Fordham Intellectual Property Law Institute

18th Annual Conference
INTELLECTUAL PROPERTY LAW & POLICY
www.fordhamipconference.com

Fordham University School of Law
Thursday and Friday, April 8-9, 2010

Hugh C. Hansen
Director

Learn  Debate  Have Fun

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Wednesday, April 7th

Early Registration
Fordham Law School Atrium
3:00 p.m. to 5:00 p.m.

Reception & Dinner for Faculty and Sponsors
Lowenstein Building, 12th Floor
Reception: 6:00 – 7:00 p.m.; Dinner: 7:00 p.m. to 9:30 p.m.

Sponsored by

BASCAP
Thursday Morning, April 8th
Fordham Law School

7:15 A.M. – 8:00 A.M.
Registration and Continental Breakfast

Please note:
Doors to the auditorium will close at 8:15 A.M.
Registrants not yet seated will be escorted to overflow room, 203.

Welcoming Remarks
8:00 A.M. – 8:15 A.M.

William M. Treanor
Dean, Fordham University School of Law

Prof. Hugh C. Hansen
Director, Fordham IP Conference

SESSION 1: Plenary Session
(Thursday, 8:15 A.M. – 1:10 P.M.)
McNally Amphitheatre
Thursday Morning Plenary Sessions Moderator:
Prof. Hugh C. Hansen
Fordham University School of Law

A. IP Policy and the Obama Administration
8:15 A.M. – 9:10 A.M.

Speakers:
David Kappos
(up to 25-30 minutes)

Panelists:
Nicholas Groombridge
Weil, Gotshal & Manges, New York
Harold C. Wegner
Foley & Lardner, Wash. D.C.
John Pegram
Fish & Richardson P.C., New York
(Panelists have no individual time allocated; they take part in the panel discussion)

Panel, speaker and audience discussion
(20 minutes)

B. IP Issues & Policy Positions of the European Commission
9:15 A.M. – 10:15 A.M.

Panelists:
Prof. Jeremy Phillips
Director of Research, IP Institute (UK); Visiting Professorial Fellow, Queen Mary IP Research Institute
Dr. Tilman Lüder
Head of Unit, DG Internal Market, Copyright and Knowledge-based Economy, European Commission, Brussels
Hon. Paul Maier
President of the Boards of Appeal, OHIM, Alicante
James Nurton
Editor-in-chief, Managing Intellectual Property, London
Oliver Varhelyi
Head of Unit, Industrial Property, DG Internal Market & Services, European Commission, Brussels
Thomas Vinje
Clifford Chance, Brussels

**Justin Watts**
Freshfields Bruckhaus Deringer, London

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

**(50 minutes)**

**BREAK**
10:15 A.M. – 10:40 A.M.

*C. Multilateral, Plurilateral and Bilateral trade issues: ACTA, WIPO, WTO, European Commission & USTR*
10:40 A.M. – 12:05 P.M.

**Speakers:**

**James Pooley**
Deputy Director General for Patents, WIPO, Switzerland

*(up to 12 minutes)*

**Antony Taubman**
Director, Intellectual Property Division, World Trade Organization, Geneva

*(up to 12 minutes)*

**Luc Devigne**
Head of Intellectual Property and Public Procurement, DG Trade, European Commission, Brussels

*(up to 12 minutes)*

**Stanford McCoy**
Assistant U.S. Trade Representative for Intellectual Property and Innovation, Washington D.C.

*Recent Developments in U.S. Trade Policy on IP and Innovation*

*(up to 12 minutes)*

**Panelists:**

**James Love**
Director, Knowledge Ecology International, Wash. D.C.

**Hon. Don Weerawit Weeraworawit**
Deputy Secretary General, National Human Rights Commission, Thailand, Bangkok

**Mihaly Ficsor**
President, Hungarian Copyright Council, Int’l Legal Consultant, Greenberg Traurig LLP

(Panelists have no individual time allocated; they take part in the panel discussion.)
Panel, speakers and audience discussion
(20 minutes)

D. Views from the Judiciary on IP in a Globalized World
12:10 P.M. – 1:10 P.M.

Panel Discussion

Panelists:
Dr. Klaus Grabinski
Judge at the Federal Supreme Court, Federal Supreme Court (Bundesgerichtshof), Karlsruhe

Lord Hoffmann
Law Lord (ret.), House of Lords, Parliament, London

Hon. Rian Kalden
Vice President, District Court The Hague, The Netherlands

Hon. Sylvie Mandel
Judge, French Supreme Court

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

Hon. Robert van Peursem
Vice President, District Court The Hague, The Netherlands

Hon. Randall R. Rader
U.S. Court of Appeals for the Federal Circuit, Washington D.C.

Hon. Jed Rakoff
U.S. District Court, Southern District of New York

Hon. Annabelle Bennett
Judge, Federal Court of Australia, Sydney

Panel Discussion
(50 minutes)

LUNCH
1:10 P.M. – 2:30 P.M.
Location: Atrium
Overflow: Room 430 B&C

Thursday Afternoon, April 8th
THREE CONCURRENT SESSIONS:
Copyright, Patent and Trademark Law
SESSION 2: COPYRIGHT LAW
Concurrent Session
(Thursday, 2:30 P.M. – 6:30 p.m.)
Amphitheatre

A. Developments in US Copyright Law
2:30 P.M. – 4:15 P.M.

Moderator:
Justin Hughes
Senior Advisor to the Undersecretary of Commerce for Intellectual Property, Professor of Law, Cardozo Law School
(up to 5 minutes to introduce subject matter)

