

Program Updated on April 26, 2011

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

**19th Annual Conference on  
Intellectual Property Law & Policy**

[www.fordhamipconference.com](http://www.fordhamipconference.com)

**Prof. Hugh C. Hansen  
Director**

*Learn    Debate    Have Fun*

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**CONFERENCE PROGRAM**

Subject to Change

[www.fordhamipconference.com](http://www.fordhamipconference.com)

**Wednesday, April 27<sup>th</sup>**

**Faculty and Sponsor Reception & Dinner**

Reception – Glass Enclosures, Plaza Level, Lowenstein

6:15 p.m. to 7:30 p.m.

Dinner: 12<sup>th</sup> Floor, Lowenstein

7:30 p.m. to 9:00 p.m.

Sponsored by

**McKool Smith**

## **Thursday, April 28<sup>th</sup>**

### **BREAKFAST**

Platt Atrium

7:00 AM – 9:00 AM

Sponsored by

**Gilbert's LLP**

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### *Registration*

Platt Atrium

7:00 AM – 8:00 AM

*Please note: Doors to the McNally Amphitheatre will close at 8:00 AM. People arriving after 8:00 AM should go to the overflow rooms. Registrants not yet seated will be escorted to overflow Room 302.*

### Welcoming Remarks:

Thursday 8:00 AM – 8:15 AM

McNally Amphitheater

**Prof. Hugh C. Hansen**

Fordham University School of Law

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

#### **What Does the Future Hold?**

Thursday 8:15 AM – 1:15 PM

McNally Amphitheatre

### Thursday Morning Moderator:

**Prof. Hugh C. Hansen**

Fordham University School of Law

*A. Multilateral IP Issues & Policy*

Thursday 8:15 AM – 9:15 AM

Speakers:

**Antony Taubman**

Director, Intellectual Property Division, World Trade Organization, Geneva  
*What are those “trade related” aspects anyhow? Relocating IP in today’s WTO?*

(up to 8 minutes)

**James Pooley**

Deputy Director General for Patents, WIPO, Geneva  
*The Risks and Opportunities of Working Outside the Multilateral System*

(up to 8 minutes)

**Stanford McCoy**

Assistant U.S. Trade Representative for Intellectual Property and Innovation,  
Office of the US. Trade Representative, Wash D.C.

*The Year Past; The Year Ahead*

(up to 8 minutes)

Panelists:

**Mihály Ficsor**

President Hungarian Copyright Council; International Legal Consultant

**Prof. Justin Hughes**

Senior Advisor to the Undersecretary of Commerce for Intellectual Property,  
Professor of Law, Cardozo Law School, New York

**Shoichi Okuyama**

President, Japanese Patent Attorneys Association, Tokyo

**Hon. Vittorio Ragonese**

Judge, Supreme Court of Cassation, Rome

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

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

*B. IP Issues & Policy in the European Union*

Thursday 9:20 AM – 10:20 AM

McNally Amphitheatre

Speakers:

**Hon. Paul Maier**

President of the Boards of Appeal, OHIM, Alicante  
(up to 12 minutes)

**Prof. Dr. Silke von Lewinski**

Max Planck Institute for Intellectual Property and Competition Law, Munich  
(up to 12 minutes)

Panelists:

**Carlo Scollo Lavizzari**

Lenz & Caemmerer, Basel

**James Nurton**

Managing Editor, *Managing Intellectual Property*, London

**Prof. Jeremy Phillips**

Director of Research, IP Institute (UK); Professorial Fellow, Queen Mary  
Intellectual Property Research Institute, London

**David Rosenberg**

Vice President Corporate IP Policy, GlaxoSmithKline, London

**Thomas Vinje**

Clifford Chance, Brussels

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

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

*C. IP Issues & Policy in the United States*

Thursday 10:25 AM – 11:25 AM

McNally Amphitheatre

Speakers:

**Prof. Arti K. Rai**

Duke University School of Law, Durham

***Judicial Review and USPTO determinations on patentability***

*The role the judiciary plays in reviewing administrative determinations regarding patentability made by the USPTO, using as a comparison the role the judiciary plays in the trademark and copyright context. This issue is posed by a case currently before the Supreme Court, *i4i v. Microsoft*, and also by a case on which the USG has sought certiorari, *Hyatt v. Kappos*.*

(up to 8 minutes)

**Maria A. Pallante**

Acting Register of Copyrights, U.S. Copyright Office, Wash D.C.

***Copyright Office Initiatives and Priorities***

*The Acting Register of Copyrights will describe current Copyright office policy initiatives and priorities during this preview of a range of copyright issues that will be discussed during the 2011 IP Institute. These topics include the digitization and orphan works discussion after the recent Google Books decision, proposed legislation on so-called "rogue websites," and the role of copyright in the complex online ecosystem.*

(up to 8 minutes)

**John Morton**

Director, Immigration and Customs Enforcement (ICE), Wash D.C.

*Director Morton will address how ICE began attacking IP theft on the internet and the limits of U.S. law enforcement in addressing global IP theft.*

(up to 8 minutes)

Panelists:

**Andrew P. Bridges**

Winston & Strawn LLP, San Francisco

**Hon. Paul Michel**

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

**Tom Rubin**

Chief Counsel for Intellectual Property Strategy, Microsoft Corporation,  
Redmond

**Albert Tramosch**

Administrator for Policy and External Affairs, USPTO, Alexandria

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

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

**BREAK**

11:25 AM – 11:50 AM

*D. Views from the Judiciary*

Thursday 11:50 AM – 1:10 PM

McNally Amphitheatre

Panel A:

Panelists:

**Hon. Mr. Justice Arnold**

Judge, High Court Chancery Division, London

**Hon. Annabelle Bennett**

Justice, Federal Court of Australia, Sydney

**Hon. Mr. Justice Peter Charleton**

Justice, High Court of Ireland, Dublin

**Hon. Denny Chin**

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

**Hon. Nicholas Forwood**

President of Chamber, General Court of the European Union, Brussels

**Hon. Roger T. Hughes**

Judge, Federal Court of Canada, Ottawa

**Hon. Vittorio Ragonese**

Judge, Supreme Court of Cassation, Rome

**Hon. Marina Tavassi**

Presiding Judge, Intellectual Property Court for the Region of Lombardy,  
Milan

**Hon. William J. Vancise**

Chairman, Copyright Board of Canada, Ottawa

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

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

Panel B:

Panelists:

**His Honour Judge Birss QC**

Specialist Circuit Judge, Patents County Court, London

**Hon. Dr. Klaus Grabinski**

Patent-streitkammern, District Court, Dusseldorf

**Prof. Lennie Hoffman**

Honorary Professor of Intellectual Property, Queen Mary, University of  
London

**Hon. Yasuhito Inoue**

Intellectual Property High Court, Tokyo

**Rt. Hon. Lord Justice Jacob**

University College London (UCL)

Court of Appeals, Civil Division, London

**Hon. Rian Kalden**

Vice President, District Court of The Hague, The Hague

**Hon. Paul Michel**

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

**Hon. Pauline Newman**

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

**Hon. Randall R. Rader**

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

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

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

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**LUNCH**

Atrium/12th Floor Lowenstein

1:10 PM – 2:30 PM

Luncheon sponsored by

**Patterson Belknap Webb & Tyler LLP**

**Speaker**

**Hon. David Kappos**

Under Secretary of Commerce for Intellectual Property &

Director of the USPTO

(up to 15 minutes)

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**Thursday Afternoon, April 28<sup>th</sup>**

**THREE CONCURRENT SESSIONS:**

*Patent, Copyright and Trademark Law*

**SESSION 2: PATENT LAW**

**Concurrent Session**

Thursday 2:30 PM – 6:30 PM

NYIT Auditorium on Broadway (1871 Broadway between 61st and 62nd)

Directions: Exit the Main Doors of the Law School, Turn right (east) and walk down 62<sup>nd</sup> Street to Broadway; Turn right (South) onto Broadway and the auditorium is on your right.

### *A. Japanese Patent Developments*

Thursday 2:30 PM – 3:30 PM

NYIT Auditorium on Broadway (1871 Broadway between 61st and 62nd)

#### Moderator:

##### **Patricia A. Martone**

Morrison & Foerster LLP, New York

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

#### Speakers:

##### **Hon. Yasuhito Inoue**

Intellectual Property High Court, Tokyo

*International Jurisdiction on Litigation over Patent Infringements through the Internet in Japan*

(up to 10 minutes)

##### **Eiji Katayama**

Abe, Ikubo & Katayama, Tokyo

*Patent Reform in Japan*

(up to 10 minutes)

##### **Shimako Kato**

Abe, Ikubo & Katayama, Tokyo

*Recent Developments in Inventiveness in Japan*

(up to 10 minutes)

#### Panelists:

##### **John B. Pegram**

Fish & Richardson P.C., New York

##### **Hon. Randall R. Rader**

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

##### **Harold C. Wegner**

Foley & Lardner LLP, Wash D.C.

