review can lead to inconsistent decisions in the PTAB and district courts. Federal Circuit decisions spotlight the split over when, how, and why a PTAB invalidity decision can nullify an earlier district court infringement judgment. The presentation will explore when a district court judgment is sufficiently “final” to avoid being mooted by the collateral estoppel effect of a later PTAB invalidity decision. The lion roars in Judge Newman’s dissents.

(up to 7 minutes)

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

Panelists:

Dustin F. Guzior

Sullivan & Cromwell LLP, New York

TBA

(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. Priority

Thursday 4:20 PM – 5:20 PM (60 minutes)

Costantino A/B

Moderator:

Jennifer Jones

Bird & Bird 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:

Maximilian Haedicke

Albert-Ludwigs-Universität Freiburg, Freiburg

Pitfalls of the Transfer of Priority Rights for European Patent Applications

The failure to formally transfer the priority right before the priority-claiming application is filed may lead to the rejection of a European patent application. Maximilian Haedicke will discuss how the impact of this restrictive interpretation of the EPC can be mitigated. He will especially discuss priority transfers executed by joint applicants. He will also explore whether the transfer of less than full legal title may lead to the transfer of the priority right also in civil law jurisdictions which have not adopted the concept of equitable title.

(up to 7 minutes)

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

John R. Thomas

Georgetown University Law Center, Washington, D.C.

U.S. Perspectives on Priority

A break in the chain of title from a U.S. priority application to one filed overseas may hold deleterious consequences for a patent that would otherwise be deemed valid. Peculiarities of U.S. practice, doubts surrounding the "employed to invent" doctrine, and the absence of judicial precedent have resulted in considerable uncertainty regarding "standing" to claim priority abroad.

(up to 7 minutes)

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

Panelists:

Steven R. Trybus

Jenner & Block LLP, Chicago

Tobias Bremi

Isler & Pedrazzini AG, Zurich

Rian Kalden

Court of Appeal of The Hague, The Hague

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

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

2C. 2nd Medical Use/Plausibility

Thursday 5:25 PM – 6:35 PM (70 minutes)

Costantino 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:

Klaus Grabinski

Federal Court of Justice, Karlsruhe

Infringement of Second Medical Use Patents in German Case Law

It is settled case law in Germany since the “Hydropyridin” decision of the Federal Court of Justice (Federal Supreme Court) of 1983 that a patent that protects a (unknown) second medical use of a (known) substance can be infringed by the manifest preparation of the substance for that protected second medical use, e.g. by a formulation, packaging, dosing or labeling that relates to the protected use. However, that approach does not cover a cross-label use of a medicament that is “manifestly prepared” only for a non-protected medical use but not for the protected second medical use (skinny labeling). On that background the Düsseldorf Higher Regional Court held in two recent decisions (“Östrogenblocker” and “Dexmedetomidin”) that under certain circumstances a manifest preparation for a protected second medical use by the alleged infringer is not a necessary requirement for the infringement of the patent. The talk will outline this development and also raise the issue to what extent injunctive relief is available when a second medical use patent has been infringed.

(up to 7 minutes)

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

Lennie Hoffmann

Queen Mary University of London, London

Staking Out the Genome

In 1977 Edmund Kitch published a famous article describing a controversial “prospect theory” which supported the grant of broad patents to demarcate protected areas of science within which the inventor would be able to carry on further research. Recent decisions in the United Kingdom suggest that the theory is alive and well, though possibly not for the reasons offered by Professor Kitch forty years ago.

(up to 7 minutes)

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

Robert Burrows

Bristows LLP, London

Plausibility in the UK

Where do we stand following the Supreme Court decision in *Warner-Lambert v Generics*? What is the threshold for plausibility and does it apply to all claim types?
(up to 7 minutes)

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

Takeshi Maeda

Kobe University, Graduate School of Law, Kobe

Infringement of Medical Use Claims in Japan

In Japan, second medical use of a known compound is protected as a product claim, which is called a "use invention". The scope of protection of such "use inventions" are unclear and have been under discussion for a long time. I will talk about recent court cases on this topic and share the discussion in Japan.
(up to 7 minutes)

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

John Pegram

Fish & Richardson, P.C., New York

Plausibility—An American View

This presentation will discuss some similarities and differences between disclosure requirements in U.S. patent law, and the developing plausibility requirements in Europe.
(up to 7 minutes)

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

Panelists:

Laura Whiting

Freshfields Bruckhaus Deringer LLP, London

Kevin J. McGough

Takeda, Lexington, Massachusetts

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

General discussion: 5 minutes (speaker, panelists and members of the audience)

SESSION 3: COPYRIGHT LAW

Concurrent Session

Thursday 2:45 PM – 6:35 PM

Moot Court Room 1-01

3A. Google v. Oracle

Thursday 2:45 PM – 3:45 PM (60 minutes)

MCR 1-01

Moderator:

Joshua L. Simmons

Kirkland & Ellis 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:

Lana K. Guthrie

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

To the Supreme Court and Back Again: The Ongoing Saga of Oracle v. Google

Oracle v. Google is one of the most closely-watched copyright lawsuits in recent history. After losing at the Federal Circuit on copyrightability in 2014 and on fair use in 2018, Google has petitioned for a writ of certiorari a second time, asking the Supreme Court to find in its favor on both issues. This presentation will walk through the posture of this landmark case and identify the main hot button issues.

(up to 12 minutes)

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

Panelists:

Eric A. Prager

Venable LLP, New York

James H. Hulme (invited)

Arent Fox, Washington, D.C.

TBA

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

General discussion: 40 minutes (speakers, panelists and members of the audience)

Break

3:45 PM – 4:10 PM

3B. DMCA: 20 Years Later

Thursday 4:10 PM – 5:20 PM (70 minutes)

MCR 1-01

Moderator:

Mitch Glazier

Recording Industry Association of America, 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:

William Patry

Google, New York

Legislation and Business Solutions: The DMCA as an Example

In the area of commercial rights, legislation serves as a way to solve business problems. It can solve those problems directly -- by specifying exactly how the regulated business should conduct itself -- or, it can solve those problems by providing a structure for businesses to themselves solve them, adapting over time as conditions change. The latter approach is the way the Copyright Act has traditionally been drafted. Judged this way, the DMCA has been very successful.