Speakers:
Thomas Kjelberg
Cowan, Liebowitz & Latman, New York
(up to 15 minutes)
Salinger/Fairey, Golan and Cellco, et al: A Review & Analysis
Scott M. Martin
Executive Vice President, Intellectual Property, Paramount Pictures, Viacom, Los Angeles
(up to 10 minutes)
Reed Elsevier: Some Thoughts on Its Impact
David Carson
General Counsel, U.S. Copyright Office, Wash. D.C.
(up to 10 minutes)
The First Sale Doctrine: Case Law Developments
Prof. Ann Bartow
University of South Carolina School of Law, Columbia, S.C.
(up to 10 minutes)
Redefining Derivative Works: Some Thoughts on Achieving Clarity and Consistency
A discussion of inconsistencies in the ways that exclusive rights in derivative works are constructed and enforced by courts. Some seem to view “substantial similarity” and “unauthorized derivative works” as synonymous and interchangeable. Others treat the derivative works right as something copyright holders can deploy when a defendant work evokes or makes reference to another work but falls short of substantial similarity. Still others conflate derivative works rights with compilation copyrights.

Panelists:
Marybeth Peters
Register of Copyrights, Wash. D.C.
**Michael Shapiro**  
Senior Counsel, Office of Intellectual Property and Enforcement, U.S. Patent and Trademark Office

**Prof. Mary W.S. Wong**  
Franklin Pierce Law Center, Concord, N.H.  
(Panellists have no individual time allocated; they take part in the panel discussion)

Panel, speakers and audience discussion  
(30 minutes)

**BREAK**  
4:15 P.M. – 4:40 P.M.

**B. Google Books Settlement: Review and Analysis**  
4:40 P.M. – 6:30 P.M.  
Amphitheatre

**Moderator:**  
**Prof. Joel Reidenberg**  
Director, Center on Law and Information Policy, Fordham Law School  
(up to 5 minutes to introduce subject matter)

**Speakers:**  
**Paul Aiken**  
Executive Director, The Authors Guild, New York  
(up to 15 minutes including history of lawsuit)

**Marybeth Peters**  
Register of Copyrights, Wash. D.C.  
(up to 12 minutes)

**Joseph Gratz**  
Durie Tangri LLP, San Francisco  
(up to 12 minutes)

(First discussion period -- 20 minutes)

**Dr. Tilman Lüder**  
Head of Unit, DG Internal Market, Copyright and Knowledge-based Economy, European Commission, Brussels  
(up to 12 minutes)

*Responses and Repercussions of the Proposed Settlement in the EU*

**Dr. Mira T. Sundara Rajan,**  
Faculty of Law, The University of British Columbia, Vancouver; Global Fellow, New York University School of Law  
(up to 12 minutes)
Google Books Settlement and Moral Rights: What Role Have They Played? What Role Should They Play?

(second discussion period 20 minutes)

Panelists:
Sandra Aistars,
Vice President and Associate General Counsel, Time Warner Inc., New York
Prof. F. Willem Grosheide
Molengraaff Institute/Center for Intellectual Property Law, University of Utrecht
Howard Knopf
Macera & Jarzyna, LLP, Ottawa
Tom Rubin
Chief Counsel for Intellectual Property Strategy, Microsoft

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

RECEPTION
10 on the Park
6:30 P.M. – 8:30 P.M.

Sponsored by
Freshfields, Bruckhaus Deringer LLP

SESSION 3: PATENT LAW/IP ENFORCEMENT
Concurrent Session
(Thursday, 2:30 P.M. – 6:30 P.M.)
Room 204

A. Written Descriptions; Enablement, Industrial Applicability
2:30 P.M. – 3:30 P.M.

Moderator:
John White
Cooper & Dunham LLP, New York
(up to 5 minutes)

Speakers:
Lord Hoffmann  
Law Lord (ret.), House of Lords, Parliament, London 
(up to 10 minutes)  

Acertaining the Likelihood of industrial application/ utility: Who Has It Right?  

Steven Lee  
Kenyon & Kenyon LLP  
(up to 10 minutes)  

Justin Watts  
Freshfields Bruckhaus Deringer, London  
(up to 10 minutes)  

Asymmetry in disclosure requirements: sufficient descriptions/ inadequate prior art.  

Patentees frequently describe their inventions loosely, incorrectly, and unscientifically (which might be inevitable when attempting to describe something new). Because the burden is on the challenger to prove inadequacy, and an examiner looking only on paper has allowed the patent through, sufficiency challenges on bad science are very difficult to mount. The difficulties are especially acute when it comes to constructing experimental evidence to demonstrate the workability of a bad patent invention. This creates an asymmetry in the patent system in which rights can be established on the basis of disclosures that would not be held to anticipate.

Panelists:  
Prof. Martin Adelman  
George Washington University Law School, Washington, D.C.  

Shimako Kato  
Abe, Ikubo & Katayam, Tokyo  

David Perkins  
Arnold & Porter, London  

(Panellists have no individual time allocated; they take part in the panel discussion)  

Panel, speakers and audience discussion  
(20 minutes)  

B. IP Enforcement in China  
3:35 P.M. – 4:30 P.M.  

Moderator:  
Daryl Lim
Microsoft Teaching and Research Fellow, Intellectual Property Law Institute, Fordham University School of Law  
(up to 5 minutes to introduce subject matter)

Speakers:

Louise Pentland  
Senior Vice President & Chief Legal Officer, Nokia Corporation, Helsinki  
(up to 13 minutes)

IP Enforcement in China

China is a very exciting marketplace, not least in the area of IP. Success depends upon understanding how to navigate the enforcement environment. Nokia, as a European Headquartered Company operating extensively in China, has developed best practices with regard to IP including trademark protection, design right protection, anti-counterfeit action, patent protection and litigation. These will be shared in this talk along with recent legal developments. A first principal: leave your western expectations behind if you want to succeed.