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

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

## *B. EU Patent Developments*

Thursday 3:35 PM – 4:50 PM

NYIT Auditorium (1871 Broadway between 61st and 62nd)

### Moderator:

#### **David Perkins**

Arnold & Porter 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:

#### **Dr. John Temple Lang**

Cleary Gottlieb Steen & Hamilton LLP, Brussels

##### ***The European Patent: Current Prospects and Alternatives***

*Is it permissible for some (but not all) EU Member States to go ahead with a European Patent? What are the implications of the Opinion of the European Court of Justice given March 8, 2011, for the proposed Patent Court, and what solutions are possible in light of the Opinion? How would it work temporarily to have a European Union Patent but no Patent Court?*

(up to 10 minutes)

#### **David Rosenberg**

Vice President Corporate IP Policy, GlaxoSmithKline, London

(up to 8 minutes)

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

### Speakers:

#### **Dr. Athanassios-andreas Stamatopoulos**

Principal Director Pure & Applied Organic Chemistry and Biotechnology, European Patent Office, Munich

##### ***The Impact of the recent Enlarged Board Decision G2/08 on the Patentability of New Treatment Plans for Known Drugs***

*How far away is the new patenting opportunity for products for use in therapeutic treatment from the border toward the unallowable methods for therapeutical treatment (which are in contrast allowable in the USA)?*

(up to 8 minutes)

#### **Prof. Dr. Josef Drexler**

Director, Max Planck Institute for Intellectual Property and Competition Law,  
Munich

***Competition Law Defenses to Patent Infringement in Germany***

*In infringement proceedings, defendants sometimes argue that plaintiff is under a duty to license under German competition law and therefore can only claim payment of reasonable royalty fees. Compared to the case-law of the European Court of Justice on a duty to license under Article 102 TFEU, German courts developed a standard under German competition law which is more favorable to the firm claiming a license. However, in a more recent case, the German Federal Supreme Court imposed a duty on the defendant to behave like a bona fide licensee from the very beginning. It introduced procedural requirements that make it very hard for the defendant to rely on the competition-law defense. Since the European courts have not yet addressed the procedural conditions of a duty to license in the framework of private infringement proceedings, the German development paves new ground in private enforcement of competition law at the intersection with IP law.*  
(up to 8 minutes)

Panelists:

**Prof. Johanna Gibson**

Director, Queen Mary Intellectual Property Research Institute, University of  
London, London

**Prof. Dr. Heinz Goddar**

Boehmert & Boehmert, Munich; University of Bremen, Bremen

**Rt. Hon. Lord Justice Jacob**

University College London (UCL)  
Court of Appeals, Civil Division, London

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

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

**BREAK**

4:50 PM – 5:15 PM

*C. US Patent Developments*

Thursday 5:15 PM – 6:30 PM

NYIT Auditorium (1871 Broadway between 61st and 62nd)

Moderator:

**Prof. Martin J. Adelman**

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

Speakers:

REVIEW OF CASE LAW AND LEGISLATIVE DEVELOPMENTS IN PATENTS

**Dimitrios T. Drivas**

White & Case LLP, New York  
(up to 30 minutes)

PATENT INDUCEMENT

**Wendy E. Miller**

Cooper & Dunham LLP, New York  
***Global-Tech Appliances, Inc. v. SEB S.A.***  
*What is the degree of knowledge, if any, that an accused infringer must have to be liable for inducement of patent infringement pursuant to 35 U.S.C. § 271(b). The parties and amici in the Supreme Court pose a wide range of possible formulations for an inducement test. Some proposed that there be no knowledge requirement whatsoever of the patent. Others proposed that an accused indirect infringer must have actual knowledge of the patent to be liable for inducement. Intermediary formulations included a requirement that the patent owner show that the accused infringer was willfully blind to the possibility that there is a patent, or that the accused infringer at least intended to cause the acts which constitute direct infringement (as distinguished from the legal consequences of those acts). If the Court adopts an actual knowledge requirement, its decision could serve as a recipe for foreign manufacturers to avoid infringement. On the other hand, Global Tech and amici in the computer and electronics industries argue that anything less than an actual knowledge standard would capture innocent actors. What is clear is that It is time for clarification of the test for inducement of patent infringement.*  
(up to 6 minutes)

**Prof. Sean O'Connor**

University of Washington School of Law, Seattle  
***Stanford v. Roche Molecular Systems. US Government, inventors and universities: Under Bayh-Dole Who Owns What?***  
*Do universities have a “statutory right” under Bayh-Dole to have title in Federally-funded inventions transferred to them “automatically” or by operation of law? Or does the Act treat the Government as a contractor and require proper contractual agreements between both the university and*

*Government agency on the one hand, and the university and its inventors on the other.*

(up to 6 minutes)

Panelists:

**Raymond Chen**

Deputy General Counsel for Intellectual Property Law and Solicitor, U.S.  
Patent and Trademark Office, Alexandria

**Christopher J. Gaspar**

Millbank, Tweed, Hadley & McCoy LLP, New York

**Henry B. Gutman (invited)**

Simpson Thacher & Bartlett LLP, New York

**Hon. Paul Michel**

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

**Harold C. Wegner**

Foley & Lardner LLP, Wash D.C.

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

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

**RECEPTION**

10 On the Park

6:30 PM – 8:30 PM

Sponsored by

**Freshfields Bruckhaus Deringer LLP**

**SESSION 3: COPYRIGHT LAW**

**Concurrent Session**

Thursday 2:30 PM – 6:30 PM

McNally Amphitheatre

*A. U.S. Copyright Developments including Golan v. Holder & Costco v. Omega.*

Thursday 2:30 PM – 4:15 PM

McNally Amphitheatre

Moderator:

**Michael S. Shapiro**

Senior Counsel for Copyright, Office of Policy and External Affairs, U.S. Patent and Trademark Office, Alexandria  
(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:

**Thomas Kjellberg**

Cowan Liebowitz & Latman, New York  
(up to 35 minutes)

**David O. Carson**

General Counsel, U.S. Copyright Office, Wash D.C.  
***§ 1201(a)(1): Exemptions***  
(up to 8 minutes)

**Maria A. Pallante**

Acting Register of Copyrights, U.S. Copyright Office, Wash D.C.  
***Copyright Registration and Recordation in the Digital Age***  
*Current Copyright Office consideration of policy issues involving copyright registration and recordation, with a focus on new challenges in the digital era. The topics will include developments with respect to online registration, termination provisions, and "born digital" content. This presentation will also address the most recent studies that the Copyright Office is undertaking at the request of Congress.*  
(up to 8 minutes)

**Nicholas A. Kurtz**

Dunlap, Grubb & Weaver, PLLC, Leesburg, VA

Panelists:

**Prof. Jane C. Ginsburg**

Columbia Law School, New York

**Prof. Justin Hughes**

Senior Advisor to the Undersecretary of Commerce for Intellectual Property  
Professor of Law, Cardozo Law School, New York

**Prof. Kimberlee Weatherall**

Senior Lecturer and Adujunt Research Fellow, Australian Centre for Intellectual Property in Agriculture, The University of Queensland, TC Beirne School of Law, Australia

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

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

**BREAK**

4:15 PM – 4:40 PM

*B. Google Books Decision, Orphan Works & Extended Collective Licensing*

Thursday 4:40 PM – 6:30 PM

McNally Amphitheatre

Moderator:

**Prof. Daniel J. Gervais**

Vanderbilt University Law School, Nashville

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

GOOGLE BOOKS

Speakers:

**Marybeth Peters**

Former U.S. Register of Copyrights, Wash D.C.

(up to 8 minutes)

**Paul Aiken (invited)**

Executive Director, The Authors Guild

(up to 8 minutes)

**Michele Woods**

Acting Associate Register for Policy & International Affairs, U.S. Copyright Office, Wash D.C.

***The Post-Google Legislative Challenge***

*The recent SDNY decision declining to approve the proposed Google Books Settlement has put consideration of issues including digitization and orphan works squarely back with the U.S. Congress. This presentation will consider the most recent legislative and licensing proposals addressing these and other issues that were highlighted by the class action settlement proposal.*

(up to 8 minutes)

**Howard P. Knopf**

Macera & Jarzyna LLP, Ottawa

(up to minutes)

**Daphne Keller**

Legal Director, Copyrights and Products, Google, Mountain View, CA

*This presentation will discuss how the problem addressed by the settlement—books whose owners could be found, but at such high transaction costs*

*compared to the books' market value that no one has incentives to do it—is different from the problem addressed by Bentley and other orphan works proposals. It suggests that an ECL regime would be one approach to the problem.*

(up to 8 minutes)

Panelists:

**Tom Rubin**

Chief Counsel for Intellectual Property Strategy, Microsoft Corporation,  
Redmond

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

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

EXTENDED COLLECTIVE LICENSING

Speakers:

**Louise Pentland**

Executive Vice President, Chief Legal Officer, Nokia  
(up to 8 minutes)

**Prof. Jan Rosén**

Professor Private Law/Vice Dean, Juridicum Stockholm University,  
Stockholm  
(up to 8 minutes)

**Hon. William J. Vancise**

Chairman, Copyright Board of Canada, Ottawa  
(up to 8 minutes)

Panelists:

**Tom Rubin**

Chief Counsel for Intellectual Property Strategy, Microsoft Corporation,  
Redmond

**Marybeth Peters**

Former U.S. Register of Copyrights, Wash D.C.

