

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

**26th Annual Intellectual Property Law & Policy
Conference**

www.fordhamipinstitute.com

**Fordham Law School, New York, NY
Thursday and Friday, April 5 - April 6, 2018**

**Hugh C. Hansen
Director**

Learn Debate Have Fun

CONFERENCE PROGRAM

Subject to Change

Wednesday, April 4

Reception & Dinner for Faculty and Sponsors

Reception: Bateman Room at Fordham Law School

6:15 PM to 7:30 PM

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

7:30 PM to 9:30 PM

Sponsored by:

Allen & Overy LLP

Thursday Morning, April 5

Continental Breakfast

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

Registration

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

Please note: Doors to Costantino A/B/C will close at 8:10 AM. Overflow room Moot Court Room 1-01 will remain open.

Welcoming Remarks:

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

Hugh C. Hansen

Fordham University School of Law, New York

SESSION 1: Plenary Sessions

Thursday 8:15 AM – 1:00 PM
Costantino A/B/C
Overflow: Moot Court Room 1-01

1A. Artificial Intelligence

Thursday 8:15 AM – 9:15 AM (60 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:

Erich Andersen

Microsoft Corporation, Redmond

Copyright in the Age of AI

Presentation will focus on rights of authorship in the output of AI programs and the necessarily broad rights that developers have to use data and copyrighted works to 'train' AI programs.

(up to 7 minutes)

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

Janet E. Fair

Merck & Co, Inc., Kenilworth

Who is the Inventor and What is Obvious when Computers do the Inventing?

Important questions such as inventorship and inventive step pop up as computer programs are used to automate and simplify steps in the drug making process, especially when those steps traditionally generate valuable IP for pharmaceutical companies. Computer programs already assist scientists with predicting compound forms and the stability of those forms, as well as provide guidance on molecular modifications that will better engage a target. With these advancements, IP professionals must grapple with who the inventor is and who is an ordinary person skilled in the art when obviousness and inventive step needs to be considered.

(up to 7 minutes)

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

Shlomit Yanisky-Ravid

ONO Academic College, Israel

Generating Rembrandt: Artificial Intelligence Ownership and Accountability- A New Model for the New Human-Like Creators

The presentation explains how Artificial Intelligence (AI/ML) systems can generate intellectual property products: artworks and patentable inventions; what features of the AI systems make these advanced technologies human-like; the new challenges that these human-like advanced systems bring upon patent and copyright laws; who can be the owner of products and processes generated by AI systems and who is responsible for infringements; the multi-player model; new solutions, such as (1) amending copyright laws to adopt artworks being generated by AI systems, focusing on the term "originality" (2) replacing copyright laws as outdated and inapplicable to address works generated by AI systems and (3) the preferable model of AI Work Made For Hire Doctrine.

(up to 7 minutes)

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

Kripa Rajshekhar

Metonymy Labs, Chicago

Third Wave AI (3Wai)

3Wai is the next generation of AI which reasons as humans do, with limited and often ambiguous data, in a manner that is explainable and auditable. For example, in areas like Patent Law, we would like to know *why* claim A was selected by a prior art / case law search algorithm and not claim B. We will introduce the next generation of algorithms that do this and outline how 3Wai helps diligence

(up to 7 minutes)

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

Panelists:

Peter S. Menell

University of California, Berkeley, School of Law, Berkeley

Massimo Sterpi

Gianni, Origoni, Grippo, Cappelli & Partners, Rome

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

1B. Multinational Developments: IP in a Hostile World

Thursday 9:20 AM – 10:20 AM (60 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:

Michele Woods

World Intellectual Property Organization (WIPO), Geneva

Will There Ever Be Another Copyright Treaty? The future of multilateral copyright law development

In an era where technology and business models are changing faster than ever, most of the core copyright treaties are over twenty years old. It appears there is no consensus on adopting new binding copyright treaties. In this situation, what is the

role and relevance of multilateral institutions such as WIPO in the development of copyright law?
(up to 7 minutes)

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

James Love

Knowledge Ecology International, Washington, D.C.

Proposed WIPO Broadcast Treaty: Rights without reason

The proposed WIPO Broadcast Treaty would benefit entities that don't create, perform, produce, own or license works. Nevertheless, the recording music industry which was an opponent, no longer is. Less understood is the role of the tech sector. It once was strongly opposed, but today thinks the distribution rights will be expanded to cover YouTube, Netflix, Hulu, Facebook etc. So, its position may change. The over-the-air television companies have always been against and once were the most important players, but no longer are. In this changing environment, what are the prospects for adoption and most likely effects of the proposed Broadcast Treaty?
(up to 7 minutes)

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

Irene Calboli

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

TPP without the U.S.: No longer at the table but still in the room?

Analysis of the IP Chapters in the TPP and RCEP, and will elaborate on the changing landscape of international trade negotiations and question to what extent economies in the Asia-Pacific region can effectively redefine international IP without the U.S. Ultimately, this paper will conclude that, despite the changing landscape, international IP norms continue to indicate an ongoing commitment to TPP US-style provisions for IP protection. Thus, for the time being, the U.S. continues, in the IP norm setting world, as it was when the U.S. was still part of the TPP.
(up to 7 minutes)

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

Mark Cohen

University of California, Berkeley, School of Law, Berkeley

Foreign Litigants in Chinese Courts: What Does the Data Show?

(up to 7 minutes)

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

Panelists:

Henry Carr

Chancery Division, High Court, London

Justin Hughes

Loyola Law School, Los Angeles

Michael S. Shapiro

U.S. Patent and Trademark Office, Washington, D.C.

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

Break

10:25 AM – 10:45 AM

1C. Government Leaders' Perspectives on IP

Thursday 10:45 AM – 11:45 AM (60 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)

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

Karyn A. Temple

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

Rulemaking: Its Current and Future Role in Copyright?

(up to 7 minutes)

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

Maria Martin-Prat

DG Trade, European Commission, Brussels

Interaction between existing multilateral framework and recent agreements & proposals: Tower of Babel or workable blueprint?

The interaction between existing multilateral rules on IP (TRIPS, a number of the WIPO Treaties) and the myriad of multilateral (e.g. EU-Japan FTA, CETA, new? NAFTA) and plurilateral (TPP 11, EU possible Treaty with Mercosur) agreements in place/being negotiated. This raises issues in terms of coherence and interpretation of multilateral rules. There is also the question of whether it is possible to update existing multilateral rules (notably enforcement) or we simply give up (after ACTA...).

(up to 7 minutes)

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

Panelists:

Margot Fröhlinger

European Patent Office, Munich

Hugo Sakkers

Philips Intellectual Property & Standards, Eindhoven, Netherlands

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

1D. Key Current IP Issues: Reflections & Analysis

Thursday 11:50 AM – 12:55 PM (65 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:

Donald R. Dunner

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

The Supreme Court and the Federal Circuit: A Failed Relationship

In the first two decades of the Federal Circuit's existence, the Supreme Court maintained a relatively hands-off relationship with the Federal Circuit, permitting the Federal Circuit to realize its mission of providing uniformity and predictability in the patent law. Beginning about 2001, however, the Supreme Court's review of Federal Circuit patent decisions not only increased meaningfully but significantly undermined that mission and the world ranking of the United States in patent system strength.

