

Program Updated on April 22, 2014 (Subject to Change)

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

**22nd Annual Intellectual Property Law & Policy
Conference**

www.fordhamipconference.com

**Fordham University School of Law
Thursday and Friday, April 24-25, 2014**

**Hugh C. Hansen
Director**

Learn Debate Have Fun

CONFERENCE PROGRAM

Subject to Change

Wednesday, April 23

Reception & Dinner for Faculty and Sponsors

Reception: Plaza

6:15 PM to 7:30 PM

Dinner: 12th Floor, Lowenstein Building

7:30 PM to 9:00 PM

Thursday Morning, April 24

Continental Breakfast

Platt Atrium
7:00 AM – 9:00 AM

Sponsored by:

Crowell & Moring LLP

Registration

Platt Atrium
7:00 AM – 8:00 AM

Please note: Doors to the McNally Amphitheater will close at 8:00 AM. People arriving after 8:00 AM should go to Room 203.

Welcoming Remarks:

Thursday 8:00 AM – 8:05 AM
McNally Amphitheater

Prof. Hugh C. Hansen

Fordham University School of Law, New York

Dean Michael M. Martin

Fordham University School of Law, New York

SESSION 1: Plenary Session

Thursday 8:10 AM – 1:10 PM
McNally Amphitheater

1A. Multilateral / FTA Law & Policy

Thursday 8:10 AM – 9:40 AM (90 minutes)
McNally Amphitheater

Moderator:

Prof. Hugh C. Hansen

Fordham University School of Law, New York

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(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:

Probir J. Mehta

Acting Assistant U.S. Trade Representative for Intellectual Property and Innovation,
Office of the United States Trade Representative, Washington D.C.

(up to 10 minutes)

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

Pedro Velasco Martins

Deputy Head of Unit, Intellectual Property and Public Procurement, DG Trade,
European Commission, Brussels

(up to 10 minutes)

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

Wolf Meier-Ewert

Counsellor, Intellectual Property Division, WTO, Geneva

(up to 10 minutes)

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

Michele Woods

Director, Copyright Law Division, World Intellectual Property Organization, Geneva

(up to 10 minutes)

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

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

Designated Audience Members:

Prof. Justin Hughes

Loyola Law School, Los Angeles

Stanford McCoy

Senior Vice President and Regional Policy Director, Motion Picture Association,
Brussels

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Shira Perlmutter

Chief Policy Officer and Director for International Affairs, United States Patent and Trademark Office, Alexandria

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

1B. Intellectual Property Leaders

Thursday 9:45 AM – 11:15 AM (90 minutes)

McNally Amphitheater

Moderator:

Prof. Hugh C. Hansen

Fordham University School of Law, New York

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

Speakers:

Hon. António Campinos

President of OHIM, Alicante

(up to 17 minutes)

Panel discussion: 7 minutes (speakers, panelists and members of the audience)

David J. Kappos

Cravath, Swaine & Moore LLP, New York

(up to 17 minutes)

Panel discussion: 7 minutes (speakers, panelists and members of the audience)

Hon. Francis Gurry

Director General, World Intellectual Property Organization, Geneva

(up to 17 minutes)

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

Panel discussion: 7 minutes (speakers, panelists and members of the audience)

Panelists:

Maria Martin-Prat

Head of Unit – Copyright, DG Internal Market & Services, European Commission, Brussels

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Hon. Maria Pallante

Register of Copyrights, U.S. Copyright Office, Washington D.C.

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

Break

11:15 AM – 11:40 AM

1C. Perspectives from Intellectual Property Pioneers

Thursday 11:40 AM – 1:10 PM (90 minutes)

McNally Amphitheater

Moderator:

Prof. Hugh C. Hansen

Fordham University School of Law, New York

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

Speakers:

Hon. Pauline Newman

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

(up to 13 minutes)

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

Prof. Jeremy Phillips

IPKat, London

(up to 13 minutes)

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

Hon. Wim van der Eijk

Vice-President Directorate-General Appeals, Chairman of the Enlarged Board of Appeal, European Patent Office, Munich

(up to 13 minutes)

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

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

Designated Audience Members:

Hon. Annabelle Bennett

Federal Court of Australia, Sydney

Hon. Denny Chin

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

Paul Maier

Director, The European Observatory on Infringement of Intellectual Property Rights (OHIM), Alicante

John Temple Lang

Cleary Gottlieb Steen & Hamilton LLP, Brussels

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

Lunch

Pope Auditorium, Lowenstein Building

1:10 PM – 2:20 PM

Speaker

Michelle K. Lee

Deputy Under Secretary of Commerce for Intellectual Property and
Deputy Director of the USPTO, Alexandria
(up to 15 minutes)

Thursday Afternoon, April 24

THREE CONCURRENT SESSIONS:

Patents, Copyright, Enforcement, Trademarks & Multilateral

SESSION 2: PATENT LAW

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Concurrent Session

Thursday 2:30 PM – 6:45 PM

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

Directions: Exit the Main Doors of the Law School, turn right (east) and walk along 62nd Street to Broadway; turn right (south) onto Broadway and the auditorium is on your right.

2A. The European Unitary Patent and the Unified Patent Court

Thursday 2:30 PM – 3:30 PM (60 minutes)

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

Moderator:

Rt. Hon. Prof. Sir Robin Jacob

Faculty of Laws, University College London, London

(up to 5 minutes to introduce the subject matter; intro of speakers –

just name and affiliation, please see bios in print materials and online.)

Speakers:

Margot Fröhlinger

Principal Director, Patent Law and Multilateral Affairs, European Patent Office, Munich

Will the Unitary Patent become a success?

The talk seeks to explain that despite the current uncertainty about the level of renewal fees for the Unitary Patent (UP) and despite concerns about the future functioning of the Unified Patent Court (UPC) the UP is likely to become a success. It aims to describe the advantages of the UP and to dispel concerns about the UPC by pointing to the thoroughness of the preparatory work and to the quality of the future judges.

(up to 12 minutes)

Hon. Allan Rosas

Court of Justice of the European Union, Luxembourg

The creation of an EU unified patent litigation system especially in the light of Opinion 1/09 of the Court of 8 March 2011

(up to 12 minutes)

Panelists:

Hon. Wim van der Eijk

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Vice-President Directorate-General Appeals, Chairman of the Enlarged Board of Appeal, European Patent Office, Munich

Hon. Dr. Klaus Grabinski

Federal Supreme Court, Karlsruhe, Germany

Dr. Bernd Janssen

Uexküll & Stolberg, Hamburg

David Laliberté

Director, Intellectual Property Policy, Intellectual Property Group, Legal and Corporate Affairs, Microsoft Corporation, Redmond

John Temple Lang

Cleary Gottlieb Steen & Hamilton LLP, Brussels

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

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

2B. Global Patent Developments

Thursday 3:35 PM – 4:50 PM (75 minutes)

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

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:

Clara Pombo

Clarke, Modet & C^o, Madrid

Patent Law in Brazil: An update

Brazilian Government has made one of its top priorities for 2014 to encourage innovation and technology investments. The recently appointed President of the Patent Office will have the double challenge of reducing the patent backlog and estimated time of examination and solving the ANVISA roadblock for pharma and biotech patents. The granting of pharmaceutical patents in Brazil requires the previous consent of ANVISA (Brazilian FDA corresponding agency). The aspects involved in this "prior consent" are very controversial and, as such, have been constantly challenged before the courts.

