

Emily C. & John E. Hansen Intellectual Property Institute

**30th Annual Intellectual Property Law & Policy
Conference**

www.fordhamipinstitute.com

**Fordham Law School, New York, NY
Thursday and Friday, April 13 – April 14, 2023**

**Hugh C. Hansen
Director**

Learn Debate Have Fun

CONFERENCE PROGRAM

Wednesday, April 12

Reception & Dinner for Faculty and Sponsors

Reception: Bateman Room, Fordham Law School

6:15 PM to 7:30 PM

Dinner: Costantino Room, Fordham Law School

7:30 PM to 9:30 PM

Sponsored by:

Allen & Overy LLP

Thursday, April 13

Continental Breakfast

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

Registration

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

SESSION 1: PATENT LAW

Concurrent Session

Thursday, 8:00 AM – 11:55 AM
Costantino A/B

1A. Injunctions

Thursday 8:00 AM – 9:10 AM (70 minutes)
Costantino A/B

Moderator:

Aloys Hüttermann

Michalski, Hüttermann & Partner, Düsseldorf

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

Speakers:

Klaus Grabinski

Unified Patent Court, Court of Appeal, Luxembourg

When Injunctions Can Be Disproportionate in European Patent Disputes and What to Do About It

In the US, courts apply the Ebay test for determining whether to award permanent injunctive relief to a prevailing plaintiff in a patent infringement litigation. In most of Europe, it follows from the character of the patent as an exclusive right that the patent proprietor can require an infringer to cease and desist from future infringements. This concept, however, is limited by the requirement that injunctions must not only be effective and persuasive but also proportionate, as laid down in Art. 3(2) Enforcement

Directive. This talk will be about when an injunction might not be proportionate, who must tell the judge about it and what possibilities does the judge have to make it proportionate.

(up to 7 minutes)

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

Richard Meade

Chancery Division, High Court, London

Availability of Injunctions in Patent Litigation in the UK

Historically, injunctions have been available almost automatically to a successful patentee in an infringement action in the UK. The position has developed in the last five years or so (i) as general UK case law about injunctions has been modernized to address situations where relief would be unduly oppressive or contrary to the public interest (ii) with regard to the EU Enforcement Directive and (iii) in relation to FRAND SEP cases. This talk will consider the upshot.

(up to 7 minutes)

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

Marleen van den Horst

La Gro Geelkerken, The Hague

A (Preliminary) Injunction Prior to the Grant of a Patent, Should That Be Possible? - The Fingolimod Case

In February 2022 the Technical Board of EPO decided that Novartis' patent application EP 2 959 894 ("EP 894") regarding a once daily dosage of 0,5 mg fingolimod for the treatment of RR multiple sclerosis should proceed to grant, overruling the decision of the Examining division. Shortly thereafter Novartis started PI proceedings against multiple generic companies throughout Europe, first in the Netherlands, arguing that bringing generic products to the market prior to the official grant/validation was unlawful. By way of a subsidiary claim Novartis requested a PI from the moment of grant/validation onwards, based on patent infringement. Both claims were denied by the Provisions judge in its decision of 22 March and 21 June 2022 respectively. Both decisions were affirmed in appeal. Proceedings were also instituted in Belgium, Germany, Finland, France, Italy, Austria, Spain, UK, Sweden and in the US.

(up to 7 minutes)

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

Jill Ge

Allen & Overy LLP, Shanghai

Injunctions in China

This presentation will review the recent developments regarding injunctions in China, which show apparent influences from both US and EU laws. For example, although the principle of proportionality is not explicitly stated in the law, it has been considered in practice. Chinese courts are generally flexible and do not shy away from fashioning injunctive relief. Having said that, this presentation will also touch on the recent U-turn on anti-suit injunctions in China.

(up to 7 minutes)

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

Panelists:

Nicholas P. Groombridge

Groombridge, Wu, Baughman & Stone LLP, New York

Carlos R. Olarte

OlarteMoure & Asociados, Bogotá

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

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

1B. Forum Shopping & Extraterritoriality

Thursday 9:15 AM – 10:20 AM (65 minutes)

Costantino A/B

Moderator:

Robin Jacob

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

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

Speakers:

David Por

Allen & Overy LLP, Paris

Forum Shopping in Europe – Making the Best of a Scattered Landscape

This talk will discuss differences in approach between courts of various European jurisdictions, and the way in which patentees (or potential defendants) can use them to their advantage.

(up to 7 minutes)

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

Andrew Bowler

Bristows LLP, London

What Are the Jurisdictional Confines of European Courts?

This talk will examine the extent to which European Courts can grant remedies extending beyond their borders. In particular, as we approach the start of the UPC, will the so-called ‘long-arm jurisdiction’ of that court prove to be a reality and, if, so, how will states that are not participating in the UPC respond?

(up to 7 minutes)

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

Shimako Kato

Abe, Ikubo & Katayama, Tokyo

The Japanese Approach to an Extraterritorial Infringement

On July 20, 2022, the IP High Court affirmed an extraterritorial infringement in *Dwango vs. FC2 et. case* for the first time in Japan. The invention at issue was a program for comments displaying apparatus and the court held that the defendant’s act of delivering the program from the server located in the USA was an infringing act in Japan. The second related case is now pending before the IP High Court and the court has invited public opinion on the application of the patent law, based on the newly introduced Japanese Amicus Curiae System. This talk will address both cases and covers expectations regarding the second case and Japanese views of extraterritorial infringement.

(up to 7 minutes)

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

Panelists:

Oliver Jan Jüngst

Bird & Bird LLP, Düsseldorf

Nahoko Ono

Lerner David, Cranford, New Jersey

John B. Pegram

Fish & Richardson, P.C., New York

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

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

Break

10:20 AM – 10:45 AM

1C. U.S. Patent Developments

Thursday 10:45 AM – 11:55 AM (70 minutes)

Costantino A/B

Moderator:**Martin J. Adelman**

The George Washington University Law School, Washington, D.C.
(up to 5 minutes to introduce the subject matter; intro of speakers –
just name and affiliation, please see bios online.)

Speakers:**Dimitrios T. Drivas**

White & Case LLP, New York

U.S. Patent Developments Overview

An overview of recent cases at the Federal Circuit and The Supreme Court with a
focus on patent eligibility under 35 USC Sec. 101 and written description and
enablement under 35 USC Sec. 112.

(up to 25 minutes)

Panelists:**James M. Bollinger**

McCarter & English, LLP, New York

David J. Kappos

Cravath, Swaine & Moore LLP, New York

Carey R. Ramos

Quinn Emanuel Urquhart & Sullivan LLP, New York

Laura Sheridan

Google, New York

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

SESSION 2: COPYRIGHT LAW**Concurrent Session**

Thursday, 8:00 AM – 11:55 AM

MCR 1-01

2A. E.U. Copyright Developments

Thursday 8:00 AM - 9:05 AM (65 minutes)

MCR 1-01

Moderator:

Stan 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 online.)

Speaker:

Eleonora Rosati

Stockholm University, Stockholm

The National Transpositions of the DSM Directive: How are Things Playing Out in Practice?