(up to 7 minutes)

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

J. Devlin Hartline

Center for the Protection of Intellectual Property (CPIP), Antonin Scalia Law School, George Mason University, Arlington

Twenty Years Later, DMCA More Broken Than Ever

With Section 512 of the DMCA, Congress sought to “preserve[] strong incentives for service providers and copyright owners to cooperate to detect and deal with copyright infringements that take place in the digital networked environment.” But rather than service providers and copyright owners working together to prevent online piracy, the DMCA has turned into a notice-and-takedown regime where copyright owners do most of the heavy lifting. This is not what Congress intended, and the main culprit is how the courts have misinterpreted the DMCA’s knowledge provisions.

(up to 7 minutes)

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

Jacqueline C. Charlesworth

Covington & Burling LLP, New York

Beyond the DMCA Safe Harbors: The Shifting Winds of Liability

For two decades, courts have been interpreting the section 512 safe harbors. During this same period, courts have been construing background principles of direct and secondary liability in online infringement cases. My remarks will focus on the interplay between the DMCA and evolving principles of liability.

(up to 7 minutes)

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

Joseph C. Gratz

Durie Tangri LLP, San Francisco

(up to 7 minutes)

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

Panelists:

Benjamin E. Golant

Entertainment Software Association, Washington, D.C.

TBA

(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. EU Copyright Reform

Thursday 5:25 PM – 6:35 PM (70 minutes)

MCR 1-01

Moderator:

Ted Shapiro

Wiggin 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.)

Speaker:

Eleonora Rosati

University of Southampton, London

The New EU Copyright Directive: Game Over?

At the end of a lengthy process riddled with controversy, the new EU Directive on copyright in the Digital Single Market was finally adopted. This new piece of EU

legislation, which contains a number of seemingly heterogeneous provisions, will now require transposition at the national level. This talk reflects on 3 key points: (1) To what extent are certain key provisions in the directive a departure from the existing *acquis*? (2) What room is there for diverging national transpositions? (3) Is the instrument of directives a good one to continue harmonizing EU countries' copyright laws?

(up to 7 minutes)

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

N. Cameron Russell

Western Union, Denver

The European Copyright Directive: Continued Leadership (and Disruption) of the Internet Economy?

The new copyright legislation is another bold effort from Europe to pause commercial momentum and recalibrate. The General Data Protection Regulation towed back industry practices, constructed contemporary norms, and cemented a new global standard for privacy in the internet economy. Will the Copyright Directive see similar success? What do lessons learned from past efforts to regulate internet intermediaries, protected content, and speech tell us about the E.U.'s new prescription of rules?

(up to 7 minutes)

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

Panelists:

Lauri Rechardt

International Federation of the Phonographic Industry (IFPI), London

Jan Bernd Nordemann

Boehmert & Boehmert, Berlin

Justin Hughes

Loyola Law School, Los Angeles

Giuseppe Mazziotti

Trinity College Dublin, School of Law, Dublin

Marco Giorello

DG CONNECT, European Commission, Brussels

Stanford McCoy

Motion Picture Association EMEA, Brussels

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

General discussion: 40 minutes (speakers, panelists and members of the audience)

SESSION 4: THREE CONCURRENT SESSIONS

Concurrent Session

Thursday 2:45 PM – 6:35 PM

Costantino C

4A. Artificial Intelligence

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

Costantino C

Moderator:

Laura Sheridan

Google, 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:

Massimo Sterpi

Gianni, Origoni, Grippo, Cappelli & Partners, Rome

NEUROGRAPHY: The Rise of the Neural Artist

The evolution of works created by AI is very fast and a quantum leap in their quality has been determined by the usage of neural networks. Even, a new word has been created by artist Mario Klingemann to designate this new kind of art: neurography. An artwork created with a neural network has been auctioned by Christie's in October 2018 for 432,000 USD. Use of Generative Adversarial Networks, Creative Adversarial Networks and other AI based tools raise entirely new and yet unresolved issues about the existence and attribution of copyright protection to these new artworks.

(up to 7 minutes)

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

Carlo Scollo Lavizzari

Lenz Caemmerer, Basel

Textbooks for AI and Clean Data to Train Machines? – How Machines Learn and What It Means for Authors, Publishers and Media Businesses

AI and machine learning are hot topics everywhere. What does it mean for publishers, content creators and producers? What are the legal implications? Where is the value and how does the value map against legally protected interests? Where are the threats, where the opportunities? What is needed to arrive at a sound environment for trusted and reliable AI/machine learning?

(up to 7 minutes)

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

Katharine Stephens

Bird & Bird LLP, London

Patentability of Artificial Intelligence and Machine Learning: the EPO Publishes Guidelines for Examination

The EPO's recent inclusion of a short section on the patentability of AI and ML to its Guidelines is timely given that this a rapidly growing area. The Guidelines do not answer all the questions raised by this new technology, however, they give some helpful hints on what may contribute to an invention's technical character.

(up to 7 minutes)

Panelists:

Shlomit Yanisky-Ravid

ONO Academic College, Israel

TBA

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

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

Break

3:55 PM – 4:20 PM

4B. In-House Panel

Thursday 4:20 PM – 5:20 PM (60 minutes)

Costantino C

Moderator:

Andrew Trask

Williams & Connolly 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:

Melissa Moriarty

VaynerMedia, LLC, New York

Lynda Nguyen

Regeneron Pharmaceuticals, Inc., Tarrytown

Greg S. Slater (invited)

Intel, Washington, D.C.