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

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

**RECEPTION**  
10 On the Park  
6:30 PM – 8:30 PM

Sponsored by  
**Freshfields Bruckhaus Deringer LLP**

## **SESSION 4: TRADEMARK LAW**

### **Concurrent Session**

Thursday 2:30 PM – 4:00 PM  
Room 302

#### *A. EU Trademark & Design Developments*

Thursday 2:30 PM – 4:00 PM  
Room 302

#### Moderator:

##### **James Nurton**

Managing Editor, *Managing Intellectual Property*, 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:

##### **Prof. Dr. Annette Kur**

Max Planck Institute for Intellectual Property and Competition Law,  
Munich

##### ***Overall Evaluation of the EU Trademark System - The MPI Trademark Study***

*Specific topics addressed are: (1) “system competition” (national and Community trademark system): “cluttering” of registers, genuine use, and distribution of fees; (2) requirements for protection ; and (3) rights conferred and limitations.*

(up to 20 minutes)

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

**Hon. Paul Maier**

President of the Boards of Appeal, OHIM, Alicante

***Languages and Trademark Protection in the EU – the Problem of Descriptive Trademarks***

*There are many reasons why descriptive signs are registered as trademarks in the EU. Some IP offices have in the past registered without examining the signs, some examination policies are very liberal and also mistakes can happen (i.e. descriptive signs can slip through the examination process).*

*Another major reason is that there are 23 official national languages in the EU and several more recognized regional ones (e.g. Catalan in Spain). National offices in the Members States normally only examine trademark applications in the languages they know or that are official in their country. For all these reasons, descriptive terms can be registered at national or OHIM level and these trademarks can be used to oppose national or CTM applications. What are the solutions to this problem? Can disclaimers help? Should the legislature change the rules in the framework of the revision of the law? Should the case law change?*

(up to 10 minutes)

**Gordon Humphreys**

Member of the Boards of Appeal, OHIM, Alicante

***What's in a Year in Luxembourg? Learning From Recent Case Law on Registered Community Designs***

*It took nearly seven years after Community design protection was available before the first designs' judgment was handed down by the General Court in 2010. Despite this slow start to litigation, some six judgments or orders were made by the General Court and order by the Court of Justice since then.*

*These covered a wide range of issues: admissibility, definition of informed user, designer's freedom, conflicts with earlier national figurative mark, proof of use, making available to the public and "overall impression." What are the practical implications of these judgments? And why have they not been able to please all of the people all of the time?*

(up to 10 minutes)

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

Panelists:

**Dr. Joseph Fesenmair**

Bird & Bird LLP, Munich

**Dr. Andrea Lensing-Kramer**

Freshfields Bruckhaus Deringer LLP, Düsseldorf

**Prof. Spyros Maniatis**

Director, Centre for Commercial Law Studies, School of Law, Queen Mary,  
University of London, London

**Vanessa Marsland**

Clifford Chance, London

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

**Wrap-up discussion: 10 minutes (speakers, panelists and members of the audience)**

**BREAK**

4:00 PM – 4:25PM

*B. EU & US Initial Interest Confusion*

Thursday 4:25 PM – 5:25 PM

Room 302

Moderator:

**Prof. Marshall Leaffer**

Indiana University Mauer School of Law, 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:

**The Honourable Mr. Justice Arnold**

Judge, High Court Chancery Division, London

*Initial Interest Confusion in European Trade Mark Law*

(up to 13 minutes)

**Daniel C. Glazer**

Patterson Belknap Webb & Tyler LLP, New York

*Initial Interest Confusion in the United States*

(up to 13 minutes)

Panelists:

**Prof. Ann M. Bartow**

University of South Carolina School of Law, Columbia

**Colin Pearson**

Cleary Gottlieb Steen & Hamilton LLP, London

**Martin Schwimmer**

Leason Ellis LLP, White Plains; Publisher, The Trademark Blog

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

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

*C. Dilution Law in the European Union & the United States*

Thursday 5:30 PM – 6:30 PM

Room 302

Moderator:

**Clark W. Lackert**

Dickstein Shapiro LLP, New York

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

Speakers:

**Trevor Cook**

Bird & Bird LLP, London

***EU Trademark Dilution - Making It Up As We Go Along***

*EU Trademark dilution law might be said to be in a quandary. There is confusion, criticism, a call for legislative clarification by member of the Court of Justice and a general perception of lack of legal certainty. How did we get to where we are now? What are the difficulties with this situation? And what might the future hold?*

(up to 13 minutes)

**Prof. Marshall Leaffer**

Indiana University Mauer School of Law, Bloomington

***Is Dilution Law Having a Revival?***

*Dilution law has shown a renaissance in the last year as represented by two noteworthy cases decided in the Ninth Circuit. This presentation will focus on Levi Strauss & Co. v. Abercrombie & Fitch Trading Co. , -- F.3d ----, 2011 WL 383972 (C.A.9 (Cal.) February 8, 2011), which held that the legal standard in evaluating the dilution claim is not one of identity nor near identity to the senior mark but whether the junior mark likely to the distinctiveness of the senior mark. Rights in famous marks were also bolstered in Visa International Service Association v. JSL Corp. 610 F.3d 1088 (9th Cir. 2010). There, the court held that dilution law is applicable to a mark that is also a common English word when it plays only weakly off the dictionary meaning of the term. These two cases appear to represent a trend in the case law to extend the scope of dilution law. Is this illusion or reality?*

(up to 13 minutes)

Panelists:

**Prof. Ann M. Bartow**

University of South Carolina School of Law, Columbia

**Dr. Andrea Lensing-Kramer**

Freshfields Bruckhaus Deringer LLP, Düsseldorf

**Prof. Spyros Maniatis**

Director, Centre for Commercial Law Studies, School of Law, Queen Mary,  
University of London, London

**Jonathan E. Moskin**

Foley & Lardner LLP, New York

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

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

**RECEPTION**

10 On the Park

6:30 PM – 8:30 PM

Sponsored by

**Freshfields Bruckhaus Deringer LLP**

**Friday Morning, April 29<sup>h</sup>**

**Platt Atrium**

**BREAKFAST**

Platt Atrium

7:00 AM – 9:00 AM

Sponsored by

**NERA Economic Consulting**

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**Three Sunrise Seminars**

7:30 AM – 8:25 AM

These sessions stress the “seminar” part of the name, with interchanges among speaker, panelists and those attending the seminar.

*A. Patents and Open Innovation*

Friday 7:30 AM – 8:25 AM

McNally Amphitheatre

Pharmaceutical R & D based companies generally adopt a traditional business model based on ‘closed innovation’ and ideas are generated internally and taken from concept to commercialization using vertically integrated internal resources. Companies then guard all their intellectual property (IP) closely to protect company interests and to prevent exploitation by rivals.

As the external environment for research and development evolves, and with people moving more freely across organizations—taking their knowledge and expertise with them—there is now a wealth of knowledgeable people distributed outside of companies with the potential expertise to address several R & D challenges.

The question then becomes, how can pharmaceutical companies tap into this expertise and remain competitive in light of shrinking R & D budgets? Open Innovation is a potential mechanism to source expertise through alliances and collaborations within a strong intellectual property framework. Strong IP provides the basis for companies and organizations to partner and exchange mutually beneficial knowledge and the patent system is flexible enough to accommodate this level of complexity. For productivity on the research side to improve, Pharma companies have to cast the net wider to obtain the most promising new leads, wherever the source — open innovation provides an interesting model to accomplish this.

