

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

**28th Annual Intellectual Property Law & Policy  
Conference**

www.fordhamipinstitute.com

**Thursday and Friday, April 8 – April 9, 2021  
(online)**

**Hugh C. Hansen  
Director**

*Learn   Debate   Have Fun*

---

**CONFERENCE PROGRAM**

**Thursday, April 8**

**Welcoming Remarks:**

Thursday 8:00 AM – 8:15 AM

Plenary Building: <https://live.remco.co/e/28th-annual-intellectual-propert-8>

**Hugh C. Hansen**

Fordham University School of Law, New York

**Matthew Diller**

Fordham University School of Law, New York

**SESSION 1: Plenary Sessions**

Thursday 8:15 AM – 11:25 AM

## ***1A. Government Leaders' Perspectives on IP***

Thursday 8:15 AM – 9:50 AM (95 minutes)

Plenary Building: <https://live.remco.co/e/28th-annual-intellectual-propert-8>

### 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:

#### **Daren Tang**

World Intellectual Property Organization (WIPO), Geneva

##### ***The Pandemic and Beyond: What Lies Ahead for the Global IP Ecosystem***

Innovation is increasingly globalized and this trend will accelerate in the next 5-10 years. Already, we are seeing tremendous growth of IP activity in different regions of Asia, and in pockets of innovation from other parts of the world, and the pandemic has accelerated the ongoing shift to digital ways of working, playing and living. In this global innovation ecosystem, intangible assets like intellectual property are growing tremendously and will eventually dominate the global economy. We need to bring a multi-disciplinary, global perspective to studying and understanding both these developments. IP institutions, including WIPO, will also need to evolve to meet the needs and expectations of stakeholders as we enter the second decade of the 21<sup>st</sup> century.

(up to 7 minutes)

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

#### **António Campinos**

European Patent Office (EPO), Munich

##### ***The Role of IP Offices in a Sustainable Patent System***

This intervention will address the current obstacles in innovation and put forward the EPO's vision of how IP offices can contribute to tackling those challenges.

(up to 7 minutes)

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

## **Shira Perlmutter**

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

### ***Future Directions for U.S. Copyright***

This talk will address the Copyright Office's current priorities, including modernization of the Office's services as well as policy analysis and development. It will also discuss the major issues being debated globally with respect to copyright and evolving technologies.

**(up to 7 minutes)**

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

## **Marco Giorello**

European Commission, Brussels

### ***The Last 10 Years of Copyright Policy in the EU***

Copyright has been in the forefront of the policy and legal debate in Europe over the last years. The much discussed new copyright directive is only part of a bigger picture which also includes several other new EU legislative instruments and a growing number of important judgements of the EU Court of Justice. While this debate never really stops, and new topics emerge, this talk will try to sketch out some trends and conclusions from the last 10 years of European copyright

**(up to 7 minutes)**

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

## **Renata Hesse**

Sullivan & Cromwell LLP, Washington, D.C.

### ***SEPs Again: Is the New Madison Approach Old News?***

From the 2015 IEEE Business Review Letter in the Obama Administration to the New Madison approach of the Trump Administration, the Antitrust Division's views on IP, and SEPs and the role of antitrust in FRAND-related disputes in particular, took what seemed like a 180-degree turn. How big was the change really and what can we expect from the Biden Administration?

**(up to 7 minutes)**

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

Panelists:

**Pauline Newman**

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

**Brian H. Pandya**

Duane Morris LLP, Washington, D.C.

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

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

**Break**

9:50 AM – 10:00 AM

***1B. Key Current IP Issues: Reflections & Analysis***

Thursday 10:00 AM – 11:25 AM (85 minutes)

Plenary Building: <https://live.remco.co/e/28th-annual-intellectual-property-8>

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.)

Ne awa

Speakers:

**Kathleen M. O'Malley**

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

***Will Cross-Border Injunctions and Worldwide Licensing Rates Interfere with Efforts to Harmonize the International Patent Landscape?***

**(up to 7 minutes)**

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

**Colin Birss**

UK Court of Appeal, London

***The Online Future of Civil Justice***

The future of civil justice is online. Cases, including intellectual property matters of all kinds, will be started online, managed online and, for the most part, resolved online. Alternative dispute resolution will be an integral element. It will make full use of the data with machine learning and natural language processing. Proper judicial

governance of these new structures and approaches is paramount. The prize in terms of access to justice is worth fighting for.

**(up to 7 minutes)**

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

**Antony Taubman**

World Trade Organization (WTO), Geneva

**(up to 7 minutes)**

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

**Michele Woods**

World Intellectual Property Organization (WIPO), Geneva

***COVID-19 Disruption in the Creative Industries: Challenges and Opportunities Along the Value Chains***

The Covid-19 pandemic has been a disruptive force in the creative industries. Many individual creators and national cultural industries have suffered greatly and many national governments have provided assistance during this difficult period. At the same time, 2020 was a banner year for certain content providers and distribution services. The disruption will have long-term effects that last well beyond the ongoing pandemic.

**(up to 7 minutes)**

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

**Allen Dixon**

Ideas Matter, London

***Getting the Message Out About the Importance of Intellectual Property***

Governments, business and the public often get wrong, misleading or indecipherable information about intellectual property—which produces a variety of problems. IP protection is, however, vital for innovation and creativity, businesses small and large, the economy, consumers and society, and we need to get that message out. Using real people’s stories, useful data, convincing commentary and effective media and internet outreach can help us build awareness of the benefits of intellectual property more widely and more effectively.

**(up to 7 minutes)**

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

Panelists:

**Jane C. Ginsburg**

Columbia Law School, New York

**Annsley Merelle Ward**

WilmerHale LLP, London

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

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

**Break**

11:25 AM – 11:45 AM

**Session 2: PATENT LAW**

**Concurrent Session**

Thursday, 11:45 AM - 3:30 PM

Building 1: <https://live.remco.co/e/28th-annual-intellectual-propert-2>

***2A. Subject Matter Eligibility***

Thursday 11:45 AM – 12:55 PM (70 minutes)

Building 1

<https://live.remco.co/e/28th-annual-intellectual-propert-2>

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 online.)

Speakers:

**John B. Pegram**

Fish & Richardson, P.C., New York

***Let's Seek a Better § 101***

Patent eligibility under 35 U.S.C. § 101 is a mess, which the courts cannot resolve.

Efforts to revise Section 101 are stalled because there is no consensus. Today, let's consider the possibility of a Section 101 that broadly defines the outer limits of patentability.

**(up to 7 minutes)**

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

### **David J. Kappos**

Cravath, Swaine & Moore LLP, New York

#### ***The Long Road to Section 101 Reform — Prospects for the New Congress***

The mess that is section 101 is not fixing itself. The district courts are lost. The Federal Circuit continues to struggle with fractious, split decisions. The Supreme Court will not step in. Reform in Congress has proven elusive. What efforts have been underway recently, what efforts are underway now, and what is coming in the ongoing effort to somehow fix section 101? This presentation will address these questions.

**(up to 7 minutes)**

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

### **Shimako Kato**

Abe, Ikubo & Katayama, Tokyo

#### ***What Is the Proper Approach to Patent Subject Matter Eligibility in Japan?***

This presentation will examine the basic approach, recent decisions, and the view of the speaker on what the approach should be in the future.