Prof. Peter K. Yu  
Drake University Law School, Des Moines, IA  
(up to 13 minutes)

Intellectual Property Enforcement in China: WTO and Beyond


Panelists:

Jennifer Choe Groves  
Hughes Hubbard & Reed, Wash. D.C.

Prof. Haochen Sun  
University of Hong Kong  
(Panellists have no individual time allocated; they take part in the panel discussion)

Panel, speakers and audience discussion  
(20 minutes)

BREAK

4:30 P.M. – 4:50 P.M.

C. The EU Patent Agenda

4:50 P.M. – 5:35 P.M.

Moderator:

David Perkins  
Arnold & Porter, London  
(up to 5 minutes)
Speaker:  
**Oliver Varhelyi**  
Head of Unit, Industrial Property, DG Internal Market & Services, European Commission, Brussels  
*(up to 15 minutes)*

Panelists:  
**Prof. Johanna Gibson**  
Director, Queen Mary Intellectual Property Research Institute, University of London  
**Hon. Robert van Peursem**  
Vice President, District Court The Hague, The Netherlands  
**Justin Watts**  
Freshfields Bruckhaus Deringer, London  
*(Panelists have no individual time allocated; they take part in the panel discussion)*

Panel, speakers and audience discussion  
*(20 minutes)*

**D. U.S. Patent Law Developments**  
5:40 P.M. – 6:40 P.M.

Moderator:  
**Prof. Martin Adelman**  
George Washington University Law School, Washington, D.C.  
*(up to 5 minutes)*

Speaker:  
**Dimitrios Drivas**  
White & Case, New York  
*(up to 25 minutes)*

Panelists:  
**Hon. Randall R. Rader**  
U.S. Court of Appeals for the Federal Circuit, Wash. D.C.  
**Prof. Clarisa Long**  
Columbia Law School, New York  
**Brian Murphy**  
Morgan, Lewis & Bockius LLP  
**Prof. John R. Thomas**  
Georgetown University School of Law, Wash. D.C.

Panel, speakers and audience discussion
SESSION 4: TRADEMARK LAW
Concurrent Session
(Thursday, 2:30 P.M. – 6:00 P.M.)
Room 203

A. Developments in EU Trademark and Design Law
2:30 P.M. – 4:00P.M.

Moderator:
James Nurton
Editor-in-chief, Managing Intellectual Property, London
(up to 5 minutes)

Speakers:
Oliver Varhelyi
Head of Unit, Industrial Property, DG Internal Market & Services, European Commission, Brussels
(up to 15 minutes)

The Commission’s Perspective
Hon. Paul Maier
President of the Boards of Appeal, OHIM, Alicante
Genuine use in one Members State: the Controversy
(up to 10 minutes)

Hon. Harri Salmi
Member, Boards of Appeal, OHIM, Alicante
Overlap of EU Community Design and Trade Mark Protection:
Grupo Promer Mon Graphic SA v. OHIM (EU General Court, 18 March 10)

Wolrad Prinz zu Waldeck
Comparative advertising - more questions than answers: What is the practical impact of the ECJ judgments in O2 and L’Oreal v. Bellure.

**Prof. Spyros Maniatis**
Director, Centre for Commercial Law Studies, Queen Mary University of London

*up to 10 minutes*

**Lego and Functionality in Europe**

*Lego*, the most recent challenge to the strict principles established in *Philips*, is not only important to clarify the doctrine but also because functionality influences the interpretation of provisions dealing with other aspects of registrability.

**Panelist**

**Prof. David Llewelyn**
King’s College London; External Director, IP Academy, Singapore

Panelist, speakers and audience discussion
*(30 minutes)*

**BREAK**

4:00 P.M. – 4:25 P.M.
Room 203

**B. Developments in U.S. Trademark Law**

4:25 P.M. – 5:50 P.M.

**Moderator:**

**Norman Zivin**
Cooper & Dunham LLP, New York

*up to 5 minutes*

**Speakers:**

**Prof. Marshall Leaffer**
Indiana University, Bloomington

*A Review of Trademark Developments*

*up to 15 minutes*

**Lynne Beresford**

*up to 10 minutes*

**Bose: The USPTO’s Perspective**

**Mark V.B. Partridge**
Partridge IP Law, Chicago

*up to 10 minutes*
Prof. Ann Bartow,  
University of South Carolina School of Law, Columbia, S.C.  
*(up to 10 minutes)*  
*Dilution Protection: Where are We? Where Should We Be?*

Panelist:  
**Daniel Schloss**  
Greenberg Traurig, New York

Panel, speakers and audience discussion  
*(25 minutes)*

**RECEPTION**  
10 on the Park  
6:30 P.M. – 8:30 P.M.

*Sponsored by*  
**Freshfields, Bruckhaus Deringer LLP**

**Friday Morning, April 9th**  
*Fordham Law School*

*7:30 A.M. Continental Breakfast*

**Sunrise Seminars**  
These sessions stress the “seminar” part of the name, with interchanges among speaker, panelists and those attending the seminar after a short introductory talk.