EU Member States had until June 7th, 2021 to transpose the 2019 DSM Directive into their own laws. After nearly two years, the picture that emerges is a concerning one. First, several countries have yet to complete this process: 11 Member States have been now referred to the Court of Justice of the European Union (CJEU) for failure to fully transpose the directive into national law. Second, and even more importantly, the existing national transpositions present several instances of gold-plating: while in the long run, the CJEU might smooth out the differences between national laws, for the time being, it is apparent that the establishment of a digital single market remains a distant hope, if not altogether a utopia.

(up to 7 minutes)

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

Benoit van Asbroeck

Bird & Bird LLP, Belgium

The Interplay Between the EU DATA ACT and Copyright

The EU Data Act proposal aims to regulate the use and access of machine-generated data in the EU across all economic sectors. One of the upcoming challenges for scholars and legal practitioners is to assess to what extent the Data Act will have an impact on data ownership and copyright. This presentation will therefore provide further insights into the general principles of the Data Act and its implications for individuals and organizations, the interplay of the Data Act with copyright protection, including the impact of the Data Act on exceptions to copyright, such as the text and data mining exception.

(up to 7 minutes)

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

Matthias Leistner

LMU Munich Faculty of Law, Munich

The New Liability and Diligence Regime in the Digital Services Act and its Impact on Future Copyright Infringement Liability in the EU

The copyright infringement liability is exempted from the DSA's scope by an express "without prejudice" clause. Nonetheless, the new diligence duties and liability regime might well have a significant indirect impact on copyright infringement liability. This could concern both, online content-sharing service providers under Art. 17 DSM Directive as well as general copyright infringement liability of internet platforms.

(up to 7 minutes)

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

Panelist:

Ole Jani

CMS Hasche Sigle Partnerschaft von Rechtsanwälten und Steuerberatern mbB, Berlin

Elizabeth Kendall

Facebook, Washington, D.C.

Michael Williams

Gilbert + Tobin, Sydney

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

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

2B. Copyright Claims Board: What Can We Expect?

Thursday 9:10 AM - 10:20 AM (70 minutes)

MCR 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 online.)

Speaker:

David O. Carson

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

The Copyright Claims Board in Action

The Copyright Claims Board opened its virtual doors last June and issued its first final determination in February. This talk will provide an overview of the Board's activities over the past year.

(up to 7 minutes)

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

Charlotte Hart

The County Court at Central London, Royal Courts of Justice, London
A Comparison of the Copyright Claims Board with the Small Claims Track of the Intellectual Property Enterprise Court (the 'IPEC') in England and Wales

The contribution will focus on how far the design of each contributes to its effectiveness as an accessible and reliable method of enforcing IP rights in lower-value claims. What purpose do these systems serve beyond the enforcement of individual rights?

(up to 7 minutes)

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

Brittany L. Kaplan-Peterson

Paramount, New York

The Copyright Claims Board: A Practitioner's Perspective

The Copyright Claims Board provides copyright claimants with a new forum to litigate copyright disputes. As an alternative to filing in federal court, the CCB offers the potential for more streamlined, efficient litigation, with certain limitations of which practitioners should be aware.

(up to 7 minutes)

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

Panelist:

Terrica Carrington (invited)

Copyright Alliance, Washington D.C.

Gigi Sohn (invited)

Electronic Frontier Foundation, San Francisco

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

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

Break

10:20 AM – 10:45 AM

2C. Copyright Exceptions & Limitations

Thursday 10:45 AM - 11:55 AM (70 minutes)

MCR 1-01

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 online.)

Speakers:

Faith Majekolagbe

University of Alberta Faculty of Law, Alberta

The Role of Copyright Exceptions in Democratising Education in Regular & Challenging Times

To ensure equal access to education, copyright regimes must go beyond incentivizing production to facilitating access, use, and dissemination for all people in regular and challenging times. Copyright exceptions are important legal tools for achieving this and must be expanded in domestic and international copyright regimes.

(up to 7 minutes)

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

Anne Bergman-Tahon

Federation of European Publishers, Belgium

Exceptions, What is It For?

From the adoption of the Berne Convention and in particular Article 9.2. (the three-step test) and Article 10 on certain free uses on works for quotations and illustration teaching to the 2019 Copyright in Digital Single Market, is the rationale to provide for exceptions still the impossibility for the users to ask every single rights holder the permission to use their works? Or are the budgetary constraints of institutional users and the lack of appetite of internet users to pay anything on top of the connection and devices, driving new exceptions? Is fair use the solution for European cultural heritage institutions, research institutes, or schools? After a few years of worldwide disruption with the pandemic, calls for new exceptions are numerous and vocal. Is it justified and what about the remuneration of creation?

(up to 7 minutes)

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

Nicholas R. Bartelt

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

Fair Use at the Supreme Court: Andy Warhol Foundation for the Visual Arts v. Goldsmith

In April 2021, the Supreme Court decided *Google v. Oracle*, its first copyright fair use case in over 25 years, with a 6-2 majority finding fair use in the copying of computer code. Less than one year later, the Court granted certiorari in another fair use case, *Andy Warhol Foundation for the Visual Arts v. Goldsmith*, this time involving works of visual art. As we await the Court’s decision in *Goldsmith*, this talk will discuss the arguments made by the parties and amici and consider the potential implications of the forthcoming decision. Does the Court intend to clarify its reasoning in *Google v. Oracle* with a “companion case” akin to the Court’s earlier decisions in *Sony Corporation of America v. Universal City Studios* (1984) and *Harper & Row Publishers v. Nation Enterprises* (1985)? How will the Court grapple with “transformative use”—an approach to analyzing “purpose and character” that the Court sanctioned in its decision in *Campbell v. Acuff-Rose* (1994)? What significance should a secondary work’s “meaning or message” have in determining the purpose of character of the use; and who decides what that meaning or message is?

(up to 7 minutes)

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

Panelists:

Daan B. Erikson

Hausch Blackwell LLP, Boston

Jerker Rydén

National Library of Sweden, Stockholm

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

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

SESSION 3: TWO CONCURRENT SESSIONS & TRADEMARK LAW

Concurrent Session

Thursday, 8:00 AM - 11:55 AM

Costantino C

3A: IP & Live Content Piracy in Sports

Thursday, 8:00 AM - 9:05 AM (65 mins)

Costantino C

Moderator:

Michele Woods

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

Speakers:

Julian Waiblinger

Nordemann, Berlin

Live Content Piracy – Will the Expected EU Recommendation Be a Suitable Instrument to Better Protect Live Content? And What Can the Europeans Learn from the U.S.?

Piracy in the live content sector - especially in sports - has long been considered a problem in the EU. Yet the current legal framework for injunctions and notice and takedown mechanisms does not sufficiently guarantee an effective and timely enforcement. As a result, rightsholders often have no effective legal protection. The EU Commission has announced to issue a Recommendation to improve the situation for rightsholders. The presentation will address whether the expected Recommendation is likely to remedy the situation, or whether the problem of live content piracy cannot be solved without new EU legislation. The question will be raised about how other jurisdictions, in particular the US, are addressing the problem.
(up to 7 minutes)

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

Barry B. Sookman

McCarthy Tétrault, Toronto

Content Blocking and Search Engine De-Indexing Orders in Canada

This talk will focus on Canadian developments on website blocking orders including dynamic blocking orders and similar injunctions.