Cheryl Wang

David Yurman Enterprises LLC, New York

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

General discussion: 55 minutes (speakers, panelists and members of the audience)

4C. IP in China

Thursday 5:25 PM – 6:35 PM (70 minutes)

Costantino C

Moderator:

Probir J. Mehta

Facebook, 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:

Spring Chang

Chang Tsi & Partners, Beijing

How to Deal with a Large Number of Trademark Squatters in China

This is a hot topic for most of the US companies who have entered the China market. They need to know the situation and corresponding strategy, especially considering the big difference in trademark protection between China and the U.S.

(up to 7 minutes)

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

He Jing

AnJie Law Firm, Beijing

Odd Chances or Real Changes After the US-China Disputes

Amidst the trade dispute, China changed its technology transfer rules after years of rejections. More changes in law and practices are said to be in the pipeline. Courts delivered more injunctions and became more assertive. What can we really expect?

(up to 7 minutes)

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

James K. Stronski

Crowell & Moring, New York

China's Economic Aggression Through the Theft of Foreign IP, and a U.S. Response

China's "Thousand Talents" and other programs focus on acquiring foreign IP and a recent U.S. response, criminally prosecuting trade secret theft incentivized by such programs.

(up to 7 minutes)

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

James Moore Bollinger

Troutman Sanders LLP, New York

(up to 7 minutes)

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

Panelists:

TBA

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

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

Thursday Reception

Empire Rooftop

44 West 63rd Street, New York, NY 10023

6:35 PM – 9:00 PM

Sponsored by:

Freshfields Bruckhaus Deringer LLP

Friday, April 26

Continental Breakfast

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

Sunrise Seminars

Sunrise Seminar I: Alternative Dispute Resolution

Friday 7:30 AM – 8:45 AM (75 minutes)

Costantino A/B

Technological and social change have put the preservation of intellectual property rights and other intangible assets at the core of modern business strategy. IP litigation is complex, often multi-party, and often multi-jurisdictional. The time, expense, and public scrutiny of sensitive commercial information are some of the reasons organizations seek to avoid conventional court litigation.

What are the alternatives, which cases are suitable, how should organizations best manage and prepare for those processes? This seminar explores the benefits and pitfalls of the two most commonly adopted alternatives, arbitration, and mediation. In doing so, the panel will examine how procedural flexibility can be used to find and agree enduring, mutually beneficial outcomes to emotive, complex and high-value disputes.

The discussion will encompass drafting effective dispute resolution clauses, and ways to adapt processes according to the nature of the dispute and the needs of the parties. The seminar will be led and moderated by ADR practitioners and specialists in IP dispute prevention, management, and resolution.

Attendees will benefit from the latest thinking in IP dispute resolution design, and how techniques, strategies, and approaches can be employed to best effect in practice. Attendees with knowledge of, and preferences for, certain processes will have the opportunity to examine a range of ADR mechanisms for particular classes and categories of dispute.

Moderator:

Richard Price

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:

James Moore Bollinger

Troutman Sanders LLP, New York

(up to 7 minutes)

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

Garrett E. Brown, Jr.

Former Chief Judge, U.S. District Court for the District of New Jersey; JAMS

International, New York

(up to 7 minutes)

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

Panelists:

Simon Holzer

Meyerlustenberger Lachenal AG, Zurich

TBA

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

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

Sunrise Seminar II: Live Streaming Piracy

Friday 7:30 AM – 8:45 AM (75 minutes)

MCR 1-01

Moderator:

Michele Woods

World Intellectual Property Organization (WIPO), Geneva

(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:

Marie Sellier

Vivendi SA, Paris

(up to 7 minutes)

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

Michael J. Mellis

Major League Baseball, New York

Internet Piracy of Live Sports Telecasts

A discussion about the piracy of live sports telecasts on the Internet, including the following topics: modalities; intellectual property rights laws and enforcement mechanisms around the world; and responses of rights holders, those involved in distribution chains, governments and international organizations. Mr. Mellis has spearheaded Major League Baseball's efforts in this area since 2002, written on the subject and testified before the U.S. House Committee on the Judiciary about it in 2009.

(up to 7 minutes)

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

Sean J. Edgett (invited)

Twitter, Inc., San Francisco

(up to 7 minutes)

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

Panelists:

TBA

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

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

Sunrise Seminar III: ICANN: Rights Protection Mechanisms

Friday 7:30 AM – 8:45 AM (75 minutes)

Costantino C

Moderator:

Gerald M. Levine

Levine Samuel 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:

Gerald M. Levine

Levine Samuel LLP, New York

Evidentiary Demands in the UDRP Process Begin with the Complaint and Response

Trademark owners have a choice of regime for challenging alleged cybersquatting domain names. They can either sue in district court under the Anti-Cybersquatting Consumer Protection Act, the ACPA, or get a quicker and less expensive result by filing a complaint under the Uniform Domain Name Dispute Resolution Policy, the UDRP.

(up to 7 minutes)

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

Gregory S. Shatan

Moses & Singer LLP, New York

The Squared Circle: Fitting Trademark Law Principles into ICANN's Rights Protection Mechanisms

Over two decades, ICANN has developed a series of trademark rights protection mechanisms (RPMs) for use in connection with domain names. However, the contours of the “real” trademark world and the “virtual” Internet and DNS (domain name system) can be quite different. Various compromises, trade-offs, approximations, translations and transmutations have been put in place to reconcile these worlds (more or less) and to approximate the balance between trademark law and other laws, rights and interests. How well did ICANN manage to square the circle? This presentation will compare and contrast the two systems, with a particular emphasis on how rules and relationships in one system were translated into the other. With ICANN's RPMs now undergoing an unprecedented internal review, a holistic understanding of this system of rights protection mechanisms is particularly important.