(up to 9 minutes)

Panel discussion: up to 4 minutes (speakers, panelists and members of the audience)

Wataru Imamura

Director for IP Strategy Policy Planning Coordination and Customer Relation Policy, Planning and Research Division, Japan Patent Office, Tokyo

IP policies and initiatives in Japan

In 2004, Japanese government and Japan Patent Office (JPO) set the long-term goal called “FA11” in which FA pendency should be achieved 11 months or less by the end of FY2013. JPO has just achieved it in this March. In the meantime, circumstances surrounding IP system have changed remarkably in the last 10 years. Currently, under the economic and fiscal policy of the ABE Administration, the Japanese government is working on a growth strategy that encourages private investment. The creation, protection and strategic use of intellectual property have been positioned as strategic, priority issues in the growth strategy. JPO has set new goals to be achieved in the next decade (by the end of fiscal 2023) based on the growth strategy. My presentation will introduce a new direction of IP policies as well as new initiatives in Japan.

(up to 9 minutes)

Panel discussion: up to 4 minutes (speakers, panelists and members of the audience)

Hon. Tamotsu Shoji

Tokyo District Court, Intellectual Property Division, Tokyo

Recent IP High Court Grand Panel Judgment regarding the method for calculating the amount of damages under the Article 102, paragraph (2) of the Patent Act of Japan – Waste Storage Device Cases –

– Does said paragraph require the patentee to work patented invention by the patentee to seek damages based on lost profits ? –

With regard to the method for calculating the amount of damages, said paragraph provides that the amount of profits earned by the infringer shall be presumed to be the amount of damages sustained by the patentee. Relating to the applicability of said paragraph, the precedent of lower courts had required the working of patented invention by the patentee as a prerequisite for the application of said paragraph. However, recent IP High Court Grand Panel judgment removed such prerequisite. How should we consider the applicable scope of that judgment ? Let’s think of that in comparison with laws and courts rulings in the U.S.

(up to 9 minutes)

Panel discussion: up to 4 minutes (speakers, panelists and members of the audience)

Hon. Dr. Klaus Grabinski

Federal Supreme Court, Karlsruhe, Germany

Harmonisation across Europe!? – comparison and interaction between the EPO appeal system and the national judicial systems

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For 50 years the European patent system has been consisting of two pillars. The EPO which provides a single patent grant procedure including opposition proceedings after grant and the national courts of the contracting member states where actions for infringement and revocation of European Patents can be brought. The talk will deal with the interaction of both systems in different procedural situations. E.g.: How are parallel litigations dealt with? To what extent do decisions in one system influence proceedings in the other system? The talk will also shortly compare national (in particular German) case law with EPO case law on a few selected issues of material patent law.

(up to 9 minutes)

Panel discussion: up to 4 minutes (speakers, panelists and members of the audience)

Panelists:

Hon. Francis Gurry

Director General, World Intellectual Property Organization, Geneva

Myles Jelf

Bristows, London

Otto Licks

Licks Advogados, Rio de Janeiro

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

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

Break

4:40 PM – 5:15 PM

2C. U.S. Patent Law: Recent Developments

Thursday 5:15 PM – 6:00 PM (45 minutes)

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

Moderator:

Prof. Martin J. Adelman

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

(up to 5 minutes to introduce the subject matter; intro of speakers –

just name and affiliation, please see bios in print materials and online.)

Speaker:

Dimitrios T. Drivas

White & Case LLP, New York

Current Developments in US Patent Law

An overview over the developments since last year's conference and in particular patent cases decided and pending before the US Supreme Court and important decisions of the Federal Circuit.

(up to 25 minutes)

Panelists:

Suzanne Michel

Senior Patent Counsel, Google, Washington D.C.

Brian H. Pandya

Wiley Rein LLP, Washington D.C.

Harold C. Wegner

Foley & Lardner LLP, Washington D.C.

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

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

***2D. Evolving Standards for Disclosing and Claiming
Inventions***

Thursday 6:00 PM – 6:45 PM (45 minutes)

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

Moderator:

Brian W. Nolan

Mayer Brown 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:

John B. Pegram

Fish & Richardson P.C., New York

(up to 8 minutes)

Dr. Penny Gilbert

Powell Gilbert LLP, London

When is an invention “ripe” for patenting? Views from Europe

The race to file a patent application to stake a claim in fast moving technical fields can lead to an early priority date but store up problems for maintaining validity.

Where the inventor's understanding of the commercially valuable aspects of an invention change there is a risk in trying to re-direct the focus of the patent

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application: the EPO's approach to added matter (EPC Art 123(2)) has been the cause of early death for many patents. Is that approach softening and how does it compare to the approach of the UK courts, for example? In the Pharma sector, is there a change in requirement for the level of information required to support claims to therapeutic use and when does it need to be filed? How much research needs to have been done to crystallise the invention and how much data has to be included in the specification? Recent UK case law suggests that more is better, but how much is enough?

(up to 8 minutes)

Panelists:

Theo Blomme

Hoyng Monegier, Amsterdam

David J. Kappos

Cravath, Swaine & Moore LLP, New York

Lisa Larrimore Ouellette

Yale Law School, New Haven

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

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

Reception

10 on the Park

Time Warner Center

North Tower, 10th Floor

60 Columbus Circle (entrance on 60th St btwn Broadway & Columbus)

6:30 PM – 8:30 PM

Sponsored by:

Freshfields Bruckhaus Deringer LLP

SESSION 3: COPYRIGHT LAW

Concurrent Session

Thursday 2:30 PM – 6:45 PM

McNally Amphitheater

3A. EU Copyright: Recent Developments

Thursday 2:30 PM – 3:40 PM (70 minutes)

McNally Amphitheater

Moderator:

Ted Shapiro

Wiggin LLP, Brussels

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

Speakers:

Maria Martin-Prat

Head of Unit – Copyright, DG Internal Market & Services, European Commission, Brussels

EU copyright policy – what's next?

Copyright has been a policy priority at European level over the last few years and it is likely to remain so for the next European Parliament and European Commission (question – and for the Member States?). Last month, the European Commission closed a large public consultation feeding into a broader process of review of the EU copyright rules. The body of EU copyright rules is large (ten Directives by now) and the CJEU case law has, in the last years, considerably narrowed down the margin of manoeuvre of Member States in this area, notably as regards the definition of rights and exceptions to rights. So, if there is a need for change, this will have to happen at EU level. This talk will examine the main issues under discussion, objectives for any possible future intervention and possible steps going forward.