*A. Green Patents: Gimmick or Answer?*  
7:30 A.M. – 8:40 A.M.  
Room 203

**Moderator:**  
**Charles M. Fish**  
Chadbourne & Parke LLP, New York  
*(up to 5 minutes)*

**Speakers:**  
**Carl Horton**  
Chief Intellectual Property Counsel, General Electric
(up to 10 minutes)

**Prof. Johanna Gibson**
Director, Queen Mary Intellectual Property Research Institute, University of London

(up to 5 minutes)

**Arti Rai**

(up to 5 minutes)

**Stuart Graham**

(up to 5 minutes)

**Jason Albert**
Associate General Counsel and Chief of Staff, Intellectual Property and Licensing Group, Microsoft Corporation, Redmond, WA

(up to 5 minutes)

**Leonora Hoicka**
Associate General Counsel for Intellectual Property Law, IBM Corp.

(up to 5 minutes)

Discussion: 25 minutes

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**B. Governmental IP Policy: By Whom & How Is It Made?**
7:30 a.m. to 8:25 a.m.
Room 204

Moderator:

**Prof. Hugh C. Hansen**
Fordham University School of Law, New York

Panelists:

**Mihaly Ficsor,**
President, Hungarian Copyright Council and International Legal Consultant, Greenberg Traurig LLP

**Prof. Anne Fitzgerald**
Queensland University of Technology, Australia

**Prof. Justin Hughes**
Senior Advisor to the Undersecretary of Commerce for Intellectual Property; Professor of Law, Cardozo Law School

**James Love**
Director, Knowledge Ecology International, Wash. D.C.

**Dr. Tilman Lüder**
Head of Unit, DG Internal Market, Copyright and Knowledge-based Economy, European Commission, Brussels

**Stanford McCoy**
SESSION 5: PATENT LAW
Concurrent Session
(Friday, 8:40 A.M. – 1:10 P.M.)
Room 203

A.Supplementary Protection Certificates
   Patent term extension in the EU for medicinal and plant protection products by means of Supplementary Protection Certificates

8:40 A.M. – 9:30 A.M.

Moderator:
Prof. John R. Thomas
   Georgetown University School of Law, Wash. D.C.
   (up to 5 minutes)

Speakers:
Prof. John R. Thomas
   Georgetown University School of Law, Wash. D.C.
   (up to 10 minutes)
Hon. Rian Kalden
   Vice President, District Court The Hague, The Netherlands
   (up to 10 minutes)
Trevor Cook
   Bird & Bird, London
   (up to 10 minutes)

SPC Regime: Questions and Concerns 20 Years Later
   Although the SPC patent extension regime has been in existence for nearly 20 years, it is attracting an ever increasing amount of litigation, much of which puts into question whether it is
achieving its original aims. This includes issues such as what can constitute a basic patent for an SPC, especially for a combination product, and what is the first marketing authorization in the EU for the purposes of establishing SPC eligibility and term? Moreover the recent introduction of pediatric extensions for SPCs has already occasioned yet further controversies, such as whether one can secure an SPC for a negative term so as to be able to benefit subsequently from a pediatric extension.

Panelist:
**Prof. Martin Adelman**
George Washington University Law School, Washington, D.C.

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

Panel, speakers and audience discussion
*(15 minutes)*

*B. Developments in Japanese Patent Law*
9:35 A.M. – 10:40 A.M.
Room 203

Moderator:
**John Pegram**
Fish & Richardson P.C., New York
*(up to 5 minutes)*

Speakers:
**Hon. Tamotsu Shouji**
High Court of Japan, IP Division, Tokyo
*(up to 12 minutes)*
*The "Dual-Track" System in Japan: Will conflict result from Invalidity Decisions being made in both the JPO and the Courts?*

**Prof. Kazuo Makino**
Omiya Law School, Tokyo
*(up to 12 minutes)*

**Shimako Kato**
Abe, Ikubo & Katayam, Tokyo
*(up to 12 minutes)*
*Developments in Description Requirement in Japan*

Panelists:
Panelists have no individual time allocated; they take part in the panel discussion.

Panel, speakers and audience discussion
(20 minutes)

BREAK
10:40 A.M. – 11:00 A.M.

C. Views from EPO, JPO, and USPTO; IP5 Group
Worksharing
11:00 A.M. – 12:05 P.M.
Room 203

Moderator:
John Richards
Ladas & Parry
(up to 5 minutes)

Speakers:
Tatsuo Takeshige
Deputy Director, Japan Patent Office, Tokyo
(up to 11 minutes)

Arti Rai
(up to 11 minutes)

Eugen Stohr
Director for International Legal Affairs, European Patent Office, Munich
(up to 11 minutes)

Panelists:
John Pegram
Fish & Richardson P.C., New York

James Pooley
Deputy Director General for Patents, WIPO, Switzerland

Richard Wilder
D. Injunctions
12:10 P.M. – 1:10 P.M.
Room 203

Moderator:
David Perkins
Arnold & Porter, London
(up to 5 minutes)

Speakers:
Rutger Kleemans
Freshfields Bruckhaus Deringer, Amsterdam
(up to 10 minutes)

Descriptive Seizures and Corporate Privacy: A Need for Regulation of seizures and a Broader Duty to Disclose.
A descriptive seizure and in particular electronic seizures that skim entire servers, are a major breach of corporate privacy. The pressure seizures put on a defendant where good court supervision is lacking (which is often the case) seems to provide for broader discovery than appropriate. Descriptive seizure issues and breach of confidential information in this context occur much more frequently in civil law jurisdictions (France, Belgium where the saisie descriptive originated) and recently Germany and the Netherlands than in the UK and common law countries.

Michael Sandonato
Fitzpatrick, Cella, Harper & Scinto, New York
(up to 10 minutes)

Christian Harmsen
Bird & Bird LLP, Düsseldorf
(up to 10 minutes)

Territorial scope of national injunctions in the globalized market

Panelists:
John Golden
University of Texas School of Law

John Kenneth Felter
(Panelists have no individual time allocated; they take part in the panel discussion)

Panel, speakers and audience discussion
(20 minutes)

LUNCH
Atrium and room 430
1:10 P.M. – 2:30 P.M.