(up to 7 minutes)

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

Mary W.S. Wong

Internet Corporation for Assigned Names and Numbers (ICANN), Los Angeles

(up to 7 minutes)

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

Panelists:

Martin Schwimmer

Leason Ellis LLP, White Plains, New York

Jason Schaeffer

ESQwire, Cherry Hill, New Jersey

TBA

(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 1: Plenary Session

Friday 9:00 AM – 10:15 AM

Costantino A/B

Overflow: Moot Court Room 1-01

1E. Views from Judicial Decision Makers

Friday 9:00 AM – 10:15 AM (75 minutes)

Costantino A/B

Overflow: Moot Court Room 1-01

Moderator:

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:

Annabelle Bennett

Former Judge of the Federal Court of Australia, Sydney; Bond University, Robina, Queensland

Tobias Bremi

Swiss Federal Patents Court, St. Gallen; Isler & Pedrazzini AG, Zurich

Edger F. Brinkman

Court of the Hague, The Hague

Klaus Grabinski

Federal Court of Justice, Karlsruhe

Lennie Hoffmann

Former Second Senior Lord of Appeal in Ordinary; Queen Mary University of London, London

Simon Holzer

Swiss Federal Patents Court, St. Gallen; Meyerlustenberger Lachenal AG, Zurich

Robin Jacob

Former Lord Justice of Appeal of the Court of Appeal, London; Faculty of Laws, University College London, London

Rian Kalden

Court of Appeal of The Hague, The Hague

Pierre Leval

U.S. Court of Appeals for the Second Circuit, New York

Maria Eugénia Martins de Nazaré Ribeiro

Former Judge of the General Court of the European Union, Luxembourg

Paul Michel

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

Yoshiaki Shibata

Tokyo District Court, 46th Division, Tokyo

Hans van Walderveen

District Court The Hague, The Hague

General discussion: 70 minutes (speakers, panelists and members of the audience)

Break

10:15 AM – 10:30 AM

SESSION 5: PATENT LAW

Concurrent Session

Friday 10:30 AM – 1:00 PM

Costantino A/B

5A. Biologics & Biosimilars

Friday 10:30 AM – 11:30 AM (60 minutes)

Costantino A/B

Moderator:

John Lee

Gilbert + Tobin, Sydney

(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:

Brian D. Coggio

Fish & Richardson, P.C., New York

Biosimilars: The Patent Dance

The key decision in all biosimilar litigation occurs when preparing for the so-called “Patent Dance” and rests in the hands of the biosimilar applicant. In that regard, it is the applicant’s decision on whether or not to participate in the Patent Dance by, inter alia, providing a copy of its biosimilar application to the Drug Sponsor. The

discussion will focus on the benefits and drawbacks of such participation.
(up to 7 minutes)

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

Cordula Schumacher

Arnold Ruess, Düsseldorf

Biosimilar Patent Litigation – Same Same but Different?

Biological drugs are a key development in the recent years. Biosimilars are lining up to take a share of the market. The first infringement cases show that the standard situation between originators and generics no longer applies. Infringement can be much more complex, regulatory issues are more important, the balance of interests is less evident. New players are entering the market.

(up to 7 minutes)

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

Nicola Dagg

Kirkland & Ellis International LLP, London

The Patent Trials and Tribulations of Launching a New Biologic Medicine

The enforcement of patents that protect biologics raises a host of practical, procedural, evidentiary and public policy issues. Recently, there has been a significant increase in the number of innovator vs. innovator disputes in respect of popular clinical targets. This discussion will focus on whether a third-party patentee should be entitled to a preliminary or final injunction on a new medicine. How should a case be decided where the new medicine is a life-saving one or other serious clinical consequences will ensue from preventing its sale? And what is necessary to “clear a path” to launch a new medicine and are those efforts feasible/practical?

(up to 7 minutes)

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

Shimako Kato

Abe, Ikubo & Katayama, Tokyo

Reasonable Protection of Antibody Patents - The Right Balance Between Patentees and Follow-On Manufacturers

Antibody drugs are getting more important and the share in the drug industry is getting bigger. On the other hand, with regard to antibody related inventions, there are some issues on protection and enforcement of the patent, e.g, claim drafting and claim construction. This speech will cover these issues by referring to a recent Japanese decision of a PCSK9 antibody case (*Amgen vs. Sanofi* case).

(up to 7 minutes)

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

Panelists:

Ron Vogel

Fish & Richardson P.C., New York

Otto Licks

Licks Attorneys, Rio de Janeiro

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

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

5B. Patent Potpourri

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

Costantino A/B

Moderator:

Adam Mossoff

Antonin Scalia Law School, George Mason University, Arlington

(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:

Tobias Hahn

Hoyng Rokh Monegier, Düsseldorf

Liability for Infringement Abroad: The Phenomenon of the Extension of European Borders

According to current German case law and particularly a German Supreme Court decision of 2017, a sale of a product by a company in Country A (with potentially no patent protection) to another company in Country A (or another Country outside Germany) may constitute patent infringement of a German patent directed at that product, provided that (some) of these products are later shipped to Germany, despite the fact that the first company solely conducts its business and solely acts in Country A and does not participate in the later shipments that are solely conducted by another company. This case law may even extend to indirect infringement, i.e. for sales of only parts of a product subsequently assembled and then shipped to Germany.

This is only one example of a potential trend of European patent courts “extending” their jurisdictions.

(up to 7 minutes)

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

Aloys Hüttermann

Michalski Hüttermann & Partner, Düsseldorf

T 1063/18 - Uproar at the EPO?

In the T 1063/18 for the first time a Technical Board of Appeal of the EPO has declared a rule of procedure of the EPC not applicable in view of conflicting rulings of the Enlarged Board of Appeal. What does this mean for the technical field involved, i.e. the protection of plants, as well as the EPO's juridical structure in general?

(up to 7 minutes)

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

Myles Jelf

Bristows LLP, London

International Exhaustion

National laws on the exhaustion of patents appear to be among the least harmonised aspects of international patent law. In an increasingly global economy, however, from a patentee's perspective one leaky bucket may undermine an entire business strategy. This talk looks at some of the challenges that the current state of the law poses for international businesses.