(up to 15 minutes)

Eleonora Rosati

IPKat and e-LAWnora, London

Overview of CJEU Case Law from the past year

The number of references for a preliminary ruling in the area of copyright has continued growing over the past few years. In the course of the past year alone, the Court of Justice of the European Union (CJEU) has ruled on a number of topical issues, including - amongst others - the scope of exclusive rights (in particular the right of communication to the public), exceptions and limitations, enforcement (notably jurisdiction criteria, remedies and measures that may be imposed on ISPs), DRM circumvention, database right, relationship between EU copyright directives, and the room left for national initiatives in areas affected by EU copyright directives. In some cases, the CJEU has departed significantly from earlier case law and the opinions of its Advocates General.

(up to 10 minutes)

Rt. Hon. Lord Justice Christopher Floyd

Court of Appeal, London

The CJEU and communication to the public: where will it end?

The CJEU has now given guidance on the ambit of “communication to the public” of a copyright work in no less than 9 cases, starting with Case C-306/05 Sociedad General de Autores y Editores de España (SGAE) v Rafael Hoteles SA and ending with Case C-607/11 ITV Broadcasting Ltd v TVCatchup Ltd. The earlier cases focused on the question of whether the communication complained of was to “a new public”, that is to say a public different from that which the owner of the copyright had in mind when he authorised the original communication. More recently the cases have pointed out that when the communication uses a different technical means to that of the original communication, it is not necessary to consider whether there is a communication to a new public. It has also been said that it is “not irrelevant” that the communication is for profit. Other factors have also been said to be relevant. One result is that the distribution of a television signal to private rooms in a hotel is a communication to the public but the playing of sound recordings to patients of a dental practice is, apparently, not.

The simple notion of communicating a copyright work to the public is in danger of becoming over-complicated. It involves two relatively simple and clear legal concepts: (a) communication and (b) public. It should not involve a multi-factorial assessment or balancing exercise. The definition of the act restricted by the copyright should not be conflated with the factual question of whether the author has licensed the act.

Is this another example (cf Arsenal) of the CJEU just trying to be “of maximum assistance to the national court”. Or have they strayed beyond their remit of construing EU legislation?

(up to 10 minutes)

Panelists:

Prof. Bernt Hugenholtz

Faculty of Law, University of Amsterdam, Amsterdam

Julie Samnadda

Member, Legal Service, European Commission, Brussels

Dr. Silke von Lewinski

Max Planck Institute for Intellectual Property and Competition Law, Munich

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

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

3B. Orphan Works & Extended Collective Licensing

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Thursday 3:45 PM – 5:00 PM (75 minutes)
McNally Amphitheater

Moderator:

Daan G. Erikson

Senior Research & Conference Fellow, Fordham IP 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:

Karyn Temple Claggett

Associate Register of Copyrights and Director of Policy & International Affairs,
United States Copyright Office, Washington D.C.

Orphan Works in the United States: Looking for a Legal Home

The problem of “orphan works” continues to raise complex issues under copyright law. The U.S. Copyright Office has been studying the problem (and potential solutions) for orphan works for several years. In 2006, the Office issued a comprehensive report assessing the severity of the orphan works problem and recommending a legislative solution. The U.S. Congress came close to enacting orphan works legislation in 2008, but was unable to do so. The Office recently renewed its review of orphan works to reflect current case law developments, licensing approaches such as extended collective licensing, and to address issues related to mass digitization projects. Associate Register of Copyrights Karyn Temple Claggett will discuss the Office’s ongoing review, and the possibility of using collective management, including extended collective licensing, as solutions to the orphan works problem in the United States.

(up to 8 minutes)

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

Tom Rivers

Copyright consultant, London

Orphan Works - the UK solution: the story so far

Two UK governments over a period of more than seven years, based on replies from stakeholders to two separate inquiries, sought to modify, modernise and make the UK's copyright regime fit for purpose in the digital world. One of the elements in that process which proved controversial was legislation to facilitate access to orphan works. The Enterprise and Regulatory Reform Act was enacted a year ago and contains an orphan work provision. The evidence base which was published to demonstrate a need for this provision was inadequate, and it is very doubtful that the provision when it finally enters into force will serve a useful purpose.

(up to 8 minutes)

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

Eleonora Rosati

IPKat and e-LAWnora, London

The proposed UK orphan works licensing scheme: is it compatible with EU law?

In 2012 the EU adopted a directive on certain permitted uses of orphan works, which Member States must transpose into their national laws by 29 October 2014. Directive 2012/28/EU (the Orphan Works Directive) permits limited uses of orphan works by means of a specific exception to the rights of reproduction and making available to the public to be introduced at the national level. The limited nature of the EU directive is one of the main reasons why in the Enterprise and Regulatory Reform Act 2013 the UK envisaged a complementary licensing scheme that would allow broader uses of orphan works. While the implementing regulations have yet to be issued, it remains doubtful whether initiatives like the UK one are compliant with EU law and, in any case, may be considered as merely complementary to the Orphan Works Directive.

(up to 8 minutes)

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

Jerker Rydén

Senior Legal Advisor, National Library of Sweden, Stockholm

Orphan Works The Wrong Problem – ECL the Right Solution?

Some libraries have argued that more than 40% or even greater numbers of their collections are Orphan – especially in UK. The aim has been to get “free” access on the Internet to these works. The focus on Orphan Works has misdirected the search for solutions by obscuring a much larger problem. The huge number of rights holders whose consent must be obtained. How did it come that the EU Commission in 2011 proposed an Orphan Works Directive which cannot achieve its primary objectives – Mass Digitisation / Mass Usage? Why have not only the EU but also many other countries focused on Orphan Works instead of trying to find the solution to the conundrum of copyright in the 21st Century; i.e. how to enable mass usage of copyright protected works in library corpus etc? Will other nations learn from the mistake and focus on the real issue, i.e. how to clear the rights for large numbers of works irrespective of whether they are orphan or not. Effective collective rights management systems is of the utmost importance for the development of the Digital Library in the European Union but also in the US, and on a global level. Is the solution Extended Collective Licensing?

(up to 8 minutes)

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

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Panelists:

Barry B. Sookman

McCarthy Tétrault, Toronto

Steven Tepp

President & Chief Executive Officer, Sentinel Worldwide, Washington D.C.

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

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

Break

5:00 PM – 5:25 PM

3C. Fair Use & Freedom of Speech

Thursday 5:25 PM – 6:45 PM (80 minutes)

McNally Amphitheater

Moderator:

Melissa Moriarty

VaynerMedia, 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. Sean M. O’Connor

University of Washington School of Law, Seattle

The Internet Does Not Reset the Copyright-Free Speech Balance

(up to 8 minutes)

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

Hon. Mr. Justice Colin Birss

Chancery Division, High Court, London

What does free speech have to do with it?