**(up to 7 minutes)**

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

### **Michael Williams**

Gilbert + Tobin, Sydney

#### ***Not Eligible Downunder: How Computer Software Inventions become "Abstract Ideas" in Australia***

Recent decisions of the Federal Court have created an almost insurmountable barrier to eligibility for computer implemented inventions in Australia. Patents for software inventions that are clearly novel and inventive are routinely struck down as "abstract ideas." Initially local patents were the main casualties of invalidation, but increasingly it is internationally filed patents that are failing. How did we get here? And is there any pathway for patentees to avoid Australia becoming a wasteland for software patents?

**(up to 7 minutes)**

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

Panelists:

**Trevor Cook**

WilmerHale, New York

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

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

**Break**

12:55 PM – 1:00 PM

## ***2B. Patents and the Pandemic***

Thursday 1:00 PM – 2:10 PM (70 minutes)

Building 1: <https://live.remco.co/e/28th-annual-intellectual-propert-2>

Moderator:

**Penny Gilbert**

Powell Gilbert LLP, London

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

Speakers:

**Joshua D. Sarnoff**

DePaul University College of Law, Chicago

***TRIPS Waiver: Needed but Not Nearly Enough!***

As a recent suit against Pfizer has shown, if patent rights had been enforceable but for the Bolar exception, they might have prevented or delayed vaccine development. This should illustrate the reason why the TRIPS Waiver should be adopted, but it is opposed even though it would have the same effects on development, and may be needed (but is not the limiting step) for broader production and distribution. What is clearly needed is mandatory sharing of know-how to produce and distribute vaccines, and the TRIPS Waiver will not begin to address that important need. Rather, only governments can compel such know-how sharing, and should do so immediately!  
**(up to 7 minutes)**

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

**John Todaro**

Merck & Co., Inc., Kenilworth, New Jersey

***The Role of IP Rights in the Development and Production of Medicines in Response to the Pandemic***

The Covid-19 pandemic has confronted the modern world with a unique public health challenge. Innovative pharmaceutical companies have responded to the pandemic by entering into collaborations and sharing intellectual property to develop vaccines and therapeutics. These efforts have demonstrated the value of intellectual property protections in encouraging innovation.

**(up to 7 minutes)**

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

**James Love**

Knowledge Ecology International, Washington, D.C.

***The Response to the COVID-19 Pandemic***

Governments have provided massive subsidies to develop COVID-19 vaccines and therapies. The U.S. R&D contracts frequently used "Other Transactions Authority" in the COVID response legislation to eliminate or narrow the government's rights in inventions. The WTO has been asked to waive TRIPS obligations during the pandemic, the WHO has tried to set up a global COVID Technology Access Pool, and the EU is proposing a new technology pool for Europe. Should companies hoard inventions and know-how during a pandemic?

**(up to 7 minutes)**

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

**Justin Hughes**

Loyola Law School, Los Angeles

***Keeping Everyone to the Bargain***

The speed at which treatments and now vaccines were developed against the novel coronavirus speaks well of the complex public-private system we have in medical R&D. But the pandemic also gave us glimmers of how the intended allocation of IP rights in the Bayh-Dole Act and other federal funding arrangements may be subverted by private actors and even government officers eager to get projects going. When the COVID storm subsides, it will be a good time to get greater transparency in how the public finds R&D and greater compliance from the private sector with the "bargain" for federally-funded research.

**(up to 7 minutes)**

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

Panelists:

**Miquel Montaña**

Clifford Chance LLP, Barcelona

**Kevin J. McGough**

Takeda, Lexington, Massachusetts

**John Lee**

Gilbert + Tobin, Sydney

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

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

**Break**

2:10 PM – 2:20 PM

***2C. U.S. Patent Developments***

Thursday 2:20 PM – 3:30 PM (70 minutes)

Building 1: <https://live.remco.co/e/28th-annual-intellectual-propert-2>

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 online.)

Speakers:

**Dimitrios T. Drivas**

White & Case LLP, New York

***U.S. Patent Developments Overview***

**(up to 25 minutes)**

Panelists:

**Nicholas P. Groombridge**

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

**Adam Mossoff**

Antonin Scalia Law School, George Mason University, Arlington

**Laura Sheridan**

Google, New York

**Ari Laakkonen**

Powell Gilbert LLP, London

**Steven Lieberman**

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

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

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

## **Session 3: COPYRIGHT LAW**

### **Concurrent Session**

Thursday 11:45 AM - 3:30 PM

Building 2: <https://live.remco.co/e/28th-annual-intellectual-propert-3>

### ***3A. EU Copyright Reform***

Thursday 11:45 AM – 12:55 PM (70 minutes)

Building 2: <https://live.remco.co/e/28th-annual-intellectual-propert-3>

#### Moderator:

#### **Ted Shapiro**

Wiggin LLP, 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:

#### **Eleonora Rosati**

Stockholm University, Stockholm

#### ***An Overview of the Digital Single Market Directive 2 Years On: What Lies Ahead for EU Copyright Law***

In 2019, the EU adopted Directive 2019/790 on copyright in the DSM. EU Member States have time until 7 June 2021 to transpose the Directive into their own laws. This talk addresses the influences of the EU Commission and Court of Justice and the current state of Member State implementations.

**(up to 10 minutes)**

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

#### **Jan Bernd Nordemann**

Nordemann, Berlin

#### ***Author Remuneration in Copyright – New Mandatory EU Rules***

The new EU DSM Copyright Directive has introduced for the entire EU rules to safeguard a fair remuneration for authors and artists granting rights to use their works. These new rules will heavily change the relationship between the author/the performing artist on the one hand and film producers, music producers, publishers etc. on the other hand. There is a principle of appropriate and proportionate remuneration, a transparency obligation to render information about the use of the work annually and a contract adjustment mechanism for bestseller scenarios. So far, such law only existed in a number of EU countries (for example in Germany), outside the EU they can hardly be found. The talk will present the new EU rules and will provide insight into some German experiences.

**(up to 7 minutes)**

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

**Jerker Rydén**

National Library of Sweden, Stockholm

*Article 15 of the Directive on Copyright and Related Rights in the Digital Single Market - From Theory to Praxis*

Many articles in the Directive provide a framework, Article 15 is one of them. It provides protection of press publications concerning online uses. All good intentions, but how are the press publishers supposed to recoup their investments? The application of Extended Collective License (ECL) to the transposition of article 15 is emerging in Member States. Could ECL be the missing piece in the jigsaw?

**(up to 7 minutes)**

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

Panelists:

**Fiona Phillips**

Fiona Phillips Law, Sydney

**Giuseppe Mazziotti**

Trinity College, Dublin

**Silke von Lewinski**

Max Planck Institute for Innovation and Competition, Munich

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

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

**Break**

12:55 PM – 1:00 PM

***3B. Copyright Potpourri***

Thursday 1:00 PM – 2:10 PM (70 minutes)

Building 2: <https://live.remco.co/e/28th-annual-intellectual-propert-3>

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:

**Umair Kazi**

The Authors Guild, New York

***Stealing from Peter to Lend to Paul: How the Internet Archive Used the Pandemic to Encroach on Authors' Rights***

Following the Internet Archive's launch of the National Emergency Library (NEL) last year, over 6,000 authors and their supporters signed on to an open letter calling for the shut-down of the National Emergency Library. Publishers called its practices, "potentially even more pernicious than ordinary online piracy." The unequivocal backlash against the NEL crystallised the frustrations that authors and publishers have felt for years in regards to IA's flouting of copyright law and the rights of authors. In this talk, I will be discussing how the Internet Archive's unilateral move to publicly distribute unauthorized copies of books – under the pretense of providing a public good -- is a slippery slope where any pirate website can give legal patina to wholly illegal conduct. I will describe the devastating consequences piracy has on authors, and the need to adopt robust and flexible licensing regulations that ensure broad legal access to copyrighted works and remuneration for the authors.