(up to 7 minutes)

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

Heinz Goddar

Boehmert & Boehmert, Munich

Injunctive Relief and Proportionality

In some countries, like Germany, the "hot-spot" for patent litigation in Europe in these days, injunctive relief in patent litigation is practically "automatic". This causes particular problems in a country like Germany with mandatory bifurcation, leaving often to immediately enforceable first-instance injunctions in patent litigation even before validity of the respective patent is decided. Particularly in the case of patents with "dubious" validity this creates an un-proportionate "blackmailing opportunity" of 1 - 2 years to squeeze the defendant into sometimes undue settlements.

(up to 7 minutes)

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

Suzanne Michel

Google, Washington, D.C.

Subject Matter Eligibility Around the World

Patent subject matter eligibility under Section 101 and Supreme Court precedent is a hot topic in the U.S. This presentation will explore how high-tech companies approach those issues in light of eligibility requirements for computer implemented inventions in other countries.

(up to 7 minutes)

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

Justin Watts

WilmerHale, London

(up to 7 minutes)

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

Panelists:

Kenneth R. Adamo

Kirkland & Ellis LLP, Chicago

Shlomo Cohen

Dr. Shlomo Cohen & Co., Bnei Brak, Israel

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

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

SESSION 6: COMPETITION AND COPYRIGHT LAW

Concurrent Session

Friday 10:30 AM – 1:00 PM

Moot Court Room 1-01

6A. FRAND

Friday 10:30 AM – 11:55 AM (85 minutes)

Moot Court Room 1-01

Moderators:

Andrew Bowler

Bristows LLP, London

Ari Laakkonen

Powell Gilbert 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:

Marc Sandy Block

IBM Corporation, Armonk, New York

(up to 7 minutes)

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

Renata Hesse

Sullivan & Cromwell LLP, New York

(up to 7 minutes)

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

Panelists:

Jill (Yijun) Ge

Clifford Chance LLP, Shanghai

Wolrad Waldeck

Freshfields Bruckhaus Deringer LLP, Düsseldorf

Dina Kallay

Ericsson, Washington, D.C.

David Por

Allen & Overy LLP, Paris

Steven Geiszler

Huawei Technologies USA Inc., Plano

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

General discussion: 55 minutes (speakers, panelists and members of the audience)

6B. International Copyright

Friday 12:00 PM – 1:00 PM (60 minutes)

MCR 1-01

Moderator:

Michael S. Shapiro

U.S. Patent and Trademark 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:

Mihály Ficsor

Hungarian Copyright Council, Budapest

No “Online Exhaustion” of the Rights of Making Available to the Public and Reproduction (and Not Real “E-lending Either): Analysis of the Relevant International and EU Norms in the Advent of the Tom Kabinet Judgement

In *ReDigi*, the US courts rejected the idea of “online exhaustion” finding that the right of reproduction has been infringed; in contrast, the CJEU, in *UsedSoft*, introduced “online exhaustion” for computer programs and, in *VOB*, recognized “e-lending” of books. In *Allposters*, although it concerned tangible copies, the Court stated that exhaustion does not apply to intangible copies, but, in the pending *Tom Kabinet* case, the questions of the referring court reflect doubts about this. Under the WCT and the EU law, irrespective of possible different characterization as “distribution” or “lending”, to such acts the rights of (interactive) making available and reproduction apply which do not exhaust; thus, the legal-political objectives pursued by the CJEU to allow secondary use of intangible copies could rather be achieved through the application of possible exceptions to these two rights in certain special cases in accordance with the three-step test.

(up to 7 minutes)

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

Jerker Rydén

National Library of Sweden, Stockholm

Copyright – Progression or Regression? Does the Existing Copyright Regime Provide the Incentive for a Diverse and Sustainable Culture and Strike an Adequate Balance Between the Exclusive Right and Exceptions and Limitations?

Copyright is closely related to the concept of freedom of speech and a diverse culture. The existing technology and the technology of the future of means of communication and illegal file sharing constitute an evident threat to a sustainable and diverse culture and could result in regression i.e. the right holders’ revenue declining and with that culture expressions. We are faced with a challenge of how to facilitate the communication of copyright protected works with the respect of the exclusive right and at the same time striking a balance between the exclusive right and the interest of the society on the whole of access to copyright protected works – i.e. how to maintain a sustainable copyright regime.

(up to 7 minutes)

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

Joel Smith

Herbert Smith Freehills LLP, London

Can You Copyright a Smell or a Taste? EU Position on Protecting Unconventional Copyright

The CJEU rejected copyright protection for the taste of cheese in the recent case *Levola Hengelo/Smilde Foods BV*, C 310/17, 13 November 2018. However, there have been other cases looking at whether copyright protection is possible for tastes or smells, such as perfumes. The latest case looks at the heart of what is the subject-matter for copyright and whether there is an autonomous EU-wide concept of a work, as well as the test for originality of an "author's own intellectual creation".
(up to 7 minutes)

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

Yoshiaki Shibata

Tokyo District Court, 46th Division, Tokyo

Linking Under the Japanese Copyright Act

Can linking be an infringement of the right to transmit to the public under the Japanese Copyright Act? Last year's judgement by the Intellectual Property High Court dealt with this issue.

(up to 7 minutes)

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

Panelists:

Silke von Lewinski

Max Planck Institute for Innovation and Competition, Munich

TBA

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

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

SESSION 7: ENFORCEMENT AND MULTILATERAL LAW

Concurrent Session

Friday 10:30 AM – 1:00 PM

Costantino C

7A. Copyright and Trademark Enforcement

Friday 10:30 AM – 11:45 AM (75 minutes)

Costantino C

Moderator:

Ann Bartow

University of New Hampshire, School of Law, Concord

(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

European Union Intellectual Property Office, Alicante

Transatlantic Cooperation Between Enforcement Authorities and Joint Actions Fighting Counterfeiting and Piracy

Fighting piracy and counterfeiting cannot be done without close cooperation at the international level. Counterfeiters and pirates are themselves members of international organized crime groups. Public authorities have understood this for some time now and this results in close working relations between US and EU bodies (IPR Centre, Europol, Interpol, etc.). The presentation will describe the main areas of cooperation and indicate some of the important results achieved in the last two years.