Moderator:

**Zachary A. Slates**

Conference and Research Fellow, Fordham Intellectual Property Institute,  
New York

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

Speaker:

**Dr. Roy F. Waldron**

Senior Vice President, Associate General Counsel & Chief IP Counsel,  
Pfizer, Inc., New York  
(up to 15 minutes)

Panelists:

**Hon. Annabelle Bennett**

Justice, Federal Court of Australia

**Prof. Rochelle C. Dreyfuss**

New York University School of Law, New York

**Prof. Dr. Heinz Goddar**

Boehmert & Boehmert, Munich; University of Bremen, Bremen

**Rt. Hon. Lord Justice Jacob**

University College London (UCL)

Court of Appeals, Civil Division, London

**James Pooley**

Deputy Director General for Patents, WIPO, Geneva

**David Rosenberg**

Vice President Corporate IP Policy, GlaxoSmithKline, London

**Dr. Steven J. Lee**

Kenyon & Kenyon LLP, New York

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

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

*B. Rule of Law on the Internet: Feasible or Fantasy?*

Friday 7:30 AM – 8:25 AM

Pope Auditorium

Moderator:

**Prof. Hugh C. Hansen**

Director, Fordham Intellectual Property Institute, New York

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

Speaker:

**Richard Cotton**

Executive Vice President & General Counsel, NBCUniversal Media, LLC,  
New York  
(up to 15 minutes)

Panelists:

**Andrew P. Bridges**

Winston & Strawn LLP, San Francisco

**Hon. Mr. Justice Peter Charleton**

Justice, High Court of Ireland, Dublin

**Prof. Joel R. Reidenberg**

Director, Center on Law and Information Policy, Fordham University School  
of Law, New York

**Carey Ramos**

Quinn Emanuel Urquhart & Sullivan, LLP, New York

**Tom Rubin**

Chief Counsel for Intellectual Property Strategy, Microsoft Corporation,  
Redmond

**Prof. Jeremy Phillips**

Director of Research, IP Institute (UK); Visiting Professorial Fellow, Queen  
Mary IP Research Institute, IP Consultant, Olswang LLP; blogmeister, IPKat  
weblog

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

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

*C. Trademark Reflections on the Royal Wedding (For Those Who  
Gave Up Their Invitations to be Here)*

Friday 7:30 AM – 8:25 AM

Room 302

Moderator:

**Prof. Marshall Leaffer**

Indiana University Mauer School of Law, 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:

**Anna Carboni**

Powell Gilbert LLP, London

(up to 12 minutes)

**Prof. Ann M. Bartow**

University of South Carolina School of Law, Columbia

***The Royal Wedding and the Gay Olympics: Sovereigns, Souvenir Sales and Trademark Law***

*This presentation will make a case for treating events like the Royal Wedding and the Olympic Games as generative of a public domain that anyone may exploit as long as there are no false claims about authorization. This will facilitate a free market in souvenirs, some of which may be more imaginative and desirable than those the event conveners choose to license. Others not so much, but bad taste is not a crime, nor should it be treated like the infringement of a sovereign held trademark.*

(up to 12 minutes)

Panelists:

**Trevor Cook**

Bird & Bird LLP, London

**Prof. Dr. Annette Kur**

Max Planck Institute for Intellectual Property and Competition Law,  
Munich

**Prof. Marshall Leaffer**

Indiana University Mauer School of Law, Bloomington

**Dr. Andrea Lensing-Kramer**

Freshfields Bruckhaus Deringer LLP, Düsseldorf

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

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

**THREE CONCURRENT SESSIONS:**

*Patents, Competition Law and Trade & Enforcement*

**SESSION 5: PATENT LAW**

**Concurrent Session**

Friday 8:30 AM – 1:15 PM

McNally Amphitheatre

## *A. Open Source & Patents*

Friday 8:30 AM – 9:30 AM

McNally Amphitheatre

Much attention has been given to the risks and opportunities that arise from the intersection of proprietary software and open source code within the corporate environment. Companies may be less aware that the increasingly widespread use of open source code to support both high and low-level functionality may also force changes in the way that companies think about and extract value from their *patent* portfolios. This panel will discuss issues regarding the scope and nature of the patent licenses granted by companies that contribute to open source projects or distribute products containing open source code, the uncertain boundaries of these licenses, and potential responses to reduce associated risks while continuing to enjoy the benefits of open source code.

### Moderator:

#### **Prof. Ron Lazebnik**

Fordham Law School, New York

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

### Speakers:

#### **Roger G. Brooks**

Cravath, Swaine & Moore, New York

##### ***Diversity and Uncertainty in Open Source Patent Licence Grants***

*An overview of the wide variety of express patent grants contained in various widely used open source licenses, and identification of uncertainties and controversies concerning the scope of these rights.*

(up to 8 minutes)

#### **Lawrence Rosen**

Rosenlaw & Einschlag, Ukiah, CA

##### ***Patent Licenses and Derivative Works: What Exactly are you Licensing?***

*A review of the controversies about the reach of the license granted to “derivative works” under the GPL License and of the policies and compromises that led to the rather more specific patent license provisions of the Apache 2.0 license.*

(up to 8 minutes)

#### **Steven P. Tapia**

Senior Attorney, Microsoft Corporation, Redmond

##### ***Implied Licensing: A Problem or a Essential Part of the Open Source Equation***

*As if the express patent license terms didn't provide enough complications, it is*

*widely asserted that the GPL and some other leading open source licenses also carry with them implied patent licenses of debatable scope. Does the possibility of implied license grants require special care or precautions on the part of patent-rich companies when they use or distribute open source code?*  
(up to 8 minutes)

Panelists:

**Terry Hardi**

Copyright Counsel, IBM, New York

**Heather J. Meeker**

Greenberg Traurig LLP, Silicon Valley

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

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

*B. Claim Construction*

Friday 9:35 AM – 10:50 AM

McNally Amphitheatre

Moderator:

**Christopher A. Hughes**

Cadwalader, Wickersham & Taft LLP, New York

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

Speakers:

**Hon. Dr. Klaus Grabinski**

Judge, Federal Court of Justice (Bundesgerichtshof), Karlsruhe

***Patent Claim Interpretation under Art. 69 EPC: Should Prosecution History be Used to Interpret the Patent?***

*There is case law and also recent case law of the German Federal Court of Justice dealing with this question. There are also different approaches to this subject-matter in different European Countries. While UK and German courts would tend to answer the question with "no," Dutch courts would say "Yes." The courts of the contracting states of the EPC apply Art. 69 when they have to deal with a European Patent. If it is a national patent then it is not Art 69 EPC, but the "equivalent" national provision like sec. 14 German Patent Act that is applied. But this is more a different formal approach since the national provisions are harmonized law. There is no material difference between Art. 69 EPC and the equivalent provision of the national patent acts of the*

*contracting states. The differences are in the case law of the national courts of the contracting states, even though European patent judges try to harmonize their case law. However, there is no European Supreme Court to enforce it, and the ECJ has no jurisdiction on EPC. One interesting example of these differences in the case law of the national courts is how to deal with prosecution history when interpreting the patent.*

(up to 8 minutes)

**Prof. Lennie Hoffmann**

Honorary Professor of Intellectual Property, Queen Mary, University of London

(up to 8 minutes)

**Hon. Rian Kalden**

Vice President, District Court of The Hague, The Hague

***Claim Construction in the Netherlands***

*The aim of article 69 European Patent Convention and the Protocol thereto is to harmonize the laws and practice of the European Courts in constructing patent claims. Although the end result is often the same, the route thereto often is not, which may occasionally cause a different outcome in parallel proceedings, sometimes enhanced by different procedural systems. In this session the Dutch approach to patent claim construction is discussed.*

(up to 8 minutes)

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

**Nicholas Groombridge**

Weil, Gotschal & Manges LLP, New York

***Insolubly Ambiguous or Incapable of Construction - A review of the Federal Circuit's Standard for Indefiniteness and Whether it is Consistent with Supreme Court Precedent***

*The definiteness requirement of the patent statute provides that patents must "particularly point out and distinctly claim" the subject matter that is exclusive property of the patent owner. The Federal Circuit has interpreted this provision to be satisfied as long as a patent claim is not "insolubly ambiguous" i.e. incapable of any construction whatsoever. Notably the USPTO has announced that it will not follow the Federal Circuit's interpretation and will instead apply its own broader standard. Is the Federal Circuit standard inconsistent with the statutory language and so narrow that effectively reads the definiteness requirement out of the law in most circumstances?*

(up to 8 minutes)

**Dr. Myles Jelf**

Bristows, London

***Post-grant amendments: Fair or Foul?***

*After a determination of a claim construction, or advent of new prior art unknown to the patentee, during litigation is it fair to allow the patentee to re-write claims in order to capture the essential invention. US says “no.” EU says “yes.” And the UK says “maybe.” Who is right?*  
(up to 8 minutes)

Panelists:

**Boris Kreye**

Bird & Bird LLP, Munich

**John Richards**

Ladas & Parry LLP, New York

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

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

**BREAK**

10:50 AM – 11:15 AM

*C. Supplementary Protection Certificates*

Friday 11:15 AM – 12:10 PM

McNally Amphitheatre

Moderator:

**Tiffany Mahmood**

Conference & Research Fellow, Fordham Intellectual Property Institute,  
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:

**Brian Cordery**

Bristows, London

***Overview of EU SPC Law: The Big Issues and Referrals to the ECJ***

*The year 2010 saw no fewer than 5 references to the Court of Justice of the European Union on the meaning of “protected by a basic patent in force” for the purposes of Article 3(a) of the SPC Regulation. This session will summarise the references and the current approach taken in the major European states. It will look ahead to the outcome of the references. It will*

*also introduce some key concepts and definitions ahead of the following presentations.*

(up to 8 minutes)

**Dr. Jürgen Dressel**

Head of Patent Litigation, Novartis Pharma AG, Basel

***Infringement of SPCs – Subject Matter and Scope***

*After the French and Belgian courts came to different conclusion in 2010 on the question of whether the losartan SPC also covered combinations of losartan with other actives, several other European courts have had an opportunity to rule on this issue, although mostly in summary proceedings. These cases will be analyzed in the context of the SPC-Regulation and legislative intent.*