**(up to 7 minutes)**

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

**Sepehr Shahshahani**

Fordham University School of Law, New York

***Designs of Useful Articles in Copyright Law: Where Do We Go After Star Athletica?***

This talk briefly describes the Copyright Act's treatment of designs of useful articles, conflicting case law on the subject, and the Supreme Court's attempt at elaborating the doctrine in *Star Athletica v. Varsity Brands* (2017). It will discuss the ambiguities in the majority opinion and why the decision has not brought much-sought coherence to the subject. And it will conclude by offering a few thoughts on how the doctrine might continue to develop.

**(up to 7 minutes)**

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

**Paolo Catalozzi**

Supreme Court of Italy, Rome

***IP Rights Protection in the Digital Environment: Dynamic Injunctions***

Due to the technical structure of the internet, regular blocking injunctions against IP rights infringement are easy to circumvent, and content can easily be re-hosted, re-uploaded or moved to another server to further evade blocking measures.

In this context, national judges are searching for measures that are able not only to bring to an end IP rights infringements, but also to prevent them, by blocking access to a website and all the different domain names under which the infringer operates.

The topic will focus on these “dynamic” injunctions, their extension and the interference with the rights of the parties involved.

**(up to 7 minutes)**

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

**Steven J. Shapiro**

Federal Bureau of Investigation (FBI), New York

***IP Attorney to Supervisory Special Agent: An Overview of the Journey***

Supervisory Special Agent Steven Shapiro will provide an overview of his journey from his brand and licensing-focused practice to overseeing the Federal Bureau of Investigation’s Intellectual Property Rights (IPR) criminal investigations. He will describe the role and priorities of the FBI on IPR cases as well as the latest trends in copyright infringement. SSA Shapiro will also provide guidance on how rights holders and consumers can assist in combating the spread of criminal infringement.

(up to 7 minutes)

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

Panelists:

**Christine Storry**

University of Melbourne, Melbourne

**Ann Bartow**

University of New Hampshire, School of Law, Concord

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

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

**Break**

2:10 PM – 2:20 PM

### ***3C. U.S. Copyright Developments***

Thursday 2:20 PM – 3:30 PM (70 minutes)

Building 2: <https://live.remco.co/e/28th-annual-intellectual-property-3>

Moderator:

**David O. 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:

**Ralph Oman**

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

***State Immunity from Monetary Damages for Copyright Infringement: Is the 14<sup>th</sup> Amendment Poised to Outflank the 11<sup>th</sup> Amendment Defense?***

Last year in *Allen v. Cooper*, the U.S. Supreme Court held that the Copyright Remedy Clarification Act (CRCA) did not successfully abrogate the 11<sup>th</sup> Amendment prohibition on suits for money damages against States and State actors. Without persuasive evidence of widespread, willful, and recurring State infringements, 11<sup>th</sup> Amendment immunity trumps congressional statute—the Constitution prevails. After

that decision, litigants have shifted their focus from the CRCA to the 14<sup>th</sup> Amendment, which prohibits the taking of property without due process of law (and, they contend, without just compensation). Will this new approach allow authors to pierce the 11<sup>th</sup> Amendment shield and collect money damages from willful State infringers?

**(up to 7 minutes)**

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

### **Nick Bartelt**

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

#### ***A Fair Use Update: Embedding, Tattoos, Experimenting, and Seuss***

Since 2019, U.S. courts have issued about 75 copyright decisions addressing fair use. This update highlights recent notable opinions—including reversals by the Fourth and Ninth Circuits—that considered issues from embedding social media posts to a Dr. Seuss/Star Trek mashup.

**(up to 7 minutes)**

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

### **Steven Tepp**

Sentinel Worldwide, Washington D.C.

#### ***Google v. Oracle: Cheat Code vs. Declaring Code***

Google admits it copied over 11,000 lines of creative “declaring code” from Oracle's popular Java program for use in its Android mobile platform. Google refused a license and now offers contorted statutory arguments claiming the copied code isn't copyrightable and insists its verbatim copying was transformative fair use. This presentation will discuss the case that could sustain copyright, tear it down, or send it into a metaphysical morass.

**(up to 7 minutes)**

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

### **Kevin Madigan**

Copyright Alliance, Washington D.C.

#### ***Copyright Small Claims and Closing the Streaming Loophole: An Overview of the PLSA and CASE Act***

In late 2020, two copyright bills were signed into law: The Protecting Lawful Streaming Act (PLSA) and the Copyright Alternative in Small Claims Enforcement (CASE) Act. This presentation will provide an overview of the scope of the laws and look ahead at how they will be implemented.

**(up to 7 minutes)**

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

Panelists:

**Robert J. Bernstein**

Law Office of Robert J. Bernstein, New York

**Jonathan Band**

Jonathan Band PLLC, Washington, D.C.

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

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

## **Session 4: TRADEMARK LAW**

### **Concurrent Session**

Thursday 11:45AM – 3:30PM

Building 3: <https://live.remco.co/e/28th-annual-intellectual-propert-4>

### ***4A. EU Trademark Law Update***

Thursday 11:45 AM – 12:55 PM (70 minutes)

Building 3: <https://live.remco.co/e/28th-annual-intellectual-propert-4>

Moderator:

**James Nurton**

IP Writer/Editor, 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 Nurton**

IP Writer/Editor, London

***EU Trademark Law and The Rise of The General Court***

The changes introduced by Article 58a of the Statute of the CJEU, and to some extent the impact of Brexit, mean fewer trademark cases are heading to the CJEU, so practitioners need to pay more attention to the judgments of the EU General Court. This presentation will summarise some key General Court decisions from the past year affecting registrability, likelihood of confusion and liability.

**(up to 9 minutes)**

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

### **Tobias Timmann**

Freshfields Bruckhaus Deringer LLP, Düsseldorf

#### ***The F Word and Goethe: Freedom of Expression in EU Trademark Law***

In a decision dated 27 February 2020 (C-240/18 P), the CJEU ruled that freedom of expression has to be considered in assessing whether a trademark is contrary to public policy or accepted standards of morality. What this exactly means is not clear yet and will lead to debate.

**(up to 7 minutes)**

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

### **Peter Ruess**

ARNOLD RUESS, Düsseldorf

#### ***Liability of Marketplaces Reloaded – CJEU on Coty v Amazon (C-567/18) and "Merely Storing"***

Liability for marketplace providers has been the scene for quite some higher and highest court rulings. In this recent decision, the CJEU as final arbiter confirms the German Federal Supreme Court's view whereas Amazon is not liable for storing goods. What does this mean for marketplaces and trademark holders and how does this fit into the previous line of cases?

**(up to 7 minutes)**

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

### **David Stone**

Allen & Overy LLP, London

#### ***Steady as She Goes – Evolution Not Revolution in EU Design Law***

Six years into the EU review of the design law system, legislative reform proposals and language are expected very shortly. From the various preparatory documents (including a legal study and an economic study), reform looks likely to be confined to tidying up unclarity in the Design Regulation and Design Directive. The EU has also acknowledged that the processes for filing designs could also be improved, and greater harmonisation introduced with practices and procedures in member states.