Luncheon Speaker

Victoria Espinel
Intellectual Property Enforcement Coordinator
The White House
(up to 15 minutes)
(in Atrium)

SESSION 6: STANDARDS
Concurrent Session
(Friday, 8:30 A.M. – 10:10 A.M.)
Room 204

Moderator:
Carey Ramos
Paul, Weiss, Rifkind, Wharton & Garrison, New York
(up to 5 minutes)

Speakers:
Fabian Gonnell
Senior Director, Legal Counsel, Qualcomm Technology Licensing, Qualcomm, Inc., San Diego, CA
(up to 10 minutes)

Patricia Martone
Ropes & Gray, New York
(up to 10 minutes)

Giovanni Casucci
Casucci Studio Legale, Milan
(up to 10 minutes)

Myles Jelf
Bristows, London

FRAND obligations: consequences and opportunities for national patent courts
National patent courts are now the main forum in which FRAND issues are adjudicated (the European Commission having declined to take up the Qualcomm complaint, saying “Such assessments [about the pricing of technology after its adoption as part of an industry standard] may be very complex, and any antitrust enforcer has to be careful about overturning commercial agreements”. How do national courts, however, procedurally achieve fairness between the interests of patentees in obtaining a fair reward for innovation, and the risk to defendants who are locked in to using standardised technology? Do the judgments of individual courts in relation to FRAND rates for individual patents risk having disproportionate – and potentially even market-distorting – effects for other market players in other jurisdictions around the world? Are, in fact, the conflicts between what is procedurally fair to each party so difficult to resolve that FRAND risks becoming virtually unjusticiable?

(up to 10 minutes)

John Temple Lang
Cleary, Gottlieb, Steen & Hamilton LLP, Brussels
(up to 10 minutes)

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

Substance or Form? Antitrust implications of conducting joint format development as an SDO or a JV.
(up to 10 minutes)

Cecilio Madero Villarejo
Director, Directorate C, Market Cases II, Information, Communication and Media, Directorate General for Competition, Brussels
(up to 10 minutes)

Speakers and audience discussion
(25 minutes)

BREAK
10:10 A.M. – 10:30 A.M.

SESSION 7: ANTITRUST/COMPETITION LAW
Concurrent Session
(Friday, 10:30 A.M. – 1:10 P.M.)
Room 204

A. Global Competition Law and Policy
10:30 A.M. – 11:50 P.M.
Moderator:
Prof Hugh C. Hansen
Fordham University School of Law

Speakers:
Cecilio Madero Villarejo
Director, Directorate C, Market Cases II, Information, Communication and Media, Directorate General for Competition, Brussels
(up to 15 minutes)
Daryl Lim
Microsoft Teaching and Research Fellow, Intellectual Property Law Institute, Fordham University School of Law
(up to 15 minutes)
The IP/Competition Interface and Asia: Critical Directions?

Panelists:

Prof. Eleanor Fox,
New York University School of Law

Barry Hawk
Director, Competition Law Institute, Fordham University School of Law

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

Thomas Vinje
Clifford Chance, Brussels
(Panelists have no individual time allocated; they take part in the panel discussion)

Panel, speakers and audience discussion

SESSION 7A: COPYRIGHT LAW
Concurrent Session
Room 204

Fair Use; Exceptions
11:55 P.M. – 1:10 P.M.

Moderator:
Mary Rasenberger
Skadden, Arps, Slate, Meagher & Flom
Speakers:

**Prof. Jeremy Phillips**  
Director Of Research, IP Institute (UK); Visiting Professorial Fellow, Queen Mary IP Research Institute, IP Consultant, Olswang  
*(up to 12 minutes)*

*The public domain: time for a health-check.*  
The public domain is a vast body of content from which many copyright-protected works are drawn and to which, at least in theory, all such works eventually migrate. How is the public domain faring these days? Is it an infinitely renewable resource, or are its limits being tested by predatory principles of copyright and other intellectual property rights?

**William Patry**  
Senior Copyright Counsel, Google  
*(up to 12 minutes)*

**Mihaly Ficsor**  
President, Hungarian Copyright Council, Int’l Legal Consultant, Greenberg Traurig LLP  
*(up to 12 minutes)*

*Does Copyright Law Need New Exceptions?*

Panelists:

**David Carson**  
General Counsel, U.S. Copyright Office, Wash. D.C.

**Dr. Tilman Lüder**  
Head of Unit, DG Internal Market, Copyright and Knowledge-based Economy, European Commission, Brussels

**Prof. Haochen Sun**  
University of Hong Kong  
*(Panelists have no individual time allocated; they take part in the panel discussion)*

Panel, speakers and audience discussion  
*(25 minutes)*

**LUNCH**  
Atrium, room 430  
1:10 P.M. – 2:30 P.M.

Luncheon Speaker

**Victoria Espinel**  
Intellectual Property Enforcement Coordinator
SESSION 8: TRADE/ENFORCEMENT LAW
Concurrent Session
(Friday, 8:30 A.M. – 1:10 P.M.)
Amphitheatre

A. Trade/Copyright: IP Trade Policy; WIPO Treaty for the Blind
8:30 A.M. – 9:55 A.M.

Moderator:
Coenraad Visser
University of South Africa, Pretoria
(up to 5 minutes)

Speakers:
James Pooley
Deputy Director General for Patents, World Intellectual Property Organization, Geneva
(up to 10 minutes)

James Love
Director, Knowledge Ecology International, Wash. D.C.
(up to 8 minutes)

Prof. Silke von Lewinski
Max Planck Institute for Intellectual Property, Competition & Tax Law, Munich; Franklin Pierce Law Center, Concord, N.H.
(up to 8 minutes)

Hon. Weerawit Weeraworawit
Deputy Secretary General, National Human Rights Commission, Thailand, Bangkok
(up to 8 minutes)

Michele Woods
Senior Counsel for Policy and International Affairs, U.S. Copyright Office, Wash. D.C.
(up to 8 minutes)

Discussion 25 minutes
Break
9:55 A.M. – 10:20 A.M.