(up to 7 minutes)

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

TBA

(up to 7 minutes)

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

Panelists:

Joshua G. Graubart

Romano Law PLLC, New York

Miruna Herovanu

Association of Commercial Television and Video on Demand Services in Europe (ACT), Brussels

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

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

3B. Multilateral Developments

Thursday, 9:10 AM - 10:20 AM (70 mins)

Costantino C

Moderator:

Stevan D. Mitchell

U.S. Department of Commerce, 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 online.)

Speakers:

Maria Martin-Prat

European Commission, Brussels

The TRIPS Waiver and Its Potential Extension

On June 17, 2022, the World Trade Organization's ('WTO') 12th Ministerial Conference, adopted a waiver of certain requirements under the Agreement on Trade-Related Aspects of Intellectual Property Rights ('the TRIPS Agreement'), commonly known as the 'TRIPS Waiver.' The TRIPS Waiver simplifies and waives certain requirements of the TRIPS Agreement related to compulsory licensing of patents that are 'required for the production and supply of COVID-19 vaccines'. While the TRIPS Waiver is limited to COVID-19 vaccines, WTO Members agreed to decide on its potential extension to COVID-19 therapeutics and diagnostics. The discussions on this extension are ongoing. The objective of this session is: to look back at the complex negotiations that led up to the decision on the TRIPS Waiver, to discuss the outcome, and finally, to reflect on the ongoing negotiations on the potential extension of the TRIPS Waiver.

(up to 7 minutes)

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

Michele Woods

World Intellectual Property Organization (WIPO), Geneva

The Marrakesh Treaty at Ten Years: What Progress Has Been Made to Date? What Can We Expect in the Future?

The Marrakesh Treaty was adopted in June 2013 to harmonize copyright exceptions and limitations for the production and cross-border sharing of books in formats accessible for persons who are blind, visually impaired, or otherwise print disabled. Much progress has been made and much remains to be done to make the promise of the Marrakesh Treaty a reality throughout the world. This talk will highlight progress from the vantage point of the World Intellectual Property Organization (WIPO), including the initiatives of the WIPO Accessible Books Consortium (ABC). It will also highlight challenges and opportunities in Marrakesh Treaty implementation for the next ten years and beyond.

(up to 7 minutes)

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

Clark W. Lackert

World Trade Centers Association, New York

IP in Space: The Time To Act is Now!

At the moment, “outer space” (defined as space above the Kármán Line - 100 kilometers above sea level), is a physical and legal vacuum, with no effective regulatory infrastructure, including for intellectual property. With the rapid advance of technology, including orbiting hotels by 2027, bases on the Moon by 2035, and a city on Mars by 2050, the time to start work on legal norms for “IP in Space” is now. The question is not “if” this will happen, it is “when.”

(up to 7 minutes)

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

Panelist:

James Love

Knowledge Ecology International, Washington, D.C.

César Ramírez-Montes (invited)

School of Law, Leeds University, Leeds

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

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

Break

10:20 AM – 10:45 AM

3C. Bad Faith

Thursday 10:45 AM – 11:55 AM (70 minutes)

Costantino C

Moderator:

Anderson Duff

Hogan Duff, Boston

(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:

Joel Smith

Hogan Lovells International LLP, London

Filing in Bad Faith – UK Supreme Court to Settle Penalty Shoot-Out in Sky v SkyKick

The issue is whether filing a trade mark with a broad specification, potentially with no bona fide intention to use it across its full specification, may lead to the trade mark's invalidity on grounds of bad faith. The epic match has been played between Sky and SkyKick through the UK courts (and the CJEU) now for over 7 years now, with the UK Supreme Court poised to deliver its judgment later in 2023 after extended time. The final whistle will likely resolve whether the UK follows the existing EU caselaw in Lindt and MONOPOLY or strikes out upon its own course post-Brexit to introduce a much stricter test based upon public policy considerations (perhaps closer to US law). In the meantime, defendants are increasingly resorting to counterclaims to infringement actions in the UK courts based upon allegations of bad faith.

(up to 7 minutes)

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

Peter Ruess

ARNOLD RUESS, Düsseldorf

Evergreening – Is It a Red Flag?

“Go to jail. Go directly to jail. Do not pass Go. Do not collect \$200” – With the ECJ denying the appeal to Hasbro, the Monopoly case seems to be the final line to evergreening. However, given that many companies "refresh" their logos from time to time and courts have accepted that as such (see the General Court's earlier Pelikan decision), it is relevant to define what is legal development and what is bad faith.

(up to 7 minutes)

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

Anke Nordemann-Schiffel

Nordemann, Berlin

Orphan Brands – Foundlings Saved or Treasures Stolen?

Brands can represent real value even if they have not been in use for years. The talk will look at when unused brands may be appropriated by a new owner and when a trade mark filing or its enforcement may be bad faith.

(up to 7 minutes)

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

Paolo Catalozzi

Unified Patent Court, Central Division, Paris; Supreme Court of Italy, Rome

The Banksy Saga

The European legislation establishes that an EU trademark shall be declared invalid where the applicant was acting in bad faith when he filed the application for the trademark. The lack of a clear definition of the concept of “acting in bad faith” and the difficulties in giving evidence of the subjective state of the applicant led the European Courts to elaborate objective indicators of what could constitute “bad faith”. However, that did not prevent some inconsistent decisions, as demonstrated by the Banksy’s trademarks saga.

(up to 7 minutes)

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

Mark A. Cohen

University of California, Berkeley, School of Law, Berkeley

USPTO's China-Focused Campaign Against Fraudulent TM Applications and Their Counsel/Intermediaries- An Appropriate Response?

During the past several years, the United States and China have launched parallel campaigns targeting bad faith trademark prosecution activities by counsel and consultants. These campaigns constitute what are likely the largest IP attorney disciplinary campaigns of any licensing authority in the world, and the largest cross-border effort in the United States to discipline attorneys and agents practicing in foreign countries. Comparisons of the two campaigns reveal that the type of fraudulent activity is similar, but that there are differing approaches to reducing the incidence of fraud. In the United States, the primary focus has been on disciplinary actions as well as expungement of trademarks and trademark applications. The United States has also had an especially aggressive jurisdictional reach. In China, disciplinary efforts have often been against the firm as a whole. Punishments have also been accompanied by modest fines with the most severe punishments involving placing agencies or individuals on China's social credit listings. Both countries could benefit from more extensive cooperation.

(up to 7 minutes)

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

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

Lunch

12:00 PM – 1:30 PM

Rosa Mexicano

61 Columbus Ave

New York, NY 10023

sponsored by:

WILMER CUTLER PICKERING HALE AND DORR LLP

Welcoming Remarks:

Thursday 1:45 PM – 2:00 PM

Costantino A/B/C

Hugh C. Hansen

Fordham University School of Law, New York

Matthew Diller

Fordham University School of Law, New York

SESSION 4: PLENARY SESSIONS

Thursday 2:00 PM – 6:30 PM

Costantino A/B/C

4A. Government Leaders’ Perspectives on IP

Thursday 2:00 PM – 3:15 PM (75 minutes)

Costantino A/B/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:

Shira Perlmutter

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

Navigating the Nexus of Copyright & Technology

This talk will discuss the U.S. Copyright Office’s initiatives relating to rapidly evolving technologies, such as artificial intelligence, that are facilitating and challenging the copyright ecosystem. It will also outline how the Office is leveraging technology and data to broaden public access to copyright information, to justice, and to government services.