(up to 7 minutes)

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

Raymond J. Dowd

Dunnington Bartholow & Miller LLP, New York

New Help for Copyright Lawyers? How the Federal Communications Act Should Transform Television Antipiracy Strategies in the IPTV and OTT Era

According to a recent report, 6.5% of IPTV in North America is pirated. With cord-cutting exploding, this number should also explode. A recent decision in the Southern District of New York illustrates that the Federal Communications Act of 1934 may soon provide effective relief to television content producers losing significant market share to piracy.

(up to 7 minutes)

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

Susan Scafidi

Fordham University School of Law, New York

Oxymoronic Infringement: Do "Legal Fakes" Exist?

At the intersection of trademark squatting and classic counterfeiting are products created under color of law that mimic established brands in a manner arguably intended to confuse consumers. While the doctrine of famous or well-known marks established via Article 6bis of the Paris convention and Article 16 of TRIPS addresses this issue, the capacity of the internet to create international demand ahead of registration or use has led to a resurgence of copycat trademark registration and product sales, most notably in the case of the American streetwear brand Supreme and its fast-growing Italian doppelganger. Even worse from the perspective of original

brands, the popularization of the term "legal fakes" can confer apparent legitimacy in the minds of not only consumers but also retailers and resellers. It remains to be seen who will reign supreme in this cross-border street fight.

(up to 7 minutes)

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

Gareth Dickson

Taylor Vinters, Cambridge

The GDPR: Boon or Bust for IP Infringers?

With the GDPR having come into force since the last Conference, we are now able to evaluate some of the predictions made about its likely impact on the enforcement of IP rights. Statistics from the World Intellectual Property Organization suggest that trademark enforcement has become more expensive and protracted, but it will be the IP community's response to such changes that will determine the long term impact of the GDPR on the enforcement of IP online. Two possible outcomes will be explored in this presentation.

(up to 7 minutes)

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

Richard Pfohl

Music Canada, Toronto

Online Copyright Enforcement Developments

The past 12 months have witnessed significant developments in global best practices to address evolving online enforcement challenges through service provider and intermediary enforcement obligations/liability. Highlights include: globally-reaching orders; dynamic website blocking orders; search engine obligations; Notice and Stay Down; User Uploaded Content (UUC) Services/Online Content Sharing Service Providers (OCSSPs) liability/obligations; linking liability; and safe harbor requirements (repeat infringer policy).

(up to 7 minutes)

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

Panelists:

Fiona Phillips

Fiona Phillips Law, Sydney

Mary W.S. Wong

Internet Corporation for Assigned Names and Numbers (ICANN), Los Angeles

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

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

7B. Multilateral Developments

Friday 11:50 PM – 1:00 PM (70 minutes)

Costantino C

Moderator:

Stevan D. Mitchell

Office of Intellectual Property Rights, International Trade Administration,
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:

Annabelle Bennett

Bond University, Robina, Queensland; 5 Wentworth, Sydney

Judges: Another Way to Harmonize the World for IP

WIPO is increasingly active in bringing Judges from the developed and developing world together to discuss issues in IP and trial procedures, using Judges to talk to Judges. What is the result? Is it dangerous? How will it shape the resolution of IP disputes?

(up to 7 minutes)

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

Shira Perlmutter

U.S. Patent and Trademark Office, Alexandria

WIPO Broadcast Treaty

(up to 7 minutes)

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

James Love

Knowledge Ecology International, Washington, D.C.

What Is the Short Term Future of IP in Bilateral and Regional Trade Agreements?

With TPP, now TPP-11, coming into force and looking for new members, the US trying to ratify the USMCA and working on trade agreements with the UK, Japan and the EU, and RCEP negotiations progressing, will the regional and bilateral trade agreements significantly change global IP rules, and how?

(up to 7 minutes)

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

Antony Taubman

World Trade Organization, Geneva

Centripetal Rules in Centrifugal Times: Where Is Multilateralism Heading?

25 years ago the ink was drying on the TRIPS Agreement's preambular emphasis on "the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral means." Today, at a time of renewed tensions, questions about the continuing effectiveness of multilateralism, and the construction of megaregional deals, what can we still make of these aspirations for the multilateral framework? What are the lessons of the first quarter-century of TRIPS, and where can its abiding value and relevance be located?

(up to 7 minutes)

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

Chomwan Weeraworawit

The Standard Hotels, Bangkok

(up to 7 minutes)

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

Panelists:

Evelyn Montellano (invited)

Di Blasi Parente & Associados, Rio de Janeiro

Irene Calboli

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

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

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

Lunch

1:00 PM – 2:30 PM

Atlantic Grill 49 West 64th St

(btw Broadway & Central Park West)

Sponsored by:
Intel Corporation

SESSION 8: COMPETITION AND PATENT LAW

Concurrent Session

Friday 2:45 PM – 6:30 PM

Costantino A/B

8A. Competition

Friday 2:45 PM – 3:55 PM (70 minutes)

Costantino A/B

Moderator:

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.)

Panelists:

Thomas F. Cotter

University of Minnesota Law School, Minneapolis

Eleanor M. Fox

New York University School of Law, New York

Milan Kristof

Court of Justice of the European Union, Luxembourg

Suzanne Munck

Federal Trade Commission, Washington, D.C.

Maureen K. Ohlhausen

Baker Botts LLP, Washington, D.C.

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: 65 minutes (speakers, panelists and members of the audience)

Break

3:55 PM – 4:15 PM

8B. Supplementary Protection Certificates

Friday 4:15 PM – 5:15 PM (60 minutes)

Costantino A/B

Moderator:

Oliver Jan Jüngst

Bird & Bird LLP, Düsseldorf

(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:

Marleen van den Horst

BarentsKrans, The Hague

(up to 7 minutes)

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

Laëtitia Bénard

Allen & Overy LLP, Paris

Recent Developments on SPCs

The recent decision from the CJEU (C-121/17 Gilead) - which is the first decision ever to be issued by the Grand Chamber of the Court of Justice - is supposed to finally settle the interpretation of Article 3(a) of the SPC Regulation. However, it still leaves a number of questions unanswered as shown notably by the diverging decisions issued by national Courts since then. Other interesting referrals are pending with decisions expected soon.