(up to 7 minutes)

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

James Moore Bollinger

Troutman Sanders LLP, New York

Weaponized Patents - Recent Trends that Strengthen Patent Infringement Enforcement

After a decade that saw the loss of *per se* injunctions on final judgment, death panels and the abstract idea exclusion that “swallowed the rule,” patent owners finally have some tools to fight back. First and foremost is the liberalized legal framework on willful infringement after *Halo*. Other trends include liberalized legal rulings on joint infringement, flexible presentation of damages and the falling number of invalidated claims at the PTAB. Together, patent owners/innovators now have more leverage in policing their technical achievements.

(up to 7 minutes)

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

Justin Hughes

Loyola Law School, Los Angeles

Copyright, Incomes, and Inequality

Just as income inequality is being discussed more widely in western societies, there has been an increased discussion in many IP fora about whether artists and authors are getting their fair share of income from ‘content’ and its distribution. These discussions range from “value chain” issues proposed by Latin American countries at WIPO to the EU’s proposed new measures “to guarantee that authors and right holders receive a fair share of the value that is generated by the use of their works” to the U.S.’s Copyright Royalty Board order this spring for a whopping 44% increase in royalty payments to songwriters and music publishers from music streaming companies. Can we better understand how copyright can and should support the “creative professionals” – most of them middle-class – who are the workforce of copyright industries?

(up to 7 minutes)

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

David J. Kappos

Cravath, Swaine & Moore LLP, New York

International Use of Competition Law: To What Extent are Some Countries Using Competition Laws to Favor National Companies over Foreign Competitors?

(up to 7 minutes)

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

Panelist:

Cecilio Madero Villarejo

DG Competition, European Commission, Brussels

General discussion: 10 minutes (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)

Sponsored by:

Licks Attorneys

SESSION 2: PATENT LAW

Concurrent Session

Thursday 2:45 PM – 6:30 PM

Costantino A/B

2A. European Patent Developments

Thursday 2:45 PM – 3:50 PM (65 minutes)

Costantino A/B

Moderator:

John B. Pegram

Fish & Richardson, 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

European Patent Office, Munich

The Unitary Patent and the Unified Patent Court: State of Play

The intervention would give an update on the process of national ratifications, including the situation in the UK and in Germany. With respect to the UK, which is expected to have ratified the UPCA by then, it would address the prospects for the long-term participation in the UPC, after the exit from the European Union. With respect to Germany, where the ratification is on hold it would address the complaint before the German Constitutional Court and the possible outcome and implications. The intervention would also give an update on measures at EU and at national level aiming to accompany the launch of the unitary Patent such as the outcome of the Commission's consultation on the creation of unitary SPC's or new national laws/legislative proposals allowing double protection for the same invention by Unitary Patents and national patents (most recently proposed in France).

(up to 7 minutes)

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

Mark Ridgway

Allen & Overy LLP, London

Injunctions: Are they still the right remedy?

An injunction is the traditional remedy for patent infringement in Europe, where we have no equivalent to *eBay Inc. v. MercExchange*. On the other hand, the European IP Enforcement Directive requires that, as with other remedies, injunctions must be proportionate, fair and equitable. The EU Commission's recent review of the operation of the Enforcement Directive also found that, broadly speaking, injunction remedies were operating effectively, suggesting that an appropriate balance has been found. This session will explore the reality of injunctive relief in the UK and Europe, by reference to recent cases, considering when and why injunctions are granted, and when might they not even be sought at all.

(up to 7 minutes)

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

Klaus Grabinski

Federal Court of Justice, Karlsruhe

Compulsory license in preliminary proceedings

German patent law knows the concept of a compulsory license for more than 100 years. It is now provided for in Sec. 24 German Patent Act and may be claimed in court proceedings. However, in practice obtaining a compulsory license was rarely tried in the past. The last case dates back to the Nineties and was not successful. The talk will summarize the recent decision of the German Federal Court of Justice in the Raltegravir case in which an appeal against a decision of the Federal Patent Court to grant a compulsory license in preliminary proceedings was dismissed.

(up to 7 minutes)

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

Penny Gilbert

Powell Gilbert LLP, London

Brexit and UK patent litigation

There are many misconceptions about the future roles of UK patent practitioners in obtaining and enforcing European patent rights after Brexit. Although the UK is leaving the EU it is not leaving the EPC. Furthermore, the UK has indicated its intentions to participate in the UPC. How will these developments play out and what does the future look like for UK patent litigators, and judges, assuming Brexit finally happens?

(up to 7 minutes)

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

Panelists:

Andrew Bowler

Bristows LLP, London

Edger F. Brinkman

Court of the Hague, The Hague

Heinz Goddar

Boehmert & Boehmert, Munich

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

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

Break

3:50 PM – 4:15 PM

2B. Trade Secrets

Thursday 4:15 PM – 5:20 PM (65 minutes)

Costantino A/B

Moderator:

James Pooley

James Pooley, A Professional Law Corporation, Menlo Park, California

(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 Pooley

James Pooley, A Professional Law Corporation, Menlo Park, California

The Rapid Rise of Global Secrets

While many lament a retreat from patent enforcement in the U.S., trade secrets, the oldest form of IP, have become the focus of new, intense interest around the world. The EU Trade Secrets Directive, the DTSA, and new laws in China, Japan and Taiwan, coming on the heels of reports from the OECD and APEC, all speak to increasing concerns about effective protection of commercial data in a digitized global economy. The panel will provide a variety of perspectives on these developments and their implications for companies and practitioners.

(up to 7 minutes)

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

Annsley Merelle Ward

Bristows LLP, London

The globalization of trade secrets protection – a lawyer’s action list

(up to 7 minutes)

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

Panelists:

Mark Cohen

University of California, Berkeley, School of Law, Berkeley

Victoria A. Cundiff

Paul Hastings LLP, New York

Jan-Diederik Lindemans

Crowell & Moring LLP, Brussels

William McNamara

Philips Electronics, New York

Mark F. Schultz

Southern Illinois University School of Law, Carbondale, Illinois

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

2C. U.S. Patent Developments

Thursday 5:25 PM – 6:30 PM (65 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:

Dimitrios T. Drivas

White & Case LLP, New York
U.S. Patent Developments Overview
(up to 25 minutes)

Panelists:

Ari Laakkonen

Powell Gilbert LLP, London

Steven Lieberman

Rothwell, Figg, Ernst & Manbeck, P.C., Washington, D.C.