(up to 7 minutes)

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

Antony S. Taubman

World Trade Organization (WTO), Geneva

TRIPS in a Pandemic: Unwavering Support?

(up to 7 minutes)

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

Charles R. Eloshway

U.S. Patent and Trademark Office (USPTO), Alexandria

The Emerging Post-Pandemic International Patent Landscape

The talk will take stock of recent developments across several multilateral forums and their implications with regard to cross-border patent acquisition and enforcement.

(up to 7 minutes)

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

Motoyuki Nakashima

Tokyo District Court, IP Division, Tokyo

New IP Conciliation Proceedings at Japanese Courts

Japanese Courts have started a new practice of IP conciliation, which is the third resolution tool for intellectual property disputes, in addition to litigation and provisional disposition. This new framework aims to solve disputes over intellectual property rights in a simple and speedy way.

(up to 7 minutes)

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

Daniel Lee (invited)

Office of the U.S. Trade Representative (USTR), Washington, D.C.

(up to 7 minutes)

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

Panelists:

Denny Chin

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

3:15 PM – 3:40 PM

4B. Key Current IP Issues: Reflections & Analysis

Thursday 3:45 PM – 5:05 PM (80 minutes)

Costantino A/B/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:

Annabelle Bennett

Federal Court of Australia, Sydney (retired); Bond University, Robina, Queensland

Judicial Independence: Is It Publicly Protected or Undermined?

Judges today are subjected to popular pressures which are probably greater than previously, for example, because of social media and increasing public comment on issues and personalities. Does this have an impact on the determination of intellectual property disputes, in particular those with great public impact?

(up to 7 minutes)

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

Paul R. Michel

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

Written Description/Enablement Case Law is Now Threatening Innovation

How case law on adequate description, like that on obviousness and eligibility, keeps expanding unpredictably, confounding patentees, prosecutors, examiners and judges as well as inventors and investors and forcing them to navigate an unstable patent system.

(up to 7 minutes)

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

Kathleen M. O'Malley

U.S. Court of Appeals for the Federal Circuit, Washington, D.C. (retired); Irell & Manella LLP, Washington, D.C.

Is the PTAB Crushing Innovation?
(up to 7 minutes)

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

Gerard F. Rogers

U.S. Patent and Trademark Office (USPTO), Alexandria
Appeals from District Court Decisions Reviewing USPTO Ex Parte Trademark Decisions Should Be Decided by the Federal Circuit.
(up to 7 minutes)

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

Ralph Oman (invited)

(up to 7 minutes)

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

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

4C. Unified Patent Court

Thursday 5:10 PM – 6:30 PM (80 minutes)

Costantino A/B/C

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 in print materials and online.)

Speakers:

Maximilian Haedicke

Unified Patent Court, Central Division, Paris, Albert-Ludwigs-Universität Freiburg,
Freiburg

Past the Rocky Road to the Unified Patent System – Clear Road Ahead?

The presentation will give an overview of the rocky road which led to the Unified Patent System and its implications for the structure of the court. The presentation will also describe some of the major challenges which the Unified Patent Court and the new patent system are facing.

(up to 15 minutes)

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

Anne-Charlotte Le Bihan

Bird & Bird AARPI, Paris

What Control Will the CJEU Have Over UPC Rulings?

The UPC is governed by the UPC Agreement which is not part of Union law. Yet, Union law is at the top of the list of the sources of law that the UPC should apply. As to Patents with a Unitary effect, they are governed by EU Regulation 1257/2012. Therefore, the CJEU shall certainly have some control over UPC decisions. The key question is whether it will have any control over substantive patent law. Unlike trademarks and designs, substantive patent law is not governed by any EU Directive or Regulation. Besides, EU Regulation 1257/2012 on Patents with a Unitary effect no longer provides substantive patent law provisions since articles 6 to 8 have been removed. Hence, one could think that the CJEU's control over UPC rulings should not encompass substantive patent law. Yet, this assumption could prove somewhat short-sighted in view of the CJEU's position on its competence to interpret the TRIPS Agreement and other international conventions.

(up to 7 minutes)

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

Edger F. Brinkman

Unified Patent Court, Central Division, The Hague; Court of The Hague, The Hague

To UPC or Not to UPC?

The so-called sunrise period of the UPC started on 1 March 2023 so it is decision time for owners of European Patents. You can now file an opt-out of the UPC system. Until 1 June 2023 you have it in your own hands to go to UPC or not, after 1 June 2023, others might decide it for you. This contribution aims to give you some last minute food for thought.

(up to 7 minutes)

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

Rian Kalden

Unified Patent Court, Court of Appeal, Luxembourg; Court of Appeal of The Hague, The Hague

The Possibilities to Preserve and Obtain Evidence

This talk will explore which means the UPC offers to collect and produce evidence in procedures before this Court.

(up to 7 minutes)

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

Panelists:

Giovanni F. Casucci

EY Studio Legale Tributario, Milan

Klaus Grabinski

Unified Patent Court, Court of Appeal, Luxembourg

Simon Holzer (tentative)

Meyerlustenberger Lachenal AG, Zürich

Miquel Montaña

Clifford Chance LLP, Barcelona

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

Thursday Reception

Empire Rooftop

44 West 63rd Street, New York, NY 10023

6:30 PM – 9:30 PM

Sponsored by:

Freshfields Bruckhaus Deringer LLP

Friday, April 14
Continental Breakfast

Fordham Law School, Bateman Room/Soden Lounge
8:00 AM – 10:00 AM

SESSION 5: PATENT LAW

Concurrent Session

Friday, 8:30 AM - 12:30 PM

Costantino A/B

5A. Plausibility, Enablement & Written Description

Friday 8:30 AM – 9:40 AM (70 minutes)

Costantino A/B

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:

Ute Kilger

Boehmert & Boehmert, Berlin

Plausibility - Between Scylla and Charybdis

The critical question is whether the data on the filing date were sufficient to make the claimed effect of the invention "plausible". In other words - what data is required for the patent (application) to be patentable or valid in the full breadth of the claims?

This question is of crucial importance for the fields of chemistry, pharmacy and biology/biotech. Early filing without "sufficient" data may endanger patent protection

because of lack of plausibility, late filing, however, might be obviously detrimental too. This legal question is pending before the European Patent Office (EPO). The EPO's Enlarged Board of Appeal (EBoA) is currently dealing with case G2/21.
(up to 7 minutes)

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

John Richards

Ladas & Parry LLP, New York

How Much Information Should Be Needed to Be Included to Justify Grant of a Patent in the Life Sciences Field

Cases such as *Amgen v. Sanofi*, G2/21, *Juno Therapeutics v. Kite*, and *Generics (UK) v. Warner Lambert* have put the spotlight on the amount of disclosure needed to justify a patent in the pharmaceutical and biotech area. This in turn raises the question of what is the right point in drug development to file a patent application, which in turn poses the question of when does discovery become invention and ultimately why do we believe that “invention” justifies a patent but discovery may not, in the United States even if the discovery is in fact the key to the invention. I will attempt to address the questions from the perspective of how best to “promote the useful arts” in an environment in which academia is focusing less on basic research and more on incubation start-ups.

(up to 7 minutes)

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

Amit H. Thakore

White & Case LLP, New York

Enablement at the Supreme Court: What is the Test for “Genus” Claims?