Recently in England arguments based on freedom of speech have been deployed in intellectual property cases more frequently than before. In a number of cases the issues are clearly engaged such as the web blocking cases (NewzBin 2 [2011] EWHC 1981). In addition PRCA v Meltwater, which was referred to the CJEU by the UK Supreme Court ([2013] UKSC 18) can be considered from that perspective. In other cases the link to art 10 ECHR is less obvious but the point is

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deployed nonetheless. I will consider what role arguments from freedom of speech are now playing in IP disputes and ask what role they ought to play.
(up to 8 minutes)

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

Prof. Pamela Samuelson

University of California, Berkeley, School of Law, Berkeley
U.S. Appropriation and Transformative Use Cases
(up to 8 minutes)

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

Prof. Bernt Hugenholtz

Faculty of Law, University of Amsterdam, Amsterdam
Flexible Limitations and Exceptions
(up to 8 minutes)

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

Prof. Ron Lazebnik

Fordham University School of Law, New York
Who decides what a fair use is on the Internet?
In Capitol Records, LLC v. Vimeo, LLC, the district court allowed an interlocutory appeal to ask the U.S. Court of Appeals for the Second Circuit whether, under Viacom Int'l, Inc. v. YouTube, Inc., a service provider's viewing of a user generated video containing all or virtually all of a recognizable, copyrighted song may establish "facts or circumstances" giving rise to "red flag" knowledge of infringement. Underlying the question is what kind of fair use analysis is expected to be done by an online service provider to avoid secondary liability if one of their agents views the content at issue. I will discuss the benefits, drawbacks and implications of placing online service providers in the position of judging fair use.
(up to 8 minutes)

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

Panelists:

Terry Hart

Director of Legal Policy, Copyright Alliance, Washington D.C.

Tom Rubin

Chief Intellectual Property Strategy Counsel, Microsoft, Seattle

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

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

Reception

10 on the Park
Time Warner Center
North Tower, 10th Floor
60 Columbus Circle (entrance on 60th St btwn Broadway & Columbus)
6:30 PM – 8:30 PM

Sponsored by:

Freshfields Bruckhaus Deringer LLP

SESSION 4: ENFORCEMENT, TRADEMARK & MULTILATERAL

Concurrent Session

Thursday 2:30 PM – 6:45 PM
Room 203

4A. Enforcement

Thursday 2:30 PM – 3:40 PM (70 minutes)
Room 203

Moderator:

Michael Schlesinger

Mitchell, Silberberg & Knupp, Washington D.C.

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

Speakers:

Christian Liedtke

Independent IP Consultant, Newport Beach

“Stop in the Name of Law - How New EU Customs Laws Create Stumbling Blocks For Intellectual Property Owners”

The new EU Customs Regulation came into effect in January 2014 and affects IP enforcement in various contexts from goods in transit to small consignments and parallel trade. The EU trademark reform package currently under discussion may well complicate matters even further. This talk points out the pitfalls created under the new legislative regime, discusses options to maintain strong IP enforcement at the border and analyses new data from EU customs authorities showing the practice impact of the new rules.

(up to 8 minutes)

Howard P. Knopf

Macera & Jarzyna LLP, Ottawa

The Perennial Issue of Parallel Imports and Border Enforcement: Canada's Version of ACTA – Bill C-8

Bill C-8 is now pending before Canada's Parliament. According to the Legislative Summary: "Canada has not explicitly indicated its intention to ratify ACTA by introducing Bill C-8... However, when questioned on this issue by the Committee, the Honourable James Moore, Minister of Industry, and his deputy minister stated that although the bill is intended to respond to domestic pressures, it brings Canada in line with ACTA." According to the IIPA, "Bill C-8 should be improved and then enacted as quickly as possible". There is, however, concern that Bill C-8 goes far beyond what is required in terms of anti-counterfeiting, even as required by ACTA. This would be controversial enough, especially since ACTA shows no sign of imminently or even ever coming into force. Moreover, there is reason to believe that Bill C-8 could – whether inadvertently or otherwise – enable the use of copyright and even trade-mark law to block parallel imports, which are legitimate by definition and which have been legitimized by the Supreme Court of Canada.

(up to 8 minutes)

Panel discussion: 7 minutes (speakers, panelists and members of the audience)

G. Roxanne Elings

Davis Wright Tremaine LLP, New York

Rogue Website Litigation: Tackling The Onslaught of Internet Counterfeiting through US Courts

*Since the first Rogue website decision in *The North Face & PRL USA v. Fujian, et. al.* in 2010 and the subsequent fall of SOPA, PIPA and other similar legislation, there has been a significant increase in filing of litigation against multiple foreign defendants. The same methods developed to fight largely anonymous defendants who are able to use the advantages of the Internet to quickly adapt their operations to minimize legal consequences, may also be prone to conflict with long-established and basic US legal jurisprudence governing third-party liability, due process, pre-judgment asset seizure and the requirement under 15 U.S.C. § 1116 (4)(B)(ii) that an applicant for seizure not publicize the request prior to the defendant's opportunity to*

show up and defend. Is the jurisprudence being heeded or are shortcuts being taken in the face of overwhelming need?

(up to 8 minutes)

Prof. Dr. Annette Kur

Max Planck Institute for Intellectual Property and Competition Law, Munich

The CJEU's decisions on international jurisdiction in case of infringement on the internet

In “eDate”, “Wintersteiger” and “Pinckney” the CJEU has defined its position re IP (and personality right) infringement on the Internet. Contrary to what was expected, an element of targeting does not seem to be required. On the other hand, relying on the broad spectrum of venues offered by that approach might turn out badly, as the case is easily lost on the merits.

(up to 8 minutes)

Panel discussion: 7 minutes (speakers, panelists and members of the audience)

Panelists:

Richard Vary

Nokia, Guildford, U.K.

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

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

4B. Trademark Law and the CJEU

Thursday 3:45 PM – 4:45 PM (60 minutes)

Room 203

Moderator:

James Nurton

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.)

Speaker:

Hon. Allan Rosas

Court of Justice of the European Union, Luxembourg

The Court of Justice of the European Union (CJEU) and EU Trademark Law

(up to 15 minutes)

Panelists:

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Prof. Dev Gangjee

Faculty of Law, University of Oxford, Oxford

Rt. Hon. Professor Sir Robin Jacob

Faculty of Laws, University College London, London

Paul Maier

Director, The European Observatory on Infringement of Intellectual Property Rights (OHIM), Alicante

Prof. Dr. Peter Ruess

International School of Management, Frankfurt; Arnold Ruess, Düsseldorf

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

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

Break

4:45 PM – 5:10 PM

4C. Multilateral Developments

Thursday 5:10 PM – 6:45 PM (95 minutes)

Room 203

Moderator:

Steven J. Metalitz

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

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

Speakers:

Hon. Weerawit Weeraworawit

Deputy Secretary General, National Human Rights Commission, Thailand

Challenges to Multilateral Treaties

Multilateral treaties concerning IP are facing serious challenges in the forms of non-effective enforcement and the increasing trend of favouring bilateral treaties. What can one do to overcome these challenges?

(up to 8 minutes)

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

Prof. Irene Calboli

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Visiting Professor, National University of Singapore, Singapore; Marquette University Law School, Milwaukee

The Trans-Pacific Partnership Agreement and the IP Impact in South East Asia

(up to 8 minutes)

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

Dr. Mihály Ficsor

President, Hungarian Copyright Council; International Legal Consultant, Budapest

The WIPO Copyright Agenda After Beijing and Marrakesh – Still a Broadcasters Treaty and Then a New “Guided Development Period”?