Patricia A. Martone

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

Pauline Newman

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

Matthew W. Siegal

Dilworth & Barrese, LLP, New York

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

General discussion: 35 minutes (speaker, panelists and members of the audience)

SESSION 3: COPYRIGHT LAW

Concurrent Session

Thursday 2:45 PM – 6:30 PM

Moot Court Room 1-01

3A. ISP Liability Including Linking and Embedding

Thursday 2:45 PM – 3:50 PM (65 minutes)

Moot Court Room 1-01

Moderator:

Nicholas Bartelt

Fordham IP Institute, 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:

Joseph C. Gratz

Durie Tangri LLP, San Francisco

"Hey, look over there!": Recent Linking Cases in the United States

Does a mere reference to the location of infringing material constitute copyright infringement? A number of recent cases in the United States -- most notably, *Playboy v. Happy Mutants*, *Goldman v. Breitbart*, and *Leader's Institute v. Jackson* -- have addressed whether and to what extent linking to content hosted by others can constitute direct or secondary copyright infringement. Do these cases mark a new era of U.S. linking litigation?

(up to 7 minutes)

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

Silke von Lewinski

Max Planck Institute for Innovation and Competition, Munich

Court of Justice (CJEU) on the communication right and thoughts on ISP liability

Recently, the Court of Justice decided some new cases on the right of communication to the public. What do we learn from them? What does the case law tell us about ISP liability? These questions will be analyzed, not least against the background of current legislative proposals.

(up to 7 minutes)

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

Jonathan Zavin

Loeb & Loeb LLP, New York

Spanski Enterprises, Inc. v. Telewizja Polska S.A.: What does it mean for extraterritoriality and the public performance right?

(up to 7 minutes)

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

Panelists:

Benoit Van Asbroeck

Bird & Bird LLP, Brussels

Nancy E. Wolff

Cowan, DeBaets, Abrahams & Sheppard LLP, 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)

Break

3:50 PM – 4:15 PM

3B. Music Licensing, Termination & Territoriality: Time for Recalibration?

Thursday 4:15 PM – 5:20 PM (65 minutes)

Moot Court Room 1-01

Moderator:

N. Cameron Russell

Center for Law and Information Policy (CLIP), 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:

Regan A. Smith

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

Updating the Music Licensing Marketplace

The U.S. House and Senate have recently introduced a number of proposals that would overhaul the copyright law with regards to music, including the Music Modernization Act, the Classics Act, and the Amp Act. This presentation will provide a brief overview of the concerns targeted by these potential reforms, and a high-level explanation of their mechanics.

(up to 7 minutes)

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

Joshua Graubart

The Law Offices of Joshua Graubart, P.C., New York

Copyright claw-back: Termination of Transfer, Non-Assignability and their Cross-Border Implications

Termination of transfer allows authors (or their heirs) a second chance to obtain fair compensation once the value of their works has been established; in the case of the U.S. Copyright Act, this is achieved by permitting termination of past transfers "notwithstanding any agreement to the contrary." Recently, *Gloucester Place Music v. Le Bon* (England & Wales, Chanc. Div., Arnold, J.) held that English contract law governed a music publishing agreement, and service of notice of termination pursuant

to the US Copyright Act constitutes breach of the music publishing agreement. This has led to some doubt as to the continued viability of termination of transfer (or related) doctrines as against foreign rightsholders.

(up to 7 minutes)

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

Kenneth L. Steinthal

King & Spalding LLP, San Francisco

The Evolving Musical Work Mechanical and Public Performance Licensing Marketplace

Mr. Steinthal will discuss the January 2018 split decision of the Copyright Royalty Board establishing rates and terms for the statutory mechanical license under Section 115 of the Copyright Act. The public version of the majority and dissenting opinions, each over 100 pages in length, was released just this past week. I will discuss the implications of the decision, including “who really won.” On the public performance side, Mr. Steinthal will discuss the latest developments relating to the Department of Justice determination not to seek to modify the ASCAP and BMI consent decrees after a two-year investigation and the implications of the Second Circuit’s December 2017 decision affirming the District Court’s determination that the BMI consent decree does not require that BMI engage in full-work licensing (and thus may engage in “fractional” licensing of works that are not controlled 100% by BMI affiliated writers/publishers).

(up to 7 minutes)

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

Thomas Kjellberg

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

The Lines Remain Blurred

(up to 7 minutes)

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

Panelists:

Jacqueline C. Charlesworth

Covington & Burling LLP, New York

Joe Keeley (invited)

Subcommittee on Courts, Intellectual Property, and the Internet of the House Judiciary Committee, U.S. House of Representatives, Washington, D.C.

Richard Pfohl

CONNECT Music Licensing, Toronto

Lauri Rechart

International Federation of the Phonographic Industry (IFPI), London

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

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

3C. EU Copyright Developments in the Digital Single Market & CJEU

Thursday 5:25 PM – 6:30 PM (65 minutes)

Moot Court Room 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.)

Speakers:

Eleonora Rosati

University of Southampton, London

The EU copyright reform: an update

Since the release of the Digital Single Market Strategy in 2015, the EU Commission has released a number of proposals to reform the EU copyright framework, including – in 2016 – a proposal for a Directive on Copyright in the Digital Single Market. So far the most controversial provisions have arguably been the proposed press publishers’ right (Article 11) and the ‘value gap’ provision (Article 13).

Currently the Council (under its Bulgarian presidency) and the European Parliament are considering whether and in what form the directive should be adopted.

In all this, the EU Commission has recently recommended initiatives to be taken to tackle illegal content across a number of different areas (including IP rights), and the CJEU has continued playing a central role in the construction of EU copyright.

(up to 7 minutes)

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

Shira Perlmutter

U.S. Patent and Trademark Office, Alexandria

A View of EU Copyright Developments from this Side of the Atlantic

The proposed Directive on Copyright in the Digital Single Market (DSM) has drawn a great deal of interest, particularly with respect to proposals regarding press publishers’ rights, to so-called “value gap,” and text and data mining. Meanwhile, the Court of

Justice of the European Union continues to develop European copyright law doctrines, especially with respect to the right of communication to the public. What is the U.S. reaction to these developments?

(up to 7 minutes)

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

Giuseppe Mazziotti

Trinity College Dublin, School of Law, Dublin

Allowing Online Content to Cross Borders: is the EU paving the way for a Digital Single Market?

The removal of territorial barriers in content distribution seemed to have become a priority for the European Union in the context of the 'Digital Single Market' strategy the Juncker Commission presented in May 2015. Despite the existence of technologically borderless platforms, access to content in Europe is still very fragmented, especially in the audiovisual sector, where copyright works are exploited locally and so-called 'geo-blocking' measures give effectiveness to licensing schemes for online exploitation rights that are still based on a 'country-by-country' logic. The talk focuses on the commercial and cultural factors that are deemed to justify such territorial partitions and that seem to have prevailed over the original attempt of the European Commission to ban or radically reduce geo-blocking and other forms of territorial discrimination of consumers.

(up to 7 minutes)

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

Panelists:

Jerker Rydén

National Library of Sweden, Stockholm

Marcus von Welser

Vossius & Partner, Munich

(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 4: THREE CONCURRENT SESSIONS

Concurrent Session

Thursday 2:45 PM – 6:30 PM

Moot Court Room 1-01

4A. IP in China

Thursday 2:45 PM – 3:50 PM (65 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:

Jill (Yijun) Ge

Clifford Chance LLP, Shanghai

Chinese Supreme Court's recent cases – ad hoc decisions or path for the future?