In *Amgen Inc. v. Sanofi*, the U.S. Supreme Court is tackling the issue of whether the patent specification must enable the “full scope” of the claimed invention in order to satisfy Section 112(a) of the Patent Act. The claims at issue cover monoclonal antibodies that bind to a particular antigen (PCSK9) and block its activity. The claims do not define the antibody by sequence or structure, but rather by its function. Should such claims be granted in the first place and, if so, what is the test for enablement of such claims? We will explore these questions in the context of the Supreme Court’s highly anticipated decision in this case.

(up to 7 minutes)

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

Panelists:

Trevor Cook

Bird & Bird LLP, London

Brian W. Gray

Brian Gray Law, Toronto

Laura Whiting

Freshfields Bruckhaus Deringer LLP, London

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

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

5B. Women in Patent Law

Friday 9:45 AM – 10:55 AM (70 minutes)

Costantino A/B

Moderator:

Paul R. Gugliuzza

Temple University Beasley School of Law, Philadelphia

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

Speakers

Patricia A. Martone

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

Chronic Gender Inequality Affecting Women Attorneys In the Patent Ecosystem in the United States: Moving the Needle In a Positive Direction

Recent studies examining nationwide district court patent trials, appeals before the Federal Circuit and PTAB post-grant actions demonstrate that women have made little progress in attaining leadership roles in these proceedings. My research shows that women comprised 8.1 % of "First Chairs" in 2010 trials. By 2019 that number had risen to only 9.9%. This presentation focuses on root causes for this lack of progress and a positive path forward for law firms to end this inequality.

(up to 7 minutes)

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

Annsley Merelle Ward

Wilmer Cutler Pickering Hale and Dorr LLP, London

Amending the Patents Court Guide: Lessons on Increasing Diversity in the UK

There has never been a woman specialist Patents Court Judge. That will change, thanks to the efforts of judges, industry and leaders from the London Chapter of the ChIPs Network who are pushing for increased diversity in cases before the Patents

Court. Last year, the Patents Court Guide was amended as a result of an initiative by these groups to encourage more diverse members of the profession opportunities to get on their feet in court earlier, with the goal that this will help build and maintain the pipeline of diverse candidates into senior ranks of the profession, including the bench. This talk will update attendees on the amendments, educate on lessons from the journey and set out the vision for future diversity plans.
(up to 7 minutes)

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

Farheena Rasheed

U.S. Patent and Trademark Office (USPTO), Alexandria
(up to 7 minutes)

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

Panelists:

Dorothy R. Auth

Cadwalader, Wickersham & Taft LLP, New York

Lisa Jakob (invited)

Merck & Co., Inc., Rahway, NJ

Lisa B. Pensabene

O'Melveny & Myers LLP, New York

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

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

Break

10:55 AM - 11:20 AM

5C. Pharma Update

Friday 11:20 AM - 12:30 PM (70 minutes)

Costantino A/B

Moderator:

Adam Mossoff

Antonin Scalia Law School, George Mason University, Arlington

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

Speakers:

Brian D. Coggio

Fish & Richardson, P.C., New York

Hatch-Waxman Safe Harbor May Not Shield the Development of Pharma/Biotech Products from Patent Infringement

The Hatch-Waxman Safe Harbor (35 U.S.C. § 271(e)(1)) was enacted to allow pharma/biotech companies to perform research needed to obtain regulatory approval of their products without concerns of patent infringement. Recent decisions, however, have excluded certain developmental and manufacturing activities from this protection. Accordingly, companies should carefully consider what activities are protected by the Safe Harbor.

(up to 7 minutes)

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

Nichole Valeyko

Merck & Co., Inc., Rahway, NJ

Experimental Use and Bolar Provisions

This talk will address the different approaches to the experimental use defense in some of the major patent jurisdictions (e.g. US, Europe, Japan, and China). In addition, this talk will touch on how a broad interpretation of the exemption may help advance science and innovation.

(up to 7 minutes)

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

Gesheng (George) Huang

Zhongzi Law Office, Beijing

The New Chinese Drug Patent Linkage System

This talk will give an overview of the new Chinese drug patent linkage system and its major differences with the corresponding U.S. system. It will also give a summary of the implementation effect of the new system in the past 20 months.

(up to 7 minutes)

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

Panelists:

Joel Coles

Powell Gilbert LLP, London

TBA

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

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

SESSION 6: COMPETITION LAW & COPYRIGHT LAW

Concurrent Session

Friday, 8:30 AM - 12:30 PM

MCR 1-01

6A. FRAND

Friday 8:30 AM - 9:45 AM (75 Minutes)

MCR 1-01

FRAND Developments and FRAND in Year Ahead

During the past year we have seen many new developments in FRAND and SEP litigation - the UPC, the UK InterDigital/Lenovo decision, and China becoming quiet - at least for now - on anti-suit injunctions. This panel will look at what we can expect to see in FRAND rate setting in the year ahead.

Moderator:

Mark A. 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.)

Panelists:

Carlos Aboim

Licks Advogados, Rio de Janeiro

Tom Cotter

University of Minnesota Law School, Minnesota

Ari Laakkonen

Powell Gilbert LLP, London

Thomas D. Pease

Quinn Emanuel Urquhart & Sullivan LLP, New York

Cordula Schumacher

ARNOLD RUESS, Düsseldorf

Wolrad Waldeck

Freshfields Bruckhaus Deringer LLP, Düsseldorf

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

6B. Competition

Friday 9:50 AM - 11:00 AM (70 Minutes)

MCR 1-01

Topics covered include

- High Drug Prices and High-Tech: Is Antitrust the Remedy?
- Digital Markets Act and the American Innovation and Choice Online Act.
- Non-Competes, Trade Secrets, and China.
- Politics, Ideology, and the Future of IP and Antitrust Law.

Moderator:

Daryl Lim

Penn State Dickinson Law, Carlisle

(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:

Eleanor M. Fox

New York University School of Law, New York

Renata B. Hesse

Sullivan & Cromwell LLP, Washington, D.C.

He Jing

GEN Law Firm, Beijing

Milan Kristof

Référéndaire, European Court of Justice, Luxembourg

Peter G. Picht

University of Zurich, Zurich

Koren Wong-Ervin

Axinn, Veltrop & Harkrider LLP, Washington, D.C.

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

Break

11:00 AM - 11:20 AM

6C. Artificial Intelligence

Friday 11:20 AM - 12:30 PM (70 minutes)

MCR 1-01

Moderator:

Joshua L. Simmons

Kirkland & Ellis LLP, New York

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

Speakers:

Karyn Temple

Motion Picture Association of America, Washington, D.C.

Copyright and AI: Is the Sky Actually Falling? Or is this Just Another in the Long Line of Technological Developments to which Copyright has Successfully Adapted over the Centuries?

The talk will discuss the very complex legal thicket facing AI technology, including copyright, privacy, the right of publicity, and whether there will be any clear guidelines for us before the next century.

(up to 7 minutes)

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

Marcus von Welser

Vossius & Partner, Munich

ChatGPT and EU Copyright Law

In November 2022 the company OpenAI made the chatbot ChatGPT available to the public. ChatGPT is able to answer almost any question with algorithmically generated and linguistically correct text. The presentation addresses the question of whether EU copyright law provides for the protection of AI output and whether the output might infringe copyrights of third parties, such as the authors of the training data.