B. Enforcement Issues, including ACTA/301
10:20 A.M. – 11:50 P.M.

Moderator:
Michael Schlesinger
Greenberg Traurig, Washington, D.C.
(up to 5 minutes)

Speakers:
Alvydas Stancikas
Head of Unit, Enforcement of IPR, DG Internal Market, European Commission, Brussels
(up to 15 minutes)
The Commission’s Internal Market initiatives for Fighting Counterfeiting and Piracy
A review of the Commission’s fresh range of internal market initiatives over the last two years, including its work on the Enforcement Directive, creation of the European Counterfeiting and Piracy Observatory and development of administrative cooperation.

Christopher Stothers
Arnold & Porter, London
(up to 8 minutes)
Nokia and in-transit border controls

Susy Frankel
Victoria University, New Zealand
Cross Retaliation in TRIPS: New Solutions or Problems?
(up to 8 minutes)

Stanford McCoy
Assistant U.S. Trade Representative for Intellectual Property and Innovation, Wash. D.C.
(up to 8 minutes)

Peter Fowler

Game-Changers in the Enforcement Environment: Five Things Countries Can Do To Enhance Their Enforcement Regimes

Panelists:
James Love
Director, Knowledge Ecology International, Wash. D.C.
Tod Cohen  
VP & Deputy General Counsel, Global Gov't Relations, Regulatory, Asset Protection, eBay Inc., San Jose

Antony Taubman  
Director, Intellectual Property Division, World Trade Organization, Geneva

Prof. Peter K. Yu  
Drake University Law School, Des Moines  
(Panelists have no individual time allocated; they take part in the panel discussion)

Panel, speakers and audience discussion  
(25 minutes)

C. Parallel Imports & IP Law  
11:55 A.M. – 1:10 P.M.

Moderator:  
Anne Nielsen  
Vice President and Associate General Counsel, Bristol-Myers Squibb Company, New York  
(up to 5 minutes to introduce subject matter)

Speakers:  
Giovanni Casucci  
Casucci Studio Legale, Milan  
(up to 10 minutes)

John Temple Lang  
Cleary, Gottlieb, Steen & Hamilton LLP, Brussels  
(up to 10 minutes)

Prof. Kazuo Makino  
Omiya Law School, Tokyo  
(up to 10 minutes)

Parallel Imports: Recent Developments in Japan  
Michael Schlesinger  
Greenberg Traurig, Washington, D.C.  
(up to 10 minutes)

Panelists:  
Peter Fowler  

Howard Knopf  
Macera & Jarzyna, LLP, Ottawa

Christopher Stothers
Panel, speakers and audience discussion
(25 minutes)

LUNCH
Atrium, room 430
1:10 P.M. – 2:30 P.M.

Luncheon Speaker

Victoria Espinel
Intellectual Property Enforcement Coordinator
The White House
(up to 15 minutes)
(Atrium)

Friday Afternoon, April 9th
Three Concurrent Sessions
Patent Law; Copyright Law; Trademark Law

SESSION 9: PATENT LAW
Concurrent Session
(Friday, 2:30 P.M. – 6:30 P.M.)
Amphitheatre

A. Damages and Reasonable Royalties
2:30 A.M. – 3:45 P.M.

Moderator:
Gonzalo Ulloa
Gomez-Acebo & Pombo, Madrid
(up to 5 minutes)

Speakers:
Hon. Randall R. Rader
U.S. Court of Appeals for the Federal Circuit, Washington D.C.
(up to 9 minutes)
Prof. John Golden
University of Texas School of Law
The U.S. Damages Debate: Recent developments and Proposed Guidelines
(up to 7 minutes)
Dr. Klaus Grabinski,
Judge at the Federal Supreme Court, Federal Supreme Court
(Bundesgerichtshof), Karlsruhe
(up to 9 minutes)
Dr. Frank-Erich Hufnagel
Freshfields Bruckhaus Deringer, Dusseldorf
(up to 7 minutes)
Johann Pitz
Vossius & Partner, Munich
(up to 7 minutes)
Steven Schwartz,
Senior Vice President, NERA, White Plains, New York
(up to 7 minutes)

Panelist:
Herbert F. Schwartz
Retired partner, Ropes & Gray LLP
Panelist, speakers and audience discussion
(20 minutes)

BREAK
3:45 P.M. – 4:05 P.M.