In two closely watched IP cases, the Michael Jordan trademark case and the Wang Lao Ji trade dress case, the Chinese Supreme Court twice "split the baby," giving both sides a "fair" victory. The fairness consideration manifests itself again in a 2017 patent validity case, where the court unprecedentedly reviewed matter that was not on appeal and invalidated claims that had been maintained by lower courts. Some may argue these are ad hoc solutions created by judges, yet they reflect a broader balancing act that the Supreme Court is trying to accomplish within an IP system that is just 30 years old and with an evident ambition to create China's own IP model.

(up to 7 minutes)

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

Henry Carr

Chancery Division, High Court, London

A Judge in China: Tales from the Far East

This talk will consider judicial interplay between the UK and China. Trademarks, FRAND licenses, and copyright licensing will be addressed.

(up to 7 minutes)

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

Peter K. Yu

Texas A&M University School of Law, Fort Worth

Building a New International Intellectual Property Infrastructure Through China's Belt-and-Road Initiative

This presentation explores the potential intellectual property developments that will be spearheaded by the "One Belt One Road" Initiative, which China launched in fall 2013 to promote connectivity and cooperation with other parts of the world. The presentation covers issues concerning substantive standards, procedural arrangements,

cross-border enforcement, dispute resolution, technical cooperation, and market aggregation.

(up to 7 minutes)

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

Panelists:

Eleanor M. Fox

New York University School of Law, New York

Kevin M. Rosenbaum

Mitchell, Silberburg & Knupp LLP, Washington, D.C.

(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

3:50 PM – 4:15 PM

4B. EU Protection of Functional Trademarks and Designs

Thursday 4:15 PM – 5:20 PM (60 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:

Gordon Humphreys

European Intellectual Property Office, Alicante

Europe's Trademark Cutting-edge: Phase II of Legal Reform

October 2017 ushered in the second and final phase of the reform of the EUTM legal framework, with two new legal instruments - the Delegated and Implementing Regulations - entering into force. Much attention has focused on among other things the abolition of the requirement of graphical representation as a pre-requisite to registration and its ramifications for non-traditional trademarks (NTTMs). There are both opportunities and challenges ahead along with questions of whether phase II reforms will endow Europe with an efficient, competitive and innovative trademark system.

(up to 7 minutes)

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

Tobias Timmann

Freshfields Bruckhaus Deringer LLP, Düsseldorf

European Perspectives on the Protection of 3D Trademarks

While the CJEU follows a rather strict approach limiting protection for 3D trademarks, national courts in the European Union apply a more generous approach, shifting potential issues from registrability to the scope of protection. This may have an important effect on protection for 3D trademarks.

(up to 7 minutes)

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

Edger F. Brinkman

Court of the Hague, The Hague

Where does the CJEU's Doceram v. Ceram case leave us regarding the technical function exception for EU designs?

Analysis of the CJEU *Doceram v. Ceram* case of March 8, 2018 on the technical function exception for EU Designs, a quick comparison to EU trade mark law and a discussion of some remaining issues.

(up to 7 minutes)

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

Panelists:

Christian W. Liedtke

Acuminis PC, Costa Mesa, California

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

4C. Trump Administration & IP: Where is it Going?

Friday 5:25 PM – 6:30 PM (65 Minutes)

Costantino C

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:

Terry Hart

Copyright Alliance, Washington, D.C.

David J. Kappos

Cravath, Swaine & Moore LLP, New York

James Love

Knowledge Ecology International, Washington, D.C.

Stanford McCoy

Motion Picture Association EMEA, Brussels

James Pooley

James Pooley, A Professional Law Corporation, Menlo Park, California

Martin Schwimmer

Leason Ellis LLP, White Plains, New York

General discussion: 60 minutes (speakers, panelists, and members of the audience)

Thursday Reception

10 on the Park

60 Columbus Circle (Enter on 58th Street)

6:30 PM – 9:00 PM

Sponsored by:

Freshfields Bruckhaus Deringer LLP

Friday Morning, April 6

Continental Breakfast

Fordham Law School, Bateman Room/Soden Lounge

7:00 AM – 9:00 AM

Sunrise Seminars

Sunrise Seminar I: IP & Competition Law

Friday 7:30 AM – 8:45 AM (75 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.)

Speakers:

Cecilio Madero Villarejo

DG Competition, European Commission, Brussels

Current Issues in the Area of IP and Technology Markets: A European Perspective
(up to 7 minutes)

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

Eleanor M. Fox

New York University School of Law, New York

Extraterritorial applications of antitrust/IP law, in view of the divergences of substantive law: Are there world norms?

There is divergence of thought at the IP/competition interface among and even within nations. These will include remedies in antitrust IP cases, and especially China, Korea, EU and the US. Some remedies reach beyond the regulating nation itself, and as to those, are there or should there be world norms that restrict the application of law and the use of such remedies?

(up to 7 minutes)

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

William E. Kovacic

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

The application of competition policy vis-à-vis intellectual property rights: the evolution of thought underlying policy change

(up to 7 minutes)

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

Renata B. Hesse

Sullivan & Cromwell LLP, Washington D.C.

Government Lawyer in the Private Sector: A First-Hand Report
(up to 7 minutes)

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

Panelists:

James A. Keyte

The Brattle Group, Inc., New York

Wolrad Waldeck

Freshfields Bruckhaus Deringer LLP, Düsseldorf

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

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

Sunrise Seminar II: Hague Convention on Recognition & Enforcement of Judgments

Friday 7:30 AM – 8:45 AM (75 minutes)

Moot Court Room 1-01

Moderator:

David Carson

U.S. 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:

Charles R. Eloshway

U.S. Patent and Trademark Office, Alexandria

The Draft Hague Convention on Recognition and Enforcement of Foreign Judgments: Views from the USPTO

USPTO views on the draft Hague Convention, touching on the relevant background, stakeholder concerns, and the intersection with certain emerging IP issues.

(up to 7 minutes)

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

Jean-Luc Gal

DG Internal Market, Industry, Entrepreneurship and SMEs, European Commission, Brussels

The Hague convention, the European point of view

Which IP rights are affected by the draft Convention? What type of judgments could be recognized/enforced? What are the requirements concerning the proper forum?
(up to 7 minutes)

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

Michael Ryan

Department of Justice, Industry Canada Legal Services, Ottawa

Draft Hague Convention on Recognition and Enforcement of Foreign Judgments: Potential Implementation Issues

The draft Convention has the potential to be implemented differently in each Contracting State. How could this impact the recognition and enforcement of IP judgments?

(up to 7 minutes)

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

Panelists:

Iris Günther

International Trademark Association (INTA), New York

Terry Hart

Copyright Alliance, Washington, D.C.

James Love

Knowledge Ecology International, Washington, D.C.

Evelyn Montellano

Di Blasi Parente & Associados, Rio de Janeiro

(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

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

Secondary market for domain names

The impact on businesses of the emergence of a secondary market for the buying and selling of domain names. How did this secondary market take root? What facilitated its rise and consolidation? Where does the inventory that fuels this secondary market come from?