(up to 7 minutes)

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

Jason Sloan

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

The U.S. Copyright Office's AI Initiative

The U.S. Copyright Office recently announced a new initiative to examine the copyright law and policy issues raised by artificial intelligence (AI) technology. This talk will provide an overview of the initiative, including recent registration developments and what's ahead as the Office delves into these important issues.

[\[Copyright Office's AI initiative web page\]](#)

(up to 7 minutes)

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

Matthew Stratton

Association of American Publishers, Washington, D.C.

TDM Legal Framework

A discussion of the text and data mining exception as framed in several jurisdictions. The overview will also address the U.S. framework for TDM activity.

(up to 7 minutes)

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

Panelist:

Ursula Feindor-Schmidt

Lausen Rechtsanwälte, Munich

Shlomit Yanisky-Ravid

ONO Academic Law School, Israel

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

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

SESSION 7: THREE CONCURRENT SESSIONS

Friday, 8:30 AM - 12:30 PM

Costantino C

7A. Enforcement

Friday 8:30 AM – 9:45 AM (75 minutes)

Costantino C

Moderator:

Maria A. Scungio

Cowan, Liebowitz & Latman, P.C., 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:

Alaina van Horn

Intellectual Property Enforcement Branch of U.S. Customs and Border Protection, Washington, D.C.

IP Border Enforcement in the 21st Century

Intellectual property theft, once a problem associated with luxury goods sales in back alleys and city streets, is now a rampant problem across the globe that results in counterfeit goods flooding the market. Customs agencies are the front line in stopping these dangerous articles from entering the market. The guiding legal document, the WTO-TRIPS Agreement, provides minimum standards member nations must implement in their border enforcement regimes, and contains a multitude of optional provisions. Due to this flexibility, vastly different IP border enforcement regimes have resulted, with varying levels of success. This session will focus on the types of IP border enforcement regimes that exist worldwide, the positives and negatives of each, and how the United States' regime fares in relation to the rest of the world. This session will also cover regulatory and statutory improvements upon the United States' IP border enforcement regime that are in development.

(up to 7 minutes)

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

Tobias Timmann

Freshfields Bruckhaus Deringer LLP, Düsseldorf

Exhaustion of Trademark Rights – New Developments in the EU

In a series of decisions (Perfumeso, SodaStream, Novartis, Harman), the CJEU has further contoured the principle of exhaustion. The new case law concerns parallel imports, repackaging and relabelling of products and the destruction of genuine goods.

(up to 7 minutes)

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

Gerald M. Levine

Levine Samuel LLP, New York

Reclaiming Dropped (Lapsed) Domain Names

What is the theory for reclaiming lost domain names and in what forum is the remedy to be found? This talk is going to explain that there is no actionable claim under the Lanham Act for trademark infringement and that the forum of choice is the Uniform Domain Name Dispute Resolution Policy, the UDRP.

(up to 7 minutes)

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

Stephen Burley

Federal Court of Australia, Sydney

Site blocking: Will It Break the Internet?

Site blocking orders have entered the mainstream of copyright jurisprudence in Australia. Numerous such orders have been made under s 115A of the Copyright Act, preventing Australian consumers from accessing overseas online locations whose primary purpose is to infringe or facilitate the infringement of copyright. This presentation considers the judicial experience so far, and pitfalls that may lie ahead.

(up to 7 minutes)

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

Panelists:

Ben Hitchens

CMS Cameron McKenna Nabarro Olswang LLP, London

TBA

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

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

7B. The Metaverse and NFTs: New Frontiers for Trademarks and Copyrights?

Friday, 9:50 AM – 11:00 AM (70 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:

Sarah Wright

CMS Cameron McKenna Nabarro Olswang LLP, London

Trademark Protection in the Metaverse: Do We Need a Meta-Jurisdiction or Will Platform Owners Be Forced to Enforce Their Worlds?

The territorial nature of trade marks sit uncomfortably within a borderless world. The jurisdictional rules which required targeting of consumers within a territory may have limited use in a ubiquitous virtual world given possible auto-translation of content, use of alternative currencies and the absence of shipping. While this might suggest a new era of forum shopping for brand owners, will the future battleground focus instead on the liability of platform owners to use their AI tools to identify and remove or geo-block infringing content automatically.

(up to 7 minutes)

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

Lauri Rechart

International Federation of the Phonographic Industry (IFPI), London

Copyright Protection in the Metaverse

Virtual, immersive, interoperable (and decentralized?) metaverse will pose a challenge, if not to the existence of copyright, to the application of copyright liability rules and to the practical enforcement of rights. However, what recent history tells us is that, in the main, courts have applied copyright law to new services and business models in a way that maintains the essential function of copyright law. That is, confirming right holders' ability to exercise their rights against operators that build services on the back of copyright protected content. It is suggested that the principles applied in some of these decisions – especially those involving P2P services, “online content sharing services”, and content aggregators -- will have direct relevance for many of the “hard cases” in the metaverse. We will look at some of the current (ab)use cases and highlight some of the existing case law around the world, that will / may guide us also in the metaverse.

(up to 7 minutes)

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

Sasha Rosenthal-Larrea

Cravath, Swaine & Moore LLP, New York

Decentralization and IP: The Challenges of Enforcing IP Rights in NFT Collections

NFTs make true digital ownership possible for the first time. However, a distinction must be made between an NFT holder's control over the token on the blockchain, which is often absolute, and the holder's control over the token's referenced IP, which is often limited. This nuance underlines an inherent tension between NFT creators and holders. A discussion of a recent NFT IP infringement lawsuit, *Ryder Ripps v. Yuga Labs*, demonstrates how some project creators are navigating this tension in the enforcement context.

(up to 7 minutes)

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

Panelists:

Gareth Dickson

Taylor Vinters, London

Leann M. Pinto

IPwe, New York

Susan Scafidi

Fordham University School of Law, New York

Massimo Sterpi

Gianni & Origoni, Rome

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

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

Break

11:00 AM - 11:20 AM

7C. What Is China IP Aiming For - Getting Ahead or Nurturing Progress?

Friday, 11:20 AM - 12:30 PM (70 mins)

Costantino C

Moderator:

He Jing

GEN Law Firm, Beijing

(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:

Yide Ma

University of Chinese Academy of Sciences, Beijing

(up to 7 minutes)

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

Mark A. Cohen

University of California, Berkeley, School of Law, Berkeley
(up to 7 minutes)

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

Peter K. Yu

Texas A&M University School of Law, Fort Worth

Third Amendment to the Chinese Copyright Law

The Third Amendment to the Chinese Copyright Law entered into effect in June 2021. The last time China completely overhauled its copyright statute was in October 2001. What are the most exciting changes? What issues remain unresolved?

(up to 7 minutes)

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

Panelists:

Liu Chuntian

Renmin University of China, Beijing

Elaine Wu (invited)

U.S. Patent and Trademark Office (USPTO), Alexandria

Alexandra Yang

Fangda Partners, Beijing

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

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

Lunch 12:30 PM – 2:00 PM

Cafe Fiorello

1900 Broadway

New York, NY 10023

&

Cafe Paradiso
144 W 65th Street
New York, NY 10023

SESSION 8: PATENT LAW

Concurrent Session

Friday 2:15 PM – 4:30 PM

Costantino A/B

8A. Patent Potpourri

Friday 2:15 PM - 3:20 PM (65 minutes)

Costantino A/B

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:

Heinz Goddar/Melanie Müller

Boehmert & Boehmert, Munich

Status of Implementation of 2nd Patent Modernization Law in Germany – 3rd Patent Modernization Law for Things to be Done?