Meanwhile, the UK is now outside the EU design law system, with a new 3-year unregistered UK design right created to mirror the EU unregistered design right, but for disclosures within the UK. Does this force designers to choose which unregistered right to obtain? Or does simultaneous internet disclosure solve the issue?  
(up to 7 minutes)

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

Panelists:

**Christina Münter**

Takeda, Glattpark/Opfikon, Switzerland

**Anke Nordemann-Schiffel**

Nordemann, Berlin

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

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

**Break**

12:55 PM – 1:00 PM

## ***4B. Trademark Applications and Enforcement in Bad Faith: Developments in the Courts and Legislature***

Thursday 1:00 PM – 1:55 PM (55 minutes)

Building 3: <https://live.remco.co/e/28th-annual-intellectual-property-4>

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:

**Alexander Tsoutsanis**

DLA Piper Nederland N.V., Amsterdam

***Skykick and Beyond***

Getting to grips with intent-to-use and over-broad trademark specifications in EU trademark filings.

(up to 7 minutes)

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

**Magdalena Berger**

Curi Platz LLP, New York

***How the USPTO Addresses Overly Broad Filings***

Can you catch them with failure to function refusals, stringent specimens review or easier cancellation proceedings?

(up to 7 minutes)

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

**Gareth Dickson**

Taylor Vinters, LLP, Cambridge

***Hallmarks of Bad Faith in the UDRP***

In the Uniform Domain Name Dispute Resolution Policy, a trademark rightsholder must show that its trademark is recognizable in a domain name and that the domain name has been registered and is being used in bad faith. A consensus as to what does and what does not constitute bad faith has served the UDRP very well for decades, but a recent case involving the domain name [hallmark.tv](http://hallmark.tv) has challenged that orthodoxy and put that consensus in doubt.

(up to 5 minutes)

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

**Paul Maier**

European Intellectual Property Office, Alicante

***Cumulation of Intellectual Property Rights and Evergreen: The Role of Bad Faith***

In the EU legal system, the same subject matter can be cumulatively protected by several intellectual property rights. A logo can be protected by 6 different IPRs cumulatively to which one can add the unfair competition rules. Can bad faith be invoked to limit such cumulation of rights? Can an unlimited right be invoked if one limited in time comes to lapse or is there a presumption of bad faith when such moves are made by rightsholders? Is there a risk of evergreen?

(up to 7 minutes)

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

Panelist:

**Daniel R. Bereskin**

Bereskin & Parr LLP, Toronto

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

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

**Break**

1:55 PM – 2:05 PM

***4C. Trademark Potpourri***

Thursday 2:05 PM – 3:30 PM (85 minutes)

Building 3: <https://live.remco.co/e/28th-annual-intellectual-propert-4>

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:

**Etienne Sanz de Acedo**

International Trademark Association (INTA), New York

***The Pandemic and Trademarks: Challenges and Opportunities***

The pandemic has significantly increased counterfeiting but it has also presented opportunities. For instance, for IP offices to educate consumers about the role of brands and innovation as well as to bolster legislative changes to promote health and safety without affecting the role brands play in helping consumers make choices. However, it is critical that there be collaboration among stakeholders, including Small and Medium Enterprises (SMEs), entrepreneurs, e-commerce platforms, and social networks.

**(up to 7 minutes)**

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

**Gordon Humphreys**

European Intellectual Property Office, Alicante

***Getting Real: The Empirical Evidence Toolkit in EU Trademark Law***

EU trademark law is replete with legal constructs, ‘paper’ conflicts and presumptions of one sort or another. But relevant consumers - usually seen as a hypothetical class of persons used to gauge a standard of reasonableness - can be transformed into actual individuals, particularly where reputation, or enhanced and acquired distinctiveness are concerned. How are real people factored into the judicial analysis of trademarks and what guidance does case law from Luxembourg offer on collating, presenting and evaluating the fruits of empirical research?

(up to 7 minutes)

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

**Melissa Pittaoulis**

NERA Economic Consulting, Philadelphia

***How Should Surveys Measure Commercial Impression?***

In *Hana Financial, Inc. v. Hana Bank*, the U.S. Supreme Court ruled that the question of whether two marks create the same, continuing commercial impression is a question of fact for the jury. Since then, several commentators have noted that surveys may be an important piece of evidence in helping a jury make such a determination. However, there is currently no standard, accepted methodology for how such surveys should be conducted. None of the recognized survey formats commonly used in trademark cases (e.g., *Eveready*, *Squirt*, *Teflon*, etc.) are adequate for measuring whether there is a continuing commercial impression. A new survey format is needed to specifically measure whether two marks create the same commercial impression and discuss the design elements that such a format should include.

(up to 7 minutes)

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

**Joel Smith**

Herbert Smith Freehills LLP, London

***Extended Protection Across Europe for Geographical Indications – More Disputes Likely, Given:***

- the impact of *Morbier v Livradois* (CJEU C-490/19), 17 December 2020 on the protection for EU PDOs/PGIs not only to their protected name, but also features of shape or appearance of the protected food or agricultural product, if there is a risk of the consumer being misled;
- the adoption of a new GI regime in the UK (including differences in N. Ireland arising out of the Northern Ireland Protocol); and
- latest EU proposals to streamline the existing EU GI scheme and also extend protection into non-food/agricultural products.

(up to 7 minutes)

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

**Daan Erikson**

Husch Blackwell LLP, Chicago

***Say, “Gruyere”: USPTO Deference to FDA and USDA***

The Trademark Trial and Appeal Board recently held that the term “gruyere” is generic in the United States for a kind of cheese. *U.S. Dairy Export Council v. Interprofession du Gruyère*, No. 91232442 (T.T.A.B. Aug. 5, 2020). After the TTAB

decision, the USPTO issued a new Trademark Examination Guide opining, “inclusion on the FDA or USDA list is strong evidence that the term is generic for the particular cheese or processed meat . . . .” It is conceivable that courts and the TTAB may apply such guidance to food and beverage products more broadly, if not other products as well. The gruyere dispute, which is on appeal in the Eastern District of Virginia, and its aftermath presents an interesting case study on what evidence the TTAB finds persuasive and how administrative, regulatory determinations intersect across agencies.

**(up to 5 minutes)**

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

Panelists:

**Irene Calboli**

Texas A&M University School of Law, Fort Worth

**Anderson Duff**

Hogan Duff LLP, New York

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

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

---

## **Thursday Reception**

3:30 PM – 4:30 PM

<https://live.remco.co/e/allen-and-overly-reception>

Sponsored by:

**Allen & Overy LLP**

---

## **Friday, April 9**

**Session 5: PATENT LAW**

**Concurrent Session**

Friday, 8:00 AM - 1:25 PM

Building 1: <https://live.remo.co/e/28th-annual-intellectual-propert-5>

## **5A. Remedies**

Friday 8:00 AM – 9:10 AM (70 minutes)

Building 1: <https://live.remo.co/e/28th-annual-intellectual-propert-5>

Moderator:

### **Brian Cordery**

Bristows LLP, London

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

Speakers:

### **Paul R. Michel**

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

***Limiting Injunctions Destroys Voluntary Licensing Incentives, Devalues IP Rights, and Overburdens Ill-Informed Courts***

Unrealistic doctrinal decisions by ill-informed appellate courts have hobbled the constitutionally-sanctioned "exclusive right" for authors and inventors. This right forms the necessary foundation for widespread licensing that enables sharing while rewarding creators. Legislative correction of serious judicial error is even more crucial with the advent of additional economic disruption from Covid-19.