(up to 7 minutes)

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

Mary W.S. Wong

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

Reviewing Trademark Protection Mechanisms in the Domain Name System: Where Are We and Where Will We End Up?

In spring 2016, the Internet Corporation for Assigned Names & Numbers (ICANN) convened a Working Group to conduct a policy review of all the various trademark rights protection mechanisms that have been developed specifically for the domain name system, including the 1999 Uniform Dispute Resolution Policy and the various new mechanisms that were created for the 2012 expansion of the generic top-level domain (gTLD) space. Two years later, what has that review achieved, and what can trademark owners expect when the reviews are completed?

(up to 7 minutes)

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

Gareth Dickson

Taylor Vinters, Cambridge

The Protection of IP Online: The impact of ICANN's response to the General Data Protection Regulation (GDPR)

The WHOIS system, through which domain name registrant contact information is made publicly available, is relied upon by IP owners around the world to detect, challenge and ultimately discontinue online IP infringements. In February 2018, ICANN proposed changes to the WHOIS in response to the forthcoming implementation of the GDPR, including an end to the publication of a domain name registrant's name and contact information. Governments have highlighted that this will have a "significant negative impact" on rights protection and while IP owners may be allowed access to that data at some point in the future, change happens only slowly at ICANN. In-house and external counsel advising on online counterfeiting or illegal streaming of content therefore need to be able to work with the new system for the foreseeable future, and to coordinate their efforts to influence its evolution as the full impact of these changes becomes clear.

(up to 7 minutes)

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

Panelists:

John Berryhill

John Berryhill, Ph.d., Esq., Ridley Park, Pennsylvania

Georges Nahitchevansky

Kilpatrick Townsend & Stockton LLP, New York

Martin Schwimmer

Leason Ellis LLP, White Plains, New York

General discussion: 15 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:

Edger F. Brinkman

Court of The Hague, The Hague

Henry Carr

Chancery Division, High Court, London

Denny Chin

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

Ian Stewart Forrester

General Court of the European Union, Luxembourg

Klaus Grabinski

Federal Supreme Court, Karlsruhe

Lennie Hoffmann

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

Gordon Humphreys

Boards of Appeal, European Union Intellectual Property Office, Alicante

Rian Kalden

Court of Appeal of The Hague, The Hague

Pierre Leval (invited)

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

F. Scott Kieff

Former Commissioner, U.S. International Trade Commission; McKool Smith, Washington, D.C.

William E. Kovacic

Former Chairman, U.S. Federal Trade Commission; The George Washington University Law School, Washington, D.C.

Maria Eugénia Martins de Nazaré Ribeiro

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

Pauline Newman

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

Kathleen M. O'Malley

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

Yoshiaki Shibata

Tokyo District Court, 46th Division, Tokyo

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. Life Sciences

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

Costantino A/B

Moderator:

Nicholas P. Groombridge

Paul, Weiss, Rifkind, Wharton & Garrison 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:

Rian Kalden

Court of Appeals of The Hague, The Hague
Important Issues with Regard to Second Medical Use
(up to 7 minutes)

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

Shlomo Cohen

Dr. Shlomo Cohen & Co., Bnei Brak, Israel
The impact of recent generic-related legislation on the healthcare environment.
Legislation did very little to benefit the healthcare consumers and in fact benefited the proprietary pharmaceutical industry. It did result however in more cautious drafting and somewhat narrower protection for new pharmaceutical inventions.
(up to 7 minutes)

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

Eiji Katayama

Abe, Ikubo & Katayama, Tokyo
To what extent can damages be based upon lowered National Health Insurance drug prices caused by effective generics in the market?
(up to 7 minutes)

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

Stéphane Drouin

UCB, Brussels
Can IP policies reward innovation when there is enhanced focus on patient and shareholder value?
UCB firmly believes that an IP approach that streamlines patent portfolios to focus on core innovation will bring clarity to the value of innovation. A more transparent approach to IP will also change the perception that pharma companies try to prolong IP protection unfairly. UCB's proposition is to demonstrate that IP protection for innovation in the pharmaceutical space is not a "evergreening" or "artificial extension" but a recognition of value. UCB believes that it can restore confidence in the value proposition of protecting innovative research by being stewards of our intellectual estates.
(up to 7 minutes)

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

Panelists:

Oliver Jan Jüngst

Bird & Bird LLP, Düsseldorf

Otto Licks

Licks Attorneys, Rio de Janeiro

Carlos R. Olarte

Olarte Moure & Asociados, Bogotá

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

5B. Plausibility/Written Description

Thursday 11:50 AM – 1:00 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:

David Shen

Allen & Overy LLP, Shanghai

Is “a reasonable expectation of success” required in order to find a prima facie case of obviousness under the Chinese Patent Law?

In the past year, the Chinese Patent Re-examination Board (“PRB”) invalidated a high percentage of pharmaceutical patents for obviousness. Even though the Chinese Patent Examination Guideline provides, for a chemical compound invention, the examiner should look into the predictability of technology field when deciding on the obvious issue, most of these decisions did not analyze the “reasonable expectation of success” requirement. We will examine these decisions and elucidate the de facto obviousness standard applied by PRB and its impact on pharmaceutical patents in China. Is there a de facto obviousness narrative applied by the PRB and if so what is its impact on pharmaceutical patents in China?

(up to 7 minutes)

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

Brian Cordery

Bristows LLP, London

Patent Construction and Infringement in the Life Sciences

Some have concluded that it is appropriate for the law to prohibit purely speculative patents but that the threshold should be low. Was that conclusion correct? A look at significant developments in the past year, including the issues of implausible variants and equivalents.

(up to 7 minutes)

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

Janet Freilich

Fordham University School of Law, New York

Prophetic Examples in Patents

Patents often include “prophetic examples” - experiment and data that are hypothetical and have not been actually conducted. An empirical study of prophetic examples in chemistry and biology patents and reports on how and when they are used and their costs and benefits. In addition, how do both the PTO and courts assess prophetic examples when determining questions of novelty, non-obviousness, enablement, and inequitable conduct?

(up to 7 minutes)

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

Panelists:

Laetitia Benard

Allen & Overy LLP, Paris

Jürgen Dressel

Novartis Pharma AG, Basel

Brian W. Gray

Brian Gray Law, Toronto

Kevin McGough

Shire Pharmaceuticals, Lexington, Massachusetts

Marleen van den Horst

BarentsKrans, The Hague

(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 6: COMPETITION LAW

Concurrent Session

Friday 10:30 AM – 1:00 PM
Moot Court Room 1-01

6A. FRAND

Friday 10:30 AM – 11:45 AM (75 minutes)
Moot Court Room 1-01

Moderator:

Suzanne Michel

Google, 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:

Themis Anagnos

Continental Automotive, Deer Park

Nicholas Banasevic

DG Competition, European Commission, Brussels

Tobias Hahn

Hoyng Rokh Monegier, Düsseldorf

Adrian Howes

Nokia, London

Myles Jelf

Bristows LLP, London

Milan Kristof

Court of Justice of the European Union, Luxembourg

Christine Yiu

Bird & Bird LLP, Shanghai

(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. Qualcomm

Friday 11:50 AM – 1:00 PM (70 minutes)
Moot Court Room 1-01

Moderator:

Logan M. Breed

Hogan Lovells 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:

Carlos Aboim

Licks Attorneys, Rio de Janeiro

David L. Cohen

DLCIP Corporation, New York

Jorge L. Contreras

University of Utah, S.J. Quinney College of Law, Salt Lake City

David Por

Allen & Overy LLP, Paris

Christopher G. Renner

Boies Schiller Flexner LLP, Washington, D.C.