The Implementation of the 2nd Patent Modernization Law, particularly relating to applying proportionality-clause regarding injunctive relief, in the first instance patent litigation courts have started. Still to be cleared, however, is how, possibly by a 3rd Patent Modernization Law, “Third Parties Interest” can be formulated to clearly cover also “public interest”. Furthermore, whether an invalidation action against a patent in litigation should be attackable by invalidation request even during pending opposition possibility or procedures (presently not possible in Germany).

(up to 7 minutes)

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

Carl Josefsson

European Patent Office, Haar

Recent Decisions of the Enlarged Board of Appeal and Other Case Law from the Boards

The Enlarged Board of Appeal ensures the uniform application of the European Patent Convention. This presentation will address the recent decisions of the Enlarged Board of Appeal as well as other topical case law from the Boards.

(up to 7 minutes)

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

Vittorio Cerulli Irelli

Trevisan & Cuonzo, Rome

Overlapping Competences Between UPC and National Courts: Implications and Strategy Options

The framework established by the UPCA creates a myriad of opportunities for an interaction between proceedings before national courts and proceedings before the UPC. One interaction is the result of overlapping competences between UPC and national courts in a number of important areas. For example, under Article 32(1)(a) the UPC will have competence to hear “related defenses, including counterclaims concerning licenses” in infringement actions. The same causes of actions underpinning such defenses and counterclaims can also be the object of main actions before national courts. This overlap gives the parties multiple strategic options. A number of open questions exist and will likely be the object of extensive litigation in the early days of UPC jurisprudence.

(up to 7 minutes)

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

Panelists:

Stephen J. Akerley

InterDigital, Inc., Wilmington, Delaware

Clara Pombo (invited)

Clarke, Modet & Co., Madrid

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

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

8B. PTAB

Friday 3:25 PM – 4:30 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 online.)

Speakers:

Kenneth R. Adamo

Law Office of KRAdamo, Chicago

315(e)(1)/(e)(2): Estopped or Not to Be Estopped, That is the Question

IPR estoppel is a critical PTAB IPR concept, regarding the effect of a final written decision on further USPTO proceedings or a district court civil action/ USITC investigation, seeking to invalidate a patent claim involved in the IPR on any ground that the IPR petitioner raised or reasonably could have raised during the IPR. This concept will be addressed through a discussion of key statutory estoppel cases.

(up to 7 minutes)

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

George E. Badenoch

Hunton Andrews Kurth LLP, New York

New Guidance Limiting Discretionary Denial of IPRs

Since the advent of IPR proceedings under the 2011 America Invents Act (AIA), the power of the Board to issue unappealable decisions rejecting petitions on discretionary grounds unrelated to the merits has been highly controversial. In an effort to lend some predictability to the process, the Board issued precedential decisions listing the factors it would consider in deciding when to reject a petition on discretionary grounds. However, these decisions did not satisfy patent defendants, because the listed factors simply became a roadmap for patent plaintiffs and plaintiff friendly courts to engineer more discretionary denials. To address these concerns the current Director of the USPTO issued interim guidance last year outlining circumstances where the Board would no longer deny the institution. The result has been a sharp drop in the percentage of petitions denied on discretionary grounds.

(up to 7 minutes)

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

Dustin F. Guzior

Sullivan & Cromwell LLP, New York

Don't Hastily File the IPR Petition: The Practical Risks of Failure in the District Court or ITC

Most practitioners are familiar with statutory IPR estoppel, the scope of which may be evaluated by the U.S. Supreme Court soon, but many are not familiar with the different ways trial courts have applied it in practice. Some of the largest patent jury verdicts in recent history have followed failed IPR attempts. Here, we briefly explore the practical impact of a failed IPR/PGR attempt (at the petition or final written decision stage), and how accused infringers might manage those risks and patent owners might leverage them.

(up to 7 minutes)

Panelists:

F. Scott Kieff

Kieff Strategies LLC, Washington, D.C.

Brian P. Murphy

Haug Partners LLP, New York

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

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

SESSION 9: COPYRIGHT LAW

Concurrent Session

Friday 2:15 PM – 4:30 PM

MCR 1-01

9A. U.S. Copyright Developments

Friday 2:15 PM - 3:20 PM (65 minutes)

MCR 1-01

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 online.)

Speakers:

Sandra Aistars

Antonin Scalia Law School, George Mason University, Arlington

Copyright's Lost Art of Substantial Similarity

This talk is about a troubling trend among courts hearing copyright cases to de-emphasize substantial similarity analysis and shift the work of deciding infringement cases almost entirely to the fair use defense. The trend has numerous procedural drawbacks for all concerned. The trend is especially prominent in cases involving the visual arts and appropriation artists — a vibrant and economically meaningful part of the creative sector, but one that judges may feel less confident opining about. *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, argued to the Supreme Court last October, is the latest example of the phenomenon. Unfortunately, the issue the Supreme Court accepted on cert does not address the problem. Happily, the solution is within the control of the courts, and this talk will explain how they should proceed.

(up to 7 minutes)

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

Kevin Amer

U.S. Patent and Trademark Office (USPTO), Alexandria

(up to 7 minutes)

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

Justin Hughes

Loyola Law School, Los Angeles

Ways to Address “Right of Repair” Concerns while Respecting DMCA Digital Locks

There are growing calls in Washington and state capitals to give consumers more options for repairing their digital devices, but we are still in the early stages of understanding the relationship between such proposals and the DMCA’s protection of digital locks. Consumers and independent repair shops can have more flexibility while respecting digital locks, but the devil will be in the details.

(up to 7 minutes)

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

Panelist:

Ann Bartow

Intellectual Property Scholar, Concord

Jennifer Pariser

Motion Picture Association of America, Washington, D.C.

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

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

9B. Copyright Potpourri

Friday 3:25 PM - 4:35 PM (70 minutes)

MCR 1-01

Moderator:

Maria Strong

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

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

Speakers:

Casey Chisick

Cassels Brock & Blackwell LLP, Toronto

Rethinking Technological Neutrality in Canada

Several decisions of the Supreme Court of Canada have stressed the importance of interpreting Canadian copyright law with an eye to technological neutrality. What does that principle mean—and is it really neutral in practice?

(up to 7 minutes)

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

Laura Fresco

HOYNG ROKH MONEGIER, Amsterdam

Protecting Product Design: From Fast Fashion to Furniture and Beyond

In this session, we will explore some of the current hot topics in the protection and enforcement of industrial design: Cumulation of IP rights: a blessing or a curse? How to protect product design innovation or adaptation? Should we worry about “evergreening”? Cross-border enforcement: since the ECJ’s Cofemel and Brompton bike decision, EU-wide injunctions are on the rise; but challenges remain. The reciprocity rule under art. 2 section 7 Berne Convention, or: is the Vitra Eames chair protected by copyright?

(up to 7 minutes)

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

Jane C. Ginsburg

Columbia Law School, New York

Authors' Rights and Platform Licenses

This talk will address the extent to which platform licenses resolve what might otherwise be questions of copyright infringement, including the inclusion of works in AI systems' training data. It will consider what these licenses authorize, whether they are valid, whether authors have any meaningful choice among platforms, and whether copyright law preempts breach of contract actions for violation of the terms-of-service.