(up to 7 minutes)

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

Brian W. Gray

Brian Gray Law, Toronto

Canada's Certificates of Supplementary Protection: One Year Later

September 21, 2018 marked the first year of Canada's SPC regime. It was enacted to implement a commitment to the EU in CETA. A two-year extension of patent protection is possible under onerous conditions. Already there is litigation over the GSK drug SHINGRIX apparently because it contains an adjuvant which Health Canada does not consider a medicinal ingredient. We will examine this case and compare it briefly with the corresponding EU SPC regulations.

(up to 7 minutes)

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

Panelists:

Jürgen Dressel

Novartis Pharma AG (Ret.), Basel

Hans van Walderveen

District Court The Hague, The Hague

Tom Mitcheson

Three New Square, London

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

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

8C. U.S. Patent Developments

Friday 5:20 PM – 6:30 PM (70 minutes)

Costantino A/B

Moderator:

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:

TBA

U.S. Patent Developments Overview

(up to 25 minutes)

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

George F. Pappas

Covington & Burling LLP, Washington, D.C.

Willfulness After Halo

After *Halo*, should parties obtain opinions from counsel and what waiver issues arise? We will explore the scope of the waiver of privilege from use of an opinion of counsel, and insights as to the likely impact of the opinion of counsel defense on case management, discovery, and jury trial.

(up to 7 minutes)

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

Panelists:

Tryn T. Stimart

Gibbons P.C., New York

Nicholas P. Groombridge

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

Joshua D. Sarnoff

DePaul University College of Law, Chicago

TBA

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

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

SESSION 9: COPYRIGHT LAW

Concurrent Session

Friday 2:45 PM – 6:30 PM

Moot Court Room 1-01

9A. U.S. Copyright Developments

Friday 2:45 PM – 3:55 PM (70 minutes)

MCR 1-01

Moderator:

TBA

(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:

Joshua L. Simmons

Kirkland & Ellis LLP, New York

Taking Copyright a (Dance) Step Too Far

In a series of recent cases, plaintiffs have asserted copyright protection in individual and simple movements, claiming that their copyrights were infringed by the video games *Fortnite* and *NBA 2K*. Just as words and short phrases are not protectable elements of literary works, individual dance steps and short dance routines are not protectable elements of choreographic works because they are fundamental building blocks that are available for all to use and perform. This presentation will discuss copyright protection for dance against the backdrop of these litigations.

(up to 7 minutes)

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

Nicholas Bartelt

U.S. Copyright Office, Washington, D.C.
(up to 7 minutes)

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

Ralph Oman

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

Congress and the Courts Rethink State Sovereign Immunity for Copyright

Copyright Infringement by States and State entities—universities, PR departments, state park systems, prisons, tourist bureaus, and school systems—has increased exponentially with the rise of the internet and digital technology. As infringement has become cheaper, faster, easier, the States have grown increasingly indifferent to their obligations to respect author’s rights, thinking that the 11th Amendment to the U.S. Constitution shields them from all monetary liability. Congress and the Courts now have powerful new evidence of the scope of the State infringement problem that may prompt them to end this outdated immunity.

(up to 7 minutes)

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

Panelists:

Steven Tepp

Sentinel Worldwide, Washington D.C.

TBA

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

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

Break

3:55 PM – 4:20 PM

9B. Music Modernization Act

Friday 4:20 PM – 5:20 PM (60 minutes)

MCR 1-01

Moderator:

Casey M. Chisick

Cassels Brock & Blackwell LLP, Toronto

(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:

Justin Hughes

Loyola Law School, Los Angeles

The MMA – the Promise of a Better Deal for Creators and the Challenge of an Authoritative Database

Implementation of the MMA will depend on a reliable and trusted database of rights information, something that has been both a technical and political challenge in the past. If everything works out – and it looks like it might – creators will be better off and we will all get closer to Paul Goldstein’s nascent internet idea of the “celestial jukebox.”

(up to 7 minutes)

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

Sean O’Connor

University of Washington School of Law, Seattle

Can the Music Modernization Act’s Database Actually Solve the Music Licensing Problem?

A primary driver of the MMA was the need to simplify music licensing while reducing gaming of the system by streaming services and others. The solution is a new government mandated database. While the concept sounds good, the devil will be in the details of implementation and governance of this powerful new tool.

(up to 7 minutes)

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

Richard H. Reimer

ASCAP, New York

Performance Rights Licensing After the Music Modernization Act

A brief description of the provisions of the MMA relating to performing rights licensing organizations and the reasons why the music industry sought those provisions. In addition, an update on the Department of Justice’s review of the ASCAP and BMI consent decrees and Congressional activity regarding the same subject.

(up to 7 minutes)

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

Panelists:

Kenneth L. Steinthal

King & Spalding LLP, San Francisco

TBA

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

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

9C. Fair Use

Friday 5:25 PM – 6:30 PM (65 minutes)

MCR 1-01

Moderator:

N. Cameron Russell

Western Union, Denver

(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:

Pierre N. Leval

U.S. Court of Appeals for the Second Circuit, New York

Transformative Value and the Tradeoff with Fourth Factor Harm as Reflected in Recent Decisions

Fair use litigation often comes down to balancing transformative value as against fourth factor harm. Judge Leval will comment on the scope of transformative use and how recent cases—including *TVEyes*, *TCA* (Abbott & Costello’s “Who’s on First?”), *ReDigi*, *HathiTrust*, and *Google Books*—have dealt with the balancing problem.

(up to 12 minutes)

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

Panelists:

Jane C. Ginsburg

Columbia Law School, New York

Terry Hart

Copyright Alliance, Washington, D.C.