(up to 8 minutes)

**His Honour Judge Birss QC**

Specialist Circuit Judge, Patents County Court, London

***Can a patent holder obtain an SPC based on an infringer’s Marketing Authorisation?***

*This is about unintended consequences. The EU’s Supplementary Protection scheme is a patent term extension system in the pharmaceutical field. The scheme allows an inventor to make up for lost time exploiting his invention. The time lost is the period between patenting a drug and getting authorisation to sell it. In the Biogen case C-181/95 the ECJ decided that the patent (A) and the authorisation (B) could be in different hands and the consent of B was not required. Thus A can obtain an extension using B’s authorisation. The implication of this decision is far reaching. It means that A can wait and see if B develops a drug which falls within A’s patent. Once B obtains an authorisation A can use it, without B’s consent, to obtain a term extension. This is despite the fact that the “inventor” A has lost no investment time at all because he has done nothing after making the invention. Thus a patent’s life is extended even though the inventor made no effort to work it at all.*

(up to 8 minutes)

Panelists:

**Jean-Frédéric Gaultier**

Clifford Chance, Paris

**Hon. Rian Kalden**

Vice President, District Court of the Hague, The Hague

**Marleen H.J. van den Hoorst**

BarentsKrans N.V., The Hague

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

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

*D. Gene Patents*

Friday 12:15 PM – 1:15 PM

McNally Amphitheatre

Moderator:

**Brian P. Murphy**

Edwards Angell Palmer & Dodge, 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:

**Brian P. Murphy**

Edwards Angell Palmer & Dodge, New York

(up to 7 minutes)

**Brian M. Poissant**

Jones Day, New York

(up to 7 minutes)

**Daniel B. Ravicher**

Executive Director, Public Patent Foundation, Cardozo Law School, New York

(up to 7 minutes)

**Hon. Annabelle Bennett**

Justice, Federal Court of Australia

***The impact of the Myriad Decision***

*Existing inquiries into questions of gene patenting have been affected by the Myriad decision and the amicus curiae brief filed in the US appeal. A private member's bill has been introduced into the Australian Parliament which bypasses normal drafting procedures and the Patent Office. It makes for very interesting analysis.*

(up to 7 minutes)

**Prof. Rochelle C. Dreyfuss**

New York University School of Law, New York

***Simplifying the Patent Ecosystem***

*Presumably, the Supreme Court granted certiorari in Bilski v. Kappos because it was concerned that patents might, in the words of Justice Breyer, "impede rather than promote the Progress of Science and the Useful Arts" (Labcorp v. Metabolite). The Court was, however, unable to identify bright line limits on patenting. The questions going forward are twofold. (1) Does the Bilski*

*Court's preemption language offer a way of dealing with the thicket? (2) If not, can the scientific community develop new norms of practice that will provide researchers with freedom to operate?*  
(up to 7 minutes)

Panelists:

**Dr. Steven J. Lee**

Kenyon & Kenyon LLP, New York

**Dr. Jane M. Love**

Wilmer Cutler Pickering Hale and Dorr LLP, New York

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

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

**LUNCH**

Atrium

1:15 PM – 2:30 PM

Sponsored by

**BASCAP**

**Luncheon Speaker**

**Hon. Victoria Espinel**

U.S. Intellectual Property Enforcement Coordinator

Executive Office of the President

(up to 15 minutes)

**SESSION 6: COMPETITION; PATENTS**

**Concurrent Session**

Friday 8:30 AM – 1:15 PM

Room 302

## *A. Global Competition Law & Policy*

Friday 8:30 AM – 11:00 AM

Room 302

### EU COMPETITION LAW DEVELOPMENTS

#### Moderator:

#### **Daryl Lim**

Microsoft Teaching and Research Fellow, Fordham Intellectual Property Institute, Fordham University School of Law, New York

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

#### Speakers:

#### **Ian Karet**

Linklaters, London

(up to 10 minutes)

#### **Monika Tomczak-Górlikowska**

Miller Canfield, Gdynia

#### ***The AstraZeneca EU Saga and its Aftermath***

*In dismissing AstraZeneca's appeal of the Commission decision, General Court (formerly the Court of First Instance), discussed issues such as Dominance and Buyer Power in the Pharmaceuticals Market and Abusive Conduct consisting of misleading regulatory authorities and bad faith withdrawal of Market Authorizations. Apart from the ruling itself this talk will describe the wider panorama of the national cases and the aftermath of the Pharma Sector inquiry.*

(up to 8 minutes)

**(up to 15 minutes for panel discussion)**

#### **Hon. Marina Tavassi**

Presiding Judge, Intellectual Property Court for the Region of Lombardy, Milan

#### ***Public-Private Enforcement in the EU***

*An analysis of the relationship between private and public enforcement of competition law from the point of view of European and Italian Judges*

(up to 10 minutes)

**(up to 15 minutes for panel discussion)**

#### Panelists:

**Prof. Barry E. Hawk**

Director, Fordham Competition Law Institute, Fordham Law School,  
New York

**Thomas Vinje**

Clifford Chance, Brussels

**Prof. Dr. Josef Drexl**

Director, Max Planck Institute for Intellectual Property and Competition Law,  
Munich

**Dr. John Temple Lang**

Cleary Gottlieb Steen & Hamilton LLP, Brussels

(Panelists have no individual time allocated; they take part in panel discussion among speakers, panelists and members of the audience.)

US ANTITRUST AND RELATED LAW DEVELOPMENTS

Moderator:

**Daryl Lim**

Microsoft Teaching and Research Fellow, Fordham Intellectual Property  
Institute, Fordham University School of Law, New York  
(up to 5 minutes to introduce the subject matter; intro of speakers –  
just name and affiliation, please see bios in print materials and online.)

Speakers:

**Gerald Sobel**

Kaye Scholer LLP, New York  
*Hatch-Waxman Settlements*  
(up to 10 minutes)

**(up to 13 minutes for discussion)**

**Prof. Eleanor M. Fox**

New York University School of Law, New York

*The Changing Balance between Innovation Issues and Static Price Issues in  
Antitrust Analysis*

*Description of the historical role of innovation and price in antitrust. While the  
shift towards more concern for innovation issues could cut either way –  
towards more or less enforcement – the US has in the past number of years  
counted innovation as leaning strongly towards freedom for the dominant firm  
or merging firms. This trend merits further consideration.*

(up to 10 minutes)

**Suzanne Michel**

Deputy Director, Office of Policy Planning, Federal Trade Commission, Wash D.C.

***The Evolving IP Marketplace: Aligning Patent Notice with Remedies with Competition***

(up to 15 minutes)

**(up to 30 minutes for discussion)**

Panelists:

**Henry B. Gutman (invited)**

Simpson Thacher & Bartlett LLP, New York

**Prof. Barry E. Hawk**

Director, Fordham Competition Law Institute, Fordham Law School, New York

**Carey Ramos**

Quinn Emanuel Urquhart & Sullivan LLP, New York

**Thomas Vinje**

Clifford Chance, Brussels

(Panelists have no individual time allocated; they take part in panel discussion among speakers, panelists and members of the audience.)

**BREAK**

11:00 AM – 11:25 AM

***B. ITC and Patents***

Friday 11:25 AM – 12:10 PM

Room 302

Moderator:

**Robert P. Parker**

Paul, Weiss, Rifkind, Wharton & Garrison LLP, Wash D.C.

(up to 10 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:

**James Lyons**

General Counsel, International Trade Commission, Wash D.C.

(up to 10 minutes)

Panelists:

**Hon. Ronald A. Cass**

Former Vice Chairman ITC; President, Cass & Associates

**Hon. Paul Michel**

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

**Carey R. Ramos**

Quinn Emanuel Urquhart & Sullivan, New York

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

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

*C. Telecoms and Patents*

Friday 12:15 PM – 1:15 PM

Room 302

Moderator:

**Ari Laakkonen**

Powell Gilbert LLP, London

(up to 10 minutes to present an overview of the subject matter; intro of speakers –just name and affiliation, please see bios in print materials and online.)

Panelists:

**John Flock**

Kenyon & Kenyon LLP, New York

**Klaus Haft**

Reimann Osterrieth Köhler Haft, Düsseldorf

**Bart van den Broek**

Hoyng Monegier LLP, Amsterdam

**Dr. Christopher Stothers**

Arnold & Porter LLP, London

**David G. Frolio**

General Counsel, GSM Association, Atlanta

**Richard Vary**

Director of European Litigation, Nokia, Guilford, UK

**Jaime Siegel**

Senior Intellectual Property Counsel, Sony Corporation of America, New York

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

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

**LUNCH**

Atrium / 430A/B/C

Friday 1:15 PM – 2:30 PM

Sponsored by  
**BASCAP**

**Luncheon Speaker**

**Hon. Victoria Espinel**

U.S. Intellectual Property Enforcement Coordinator  
Executive Office of the President  
(up to 15 minutes)

**SESSION 7: ENFORCEMENT; TRADE LAW**

**Concurrent Session**

Friday, 8:30 AM – 1:15 PM

Pope Auditorium

*A. Multilateral IP & FTA Developments*

Friday 8:30 AM – 10:10 AM

Pope Auditorium

International trade agendas with discussions of multilateral, plurilateral, and bilateral issues. Also, what is the dynamic interplay among these and how does that effects procedural and substantive choices.