(up to 7 minutes)

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

Regan Smith

Spotify, Washington, D.C.

Copyright, Remunerative Rights and Collective Management - Oh My!

Increasingly, some markets are examining remunerative rights for music and audiovisual performers and AV authors that would be made subject to mandatory collective licensing, including in connection with the implementation of the EU Copyright Directive. This talk will examine the basis and potential impact of such proposals, including the intended benefits to performers, operational considerations around rights administration and payment efficiency, and whether such proposals ultimately derogate the exclusive interests of copyright.

(up to 7 minutes)

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

Panelists:

Mitch Glazier

Recording Industry Association of America (RIAA), Washington, D.C.

Dean Marks

Coalition for Online Accountability, Los Angeles

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

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

SESSION 10: TRADEMARK LAW

Concurrent Session

Friday 2:15 PM – 4:30 PM

Costantino C

10A. EU Trademark Law Update

Friday 2:15 PM – 3:15 PM (60 minutes)

Costantino C

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

Red Soles, Extraterritorial Services and the Legacy of Brexit: A Year in Luxembourg

This talk will summarize key judgments from the EU Court of Justice and General Court on issues including trademark use (the Standard case), distinctiveness (Shopify) and liability of online marketplaces (Louboutin v Amazon). It will also highlight some pending cases to look out for in 2023 and beyond.

(up to 10 minutes)

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

Gordon Humphreys

European Intellectual Property Office, Alicante

Names of Countries as a Trademark: Differing Dynamics?

While country names like Sudan and Madagascar appear on the EU trademark register, states such as Monaco and Andorra have taken great exception to such trademarking practices. In December 2022, the EUIPO Grand Board handed down two decisions concerning the cancellation of two trademarks for a wide range of food, agricultural and electrical goods and retail services, using the country name ‘Iceland’ and registered by a UK supermarket of the same name. Much of the debate focused on the application of the Chiemsee criteria. Although geographical size, population density, climatic considerations, nation branding, proximity to the EU and historical links were discussed among other factors by the Grand Board, one may wonder whether it is still appropriate to apply the same criteria to countries as lakes, regions and mountains. Finally, the question will be asked whether countries who advocate a ban on nation-state trademarking must be careful what they wish for.

(up to 7 minutes)

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

David Stone

Allen & Overy LLP, London

EU Design Reform: Happily Evolution not Revolution

Late last year, the European Commission finally published draft legislation to conclude an 8-year-long review of EU design law. The Commission concluded that EU design law, at both Regulation (EU-wide) and Directive (member state) level remains broadly fit for purpose, providing predictable, fast and cost-effective rights. But the draft legislation provides for changes to make the system “quicker, cheaper and more predictable” – justifying the claim that EU design law remains at the forefront of IP protection systems for innovative designers. This talk will review the main proposals for legislative change whilst quietly lamenting some of the more radical changes that the Commission chose not to adopt.

[*\[Proposal for a Regulation on Community designs; Proposal for a Directive on the legal protection of designs \(recast\)\]*](#)

(up to 7 minutes)

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

Panelists:

Daniele Caneva

EY Studio Legale Tributario, Milan

Paolo Catalozzi

Unified Patent Court, Central Division, Paris; Supreme Court of Italy, Rome

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

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

10B. U.S. Trademark Law Update

Friday 3:20 PM – 4:30 PM (70 minutes)

Costantino C

Moderator:

Marshall Leaffer

Maurer School of Law, University of Indiana, Bloomington

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

Speakers:

Marshall Leaffer

Maurer School of Law, University of Indiana, Bloomington

Two Faces of Lanham Act Extraterritoriality

This talk will cover two recent developments concerning the extraterritorial application of the Lanham Act. First, *Hetronic Int'l. Inc. v. Abitron Austria GmbH*, 10 F.4th 1016 (10th Cir. 2021), currently before the Supreme Court, will decide to what extent the Lanham Act allows the recovery of damages for infringement of a U.S. trademark occurring abroad. Second, in *Meenaxi Enter. Inc. v. Coca Cola, Co.* F.4th 1067 (Fed. Cir. 2022), the Court of Appeals for the Federal Circuit reversed a cancellation action in favor of Coke based on a misrepresentation of the source of its goods under U.S.C. § 1064(3). The CAFC held that Coke had not established a statutory cause of action for cancellation of Meenaxi's registration of two trademarks that Coke owns and uses only in the Indian market. This case represents in part the never-ending controversy over the fact that the U.S. has never explicitly recognized the "well-known marks doctrine" of Article 6bis of the Paris Convention.

(up to 7 minutes)

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

Daan G. Erikson

Husch Blackwell LLP, Boston

The Supreme Court's Bad Spaniels Case

(up to 7 minutes)

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

Sari Mazzurco

Yale Law School, New Haven

The Exclusive Right to Customize?

Artists, political commentators, and even multinational corporations are increasingly taking existing branded products and modifying them – sometimes to comment on the underlying product, sometimes to make a political or artistic statement unrelated to that product, sometimes to make them look fancier than they are, and sometimes for their own advertising purposes. As ornamenting and customizing existing products has shifted from a personal hobby to a business model, trademark owners have begun to insist that they have the exclusive right to control the appearance of products associated with them or that prominently bear their logos. This talk will delve into the problems customization poses for trademark law and a few ways the law can adapt to protect this form of creative expression, without undermining its pernicious forms.

(up to 7 minutes)

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

Justin Hughes

Loyola Law School, Los Angeles

Trademark's Troubles With T-shirts

A string of recent T.T.A.B. decisions have denied trademark registration to informational phrases, single words, and ornamentation on the grounds that the claimed device is not being used as a trademark. Will these laudable decisions and roughly parallel rulings in Europe enforcing distinctiveness requirements help curb abuse of the trademark system?

(up to 7 minutes)

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

Panelists:

Matthew D. Asbell

Offit Kurman, P.A., New York

Jefferey A. Handelman

Crowell & Moring LLP, Chicago

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

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

Break

4:30 PM – 4:55 PM

SESSION 4: PLENARY SESSION

Friday 4:55 PM – 6:30 PM

Costantino A/B/C

4D. Views from Judicial Decision Makers

Friday 4:55 PM – 6:30 PM (95 minutes)

Costantino A/B/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:

Annabelle Bennett

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

Edger F. Brinkman

Unified Patent Court, Central Division, The Hague; Court of The Hague, The Hague

Stephen Burley

Federal Court of Australia, Sydney

David Carson

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

Paolo Catalozzi

Unified Patent Court, Central Division, Paris; Supreme Court of Italy, Rome

Klaus Grabinski

Unified Patent Court, Court of Appeal, Luxembourg

Maximilian Haedicke

Unified Patent Court, Central Division, Paris; Albert-Ludwigs-Universität Freiburg, Freiburg

Charlotte Hart

The County Court at Central London, Royal Courts of Justice, London

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

Unified Patent Court, Court of Appeal, Luxembourg; Court of Appeal of 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.

Motoyuki Nakashima

Tokyo District Court, IP Division, Tokyo

Pauline Newman

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

Closing Reception

Bateman Room, Fordham Law School

6:30 PM – 8:30 PM

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