(up to 8 minutes)

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

Stanford McCoy

Senior Vice President and Regional Policy Director, Motion Picture Association, Brussels

Wearing the Target: Reflections of a Former Trade Negotiator

Stan McCoy recently ended his tenure as the lead IP negotiator at USTR. He will reflect on lessons learned and assess future opportunities for multilateral, regional, and bilateral IP negotiations.

(up to 8 minutes)

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

Designated Audience Members:

James Love

Director, Knowledge Ecology International, Washington D.C.

Pedro Velasco Martins

Deputy Head of Unit, Intellectual Property and Public Procurement, DG Trade, European Commission, Brussels

Wolf Meier-Ewert

Counsellor, Intellectual Property Division, WTO, Geneva

Michele Woods

Director, Copyright Law Division, World Intellectual Property Organization, Geneva

General panel discussion: 30 minutes (speakers, designated audience members and members of the audience)

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Reception

10 on the Park

Time Warner Center

North Tower, 10th Floor

60 Columbus Circle (entrance on 60th St btwn Broadway & Columbus)

6:30 PM – 8:30 PM

Sponsored by:

Freshfields Bruckhaus Deringer LLP

Friday Morning, April 25

Continental Breakfast

Platt Atrium

7:00 AM – 9:00 AM

Sponsored by:

Paul Hastings

Sunrise Seminars

Sunrise Seminar I: VIP Treaty: Post Mortem

Friday 7:30 AM – 8:45 AM (75 minutes)

Moot Court Room (3rd Floor)

This session will explore what went on before and during the diplomatic congress in Marrakesh -- the problems, the solutions, the interactions. It will seek to explain how disputes and strongly held differing points of view were ultimately resolved successfully. It will then ask what, if anything, can be learned about the future. Where will the road from Marrakesh lead?

Moderator:

N. Cameron Russell

Executive Director Center on Law and Information Policy, 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:

James Love

Director, Knowledge Ecology International, Washington D.C.
(up to 10 minutes)

Prof. Justin Hughes

Loyola Law School, Los Angeles

The known unknowns of the Marrakesh Treaty for the Blind
(up to 10 minutes)

Panelists:

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Dr. Mihály Ficsor

President, Hungarian Copyright Council; International Legal Consultant, Budapest

Carlo Scollo Lavizzari

Lenz & Caemmerer, Basel

Maria Martin-Prat

Head of Unit – Copyright, DG Internal Market & Services, European Commission, Brussels

Michele Woods

Director, Copyright Law Division, World Intellectual Property Organization, Geneva

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

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

Break

8:45 AM – 9:00 AM

Sunrise Seminar II: Supreme Courts and Trademark Law: Why SCOTUS has little influence, why the CJEU has more – but for how long?

Friday 7:30 AM – 8:45 AM (75 minutes)

Room 311

Moderator:

Prof. Marshall Leaffer

Maurer School of Law, Indiana University, 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.)

Speaker:

Prof. Hugh C. Hansen

Fordham University School of Law, New York

When looking at trademark law, it is natural to rely more heavily upon decisions from the highest courts. But what if the lower courts do not? Why might that be so, and what do you do then?

Panelist:

Hon. Denny Chin

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

James Nurton

Managing Intellectual Property, London

Program Updated on April 22, 2014

Prof. Jeremy Phillips

IPKat, London

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

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

Break

8:45 AM – 9:00 AM

Sunrise Seminar III: Trade Secrets

Friday 7:30 AM – 8:45 AM (75 minutes)

Room 302

Moderator:

Daniel Ilan

Cleary Gottlieb Steen & Hamilton 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. Mr. Justice Richard Arnold

Chancery Division, High Court, London

Accessory liability for breach of confidence

In Vestergaard Frandsen A/S v Bestnet Europe Ltd [2013] UKSC 31, [2013] 1 WLR 1556 the UK Supreme Court considered an issue of accessory liability for breach of confidence. The Court's decision is unexceptionable, but its reasoning blurs the test for primary liability and the test for accessory liability it propounds is unsatisfactory.

(up to 10 minutes)

Rutger M. Kleemans

Freshfields Bruckhaus Deringer LLP, Amsterdam

The European Commission's proposal for a Directive on the protection of trade secrets

(up to 10 minutes)

Victoria Cundiff

Paul Hastings LLP, New York

A View From the United States: How a 50-State Regime Addresses Misappropriation Inside and Outside the U.S.

Unlike other forms of intellectual property, trade secrets law in the United States is largely a function of state, rather than federal, substantive law. While 48 states have adopted a version of the Uniform Trade Secrets Act, there are important variations in the various adopted versions of the Act. Two states that are important drivers of innovation—Massachusetts and New York—have not adopted the Act at all. This means that misappropriation crossing state and international borders is frequently the subject of private civil suits, federal criminal prosecutions under the Economic Espionage Act, and, more recently, investigations and exclusions orders issued by the International Trade Commission prohibiting the importation into the U.S. of goods made through acts of misappropriation taking place entirely outside the U.S. In recent cases granting such orders, the ITC, as affirmed by the Federal Circuit, have relied on a “Federal common law of trade secrets.” These approaches have led to what some term a growing “internationalization” of U.S. trade secrets law.
(up to 10 minutes)

Panelists:

Giovanni Casucci

Bardehle Pagenberg, Milan

Trevor Cook

WilmerHale, New York

Sergio Miralles

Freshfields Bruckhaus Deringer LLP, Barcelona

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

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

Break

8:45 AM – 9:00 AM

1D. Plenary Session: General Counsel Round Table

Friday 9:00 AM – 10:05 AM (55 minutes)

McNally Amphitheater

Moderator:

Prof. Hugh C. Hansen

Fordham University School of Law, New York

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

Panelists:

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Michael D. Fricklas

Executive Vice President, General Counsel and Secretary, Viacom Inc., New York

Kimberley D. Harris

Executive Vice President and General Counsel, NBCUniversal, Inc., New York

David Hyman

General Counsel and Secretary, Netflix, Los Gatos

Mark Seeley

Senior Vice President & General Counsel, Elsevier, Boston

Brad Smith

Executive Vice President and General Counsel, Legal and Corporate Affairs,
Microsoft Corporation, Redmond

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

Break

10:05 AM

THREE CONCURRENT SESSIONS:

Patents, Competition & Trademarks

SESSION 5: PATENT LAW

Concurrent Session

Friday 10:20 AM – 1:10 PM

McNally Amphitheater

***5A. A Comparison of the New Inter Partes Review at the
USPTO and Oppositions at the EPO***

Friday 10:20 AM – 11:40 AM (80 minutes)

McNally Amphitheater

Moderator:

John P. White

Cooper & Dunham 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:

John P. White

Cooper & Dunham LLP, New York

Inter Partes Review – A Practitioner’s Perspective

After a slow start the volume of Petitions for Inter Partes review has picked up steadily. The Patent Trial and Appeal Board (PTAB) now rendered decisions in the earliest IPRs for which trials were instituted. The decisions to date for patent owners have been consistently negative. A discussion of trends to date will be presented.