**(up to 7 minutes)**

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

### **Maximilian Haedicke**

Albert-Ludwigs-Universität Freiburg, Freiburg

***Proportionality and Injunctive Relief in German Patent Law – A Paradigm Shift?***

Whereas proportionality has not been applied in German patent infringement proceedings over a long time, recent case law has considered proportionality in cease and desist claims. Moreover, the German legislator is willing to implement proportionality into the Patent Act but many questions have yet to be resolved.

**(up to 7 minutes)**

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

### **Marleen van den Horst**

BarentsKrans, The Hague

***Liability for Enforcing Preliminary Injunctions in Pharma Cases***

The impact of the CJEU decision in *Bayer vs. Richter* on the right of a party to claim damages in a case where a preliminary injunction was enforced against it and the patent is held invalid and/or not infringed. Also discussed is a recent, unique NL District Court decision, holding a patentee liable for damages suffered by a health insurer as a result of unjustly forcing a generic company off the market.

**(up to 7 minutes)**

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

**Adrian Howes**

Nokia, London

***Anti-Suit Injunctions: A New Fad or Here to Stay?***

This talk will review the context of the current spate of anti-suit injunctions (SEPs and global licensing), provide a summary of recent cases in the battle over jurisdiction from the U.S. to China, and discuss how this might develop in the future.

**(up to 7 minutes)**

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

Panelists:

**Ralf Uhrich**

Google, Munich

**Wolrad Waldeck**

Freshfields Bruckhaus Deringer LLP, Düsseldorf

**David J. Kappos**

Cravath, Swaine & Moore LLP, New York

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

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

**Break**

9:10 AM – 9:15 AM

***5B. Patent Litigation***

Friday 9:15 AM – 10:25 AM (70 minutes)

Building 1: <https://live.remo.co/e/28th-annual-intellectual-propert-5>

Moderator:

**Myles Jelf**

Bristows LLP, London

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

Speakers:

**Simon Holzer**

Meyerlustenberger Lachenal AG, Zurich

***The Limitation of Patents by the Patentee in Patent Infringement Proceedings***

In patent infringement proceedings, where the validity of the asserted patents may be challenged, it may be necessary for the patent owner to limit his patents prior to or during patent infringement proceedings. If he fails to do so in good time, the patentee risks having the patent infringement action dismissed on the grounds of an invalid patent. Recent court rulings from Switzerland show that stumbling blocks can lie in the way of the patent holder.

**(up to 7 minutes)**

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

**Marjan Noor**

Allen & Overy LLP, London

***Use of Divisionals to Stifle Competition? UK Patent Court's Flexibility Provides the Antidote – Issue Estoppel and Broad Arrow Declarations***

With innovator vs innovator disputes increasing in the biologics space, patentees can use the uncertainty of pending divisionals to create leverage. This presentation will analyse recent decisions by the UK court introducing a new means of clearing the way of divisionals based on issue estoppel principles and also extending the scope of Arrow declarations to facilitate their use against a broad alleged inventive concept rather than a specific product or process.

**(up to 7 minutes)**

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

**Stephen Burley**

Federal Court of Australia, Sydney

***The Conduct of Patent Trials: A Judge's Perspective***

Moving from the role of an advocate to judge hearing patent trials has been an education. Over the last 5 years my perspective on what works in the art of persuasion in such cases – and what doesn't work – has changed. Oral presentation or arguments, the role and perception of experts, client behaviour and the treatment of written

submissions are addressed. This presentation will pass on a judge's eye view on the hearing of patent cases in the common law system.  
**(up to 7 minutes)**

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

**Ronald E. Dimock**

Gowling WLG, Toronto

***What Keeps the Doctrine Away?***

Canada has long rejected the "Doctrine of Equivalents" in favour of a law that is based on "Purposive Construction" of the claims, a contextual rather than a literal interpretation of the claims, followed by the assessment of infringement. Such claims construction will identify and separate the elements which are essential to the way the invention works from those which are non-essential. Infringement of a patent claim occurs when all its essential elements are used without license, even if a non-essential element of that claim is omitted or varied.

**(up to 7 minutes)**

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

Panelists:

**Otto Licks**

Licks Attorneys, Rio de Janeiro

**Aloys Hüttermann**

Michalski, Hüttermann & Partner, Düsseldorf

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

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

**Break**

10:25 AM – 10:30 AM

***5C. International Patent Developments***

Friday 10:30 AM – 12:00 PM (90 minutes)

Building 1: <https://live.remco.co/e/28th-annual-intellectual-property-5>

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 online.)

## Speakers

### **Robin Jacob**

Lord Justice of Appeal of the Court of Appeal, London (retired); Faculty of Laws, University College London, London

#### ***New Uses for Old Medicines: How to Incentivise Research***

To a doctor a new use for an old medicine is the same as a new medicine for that new use. To find and prove new uses takes time and money but only around a quarter of the cost in time and money to find and prove a new medicine for the first time. The incentive to find new uses for old medicines which are or shortly about to be generic are not good. How do we incentivize finding new uses of old medicines?

**(up to 7 minutes)**

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

### **Christopher Floyd**

Lord Justice of Appeal of the Court of Appeal, London (retired)

#### ***Regeneron: Adequate Protection for Ground-Breaking Inventions?***

In *Regeneron*, the UK Supreme Court held (by a majority) that a patent was insufficient for failing to enable more sophisticated embodiments of the invention than it had described. All such embodiments would, however, have made use of the inventor's essential idea. Lord Hoffmann, a retired Supreme Court judge said recently that he was "startled" by the result and that it was "obviously wrong." Was the Supreme Court right?

**(up to 7 minutes)**

### **Lennie Hoffmann**

Second Senior Lord of Appeal in Ordinary (retired); Queen Mary University of London, London

#### ***Of Mice and Law Lords: The Regeneron Patent***

In the recent *Regeneron* case, the UK Supreme Court held a patent specification insufficient because although the invention could be performed, it could not in the then state of technology be put to much use. Does this confuse the concept of 'susceptible of industrial application' with sufficiency?

**(up to 7 minutes)**

**Discussion: 10 minutes (speakers, panelists and members of the audience)**

## **Dirk Bühler**

Maiwald, Munich

### ***SPCs – Recent Case Law of the European Court of Justice Foreshadows Challenging Times for Innovators***

SPCs are Europe's counterpart to PTEs. They are the only patent-related property right in which the European Court of Justice (CJEU) acts as the final instance and one of the few examples where patent and regulatory law are directly linked. The case law of the past decade has focused to a large extent on developing the criteria for assessing when an approved active is protected by an SPC/patent. We will review how recent decisions by the CJEU continue to introduce new criteria unknown to national practice and why these criteria foreshadow challenging times for the innovative branches of the industry.

**(up to 7 minutes)**

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

## **Heinz Goddar**

Boehmert & Boehmert, Munich

### ***Second Medical Use Patents and Compulsory Cross-Licenses***

Second medical use patents could/should be looked at as covering important improvements of patents directed to the "substance as such" and/or first medical use patent. In that case, opening clauses like in Art. 24 (2) of German Patent Act (GPA), entitling the "improver" in a compulsory cross license (possibly with balancing royalty stream(s) between primary and secondary patentee) might be suitable to make the improvement invention available to mankind. Similar provisions, of course, exist also in other countries, like e.g. India.