Cordula Schumacher

Arnold Ruess, Düsseldorf

Koren Wong-Ervin

Qualcomm, Washington, D.C.

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

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

SESSION 7: TRADEMARK AND COPYRIGHT LAW

Concurrent Session

Friday 10:30 AM – 1:00 PM

Costantino C

7A. EU Trademark Law Update

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

Costantino C

Moderator:

James Nurton

IP Writer/Consultant, 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:

Peter Ruess

Arnold Ruess, Düsseldorf

Cross-Border Strategies in EU Litigation: Why National Marks Might Be on the Rise Again

The German Federal Supreme Court (BGH) has ruled, in its 2017 *Coty* decision, that jurisdiction in a cross-border infringement case calls for an "overall assessment" of the defendant's behavior to establish infringement as opposed to focusing on the individual and separate acts of infringement. This interpretation of the CJEU's latest opinion on this issue in *Nintendo v. BigBen* (2017) has ignited discussion and given rise to the argument that European Union marks could thus effectively be devalued.
(up to 7 minutes)

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

Trevor Cook

WilmerHale, New York

Changing Trademarks: Does "Updating" Create Risks for Trademarks?

The EU Court of Justice in Case C-501P/15 "Cactus of Peace", rejecting the appeal by the EUIPO against the decision of the General Court, provides guidance on two aspects of genuine trade mark use. One involves marks that predate the "IP Translator" case. The other is whether the abbreviated form of a composite mark constitutes genuine use of that mark.

(up to 7 minutes)

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

Spyros Maniatis

Queen Mary University of London, London

Bad Faith and Intent to Use

(up to 7 minutes)

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

Maria Eugénia Martins de Nazaré Ribeiro

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

New Issues Concerning the Unitary Character of the EU Trademark in Recent CJEU Case Law

The impact of a "peaceful coexistence" of a EU trademark with a national trademark used in part of the EU. The interesting question of "jurisdiction" where actions for infringement, the first on the basis of a national trade mark concerning the territory of a Member state and the second on the basis of an EU trademark concerning the entire territory of the EU, are brought before the courts of different Member states between the same parties.

(up to 7 minutes)

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

Panelists:

Gordon Humphreys

European Intellectual Property Office, Alicante

Clara Pombo

Clarke, Modet & Co., Madrid

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

7B. Copyright & Trademark Enforcement

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

Costantino C

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:

Thies Bösling

Boesling IP Rechtsanwälte GbR, Hamburg

The CJEU’s Interpretation of “Establishment” – Will it Promote Forum Shopping or Effective Trademark Enforcement?

In *Hummel v. Nike* (C-617/15), the CJEU held that a subsidiary legal entity may qualify as an “establishment” of its non-EU parent for the purposes of granting pan-EU jurisdiction. Given that global corporations typically operate subsidiaries in more than one EU Member State, the CJEU’s interpretation has been criticized for creating the risk of forum shopping. In my opinion, the CJEU’s interpretation is fully in line with the ratio of the European Union Trade Mark Regulation (EUTMR). I argue that the EUTMR’s main objective is not to prevent forum shopping, but to protect trademarks effectively and to avoid contradictory judgments in different EU Member States. This objective is served by a broad interpretation of the term “establishment” because it increases the number of cases where courts have pan-EU jurisdiction.

(up to 7 minutes)

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

Susan Scafidi

Fordham University School of Law, New York
Fashion and Trademark Enforcement: What Does the Future Hold?
(up to 7 minutes)

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

Jesús Sepúlveda

Clarke, Modet & Co., Mexico City
Trademarks in Latin America: Protection Strategies and Enforcement
An overview on trademark protection in Latin America, with special focus on Mexico, Argentina, Brazil and Colombia, including key useful information and advice concerning best practices to protect and enforce trademark rights, with special emphasis on opposition systems and anti-counterfeiting measures.
(up to 7 minutes)

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

Barry B. Sookman

McCarthy Tétrault, Toronto
Why Canada Should Adopt Fairplay's Website-Blocking Plan
The proposal is a much-needed solution to a large and growing problem that threatens the massive employment, economic, and cultural contributions of Canada's film, television, and music industries.
(up to 7 minutes)

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

Panelist:

Rachel Alexander

Wiggin LLP, London

General discussion: 15 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)

SESSION 8: PATENT LAW

Concurrent Session

Friday 2:45 PM – 6:30 PM

Costantino A/B

8A. Exhaustion

Friday 2:45 PM – 3:50 PM (65 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:

Shimako Kato

Abe, Ikubo & Katayama, Tokyo

Doctrine of Patent Exhaustion in Japan

In the “BBS case” decision, in which the parallel import of patented products was at main issue, the Japanese Supreme Court firstly held that the patent right should be deemed exhausted, if patented products are sold domestically either by the patentee or the licensee. Thereafter, in the “Ink cartridge case”, the Supreme Court developed the approach of granting exhaustion. The speech will address the doctrine of patent exhaustion in Japan with the brief comparison with the U.S. *Lexmark* case.

(up to 7 minutes)

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

Jane Mutimear

Bird & Bird LLP, London

Exhaustion – protectionism v free market – US/EU compared

The *Lexmark* decision has changed the US law on patent exhaustion. In contrast Europe has regional exhaustion creating "Fortress Europe". For now the UK has to recognise European exhaustion but as patents are not a harmonised right across the EEA, the U.K. also follows a form of international exhaustion of rights called the doctrine of implied licence. This differs from the US position as it permits the patentee effectively to contract around the implied licence. However it is a complex case-law evolved doctrine, which is not easy for business to grapple with. So just between the US and Europe there are 3 different approaches to exhaustion, which makes planning a pricing strategy very challenging. As the UK exits the EU, it has the option of rethinking its laws on exhaustion. Should it?

(up to 7 minutes)

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

Brian W. Gray

Brian Gray Law, Toronto

Rights acquired by a Restricted License: Implications for Canada and Commonwealth Countries

U.S. and Commonwealth law differ in relation to the exhaustion of rights, which arises when a restricted or limited licensee sells to a party. If a license restriction does not “run with the goods” the purchaser from a restricted licensee is able effectively to ignore the license restrictions, giving that purchaser greater rights than the restricted licensee itself has and essentially vitiating the *nemo dat quod non habet* rule which is still respected for the most part in Commonwealth jurisdictions.