(up to 9 minutes)

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

Dr. Aliki Nichogiannopoulou

Director Biotechnology, European Patent Office, Munich

Post-Grant proceedings at the EPO

This talk will give an overview including an outline of the proceedings (opposition & appeal); who is the opposition division and the Board of Appeal is; how many examiners it takes per year to deal with the first instance oppositions and who the parties are in the first and second instances. It will also include statistics on how many technical boards deal with oppositions (how many board members altogether) and how many oppositions are filed per year.

(up to 9 minutes)

Dr. Hans-Rainer Jaenichen

Vossius & Partner, Munich

Opposition Proceedings in the EPO from a patent attorney’s perspective

This talk will cover the following aspects: burden of proof, what to file when (experiments, documents); experts; how to develop a claim request strategy; when to file the claim requests; how is the first and second instance going to deal with this; statistics of the results of first and second instance oppositions.

(up to 9 minutes)

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

Eiji Katayama

Abe, Ikubo & Katayama, Tokyo

Comparison of patent invalidity examination in the pendency of infringement suit among Japan, the U.S. and European Patent Court.

The Japanese “double track” system on patent invalidity examination seems unfavorable to the patentee. In the Japanese “double track”, the court and JPO examine the invalidity of the patent simultaneously. The alleged infringer may win

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the case if only they get a favorable decision either in the court or in JPO. The U.S. started Inter Parte Review and European Patent Court has a transfer option of invalidity assertion to the central court. But it seems neither of them proceed the simultaneous examination of the invalidity in the two jurisdictions.

(up to 9 minutes)

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

Panelist:

John B. Pegram

Fish & Richardson P.C., New York

Teresa Rea

Crowell & Moring LLP, Washington D.C.

Prof. John R. Thomas

Georgetown University Law Center, Washington D.C.

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

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

Break

11:40 AM – 11:55 AM

5B. Supplementary Protection Certificates

Friday 11:55 PM – 1:10 PM (75 minutes)

McNally Amphitheatre

Moderator:

Gonzalo Ulloa

Gómez-Acebo & Pombo, 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:

Brian Cordery

Bristows, London

SPCs continue to be a hot topic in Europe. 2013 witnessed several further referrals to the CJEU and several more rulings emerged. Whilst it is possible to pick out a line of logic in the decisions, much uncertainty remains and the recent rulings have

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arguably confused as much as they have clarified. This presentation will provide a condensed review of the recent case-law and look ahead to the future.

(up to 10 minutes)

Hon. Rian Kalden

Court of Appeal of The Hague, The Hague

(up to 10 minutes)

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

Jürgen Dressel

Novartis Pharma AG, Basel

Update on Second Medical Use

Legislators and courts in all developed countries have recognized the value and patentability of innovation stemming from clinical research. However only now and very slowly patent offices and courts are learning how to deal with clinical inventions in a way that is fair to all stakeholders. For further stimulation of such important innovation business certainty and therefore a globally harmonized approach to patentability requirements and enforcement will be of utmost importance.

(up to 10 minutes)

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

Panelists:

Laëtitia Bénard

Allen & Overy LLP, Paris

Dr. Joachim Feldges

Allen & Overy LLP, Munich

Christine Kanz

Reimann Osterrieth Köhler Haft, Düsseldorf

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

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

Lunch

Pope Auditorium, Lowenstein Building

1:10 PM – 2:20 PM

Speaker

Hon. Miguel Angel Margain

Director General, Mexican Institute of Industrial Property, Mexico City
(up to 15 minutes)

SESSION 6: COMPETITION LAW

Concurrent Session

Friday 10:20 AM – 1:10 PM

Room 302

6A. Competition Recent Developments

Friday 10:20 AM – 11:35 AM (75 minutes)

Room 302

Moderator:

Patricia A. Martone

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

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

Speakers:

Milan Kristof

Référéndaire, Court of Justice of the European Union, Luxembourg

Recent Developments in IP and Competition in the CJEU

(up to 8 minutes)

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

Rt. Hon. Prof. Sir Robin Jacob

Faculty of Laws, University College London, London

Competition Authorities Should Back-Off: Why they are threatening innovation
Competition authorities on both sides of the Atlantic mistakenly think that they need to intervene where patentees seek to enforce standard essential patents. They base their theories on mistaken views as to the legal effect of a FRAND commitment, mistaken views about access to justice. Their interventions are always in favour of

those who did not invent at the expense of the inventors. They threaten the incentives to produce 5G, 6G ... If they don't back off our phones will clog up.
(up to 8 minutes)

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

Robert J. Goldman

Ropes & Gray LLP, East Palo Alto

Patent Misuse Post Actavis

Since the 1980s, the doctrine of unenforceability for patent misuse has been substantially limited in the U.S., first by executive action during the Reagan Administration, then by legislation and finally by Federal Circuit decisions, holding in essence that, so long as the patent owner acts within the scope of statutory right to exclude, there can no patent misuse. However, in FTC v. Actavis, 133 S.Ct. 2223 (2013), the Supreme Court held that the propriety for antitrust purposes of a settlement of patent infringement litigation under the Hatch-Waxman Act must be tested under a “rule of reason” analysis, rejecting the argument that the scope of the patent grant provides per se immunity from antitrust scrutiny. Is there a place in U.S. patent practice for a renewed doctrine of patent misuse? If so, what types of conduct should that doctrine reach?

(up to 8 minutes)

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

Gabriel Cuonzo

Trevisan & Cuonzo, Milan

The Pfizer Antitrust Saga

The Italian Competition Authority issued on August 25, 2011 a decision against Pfizer finding that the latter abused its dominant position using patent enforcement and regulatory strategies. The decision was then reversed by the Administrative Court of Rome on September 3, 2012. On February 12, 2014 the Italian Supreme Administrative Court (“Consiglio di Stato”) reversed the first instance decision of the Administrative Court of Rome and reinstated the initial decision of the Italian Competition Authority setting some important principles regarding the conducts of dominant pharma. Vittorio Cerulli Irelli assisted in preparing this presentation.

(up to 8 minutes)

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

Panelists:

Nicholas Banasevic

Head of Unit – Antitrust – IT, Internet and Consumer Electronics, DG Competition, European Commission, Brussels

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Dr. Steven J. Lee

Kenyon & Kenyon LLP, New York

Prof. Daryl Lim

The John Marshall Law School, Chicago

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

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

Break

11:35 AM – 11:50 AM

6B. FRAND/Standard Essential Patents

Friday 11:50 AM – 1:10 PM (80 minutes)

Room 302

Moderator:

Prof. Daryl Lim

The John Marshall Law School, Chicago

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

Speakers:

Nicholas Banasevic

Head of Unit – Antitrust – IT, Internet and Consumer Electronics, DG Competition, European Commission, Brussels

An Antitrust Perspective on Injunctions Based on Standard-Essential Patents

The talk will first specify how the standardisation process creates a potential antitrust context. It will then describe how the European Commission's antitrust policy in this area has focused on preventing exploitation of monopoly power resulting from a technology being included in a standard, most recently through the Commission's interventions as regards injunctions based on standard-essential patents.