**(up to 7 minutes)**

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

## **Gustavo de Freitas Morais**

Dannemann Siemsen Bigler & Ipanema Moreira, São Paulo

### ***Enforcing Patents in Brazil***

Brazil often seems like a tough place to enforce a patent. Although it certainly has its peculiarities, one should bear in mind that, as a rule, it is much easier to obtain a preliminary injunction in Brazil than in other jurisdictions. In order to increase the chances of a preliminary injunction grant, one should pay attention to venue and expert selection, among other issues.

**(up to 7 minutes)**

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

Panelists:

**Shlomo Cohen**

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

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

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

**Break**

12:00 PM – 12:20 PM

***5D. PTAB***

Friday 12:20 PM - 1:25 PM (65 minutes)

Building 1: <https://live.remco.co/e/28th-annual-intellectual-propert-5>

Moderator:

**Kenneth R. Adamo**

Law Office of KRAdamo, Chicago

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

Speakers:

**George E. Badenoch**

Hunton Andrews Kurth LLP, New York

***Discretionary Denial of Inter Partes Review***

Current US law allows anyone to petition for inter partes review (IPR) of a patent, allows multiple IPRs to be filed against the same patent, and allows the Administrative Law Judges (ALJs) that preside over IPR proceedings to refuse to institute proceedings for discretionary reasons unrelated to the merits of the petition. This system creates problems for defendants in multi-party cases, because the discretionary factors considered in deciding whether to institute tend to favor instituting only the first petition to be filed, whether or not it relies on the best prior art, presents the strongest arguments or is controlled by the party with the most at stake. The system can also be problematic for patent owners, because it allows companies in an industry to fund independent IPR filing firms that file IPRs against patents asserted against the companies without binding those companies to the result. **(up to 7 minutes)**

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

## **Patricia Martone**

NYU Law Engelberg Center on Innovation Law & Policy, New York

### ***Has the AIA Finally Hit the Wall in the Arthrex Cases?***

The Arthrex cases before the Supreme Court highlight the fundamental structural dichotomy on which the IPR is built. It is an adjudicative proceeding cloaked in an administrative proceeding. The AIA created administrative judges with the same powers as Article III judges to determine patent validity. A Supreme Court decision holding that the appointment and/or oversight of PTAB judges is unconstitutional would require either the Court or Congress to fix the problem. The result would be disruptive but necessary to restore confidence in our patent system.

**(up to 7 minutes)**

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

## **John Richards**

Ladas & Parry LLP, New York

### ***Standing Requirement for Losing Challengers in PTAB Proceedings to Appeal to the Federal Circuit***

The America Invents Act provides that the losing party in post grant review or inter partes review can appeal from a decision of the PTAB to the Court of Appeals for the Federal Circuit. Article III of the U.S. Constitution limits the role of the federal courts to deciding “cases or controversies.” This has led to a number of cases in which the question of whether a losing challenger in the PTAB has sufficient of a potential dispute with the patent owner to meet the “case or controversy” requirement and so have standing to appeal.

**(up to 7 minutes)**

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

## Panelists:

### **John R. Thomas**

Georgetown University Law Center, Washington, D.C.

### **Brian Scarpelli**

ACT | The App Association, Washington, D.C.

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

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

## **Break**

1:25 PM – 1:30 PM

## **Session 6: COPYRIGHT LAW, COMPETITION & TRADEMARK LAW**

### **Concurrent Session**

Friday, 8:00 AM - 1:25 PM

Building 2: <https://live.remo.co/e/28th-annual-intellectual-propert-6>

### ***6A. Platform Liability in the U.S. and EU***

Friday 8:00 AM – 9:10 AM (70 minutes)

Building 2: <https://live.remo.co/e/28th-annual-intellectual-propert-6>

#### Moderator:

#### **Lauri Rechart**

International Federation of the Phonographic Industry (IFPI), 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:

#### **Maria Strong**

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

#### ***Five on 512***

This presentation will summarize the Copyright Office’s 2020 report on section 512 and raise some considerations related to intermediary liability.

**(up to 7 minutes)**

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

#### **Abigail A. Rives**

Engine, Washington, D.C.

#### ***Startup Perspective on DMCA 512***

The current framework for resolving allegations of copyright infringement online, under 17 U.S.C. §512, provides critical certainty and is especially important to startups and emerging Internet platforms. This talk will give an overview of that perspective, and address how--in policy debates that can tend to revolve around large companies and rightsholder organizations--startups could have the most to lose.

**(up to 7 minutes)**

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

**Ursula Feindor-Schmidt**

Lausen Rechtsanwälte, Munich

*The Liability of Online Content Sharing Service Providers in EU Jurisdiction and Legislation – The YouTube/Uploaded Case and Article 17 DSM*

In 2021, the upcoming decision in the YouTube/Uploaded case as well as its interconnection with the new liability regime in Article 17 DSM and its national implementations entering into force June 7, will have an immense impact on the rights of artistic, business and scholarly creators – as well as the entertainment, media and publishing industries that serve them. This talk gives an overview of what rightsholders have to be prepared for in order to be able to enforce their rights.

**(up to 7 minutes)**

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

**Stanford McCoy**

Motion Picture Association EMEA, Brussels

*Cybercrime and the Proposed EU Digital Services Act*

The European Commission has touted the DSA as an “upgrade” to enhance online safety and trust. In this presentation, Stan McCoy puts on his black hat to consider how purveyors of illegal content and services – including but not limited to IP infringements – will try to remain untouchable.

**(up to 7 minutes)**

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

Panelists:

**Sandra Aistars**

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

**Julia Reda**

Berkman Klein Center for Internet & Society at Harvard University, Cambridge

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

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

**Break**

9:10 AM – 9:15 AM

**6B. Copyright & Music**

Friday 9:15 AM – 10:25 AM (70 minutes)

Building 2: <https://live.remco.co/e/28th-annual-intellectual-property-6>

Moderator:

**Mitch Glazier**

Recording Industry Association of America (RIAA), 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:

**Judith Finell**

Judith Finell MusicServices Inc., New York and Los Angeles  
*Blurred Lines, Led Zeppelin, and Katy Perry Decisions from a Musicologist Perspective*

A discussion of the issues using exhibits including audio and visual exhibits and musical analysis breakdowns.

**(up to 7 minutes)**

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

**William F. Patry**

Google, New York

*Blurred Lines, Led Zeppelin, and Katy Perry Decisions: Another Musician's Perspective*

Blurred copyright law: Is there a stairway to rational decision making in music infringement cases?

**(up to 7 minutes)**

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

**Regan A. Smith**

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

***Music Modernization Act: Where Are We Today?***

Regan Smith will provide an overview on implementation of the Music Modernization Act and the January 2021 transition to a blanket licensing system administered by a new collective for mechanical uses of musical works by digital streaming services. The presentation will address what to expect from the mechanical licensing collective, the Copyright Office's activities, as well as potential impacts on future rate settings and other takeaways for music policy.