B. Patent Eligible Subject Matter
4:05 P.M. – 5:25 P.M.
Amphitheatre

Moderator:
Prof. Jeanne Fromer
Fordham University School of Law, New York
(up to 5 minutes introducing subject matter)
Speakers:

**Prof. Rochelle Dreyfuss**  
New York University School of Law  
(up to 10 minutes)

_The Patentability of Genetic Diagnostics_

In the run-up to Bilski v. Kappos, Justice Breyer cast doubt on the patentability of methods of diagnosis, see Lab. Corp. of Am. Holdings v. Metabolite Labs., Inc. Lab Corp., 548 U.S. 124 (2006)(dissenting from dismissal of certiorari as improvidently granted). The problem Breyer identified—the possibility that diagnostics express rules of nature—is especially prevalent in the case of genetic diagnostics. These methods rely on gene sequences, and these sequences are currently themselves subject to challenge, see Association for Molecular Pathology v. USPTO, 669 F.Supp. 365 (SDNY 2009). While gene patents are clearly important to spur research into gene therapies, the case for gene diagnostics is much weaker. Yet patents on genetic diagnostics can interfere significantly with patient care. This talk will discuss options for dealing with these patents, including the proposals suggested by the Secretary of Heath & Human Services' Advisory Committee on Genetics, Health, and Society, see [http://oba.od.nih.gov/oba/SACGHS/SACGHS%20Patents%20Report%20AProved%202-5-2010.pdf](http://oba.od.nih.gov/oba/SACGHS/SACGHS%20Patents%20Report%20AProved%202-5-2010.pdf)

**Prof. Dan Ravicher**  
Executive Director, Public Patent Foundation; Lecturer in Law, Intellectual Property Law Program, Benjamin N. Cardozo Law School, New York  
(up to 10 minutes)

_Ass’n for Molecular Pathology: What Lies Ahead?_

**William Chandler**  
Member, Board of Appeal, European Patent Office, Munich  
(up to 10 minutes)

What the EPO referral G3/08 might tell us

**Hon. Pauline Newman**  
U.S. Court of Appeals for the Federal Circuit, Wash. D.C.  
Some Thoughts on Current Issues  
(up to 10 minutes)

Panelists:

_Nicholas Groombridge,_  
Weil, Gotshal & Manges, New York

**Lord Hoffman**  
Law Lord, House of Lords, Parliament, London

**David W. Jones**  
Senior Attorney, Microsoft Corporation, Redmond

(Panelists have no individual time allocated; they take part in the panel discussion)
Panel, speakers and audience discussion
(25 minutes)

C. Obviousness/Inventive Step: Comparative View
5:30 P.M. – 6:40 P.M.
Amphitheatre

Moderator:
Prof. Ron Lazebnik
Fordham University School of Law, New York
(up to 5 minute introduction of subject matter)

Speakers:
John Richards
Ladas & Parry, New York
(up to 12 minutes)
A Comparative Overview

William Chandler
(up to 9 minutes)
Member, Board of Appeal, European Patent Office, Munich
What the EPO referral G3/08 will probably not tell us

Brian Cordery
Bristows, London
(up to 9 minutes)
Inventive Step – Out of Step? Is European Harmonisation A Reality?
Are English Patents Courts in Sync with other EU national courts and the EPO? In relation to inventive step, Lord Justice Jacob observed in Generics UK v Daiichi (July 2009) that “Some have suggested that Pozzoli/Windsurfing is different from the EPO’s problem/solution approach. It is not.” But is this borne out in the cases?”

Hon. Robert van Peursem
Vice President, District Court The Hague, The Netherlands
(up to 9 minutes)
Is there a European approach to inventive step by the EPO and national judges? A Dutch Perspective
Structured approaches assessing obviousness in EPO, NL, UK and Germany do not differ principally but some differences remain.

Panelists:
Hon. Annabelle Bennett
Judge, Federal Court of Australia, Sydney

Robert J. Goldman
Ropes & Gray, Palo Alto, CA

Dr. Klaus Grabinski,
Judge at the Federal Supreme Court, Federal Supreme Court (Bundesgerichtshof), Karlsruhe

**Hon. Randall R. Rader**
U.S. Court of Appeals for the Federal Circuit, Wash. D.C.
(Panelists have no individual time allocated; they take part in the panel discussion)

Panel, speakers and audience discussion
*(25 minutes)*

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**SESSION 10: COPYRIGHT LAW**

**Concurrent Session**
(Friday, 2:30 P.M. – 6:30 P.M.)
Room 203

**A. Developments in EU Copyright Law**
2:30 P.M. – 3:50 P.M.

**Moderator:**
**Dr. Tilman Lüder**
Head of Unit, DG Internal Market, Copyright and Knowledge-based Economy, European Commission, Brussels
*(up to 5 minutes)*

**Speakers:**
**Prof. F. Willem Grosheide**
Molengraaff Institute/Center for Intellectual Property Law, University of Utrecht
*(up to 10 minutes)*
*The ECJ Infopaq-decision*

**Tom Rivers**

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**RECEPTION**
Fordham Law Atrium
6:30 P.M. – 8:30 P.M.

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Monika Tomczak
Miller Canfield, Warsaw

Online licensing of creative content - is there a way to close the transnational gap across the EU?
Consumers in various parts of the EU are prevented from legally purchasing creative content from sites operating in other Member States due to the various obstacles. A look at the efforts of the European Commission to provide an efficient platform for online licensing across the EU, the views of stakeholders and collective management societies and the current practice of licensing online music.

Tim Frain
Director of Intellectual Property Rights, Regulatory Affairs, Nokia Corporation, Helsinki

Panelists:
Trevor Cook
Bird & Bird, London

John Temple Lang
Cleary, Gottlieb, Steen & Hamilton LLP, Brussels

Prof. Silke von Lewinski
Max Planck Institute for Intellectual Property, Competition & Tax Law, Munich; Franklin Pierce Law Center, Concord, N.H.