(up to 15 minutes)

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

Dina Kallay

Ericsson, Washington D.C.

FRAND Patent Licensing Challenges in a Global Antitrust World

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This talk will highlight the challenges of FRAND patent licensing, given their dynamics and the growing antitrust scrutiny of this area by competition agencies around the world.

(up to 10 minutes)

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

He Jing

AnJie Law Firm, Beijing

Comparing China court decision on Huawei v. InterDigital and Microsoft v. Motorola

A Chinese court ruled Interdigital violated China Anti-monopoly law in its licensing activities. Interdigital was held to pay RMB 20 million and ordered to license at the rate of 0.019%. How we reconcile or even find something common between the Chinese court and the US court? Was the Chinese court inspired by the US judges?

(up to 10 minutes)

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

Designated Audience Members:

David L. Cohen

Chief Legal and IP Officer, Vringo, New York

Dr. Tobias Hahn

Reimann Osterrieth Köhler Haft, Düsseldorf

Ari Laakkonen

Powell Gilbert LLP, London

David Por

Allen & Overy LLP, Paris

Wolrad Waldeck

Freshfields Bruckhaus Deringer LLP, Düsseldorf

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

Lunch

Pope Auditorium, Lowenstein Building

1:10 PM – 2:20 PM

Speaker

Hon. Miguel Angel Margain

Director General, Mexican Institute of Industrial Property, Mexico City
(up to 15 minutes)

SESSION 7:

TRADEMARK TRIAL AND APPEAL BOARD SESSION

Concurrent Session

Friday 10:30 AM – 1:10 PM

Moot Court Room (3rd floor)

A. ADDING VALUE TO THE OPPOSITION PRACTICE BEFORE THE U.S.

TRADEMARK TRIAL AND APPEAL BOARD

10:30 AM – 10:50 AM

Speaker:

Hon. Gerard F. Rogers

Chief Judge, Trademark Trial and Appeal Board, United States Patent and Trademark Office, Alexandria
(up to 20 minutes)

B. U.S. TRADEMARK TRIAL AND APPEAL BOARD HEARING:

PROMARK BRANDS V. GFA BRANDS, OPPOSITION NUMBER 91194974

10:50 AM – 11:50 AM (60 minutes)

Judicial Panel:

Hon. Gerard F. Rogers

Chief Judge, Trademark Trial and Appeal Board, United States Patent and Trademark Office, Alexandria

Hon. Anthony R. Masiello

Trademark Trial and Appeal Board, United States Patent and Trademark Office, Alexandria

Hon. Lorelei Ritchie

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Trademark Trial and Appeal Board, United States Patent and Trademark Office,
Alexandria

Counsel for Applicant:

David R. Cross

Quarles & Brady LLP, Milwaukee

Johanna M. Wilbert

Quarles & Brady LLP, Milwaukee

Susan G. Schellinger

Davis & Kuelthau, Milwaukee

Counsel for Opposer:

Jim Dimitrijevs

McDonald Hopkins LLC, Cleveland

Andy King

Mewburn Ellis LLP, London

Matthew J. Cavanagh

McDonald Hopkins LLC, Cleveland

Break:

11:50 AM – 12:05 PM

*C. OPPOSITION PRACTICE BEFORE THE U.S. TRADEMARK TRIAL AND
APPEAL BOARD: JUDGE'S PERSPECTIVE*

12:05 PM – 12:20 PM (15 minutes)

Moderator:

Jeffery A. Handelman

Brinks, Gilson & Lione, Chicago

(up to 5 minutes to introduce the panelists –

just name and affiliation, please see bios in print materials and online.)

Panelists:

Hon. Gerard F. Rogers

Chief Judge, Trademark Trial and Appeal Board, United States Patent and Trademark
Office, Alexandria

Hon. Anthony R. Masiello

Trademark Trial and Appeal Board, United States Patent and Trademark Office,
Alexandria

Hon. Lorelei Ritchie

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Trademark Trial and Appeal Board, United States Patent and Trademark Office,
Alexandria

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

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

*D. OPPOSITION PRACTICE BEFORE THE U.S. TRADEMARK TRIAL AND
APPEAL BOARD: A PRACTITIONER'S VIEW; AND A COMPARISON WITH
OHIM BOARDS OF APPEAL*

12:20 PM – 1:10 PM (50 minutes)

Moderator:

Jeffery A. Handelman

Brinks, Gilson & Lione, Chicago

(up to 5 minutes to introduce the panelists –

just name and affiliation, please see bios in print materials and online.)

Panelists:

Hon. Gordon Humphreys

Member of the Boards of Appeal, OHIM, Alicante

Prof. Marshall Leaffer

Maurer School of Law, Indiana University, Bloomington

Robert L. Raskopf

Quinn Emanuel Urquhart & Sullivan, LLP, New York

Prof. Dr. Peter Ruess

International School of Management, Frankfurt; Arnold Ruess, Düsseldorf

Prof. Jeremy Sheff

St. John's University School of Law, New York

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

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

Lunch

Pope Auditorium, Lowenstein Building

1:10 PM – 2:20 PM

Speaker

Hon. Miguel Angel Margain

Director General, Mexican Institute of Industrial Property, Mexico City
(up to 15 minutes)

Friday Afternoon, April 25

Three Concurrent Sessions:
Patents, Copyright & Trademarks

SESSION 8: PATENT LAW

Concurrent Session

Friday 2:30 PM – 6:45 PM

McNally Amphitheater

8A. Patent Reform: On Track or Throwing the Baby out With the Bathwater?

Friday 2:30 PM – 4:00 PM (90 minutes)

McNally Amphitheater

Moderator:

Prof. John R. Thomas

Georgetown University Law Center, Washington D.C.

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

Speakers:

Prof. John R. Thomas

Georgetown University Law Center, Washington D.C.

Patent Reform in the 113th Congress

Even as implementation of the Leahy-Smith America Invents Act proceeds apace, legislative reform efforts continued in the United States. Many of the proposed

statutory changes--including new rules for ownership attribution, pleadings, and discovery--are directed towards non-practicing entities. This talk reviews the proposals and assesses their potential impact and traction on the Hill.
(up to 10 minutes)

Patricia A. Martone

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

Patent troll legislation directed to changing the rules for patent litigation is misguided and dangerous. It can destroy the patent system for all patent holders.
It is impossible to write laws that cover only one class of plaintiffs who are enforcing a property right. And, it is impossible to define with any precision who qualifies as a troll. Therefore such legislation will negatively impact all suits, including those brought by the very plaintiffs the anti-troll lobby puts forth as the rightful beneficiaries of the patent system - companies practicing their patents and using those patents to protect their investment against competitors. What troll legislation is really trying to stop is investments in patents. The need for legislation regulating investment in patents should be assessed by objectively assessing the costs and benefits of the purchase and sale of patents, and deciding whether any restrictions or special tax levies should be placed on that activity.
(up to 10 minutes)

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

Prof. John M. Golden

The University of Texas School of Law, Austin

International perspective on fee shifting
Fee shifting has become a hot topic in patent law in the U.S. A discussion of experiences in other countries could be useful.
(up to 10 minutes)

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

Myles Jelf

Bristows, London

PAEs and the UPC
The new Unified Patent Court system was widely advertised by those responsible for its creation as a fast, cheap mechanism for small-to-medium sized patentees to litigate across the breadth of Europe. It is now occurring to many, however, that the archetypal small employee number patentee who is highly interested in getting rapid pan-European relief is quite likely to be a 'patent asserting entity'. Will PAEs, therefore, be at the vanguard of the UPC revolution? Will the reforms presently being discussed in the US patent system simply relocate PAE activity to Europe? Will the

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new system have the tools to 'control' such activity, and if not, should it be given them?