(up to 7 minutes)

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

Joshua D. Sarnoff

DePaul University College of Law, Chicago

Exhaustion after Impression Products

In *Impression Products v. Lexmark*, the U.S. Supreme Court created a sea-change in exhaustion doctrine. The court implicitly reject implied license as the basis for exhaustion doctrine, making exhaustion automatic as a matter of patent law. But in doing so, the Court left many unanswered questions that will now have to be worked out over time. This will likely lead to changes in contractual relations and licensing behaviors, costly litigation, and substantial uncertainty for the foreseeable future.

(up to 7 minutes)

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

Panelists:

Martin J. Adelman

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

Justin Watts

Freshfields Bruckhaus Deringer LLP, London

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

Break

3:50 PM – 4:15 PM

8B. PTAB

Friday 4:15 PM - 5:15 PM (65 min)

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:

John Richards

Ladas & Parry LLP, New York

Federal Circuit Review of PTAB post grant challenge proceedings

2017 saw a number of decisions of the Federal Circuit clarifying the way in which the PTAB should carry out inter partes review and other post grant challenges to patent validity. Issues addressed include how to deal with amendments proposed by the patent owner during such proceedings, the need for clarity as to the reasons for a decision, whether decisions are required on all challenged claims (a matter on which the Supreme Court has granted certiorari) and when review could properly be denied as being untimely.

(up to 7 minutes)

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

Patricia A. Martone

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

IPR Procedure: If we have to do it all over again, would we, could we make it better.

Even if the Supreme Court holds in Oil States that the current IPR procedure is unconstitutional, there will be widespread support for Congress to enact a new post-patent issuance validity review procedure that is constitutional. If the Court holds that the current IPR procedure is constitutional, patent owners will continue to seek changes to address their concerns. This presentation will explore possible changes to the IPR process and their impact on stakeholders.

(up to 7 minutes)

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

Panelists:

Brian Murphy

Haug Partners LLP, New York

John B. Pegram

Fish & Richardson, New York

Laura Sheridan

Google, New York

General discussion: 35 minutes (speakers, panelists and members of the audience)

8C. Doctrine of Equivalents

Friday 5:20 PM – 6:30 PM (70 minutes)

Costantino A/B

Moderator:

Justin Watts

WilmerHale, 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:

Kathleen M. O'Malley

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

TBA

(up to 7 minutes)

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

Yoshiaki Shibata

Tokyo District Court, 46th Division (IP Division), Tokyo

The Doctrine of Equivalents in Japan

In 1998, the Supreme Court of Japan affirmed the doctrine of equivalents and indicated five requirements for showing infringement under the doctrine of equivalents. Since then, there have been some issues concerning the interpretation of these requirements. Last year, the Supreme Court addressed one of the five requirements.

(up to 7 minutes)

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

Lennie Hoffmann

Queen Mary University of London, London

Activis v. Eli Lilly and the Doctrine of Equivalents: U-Turn or Much Ado about Nothing?

(up to 7 minutes)

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

Boris Kreye

Bird & Bird LLP, Munich

Doctrine of Equivalents – Simple, but Complicated

The scope of protection of a patent includes certain variants that do not literally fulfill all features of a claim. The legal framework under which such variants are covered is commonly referred to as the Doctrine of Equivalents. Patent infringement courts in Germany normally apply this doctrine on a regular basis when appropriate. Also, the German FSC constantly elaborates on the requirements for patent infringement with equivalent means. It did so in its decisions “Heat exchanger” and “Pemetrexed” – also known as *Actavis v. Eli Lilly* -, which are amongst the latest decisions on this topic. They elude in particular on the so called “3rd Question” for the doctrine of equivalents test dealing mainly with the issue of how much information the skilled person receives from the patent to assume something is an equivalent embodiment or not.

(up to 7 minutes)

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

Miquel Montaña

Clifford Chance, Barcelona

The Spanish doctrine of equivalents after Alimta®

What effect will the UK case have on the Spanish patent law and the UPC?

(up to 7 minutes)

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

Panelists:

Rian Kalden

Court of Appeal of The Hague, The Hague

Eiji Katayama

Abe, Ikubo & Katayama, Tokyo

(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 9: COPYRIGHT LAW

Concurrent Session

Friday 2:45 PM – 6:30 PM
Moot Court Room 1-01

9A. U.S. Copyright Potpourri

Friday 2:45 PM – 3:55 PM (70 minutes)
Moot Court Room 1-01

Moderator:

Sandra Aistars

Center for the Protection of Intellectual Property (CPIP), 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:

John M. Golden

The University of Texas at Austin, Texas Law, Austin

Copyright Redundancy

In a draft paper, Oren Bracha and I argue in favor of overlaps in copyright doctrines,
such as those on fair use and nonfunctionality, which we argue were distinguished
overly strictly by the U.S. Court of Appeals for the Federal Circuit in *Oracle America,
Inc. v. Google Inc.*, 750 F.3d 1339 (Fed. Cir. 2014). We acknowledge, however, that
overlapping legal doctrines can sometimes lead to confusion, as appears to have been
the case with respect to the scope of reproduction and derivative-work rights
in *Warner Bros. Entertainment, Inc. v. RDR Books*, 575 F. Supp. 2d 513 (S.D.N.Y.
2008).

(up to 7 minutes)

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

Ralph Oman

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

Did CONTU Get It Right on Software?

We are about to celebrate the 40th anniversary of the publication of the CONTU
Report. Was the subsequent act of Congress to adopt a standard copyright regime or
something closer to a sui generis regime as it did with semiconductor chips? I say
standard regime and it did get it right. Others disagree. This is an important current
issue. It arose in *Oracle v. Google* and continues to be debated.

(up to 7 minutes)

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

Daan G. Erikson

Husch Blackwell LLP, Omaha

What's "Useful" Post-Star Athletica?

Since the U.S. Supreme Court's ruling in *Star Athletica v. Varsity Brands* last year, district courts and the Copyright Office Review Board have interpreted the Supreme Court's guidance on conceptual separability and useful articles. What trends emerge from these decisions?

(up to 7 minutes)

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

Michael R. Klipper

Law Office of Michael R. Klipper, PLLC, Washington, D.C.

H.R. 3945, the "Copyright Alternative in Small-Claims Enforcement Act of 2017"

Last year, Representatives Hakeem Jeffries (D-NY) and Tom Marino (R-PA) HR 3945, the Copyright Alternative in Small-Claims Enforcement Act of 2017" (the "CASE Act") which would create a small claims copyright Board within the Copyright Office. The bill is intended to provide individual creators and small businesses with a viable forum to combat infringements of their creative works. Today, all too often these copyright owners are denied access to federal courts when their works are infringed due to the prohibitive costs of retaining counsel and maintaining federal court litigation.

(up to 7 minutes)

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

William McGrath

Davis McGrath LLC, Chicago

How Should Courts Interpret the Registration Requirement of Section 411(a) in Copyright Litigation?

There is a clear split in the Circuits on whether a plaintiff who has filed a copyright infringement action must have a copyright registration in hand (the "registration approach") or merely have submitted an application with a proper fee and deposit (the "application approach") in order to file suit. SCOTUS may be interested, as indicated by its recent order asking the Solicitor General to file a brief in response to a cert petition raising the issue.