Moderator:

**Michael Schlesinger**

Greenberg Traurig, LLP, Wash D.C.

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

Speakers:

MULTILATERAL

**Hon. Vittorio Ragonesi**

Judge, Supreme Court of Cassation, Rome

*Exceptions for visually impaired persons in the WIPO*

(up to 7 minutes)

**Antony Taubman**

Director, Intellectual Property Division, World Trade Organization, Geneva

*Trips at 15: Buyers Remorse or Satisfaction? Revaluing the Marrakesh Package*

(up to 7 minutes)

**Dr. Marcus V. Welser**

Vossius & Partner, Munich

*Some Troubling Implications of ACTA*

*Comparing the planned Anti-Counterfeiting Trade Agreement (ACTA) with TRIPS and European legislation, e.g. provisions concerning provisional measures. Art. 50(2) TRIPS provides that the judicial authorities shall have the authority to adopt provisional measure that would cover ex parte injunctions. According to Art. 50(4) TRIPS, the parties affected shall be given notice without delay after the execution of the measures at the latest. Further, a review, in compliance with the right to be heard, shall take place upon request of the defendant. Similar provisions are contained in the European Enforcement Directive (Directive 2004/48/EC on the Enforcement of Intellectual Property Rights). In contrast to these provisions, Art. 12 ACTA provides for provisional measure including ex parte ones, but does not at the same time comply with the procedural guarantees which have been introduced in the Enforcement Directive and by TRIPS. Further, ACTA contains provisions concerning border measures, damages, and other remedies which could also be in contrast to International law as well as European law.*

(up to 7 minutes)

**Hon. Weerawit Weeraworawit**

Deputy Secretary General, National Human Rights Commission, Thailand

(up to 7 minutes)

Panelists:

**Michele Woods**

Acting Associate Register for Policy & International Affairs, U.S. Copyright Office, Wash D.C.

**Probir Mehta**

Deputy Assistant USTR, Office of the U.S. Trade Representative, Wash D.C.

**James Pooley**

Deputy Director General for Patents, WIPO, Geneva

**Alexander Stack**

Gilbert's LLP, Toronto

**Prof. Daniel J. Gervais**

Vanderbilt University Law School, Nashville

**(up to 15 minutes of discussion)**

FREE TRADE AGREEMENTS

**James Pooley**

Deputy Director General for Patents, WIPO, Geneva

***The Influence of FTAs on Harmonization Efforts***

(up to 7 minutes)

**Shoichi Okuyama**

President, Japanese Patent Attorneys Association, Tokyo

***FTAs in Asia***

(up to 7 minutes)

**Prof. Robert Burrell**

TC Beirne School of Law at the University of Queensland, Brisbane

(up to 7 minutes)

**Probir Mehta**

Deputy Assistant USTR, Office of the US Trade Representative, Wash D.C.

***The Advantages of FTAs and Plurilateral Agreements***

*This presentation will cover the developments over the past year in the U.S. international trade agenda, with a particular focus on FTA issues, such as the Korea-United States FTA and the Trans-Pacific Partnership negotiations, as well as multilateral and plurilateral discussions relating to IPR. It will also feature a discussion of the dynamic interplay between bilateral, plurilateral, and multilateral trade discussions from the perspective of a trade negotiator.*

(up to 7 minutes)

**Steven J. Metalitz**

Mitchell Silberberg & Knupp LLP, Wash D.C.

***Copyright and Enforcement in U.S. FTAs: Past, Present, and Future***

*Recent Free Trade Agreements (FTAs) between the US and more than a dozen trading partners have included robust obligations regarding substantive copyright law and enforcement procedures against copyright piracy. How well have these agreements worked? What are the prospects for the FTAs that have been negotiated but not yet brought into force? What are the challenges of extending this approach in the first FTA negotiation being undertaken by the Obama Administration: the Trans-Pacific Partnership Free Trade Agreement,*

*currently being negotiated among 9 countries, with more participating as observers?*

(up to 7 minutes)

Panelists:

**Tim Gilbert**

Gilbert's LLP, Toronto

**Prof. Daniel J. Gervais**

Vanderbilt University Law School, Nashville

**(up to 20 minutes of discussion)**

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

**BREAK**

10:10 AM – 10:35 AM

*B. Enforcement Issues Including New Government Initiatives*

Friday 10:35 AM – 12:10 PM

Pope Auditorium

Moderator:

**Anderson J. Duff**

Conference & Research Fellow, Fordham Intellectual Property Institute, 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:

**Prof. Jeremy Phillips**

Director of Research, IP Institute (UK); Visiting Professorial Fellow, Queen Mary IP Research Institute, IP Consultant, Olswang LLP; blogmeister, IPKat weblog

***Time for a Tsar – and a Tsar for our Time***

*Does the government of a country with an open economy, based on principles of private investment in competitive industry, require the appointment of an IP Tsar? Some thoughts and ideas on whether to have one, and if there is one what he or she should do.*

(up to 8 minutes)

**Stevan Mitchell**

Vice President, Intellectual Property Policy, Entertainment Software Association, Wash D.C.

***Circumvention Prohibitions and Market Growth: Perspectives of the Entertainment Software Industry***

*Prohibitions on circumvention of technological protection measures help preserve the integrity of online business models and combat piracy. Find out more about the essential elements of an effective protection regime.*

(up to 8 minutes)

**Peter Fowler**

Senior Counsel for Enforcement, Office of Policy and External Affairs, U.S. Patent and Trademark Office, Alexandria

***Are there Never-ending problems in Enforcement? Is it Time for a Regime Change?***

*Can and will governments ever really eliminate IP crime in the age of the Internet and a global economy, or are we destined to only fight the fight forever everywhere? Is the war against piracy and counterfeiting a never-ending war, and if so, will there ever be victors or only casualties? Are there new approaches in enforcement which may help or have we reached the point of diminishing returns? Should we just negotiate a truce with our adversaries or send in the armed drones?*

(up to 8 minutes)

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

Speakers:

**Kevin Suh**

Senior Vice President, Content Protection, Internet, Motion Picture Association of America, Los Angeles

(up to 8 minutes)

**Erik Barnett**

Assistant Deputy Director, U.S. Immigration and Customs Enforcement, Department of Homeland Security, Wash D.C.

(up to 8 minutes)

**Steven M. Tepp**

Senior Director, Internet Counterfeiting and Piracy, Global Intellectual Property Center, U.S. Chamber of Commerce, Wash D.C.

***A Safe Internet is Better Than a Lawless One: The Need for Action Against Rogue Web sites***

*This presentation will define rogue Web sites and identify the harm they cause. It will make a brief, high-level mention of current enforcement efforts as well*

*as proposed legislation, setting the table for an in-depth discussion of ICE Web site seizures and legislation.*  
(up to 8 minutes)

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

Panelists:

**Andrew P. Bridges**

Winston & Strawn LLP, San Francisco

**Jennifer Choe Groves**

Hughes Hubbard & Reed LLP, Wash D.C.

**Steven J. Metalitz**

Mitchell Silberberg & Knupp LLP, Wash D.C.

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

### *C. IP Enforcement in China*

Friday 12:15 PM – 1:15 PM

Pope Auditorium

The China State Council has initiated a national "Special Campaign on Combatting IPR Infringement and the Manufacture and Sale of Counterfeiting and Shoddy Commodities," which lasts through July 15, 2011. China is also undertaking new activities within the framework of the Joint Commission on Commerce and Trade (JCCT). Participants will examine the effectiveness of these recent enforcement developments and discuss market access problems that affect local enforcement efforts in China.

Moderator:

**Maria Strong**

Senior Counsel for Policy and International Affairs, U.S. Copyright Office,  
Wash D.C.

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

Speakers:

**Prof. Du Ying**

Fellow, Center for Chinese Legal Studies, Columbia Law School, New York;  
Professor, School of Law, Huazhong University of Science & Technology,  
Wuhan

***The 3<sup>rd</sup> Amendment of the P. R. China Trademark Law***

*The ongoing 3<sup>rd</sup> Amendment of the P. R. China Trademark Law aims at accommodating its contents with the economic development and further meeting the demands for simplifying the proceedings of examination and review. Several provisions of the Draft will be examined for illustrating the goals to be attained by the amendment.*

(up to 7 minutes)

**Prof. Peter K. Yu**

Drake University Law School, Des Moines

***Measuring Piracy and Counterfeiting in China***

(up to 7 minutes)

**Eric H. Smith**

Greenberg Traurig LLP, Wash D.C.

***China: Two steps forward. How many back?***

(up to 7 minutes)

Panelists:

**Mark Cohen**

Director, International Intellectual Property, Microsoft, Wash D.C.