**(up to 7 minutes)**

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

**Daniel J. Abowd**

The Royalty Network, Inc., New York

***2021: A Songwriter's Odyssey***

2021 promises to be an eventful, insightful, and uncertain year for songwriters and music publishers. This presentation will explore whether there are any lasting implications for rightsholders stemming from several 2021 developments including: (1) the launch of the Mechanical Licensing Collective and the new blanket mechanical licensing for digital streaming rights; (2) the ongoing remand of the Phonorecords III Copyright Royalty Board decision that, prior to vacatur, had bumped digital streaming rates by 44%; and (3) the looming Phonorecords IV CRB trial governed, for the first time, by the Music Modernization Act's new "willing buyer/willing seller" rate standard.

**(up to 7 minutes)**

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

Panelists:

**Richard Pfohl**

CONNECT Music Licensing, Toronto

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

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

**Break**

10:25 AM – 10:30 AM

## **6C. FRAND**

Friday 10:30 AM – 12:00 PM (90 minutes)

Building 2: <https://live.remco.co/e/28th-annual-intellectual-propert-6>

Topics covered include anti-suit injunctions (including ADR; Unwired Planet; litigation against car makers), licensing practices (including to whom must SEP holders must offer a license; FTC v Qualcomm; non-discrimination aspects in FRAND) and intersections (access to digital platforms and data sets; lessons from Covid-19; NDAs and trade secrets in FRAND litigation).

Moderator:

### **Cordula Schumacher**

ARNOLD RUESS, 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.)

Panelists:

### **David Por**

Allen & Overy, Paris

### **Steven Geiszler**

Huawei Technologies, USA, Inc., Plano

### **Anne-Charlotte Le Bihan**

Bird & Bird, Paris

### **Milan Kristof**

Court of Justice for the European Union, Luxembourg

### **Kamil Kiljanski**

European Commission, Brussels

### **Rian Kalden**

Court of Appeal of the The Hague, The Hague

### **Tobias Hahn**

Hoyng Rokh Monegier, Düsseldorf

### **Steve Akerley**

InterDigital, Inc., Wilmington, Delaware

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

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

## **Break**

12:00 PM – 12:15 PM

## ***6D. U.S. Trademark Law Update***

Friday 12:15 PM – 1:25 PM (70 minutes)

Building 2: <https://live.remo.co/e/28th-annual-intellectual-propert-6>

### **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***

Will a generic term, when combined with the .com top level domain must automatically be deemed generic (*United States Patent and Trademark Office v. Booking.com B.V.*, 140 S. Ct. 2298 (2020))? Is willful infringement required before a court may order a trademark infringer's profits be disgorged (*Romag Fasteners, Inc. v. Fossil Group, Inc.*, 140 S. Ct. 1492 (2020))? Can multi-color marks used on product packaging be inherently distinctive without proof of secondary meaning (*In Re Forney Indus., Inc.*, 955 F.3d 940 (Fed. Cir. 2020))?

**(up to 10 minutes)**

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

#### **Joshua L. Simmons**

Kirkland & Ellis LLP, New York

##### ***Dancing with Rogers: Trademarks and the First Amendment***

Although the courts agree that trademark law must accommodate First Amendment considerations, they have done so utilizing disparate doctrinal frameworks. Since its adoption in 1989, the *Rogers v. Grimaldi* doctrine has developed into a robust protection of expressive works. In recent cases, however, trademark owners have asserted that the doctrine has extended beyond its original contours. This talk will

consider the evolution of *Rogers* and the arguments that have been advanced to restrict its ambit.

**(up to 7 minutes)**

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

**Jeffery A. Handelman**

Brinks Gilson & Lione, Chicago

***The Trademark Modernization Act of 2020***

The Trademark Modernization Act of 2020 contains significant provisions that impact litigation strategy in federal court as well as practice before the Trademark Trial and Appeal Board. The Act includes a rebuttable presumption of irreparable harm, giving added protection to trademark owners, and new expungement and reexamination proceedings, helping to remove unused marks from the register and thereby promoting the integrity of the U.S. trademark system.

**(up to 7 minutes)**

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

**Gerald M. Levine**

Levine Samuels LLP, New York

***UDRP and ACPA: 21 Years On***

Before 1999, there was no dedicated mechanism for combating abusive registrations of domain names and no case authority or jurisprudence for parties to consult about the rights and wrongs of registering domain names identical or confusingly similar to existing trademarks. In 1999, the Internet Corporation for Assigned Names and Number (ICANN) implemented the Uniform Domain Name Dispute Resolution Policy (UDRP) and at the same time the U.S. Congress enacted the Anticybersquatting Consumer Protection Act (ACPA). There are similarities and differences of liability between these two regimes that stimulate the disparities in the developing bodies of law.

**(up to 8 minutes)**

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

**Panelist:**

**Jennifer McDowell**

International Trademark Association (INTA), New York

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

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

**Break**

1:25 PM – 1:30 PM

**Session 7: COMPETITION & FOUR CONCURRENT SESSIONS**

**Concurrent Session**

Friday, 8:00 AM - 1:25 PM

Building 3: <https://live.remco.co/e/28th-annual-intellectual-propert-7>

***7A. IP in China***

Friday 8:00 AM – 9:00 AM (60 minutes)

Building 3: <https://live.remco.co/e/28th-annual-intellectual-propert-7>

Moderator:

**Mark Cohen**

University of California, Berkeley, School of Law, Berkeley

(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:

**Elaine Wu**

U.S. Patent and Trademark Office, Alexandria

**(up to 7 minutes)**

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

**He Jing**

Gen Law Firm, Beijing

***China IP Reforms – What the Patent Law Amendment Tells Us?***

The fourth round of patent law amendments took almost a decade to complete. Patent linkage, patent term extension, punitive damages, design patents are among some of

the major reforms. What are the dynamics underlying the changes and what may be coming next?

**(up to 7 minutes)**

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

**Jill (Yijun) Ge**

Allen & Overy LLP, Shanghai

***Patent Linkage in China – Protecting Innovation or Accelerating Patent Cliff?***

China has introduced a patent linkage system through the recent amendment to the Patent Law which will come into effect in June this year. The patent linkage system is intended to provide a mechanism for early resolution of patent disputes between innovators and generic companies before the generic approvals in China. In addition to examining the proposed procedural framework from both regulatory and litigation perspectives, a more practical question is how pharmaceutical companies operating in China should prepare for this new breed of patent dispute resolution. In particular, it would be worthwhile examining potential pitfalls and challenges taking into account the existing court practices and lessons learned from past enforcement cases.

**(up to 7 minutes)**

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

**Guan H. Tang**

Queen Mary University of London, London

***Social Media, Copyright and Censorship: Will Technology Be the Saviour?***

The technology of social media has evolved tremendously, which allows “almost half the world”, including “a billion users” in China to engage, create and advocate. Such nature of social media has brought unprecedented challenges to the current legislation, copyright and censorship in particular; will technology be the saviour?

**(up to 7 minutes)**

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

Panelists:

**Boya Yin**

Lung Tin IP, Beijing

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

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

**Break**

9:00 AM – 9:05 AM

***7B. Antitrust: AI and Digital Platforms***

Friday 9:05 AM – 10:05 AM (60 minutes)

Building 3: <https://live.remco.co/e/28th-annual-intellectual-propert-7>

Topics covered include U.S. antitrust and tech platforms (including privacy, equity, and data access concerns), Senator Klobuchar’s antitrust bill , AI and antitrust (See e.g. <https://law.stanford.edu/codex-the-stanford-center-for-legal-informatics/computational-antitrust/>) and Chinese/European developments.