William Patry

Google, New York

Silke von Lewinski

Max Planck Institute for Innovation and Competition, Munich

John M. Golden

The University of Texas at Austin, School of Law, Austin

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

General discussion: 40 minutes (speakers, panelists and members of the audience)

SESSION 10: TRADEMARK LAW

Concurrent Session

Friday 2:45 PM – 6:30 PM

Costantino C

10A. Iconic Brands: Creating Trademark Law for the Few

Friday 2:45 PM – 3:45 PM (60 minutes)

Costantino C

Moderator:

Magdalena Berger

Curi Platz 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:

Anderson Duff

Revision Legal, New York

(up to 7 minutes)

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

Tobias Timmann

Freshfields Bruckhaus Deringer LLP, Düsseldorf

Are There Specific Exceptions to the Principle of Trademark Exhaustion for Luxury Goods Under EU Law?

While the CJEU has taken a less trademark owner friendly approach to trademark exhaustion in recent decisions, national Courts in the European Union have strengthened the position of trademark owners even so far as to exclude trademark exhaustion in cases where luxury goods are sold through supermarkets. Against this background, the question arises as to whether it is justified to have specific exceptions to trademark exhaustion for luxury goods.

(up to 7 minutes)

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

Peter Ruess

Arnold Ruess, Düsseldorf

CJEU Rules on Red Shoe – New Guidelines for Shape and Color Marks or More Uncertainty?

The new CJEU decision on the famous Louboutin red sole covers questions of shape, color and position marks and the lines between them. It also looks into what is required to pass the threshold of not being merely functional when it comes to a shape.

(up to 7 minutes)

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

Panelists:

Emily M. Borich

Davis Wright Tremaine LLP, New York

Daan G. Erikson

Husch Blackwell LLP, Omaha

(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

3:45 PM – 4:10 PM

10B. EU Trademark Law Update

Friday 4:10 PM – 5:15 PM (65 minutes)

Costantino C

Moderator:

Sven Schonhofen

Reed Smith 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:

James Nurton

Lextel Partners; IP Writer/Consultant, London

Recent CJEU and General Court Case Law on Trademarks and Designs

The courts in Luxembourg continue to issue a large number of important, influential and (sometimes) controversial decisions in cases from EUIPO as well as referrals from national courts. The past year has seen interesting judgments on issues including protection of non-traditional marks, similarity, genuine use and debranding. What can be learned from them?

(up to 12 minutes)

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

Gordon Humphreys

European Intellectual Property Office, Alicante

Of Celebrity Chefs, Gruesome Video Games and Astrophysicists: The Eclectic World of New Types of Marks - First Experiences at EUIPO

When the graphical representation requirement was abolished at EUIPO in October 2017, it was hailed as a “leg up” to filers of non-traditional trademarks (NTTMs). But just how easy has it been to get such marks on the register? And, assuming that requirements of clarity and precision are met, are these signs really able to function as indicators of commercial origin? This presentation will look at some examples of the sorts of NTTMs that the EUIPO has been faced with as the trademark world attempts to push the boundaries of what constitutes a mark ever further.

(up to 7 minutes)

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

Maria Eugénia Martins de Nazaré Ribeiro

Former Judge of the General Court of the European Union, Luxembourg

The CJEU Case-Law on Distinctive Character of EU Trademarks Acquired Through Use Revisited: The Mondelez Case

With regard to a mark that is, *ab initio*, devoid of distinctive character across all Member States, how did the Court of Justice reconcile the need to prove the acquired distinctive character through use throughout the territory of the EU with the “unreasonable” requirement of proof for each individual Member State? What is the extent and what are the limits of the evidence required to establish such a distinctive character in the EU of 28 Member States?

(up to 7 minutes)

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

Edger F. Brinkman

Court of the Hague, The Hague

Descriptive Trademarks: How (Un)free Is It to Use Them?

It has been 15 years since CJEU’s landmark Postkantoor and Biomild-decisions. Business still loves (semi)descriptive trademarks. Either it is attempted to register

them as a word mark per se or as part of a logo. The CJEU's or Court of First Instance case law still seems murky at times. What defences are available to a competitor that uses a descriptive mark? Which defences are more likely to stick and where are the snags? How are Dutch courts deciding in this seemingly unrelenting stream of cases set against the background of the CJEU case law?

(up to 7 minutes)

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

Panelists:

Joel Smith

Herbert Smith Freehills LLP, London

Peter Ruess

Arnold Ruess, Düsseldorf

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

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

10C. U.S. Trademark Law Update

Friday 5:20 PM – 6:30 PM (70 minutes)

Costantino C

Moderator:

Marshall Leaffer

Maurer School of Law, University of Indiana, Bloomington

(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:

Marshall Leaffer

Maurer School of Law, University of Indiana, Bloomington

Recent U.S. Trademark Law Developments

(up to 12 minutes)

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

Jeffery A. Handelman

Brinks, Gilson & Lione, Chicago

Noteworthy Developments at the TTAB

(up to 10 minutes)

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

Magdalena Berger

Curi Platz LLP, New York

Marijuana Marks: The Struggle with the Lawful Use Requirement

To obtain a federal trademark registration, any mark must be lawfully used in commerce. The USPTO routinely rejects trademark applications that cover any product or service prohibited under the Controlled Substances Act. However, more and more states are legalizing the sale of marijuana and brand owners recognize the importance of a federal trademark registration. The question becomes not only how to protect trademark rights but also how to avoid consumer confusion.

(up to 7 minutes)

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

Carey R. Ramos

Quinn Emanuel Urquhart & Sullivan LLP, New York

Game of Coins: Cryptocurrencies and Trademarks

It's a trademark owner's nightmare: Your brand name is now a cryptocurrency!

(up to 7 minutes)

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

Panelists:

Christian W. Liedtke

Acuminis PC, Costa Mesa, California

Ron Lazebnik

Fordham University School of Law, New York

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

General discussion: 10 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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