**M. Luisa Simpson**

Executive Director, International Copyright Enforcement and Trade Policy,  
Association of American Publishers, Wash D.C.

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

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

**LUNCH**

Atrium

1:15 PM – 2:30 PM

Sponsored by

**BASCAP**

**Luncheon Speaker**

**Hon. Victoria Espinel**

U.S. Intellectual Property Enforcement Coordinator

Executive Office of the President  
(up to 15 minutes)

**Friday Afternoon, April 29<sup>th</sup>**

**Three Concurrent Sessions:**

*Patent Law; Copyright Law; Trademark Law*

**SESSION 8: PATENT LAW**

**Concurrent Session**

Friday, 2:30 PM – 6:30 PM

McNally Amphitheatre

*A. Views from the JPO, USPTO and WIPO*

Friday 2:30 PM – 3:30 PM

McNally Amphitheatre

Moderator:

**John Richards**

Ladas & Parry LLP, New York

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

Speakers:

**Matthew R. Bryan**

Director, Patent Cooperation Treaty, Legal Division, World Intellectual Property Organization, Geneva

***Recent and Future Developments in the Patent Cooperation Treaty***

*This session will highlight the steps WIPO is taking to implement the “PCT Roadmap” which was agreed by member states in 2010, along with practical tools and features which WIPO is bringing online to enhance the PCT user experience.*

(up to 12 minutes)

**Kenichi Morooka**

Director for U.S. Matters, International Affairs Division, Japanese Patent Office, Tokyo

***IP Issues From the Viewpoint of the JPO***

*This talk will address the current status of the Patent Prosecution Highway in the JPO and the amendment of the Japanese Patent Act in 2011.*

(up to 12 minutes)

**Albert Tramposch**

Administrator for Policy and External Affairs, U.S. Patent and Trademark Office, Alexandria

***Patent Law Harmonization***

*The USPTO recently hosted the "Asia-Pacific Patent Cooperation in the 21st Century" Conference to launch a new initiative to restart the global dialogue on patent law harmonization. This talk will discuss current USPTO efforts to continue the global dialogue begun among the patent leaders and experts at the conference.*

(up to 12 minutes)

Panelists:

**Shoichi Okuyama**

President, Japanese Patent Attorneys Association, Tokyo

**John B. Pegram**

Fish & Richardson P.C., New York

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

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

**BREAK**

3:30 PM – 3:55 PM

***B. Bilski & its Progeny in Comparison***

Friday 3:55 PM – 4:55 PM

McNally Amphitheatre

Moderator:

**John Richards**

Ladas & Parry LLP, New York

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

Speakers:

**Hon. Pauline Newman**

Judge, Federal Circuit, Wash D.C.

(up to 8 minutes)

**William Chandler**

Member, Board of Appeal, European Patent Office, Munich

*Abstract thinking at the EPO Boards of Appeal*

(up to 8 minutes)

**Hon. Roger T. Hughes**

Judge, Federal Court of Canada, Ottawa

*Business Method Patents – A Canadian View*

(up to 8 minutes)

**James Moore Bollinger**

Troutman Sanders LLP, New York

*The Business Method Paradox for the Financial Industry*

*While the contours of patentable subject matter remain murky, recent decisions and related events offers some meaningful guidance to the financial industry.*

*Investment banks, hedge funds and the insurance industry – all experts in risk management – are well positioned to apply these recent developments in managing both their exposure and opportunities.*

(up to 8 minutes)

Panelists:

**Hon. Dr. Klaus Grabinski**

Presiding Judge, District Court, Düsseldorf

**Prof. Lennie Hoffmann**

Honorary Professor of Intellectual Property, Queen Mary, University of London

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

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

*C. Remedies*

Friday 5:00 PM – 6:30 PM

McNally Amphitheatre

Moderator:

**Gonzalo Ulloa**

Gomez-Acebo & Pombo Abogados S.L.P., Madrid

(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:

AN ECONOMIC ANALYSIS

**Laura Stamm**

Analysis Group, New York  
(up to 8 minutes)

**Dr. David Blackburn**

NERA Economic Consulting, White Plains  
(up to 8 minutes)

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

DAMAGES, INJUNCTIONS, AND ROYALTIES

**Gertjan Kuipers**

De Brauw Blackstone Westbroek, Amsterdam, The Netherlands

***A European Perspective in Remedies***

*This talk will address the European Enforcement Directive and focus on injunctive relief in Europe. It will also address availability, territorial scope and enforcement. Furthermore, it will deal with border detention under the Anti-Piracy Directive and the recent opinion of the Advocate General of the ECJ.*

(up to 8 minutes)

**Hon. Randall R. Rader**

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

***A View from the Judiciary in Remedies***

(up to 8 minutes)

**Robert J. Goldman**

Ropes and Gray LLP, Silicon Valley

***Damages in U.S. Patent Litigation: The Changing Battlefield, As Seen From The Trenches***

*This talk will discuss the practical aspects of trying damages in U.S. patent infringement cases, including the inherent complexities of economic evidence and the need to streamline court-room presentations because of time limits placed on the parties at trial. It will also address the problems and opportunities presented to trial lawyers by the Federal Circuit's decisions relating to what is and is not permissible to rely on when trying damages.*

(up to 8 minutes)

**Robert Cote**

McKool Smith, New York

***Patent Damages from the Ground Up***

(up to 8 minutes)

**Prof. John M. Golden**

The University of Texas School of Law, Austin

***Patent Infringement Injunctions' Scope***

*Much recent debate on patent-infringement remedies has focused on two questions: (1) when injunctive relief should be available and (2) how damages should be calculated. This talk will address a comparatively neglected issue: what the scope of a patent-infringement injunction should be when it is granted. Neglect of this issue might help explain a startling fact that empirical study reveals: the majority of patent-infringement injunctions issued by U.S. district courts in 2010 appear to violate the Federal Rules of Civil Procedure, at least as those rules have been understood by the U.S. Court of Appeals for the Federal Circuit.*

(up to 8 minutes)

Panelists:

**Patricia A. Martone**

Morrison Foerster LLP, New York

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

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

**CLOSING RECEPTION**

6:30 PM – 8:30 PM

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**SESSION 9: COPYRIGHT LAW**

**Concurrent Session**

Friday 2:30 PM – 6:30 PM

Pope Auditorium

*A. EU Copyright Developments*

Friday 2:30 PM – 3:40 PM  
Room 311

Moderator:

**Ted Shapiro**

Senior Vice President, General Counsel and Deputy Managing Director,  
EMEA Motion Picture Association, Brussels  
(up to 5 minutes to introduce the subject matter; intro of speakers –  
just name and affiliation, please see bios in print materials and online.)

Speakers:

**Ted Shapiro**

Senior Vice President, General Counsel and Deputy Managing Director,  
EMEA Motion Picture Association, Brussels  
***Overview of EU Copyright Developments***  
(up to 9 minutes)

**Justin Watts**

Freshfields Bruckhaus Deringer LLP, London  
***The Premier League Case - Why Following the Advocate General Would be  
a Pyrrhic Victory for Free Movement***  
(up to 7 minutes)

**Dr. Tanya Aplin**

King's College London, School of Law, London  
***Injunctions against intermediaries/Free movement of services  
and the right of communication to the public***  
(up to 7 minutes)

**Vanessa Marsland**

Clifford Chance LLP, London  
***Copyright Protection for Software***  
*Twenty years after original adoption of the European Directive on the legal  
protection of computer programs, the EU Court of Justice has started to be  
asked by national courts to elaborate the scope of copyright protection for  
software. Two references have been made to the Court from national courts.  
One recent decision, in a case brought by the Czech limb of the BSA, explored  
protectability of GUIs. The other pending reference, from the English court,  
explores various aspects of what is and is not protectable subject matter, as  
well as some unanswered questions about when reverse engineering may  
infringe.*  
(up to 7 minutes)

**Giovanni Casucci**

Casucci Studio Legale, Milan  
***The ECJ Flos –Decision***

*This ECJ case clarifies the effects of copyright protection on design products and the grace period that must be recognized in case of new incoming IP rights assessed at the Community level. This case will play a big role at the Berne Convention level, influencing the juridicial effects of copyright in the Berne's Member States.*

(up to 7 minutes)

**Mihály Ficsor**

President, Hungarian Copyright Council; International Legal Consultant

***Role of Collecting Societies: Problem or Promise?***

(up to 7 minutes)

Panelist:

**Prof. Dr. Silke von Lewinski**

Max Planck Institute for Intellectual Property and Competition Law, Munich

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

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

**BREAK**

3:40 PM – 4:05 PM

***B. Secondary Liability***

Friday 4:05 PM – 5:35 PM

Room 311

Moderator:

**Eric J. Schwartz**

Mitchell Silberberg & Knupp LLP, Wash D.C.