Moderator:

**Daryl Lim**

UIC 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:

**Damien Geradin**

Geradin Partners, Brussels

**William E. Kovacic**

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

**Thomas B. Nachbar**

University of Virginia, School of Law, Charlottesville

**Thibault Schrepel**

Utrecht University, Utrecht; Stanford University's CodeX Center, Stanford

**Charlotte Slaiman**

Public Knowledge, Washington D.C.

**Angela Zhang**

University of Hong Kong, Faculty of Law, Hong Kong

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

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

**Break**

10:05 AM – 10:10 AM

***7C. Artificial Intelligence***

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

Building 3: <https://live.remco.co/e/28th-annual-intellectual-property-7>

Moderator:

**Michael S. Shapiro**

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:

**Heli Pihlajamaa**

European Patent Office (EPO), Munich

***Patent Law and AI – Out of the Black Box***

It is important to clarify the myths surrounding patentability of AI-related inventions, addressing the requirements of sufficient disclosure, patent eligibility and inventiveness. In addition, the principles of inventorship and its application in relation to AI inventions are discussed.

**(up to 7 minutes)**

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

**Janet Freilich**

Fordham University School of Law, New York

***Using Technology to Find Patents***

This talk will explore how AI is used to run freedom-to-operate searches and create patent landscapes. It will also cover technologies that can be used for large-scale patent analytics, how these technologies can be used to guide decision making, and some opportunities and pitfalls the technologies present.

**(up to 7 minutes)**

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

## **Carlo Scollo Lavizzari**

Lenz Caemmerer, Basel

### ***“Feed Me!” Said the Machine, and so Said Its Feeder: How to Square IP with AI, TDM and Machine Learning***

What should be done when AI appropriates the value from owners of databases and published works. This topic should concern all copyright and IP practitioners representing clients both as suppliers of high-quality inputs and as creators/users of AI systems/tools.

**(up to 7 minutes)**

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

### Panelists:

#### **Michael Fischer**

Venner Shipley LLP, Munich

#### **Shlomit Yanisky-Ravid**

ONO Academic Law School, Israel

#### **Ian C. Ballon**

Greenberg Traurig LLP, Palo Alto

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

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

## ***7D. Trade Secrets***

Friday 11:10 AM – 12:05 PM (55 minutes)

Building 3: <https://live.remo.co/e/28th-annual-intellectual-propert-7>

### Moderator:

#### **Jan-Diederik Lindemans**

Crowell & Moring LLP, 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:

**Richard Arnold**

UK Court of Appeal, London

***Trade Secrets and Conflicts of Laws under the Trade Secrets Directive***

What law applies to trade secrets disputes in the EU and the UK? Although choice of law is regulated by the Rome II Regulation, it has been argued that Article 4(5) of the Trade Secrets Directive contains an implied choice of law rule. Is there a conflict, and if so how it is to be resolved?

**(up to 8 minutes)**

**Discussion: 6 minutes (speakers, panelists and members of the audience)**

**Courtney Cox**

Fordham University School of Law, New York

***Deceptive Precautions***

Trade secret law requires companies to protect their secrets to be eligible for legal relief. One common way of protecting secrets in ordinary life is relatively inexpensive: lie. Verbal decoys, like outright lies and misleading half-truths, can obscure a secret and even conceal its existence. Is the same true for companies that need to protect commercial secrets? And if so, could the law recognize such deceptive precautions as satisfying trade secret law's reasonable precaution requirement?

**(up to 8 minutes)**

**Discussion: 6 minutes (speakers, panelists and members of the audience)**

Panelists:

**Victoria A. Cundiff**

Paul Hastings LLP, New York

**Sharon K. Sandeen**

Mitchell Hamline School of Law, Saint Paul

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

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

**Break**

12:05 PM – 12:20 PM

## ***7E. IP and Courts: Current and Future Challenges***

Friday 12:20 PM – 1:25 PM (65 minutes)

Building 3: <https://live.remco.co/e/28th-annual-intellectual-propert-7>

### 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:

#### **Klaus Grabinski**

Federal Court of Justice, Karlsruhe

***How the Pandemic Has Affected Patent Litigation at the Bundesgerichtshof and  
What Might Remain Once the Pandemic Has Been Overcome.***

(up to 7 minutes)

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

#### **Carl Josefsson**

European Patent Office, Haar

***The Boards of Appeal of the EPO – Judicial Authority of First and Final Instance:  
Recent Developments in the Appeals Procedure***

The President of the Boards of Appeal will speak about the judicial nature of the  
appeal proceedings before the Boards, their new Rules of Procedure (in force since 1  
January 2020) and on conducting oral proceedings by videoconference.

(up to 7 minutes)

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

#### **Annabelle Bennett**

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

***Which Courts; Which Judges; Which System?***

This is not about whether there should be specialised IP Courts or specialised Judges. We must accept that what is, is. Different jurisdictions have decided how, and by whom, IP rights are determined and we must work with that. So, how to know where to go, how much to educate and how to prepare and present? How much can one take an already prepared case from one jurisdiction to another and from one Judge to another?

**(up to 7 minutes)**

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

### **F. Scott Kieff**

Kieff Strategies LLC, Washington D.C.

#### ***Options for IP Dispute Settlement***

Parties to IP disputes have many choices. Various adjudicative bodies exist within most national systems, and several exist in the transnational arena. There also is the option for mediation. This presentation will summarize different bundles of characteristics that make several options more attractive than many first thought, while offering suggestions for managing challenges today and tomorrow.

**(up to 7 minutes)**

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

#### Panelists:

#### **Oliver Jan Jüngst**

Bird & Bird LLP, Düsseldorf

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

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

#### **Break**

1:25 PM – 1:30 PM

### **SESSION 1: Plenary Session**

Friday 1:30 PM – 3:00 PM

<https://live.remco.co/e/28th-annual-intellectual-property-5>

## ***1C. Views from the Judiciary***

Friday 1:30 PM – 3:00 PM (90 minutes)

Building 1: <https://live.remo.co/e/28th-annual-intellectual-propert-5>

### 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:

#### **Richard Arnold**

UK Court of Appeal, London

#### **Annabelle Bennett**

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

#### **Colin Birss**

UK Court of Appeal, London

#### **Stephen Burley**

Federal Court of Australia, Sydney

#### **Paolo Catalozzi**

Supreme Court of Italy, Rome

#### **Jennifer Choe-Groves**

U.S. Court of International Trade, New York

#### **Christopher Floyd**

Lord Justice of Appeal of the Court of Appeal, London (retired)

#### **Klaus Grabinski**

Federal Court of Justice, Karlsruhe

#### **Lennie Hoffman**

Second Senior Lord of Appeal in Ordinary; Queen Mary University of London, London (retired)

#### **Simon Holzer**

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

#### **Gordon Humphreys**

Boards of Appeal, European Union Intellectual Property Office, Alicante

#### **Robin Jacob**

Lord Justice of Appeal of the Court of Appeal, London (retired); Faculty of Laws,  
University College London, London

**Carl Josefsson**

European Patent Office, Haar

**Rian Kalden**

Court of Appeal of the The Hague, The Hague

**F. Scott Kieff**

Former Commissioner, U.S. International Trade Commission; Kieff Strategies LLC,  
Washington D.C.

**Kathleen M. O'Malley**

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

**Paul R. Michel**

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

**Pauline Newman**

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

---

## **Closing Reception**

3:00 PM – 4:00 PM

<https://live.remco.co/e/bristows-reception>

Sponsored by:

**Bristows LLP**

---