Panel, speakers and audience discussion
(30 minutes)

B. Secondary Liability
4:15 P.M. – 5:30 P.M.
Room 203

Moderator:
Morton David Goldberg
Cowan, Liebowitz & Latman, New York
(up to 5 minutes)
Speakers:

**Howard Knopf**
Macera & Jarzyna, LLP, Ottawa
*(up to 13 minutes)*

**Dr. Stanley Lai**
Allen & Gledhill, Singapore
*The perspectives in Singapore and Asia*
*(departure due to emergency)*

**Stanley Pierre-Louis**
Vice President and Associate General Counsel, Intellectual Property & Content Protection, Viacom, New York
*(up to 13 minutes)*

**Ted M. Shapiro**
Deputy Managing Director, Vice President & General Counsel, MPA, Brussels
*(up to 13 minutes)*

Panelists:

**Prof. Kazuo Makino**
Omiya Law School, Tokyo

**Alain Strowel**
Covington & Burling, LLP, Brussels

Panel, speakers and audience discussion
*(25 minutes)*

*C. Worldwide Developments in ISP Participation*
5:35 P.M. – 6:30 P.M.
Room 203

Moderator:

**Morton David Goldberg**
Cowan, Liebowitz & Latman, New York
*(up to 5 minutes)*

Speakers:

**Prof. Valerie-Laure Benabou**
University of Versailles, Visiting Professor, McGill University and University of Montreal
*(up to 13 minutes)*

**Shira Perlmutter**
Executive Vice President, Global Legal Policy, IFPI, London
*(up to 13 minutes)*

*The Evolution of A Graduated Response Approach to Illegal File-Sharing*
Panelists:

**Susy Frankel**  
Victoria University, New Zealand

**Ted M. Shapiro**  
Deputy Managing Director, Vice President & General Counsel, MPA, Brussels

**Mihaly Ficsor**  
President, Hungarian Copyright Council and International Legal Consultant,  
Greenberg Traurig, LLP

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

Panel, speakers and audience discussion  
(20 minutes)

**RECEPTION**  
Fordham Law Atrium  
6:30 P.M. – 8:30 P.M.

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**SESSION 12: TRADEMARK LAW**

Concurrent Session  
(Friday, 2:30 P.M. – 6:30 P.M.)  
Room 204

**A. Protection of Premium Products**  
2:30 P.M. – 3:40 P.M.

**Moderator:**  
**Prof. Susan Scafidi**  
Brooklyn Law School, New York  
(up to 5 minutes)

**Speakers:**  
**Monika Tomczak**
The regime for vertical restraints is due to be revamped in the EU with a new proposed regulation on the exemption of vertical restraints. What is the current regime, the projected change and when will it occur? The new regime is particularly important for premium and luxury brand products because of the nature of their distribution channels.

(up to 10 minutes)

Dr. Joseph Fesenmair
Bird & Bird, Munich
(up to 10 minutes)

Prof. Marshall Leaffer
Indiana University, Bloomington
(up to 10 minutes)

Dr. Peter Ruess
Professor of Law, International School of Management, Frankfurt

Better premium product protection after ECJ’s Dior decision?
Is sale of a premium product in discount channels a violation of trademark law? A new and widely discussed ECJ decision seems to hold some benefits in store for licensors.

(up to 10 minutes)

Panelists:

Prof. Ann Bartow
University of South Carolina School of Law, Columbia, S.C.

Prof. David Llewelyn
King’s College London, External Director, IP Academy, Singapore

Hon. Paul Maier
President of the Boards of Appeal, OHIM, Alicante

(Panellists have no individual time allocated; they take part in the panel discussion)

Panel, speakers and audience discussion
(20 minutes)

BREAK
3:40 P.M. – 4:05 P.M.

B. Geographic Terms, Including Geographical Indications
4:05 P.M. – 5:00 P.M.
Moderator:
Coenraad Visser  
University of South Africa, Pretoria

Speakers:
Hon. Annabelle Bennett  
Judge, Federal Court of Australia, Sydney
Prof. Justin Hughes  
Senior Advisor to the Undersecretary of Commerce for Intellectual Property;  
Professor of Law, Cardozo Law School
Dr. G.E. Evans  
Queen Mary, University of London, Centre for Commercial Law Studies
Comparative Advantages of GIs and Trademarks in the Marketing of Agricultural Products in the EU

Panelist:
Mark V.B. Partridge  
Partridge IP Law, Chicago
Hon. Harri Salmi  
Member, Boards of Appeal, OHIM, Alicante
(Panelists have no individual time allocated; they take part in the panel discussion)

Panel, speakers and audience discussion

C. Trademark Use, Including Search Words: Comparative View
5:05 P.M. to 6:30 P.M.

Moderator:
Prof. Jeremy Phillips  
Director of Research, IP Institute (UK); Visiting Professorial Fellow, Queen Mary IP Research Institute

Speakers:
Prof. Jeremy Phillips  
Director of Research, IP Institute (UK); Visiting Professorial Fellow, Queen Mary IP Research Institute  
(up to 12 minutes)
An Overview of “Use” Issues in Trade Mark law
Alain Strowel  
Covington & Burling, LLP, Brussels  
(up to 10 minutes)
Mark V.B. Partridge  
Partridge IP Law, Chicago  
(up to 10 minutes)

Prof. Peter Ruess  
Professor of Law, International School of Management, Frankfurt  
(up to 10 minutes)

Use and Misuse of trademarks in cyberspace  
From eBay to Google, including the very recent ECJ decision on Adwords, cyberspace seems to have its own rules. What are they and the trends in the online world?

Hon. Sylvie Mandel  
Judge, French Supreme Court

Genuine Use of Marks: on the Internet; as Registered  
(up to 10 minutes)

Panelist:  

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

Panel, speakers and audience discussion  
(25 minutes)

RECEPTION  
Fordham Law Atrium  
6:30 P.M. – 8:30 P.M.

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See you next year!  
April 28-29, 2011