(up to 7 minutes)

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

Panelists:

Joshua L. Simmons

Kirkland & Ellis LLP, 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)

Break

3:55 PM – 4:20 PM

9B. ALI Restatement of Copyright

Friday 4:20 PM – 5:20 PM (60 minutes)

Moot Court Room 1-01

Moderator:

June M. Besek

Kernochan Center for Law, Media and the Arts, 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.)

Speaker:

Peter S. Menell

University of California, Berkeley, School of Law, Berkeley

The ALI Copyright Restatement Project: A Horse of a Different Color?

In announcing the Copyright Restatement project in 2015, the American Law Institute set its sights for the first time on restating a complex federal statutory regime as opposed to predominantly common law fields. While critical aspects of U.S. copyright law have a common law character—such as limiting doctrines, infringement standards, and the fair use doctrine—much of the regime is set forth in the U.S. Code. Professor Menell will discuss the first two years of the ALI Copyright Restatement Project and concerns that have been raised about fitting a comprehensive federal statutory regime into a template developed for restating judge-made state common law subjects.

(up to 10 minutes)

Panelists:

Irene Calboli

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

J. Devlin Hartline

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

Justin Hughes

Loyola Law School, Los Angeles

Pierre Leval

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

William Patry

Google, New York

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

General discussion: 45 minutes (speakers, panelists and members of the audience)

9C. Fair Use

Friday 5:25 PM – 6:30 PM (65 minutes)

Moot Court Room 1-01

Moderator:

Ron Lazebnik

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:

Joshua Simmons

Kirkland & Ellis LLP, New York

Watching the Fair Use Pendulum Swing

For several years, courts have delivered significant fair use victories to copyright defendants at earlier and earlier stages of litigation. This talk will consider whether the pendulum is swinging back, resulting in an increasing number of decisions finding a lack of fair use. In particular, it will highlight the resurgence of a multi-factor approach to fair use, and how courts are addressing fair use at the pleadings stage.

(up to 12 minutes)

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

Panelists:

Richard Dannay

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

Fiona Phillips

Fiona Phillips Law, Sydney

Jane C. Ginsburg

Columbia Law School, New York

Pierre Leval

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

William Patry

Google, New York

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

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

SESSION 10: MULTILATERAL; TRADEMARK LAW

Concurrent Session

Friday 2:45 PM – 6:30 PM

Costantino C

***10A. How Do Courts and Commissions Arrive at Their
Judicial Decisions? Some Inside Views***

Friday 2:45 PM – 3:50 PM (65 Minutes)

Costantino C

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:

Denny Chin

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

Federal Courts and IP: Making Sense in a Complex World

(up to 7 minutes)

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

F. Scott Kieff

McKool Smith, Washington, D.C.

International Trade Commission and IP

(up to 7 minutes)

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

Ian Stewart Forrester

General Court of the European Union, Luxembourg

The General Court: How is it Different from Other Courts, How is it the Same?

(up to 7 minutes)

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

Simon Holzer

Mayerlustenberger Lachenal Ltd., Zurich

The Swiss Federal Patent Court: From court expert opinions to judges with a technical background

The new Swiss Federal Patent Court was established in Switzerland in 2012. Under the new rules, at least one judge with technical training is involved in each case, whereas previously only judges with legal training examined the cases. The change in the composition of the court had a great influence on the way the cases are presented and discussed. The court uses reports and statements from technical judges in lieu of expert opinions. This may also be the case when the UPC will take up work.

(up to 7 minutes)

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

Panelists:

Mary W.S. Wong

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

William E. Kovacic

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

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

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

Break

3:50 PM – 4:15 PM

10B. Multilateral Developments

Friday 4:15 PM – 5:15 PM (60 minutes)

Costantino C

Moderator:

Stanford McCoy

Motion Picture Association EMEA, 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:

Jane C. Ginsburg

Columbia University School of Law
U.S. Non-Compliance with Berne
(up to 7 minutes)

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

Weerawit Weeraworawit

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

Empathy or Unreadiness in Protecting Emerging IP Rights

There are international initiatives in trying to provide legal protection to emerging IP rights such as traditional knowledge, folklore, and genetics resources. But negotiations seem to go on without any concrete result. Is this because there is lack of empathy among the stakeholders or the authorities concerned are not ready to grant such legal protection?

(up to 7 minutes)

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

Kevin M. Rosenbaum

Mitchell, Silberberg & Knupp LLP, Washington, D.C.

Copyright and the NAFTA Negotiations

Although other issues have so far dominated press coverage of the NAFTA negotiations, the copyright rules will be a very important part of any renegotiated agreement. How important is updating the copyright provisions in a renegotiated agreement? What are the priorities and challenges for rights holders in the negotiations?

(up to 7 minutes)

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

Mihály Ficsor

Presidential Board of the Council of Copyright Experts, Hungarian Intellectual Property Office, Budapest

The Anti IP Campaign: What role does it have in contemporary multilateral IP negotiations?

The anti-IP campaign seemed to begin in field of copyright and spread over to other branches of IP rights. Its roots might be found in the common interests of internet intermediaries and their end users in limiting copyright protection. Certain academics have offered ideology and NGOs have been established as a framework of anti-IP activism. The success of the campaign already endangers sustainable creation and

production of valuable works. What can we expect from WIPO and WTO or perhaps the EU's Digital Single Market proposed directive?
(up to 7 minutes)

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

Panelists:

John Lee

Gilbert + Tobin, Sydney

Maria Strong

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

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:

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.)

Speakers:

Marshall Leaffer

Maurer School of Law, University of Indiana, Bloomington

Recent U.S. Trademark Law Developments

(up to 10 minutes)

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

Jeffery A. Handelman

Brinks, Gilson & Lione, Chicago

Noteworthy Developments at the TTAB

Much is happening at the TTAB. Sweeping changes to the Rules of Practice give parties an opportunity to streamline their cases. Moreover, consumer surveys are playing an increasingly important role in high-profile TTAB cases, highlighting the need to avoid common flaws in survey design and methodology. Recent decisions in cases involving snack foods, a familiar yellow box, and popular soft drinks provide important lessons.

(up to 7 minutes)

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

Anne Gilson LaLonde

Author, *Gilson on Trademarks*, South Burlington

Scandalous marks and Section 2(a) of the Lanham Act

In *Tam*, the U.S. Supreme Court opened the door for registration of disparaging trademarks. Next, the Federal Circuit followed suit for scandalous marks in *Brunetti*. How likely is SCOTUS to review the *Brunetti* decision? What's the status of the bad words bars?

(up to 7 minutes)

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

Barton Beebe

New York University School of Law, New York

What is the Status of Territoriality Doctrine in the U.S. after Belmora v. Bayer?

(up to 7 minutes)

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

Panelists:

Emily M. Borich

Davis Wright Tremaine LLP, New York

Anderson Duff

Revision Legal, New York

General discussion: 15 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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