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

Speakers:

**Andrew P. Bridges**

Winston & Strawn LLP, San Francisco

***Secondary Liability in Copyright and Other IP Fields: Has It Collapsed into Negligence Law?***

*This presentation will discuss the general secondary liability underpinnings of copyright law. It will also examine whether the secondary liability framework in copyright law has evolved, how it compares to similar frameworks of other*

*types of intellectual property, and how it compares to secondary liability frameworks outside intellectual property.*

(up to 7 minutes)

**Mary E. Rasenberger**

Skadden, Arps, Slate, Meagher & Flom LLP, New York

***Secondary Liability for ISPs and the DMCA Safe Harbors: Are the Courts Getting it all Wrong?***

*This presentation will discuss the recent lower court decisions in the UMG v. Veoh and Viacom v. Youtube cases, both of which are currently on appeal, and will explain how they (and the precedent they rely on) misconstrue the plain language of the DMCA safe harbors in § 512 of the Copyright Act. This presentation will examine the legislative intent of § 512 and the policy issues driving some courts to look beyond the plain meaning of the statute, and will describe the countervailing policy imperatives for the Second and Ninth Circuit courts to construe § 512 as drafted and intended—namely, to prevent bad actors from availing themselves of safe harbors. This presentation will also briefly touch on a couple of recent cases where the courts did find secondary liability (Columbia v. Fung, Arista v. LimeWire).*

(up to 7 minutes)

**Ian C. Ballon**

Greenberg Traurig LLP, Los Angeles and Palo Alto

*This presentation will focus on the litigation of DMCA safe harbor cases from the perspective of a litigator. It will cover recent litigation and the applicability of the DMCA safe harbor to web 2.0 services and inducement as asserted against a cloud computing service.*

(up to 7 minutes)

**(up to 15 minutes of discussion)**

**Martin Schwimmer**

Leason Ellis LLP, White Plains; Publisher, The Trademark Blog

***Notice & Takedown for Trademarks: The Time has Come for Measures to Combat Deceptive Trademark Use Online***

(up to 7 minutes)

**(up to 6 minutes of discussion)**

**Yoram Elkaim**

Head of Legal – Southern & Eastern Europe, Middle East & Africa,  
Google, Paris

***Recent EU Developments on ISP Liability: From Notice & Take Down to Notice & Stay Down?***

*This presentation will discuss how several courts have applied the E-Commerce Directive's safe harbor to hosting platforms, following the ECJ's Google v. Vuitton ruling of March 2010 (Telecinco v. YouTube in Spain, Nord-Ouest Productions v. Dailymotion in France), while other courts have interpreted the same provisions as imposing not just a notice and take down regime, but a "notice and stay down" regime, akin to a filtering obligation to prevent future infringement (France, Germany, Belgium and a pending ECJ referral in the Belgian Sabam v. Netlog case).*

(up to 7 minutes)

**Prof. David Brennan**

Melbourne Law School, Melbourne

***Roadshow Films v. iiNet—Can Australian ISP Have Copyright Liability for Providing Internet Access to Infringing File-Sharers?***

*This presentation will discuss the thirty-four film studios that initiated legal action against iiNet, the third largest Australian ISP, for iiNet's authorisation of copyright infringements by iiNet's users. This presentation will set out the current state of Australian law on secondary copyright liability (including the Australian safe harbour regime) and the choices that now confront the Australian High Court if it hears the studios' appeal.*

(up to 7 minutes)

**(up to 15 minutes of discussion)**

Panelist:

**Ted Shapiro**

Senior Vice President, General Counsel and Deputy Managing Director,  
EMEA Motion Picture Association, Brussels

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

*C. Worldwide ISP Participation Developments*

Friday 5:40 PM – 6:30 PM

Room 311

Moderator:

**Prof. Mary W.S. Wong**

University of New Hampshire School of Law, Concord

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

Speakers:

**Hon. Mr. Justice Peter Charleton**

Justice, High Court of Ireland, Dublin  
(up to 7 minutes)

**Shira Perlmutter**

Executive Vice President, Global Legal Policy, IFPI, London  
(up to 7 minutes)

**Prof. Valerie-Laure Benabou**

University of Versailles, Visiting, McGill University, Montreal, University of Montreal  
(up to 7 minutes)

**Prof. Rebecca Giblin**

*New Developments in ISP Legislation in New Zealand*  
Visiting Intellectual Property Scholar, Columbia Law School, New York;  
Monash University, Victoria, Australia  
(up to 7 minutes)

Panelists:

**Prof. Jane C. Ginsburg**

Columbia Law School, New York

**Howard P. Knopf**

Macera & Jarzyna LLP, Ottawa

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

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

**CLOSING RECEPTION**

6:30 PM – 8:30 PM

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## **SESSION 10: TRADEMARK LAW**

### **Concurrent Session**

Friday 2:30 PM – 6:30 PM

Room 302

### *A. Smell & Look-a-likes: A Comparative Analysis*

Friday 2:30 PM – 3:30 PM

Room 302

#### Moderator:

#### **Prof. Susan Scafidi**

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:

#### **Anna Carboni**

Powell Gilbert LLP, London

#### ***Lookalikes: Can Telling the Truth be Unfair?***

*Lord Justice Jacob concluded that the effect of the ECJ's decision in L'Oreal v. Bellure (Case C-487/07), was to require him to find "truthful" advertising and packaging "unfair" and thus unlawful. Are there different perceptions or approaches to determining what is truth? Is there an alternative to Lord Justice Jacob's approach? One way to proceed is to ask two questions: what "statements" are lookalike packaging making; and are these statements (a) "true" and (b) fair or unfair. Should the answers be based upon anecdotal, judge-driven opinions or from published research of the British Brands Group concerning how consumers react to lookalike?.*

(up to 15 minutes)

#### Panelists:

#### **Prof. Barton Beebe**

New York University School of Law, New York

#### **Prof. Robert Burrell**

TC Beirne School of Law at the University of Queensland, Brisbane

#### **Prof. Jane C. Ginsburg**

Columbia Law School, New York

#### **Rt. Hon. Lord Justice Jacob**

University College London (UCL)

Court of Appeals, Civil Division, London

#### **Colin Pearson**

Cleary Gottlieb Steen & Hamilton LLP, London

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

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

**BREAK**

3:30 PM – 3:55 PM

*B. Specialized Trademark Courts: Overdue or Unnecessary?*

Friday 3:55 PM – 4:55 PM

Room 302

Moderator:

**Ashley B. Graham**

Conference and Research Fellow, Fordham Intellectual Property Institute, 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:

**Hon. Nicholas Forwood**

President of Chamber, General Court of the European Union, Brussels  
(up to 15 minutes)

**Hon. Marina Tavassi**

Presiding Judge, Intellectual Property Court for the Region of Lombardy, Milan

*Specialized Trademark Courts – The Italian Experience*

(up to 10 minutes)

Panelists:

**Prof. Dr. Annette Kur**

Max Planck Institute for Intellectual Property and Competition Law, Munich

**Hon. Randall R. Rader**

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

**Hon. Jed S. Rakoff**

Judge, U.S. District Court, Southern District of New York, New York

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

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

*C. AdWords: A Comparative Analysis*

Friday 5:00 PM – 6:30 PM

Room 302

Moderator:

**Jonathan E. Moskin**

Foley & Lardner LLP, New York

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

Speakers:

**Prof. Dr. Peter Ruess**

International School of Management, Frankfurt; Arnold Ruess, Düsseldorf  
***New Developments for Trademarks Online – ECJ Rules on AdWords and Provider Liability***

*The ECJ has handed down several judgments recently focusing on the question whether Google AdWords are “trademark use” and to which extent this is allowed. Google has, as of September 2010, significantly changed its trademark policy, allowing third parties to book trademarks as keywords. The presentation will briefly describe the situation and highlight practical consequences for trademark holders.”*

(up to 10 minutes)

**Prof. Marshall Leaffer**

Indiana University Mauer School of Law, Bloomington

***Keyword Advertising and Likelihood of Confusion: the Turmoil Continues***

*Continuing ambivalence – or perhaps confusion – by courts on the role that keyword advertising plays in trademark law. There are two principal issues. What is the test for infringement? Do keywords constitute trade mark use? What should the answers be on these issues, and is there a likelihood of a consensus in the courts on either one?*

(up to 10 minutes)

**Prof. Barton Beebe**

New York University School of Law, New York

***Consumer Sophistication and the AdWords Problem in the United States and Europe***

*This presentation will analyze current case law to argue that the decisive factor determining the outcomes of the adwords cases going forward in the U.S. and the E.U. will be courts’ assessment of the sophistication of consumers*

*in using search engines. Indeed, the consumer sophistication factor will emerge in coming years as a crucial aspect of all likelihood of confusion analyses in high-technology contexts.*

(up to 10 minutes)

**Prof. Hugh C. Hansen**

Fordham University School of Law

***1-800 Contacts: How to Spot an Outlier from Day One***

(up to 10 minutes)

Panelists:

**Clark W. Lackert**

Dickstein Shapiro LLP, New York

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

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

**CLOSING RECEPTION**

6:30 PM – 8:30 PM

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