(up to 10 minutes)

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

Panelists:

Donald M. Cameron

Bereskin & Parr, Toronto

Charles Duan

Director, Patent Reform Project, Public Knowledge, Washington D.C.

David J. Kappos

Cravath, Swaine & Moore LLP, New York

Dr. Ute Kilger

Boehmert & Boehmert, Berlin

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

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

Break: 4:00 AM – 4:25 PM

8B. A Conversation with Judges About Patent Litigation

Friday 4:25 PM – 5:25 PM (60 minutes)

McNally Amphitheater

Moderator:

Prof. Hugh C. Hansen

Fordham University School of Law, New York

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

Panelists:

Hon. Mr. Justice Richard Arnold

Chancery Division, High Court, London

Hon. Annabelle Bennett

Federal Court of Australia, Sydney

Hon. Mr. Justice Colin Birss

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Chancery Division, High Court, London

Hon. Denny Chin

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

Rt. Hon. Lord Justice Christopher Floyd

Court of Appeal, London

Hon. Dr. Klaus Grabinski

Federal Supreme Court, Karlsruhe, Germany

Hon. Rian Kalden

Court of Appeal of The Hague, The Hague

Hon. Pauline Newman

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

Hon. Tamotsu Shoji

Tokyo District Court, Intellectual Property Division, Tokyo

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

8C. Patentable Subject Matter

Friday PM 5:35 PM – 6:45 PM (75 minutes)

McNally Amphitheater

Moderator:

Wendy Miller

Cooper & Dunham 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. Annabelle Bennett

Federal Court of Australia, Sydney

(up to 9-10 minutes)

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

Hon. William Chandler

Member, Board of Appeal, European Patent Office, Munich

Program Updated on April 22, 2014

Arguments about Technical Character before the EPO - Recurring Fallacies?
(up to 9-10 minutes)

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

David Jones

Assistant General Counsel, Microsoft Corporation, Redmond
Alice Corporation Pty. Ltd. v. CLS Bank International
(up to 9-10 minutes)

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

Panelists:

Sumiko Kobayashi

Abe, Ikubo & Katayama, Tokyo

Noah M. Leibowitz

Simpson Thacher & Bartlett LLP, New York

Jürgen Meier

Vossius & Partner, Munich

Hon. Pauline Newman

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

Bruce M. Wexler

Paul Hastings LLP, New York

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

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

CLOSING RECEPTION

Platt Atrium

6:30 PM – 8:30 PM

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Friday Afternoon, April 25

SESSION 9: COPYRIGHT LAW

Concurrent Session

Friday 2:30 PM – 6:45 PM

Room 311

9A. Copyright Revision Around the World

Friday 2:30 PM – 4:15 PM (105 minutes)

Room 311

Moderator:

Michael S. Shapiro

Senior Counsel for Copyright, Office of Policy and External Affairs, United States 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:

Hon. Maria Pallante

Register of Copyrights, U.S. Copyright Office, Washington D.C.

The View from the U.S. Copyright Office on music

The music landscape may be the most complex and fragmented of all areas of copyright law. How to reconcile the statutory framework with emerging business models, technology growth, consumer behavior, and the exclusive rights of authors is a major focus of the Copyright Office, as it supports and advises the U.S. Congress in its review of copyright law and practice in the twenty-first century. To the extent recalibration of the law is a necessary outcome in the music space, it will require consideration of the public performance right, statutory licenses, blanket licenses, micro-licensing, consent decrees, ratesetting, data standards, and the investment in, and development of, new products and delivery platforms. This talk will discuss these issues in the context of a public study the Copyright Office is conducting and ongoing copyright review in the United States.

(up to 15 minutes)

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

Shira Perlmutter

Chief Policy Officer and Director for International Affairs, United States Patent and Trademark Office, Alexandria

The USPTO Green Paper – remixes and mashups, first sale, and statutory damages in personal file-sharing

(up to 12 minutes)

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

David O. Carson

Executive Vice President, Global Legal Policy, IFPI, London

“Copyright Reform” outside the United States

In addition to the United States, several other governments are conducting or have recently conducted “copyright reviews” with a view toward updating or “reforming” their copyright laws. The European Union has commenced a review of the EU copyright rules, with the Commission now considering stakeholder responses to a lengthy questionnaire and a White Paper is expected in June. Within Europe, some countries are at various stages in national copyright review processes. The Australian government is considering recommendations from the Australian Law Reform Commission and the Hong Kong government is looking at a proposal to introduce an exception for parody, satire, caricature and pastiche. This talk will discuss some of the common themes as well as different approaches that have arisen in the course of these processes.

(up to 10 minutes)

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

Designated Audience Members:

Dr. Mihály Ficsor

President, Hungarian Copyright Council; International Legal Consultant, Budapest

Howard P. Knopf

Macera & Jarzyna LLP, Ottawa

Fiona Phillips

Australian Copyright Council, Sydney

Steven Tepp

President & Chief Executive Officer, Sentinel Worldwide, Washington D.C.

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

Break

4:15 PM – 4:40 PM

9B. Enforcement (cont.)

Program Updated on April 22, 2014

Friday 4:40 PM – 5:35 PM (55 minutes)
Room 311

Moderator:

David O. Carson

Executive Vice President, Global Legal Policy, IFPI, London
(up to 5 minutes to introduce the subject matter; intro of speakers –
just name and affiliation, please see bios in print materials and online.)

Speakers:

Prof. Jane C. Ginsburg

Columbia Law School, New York

Intermediary Liability and Website-Blocking in the EU

The CJEU's recent decision in Telekabel Wien (27 March 2014) marks the latest in an EU evolution from rejection of general site-filtering remedies (Scarlett Extended v SABAM, 2011; SABAM v Netlog, 2012) to the arguably more radical remedy of requiring the blockage of access to the site altogether. What accounts for the different outcomes, and how might site-blocking be applied in the future?
(up to 12 minutes)

Karen R. Thorland

Senior Vice President, Global Content Protection Counsel, Motion Picture
Association of America, Inc., Sherman Oaks

Notice and Takedown Around the Globe

This talk will discuss the ways different copyright regimes have designed and implemented “notice and takedown” systems to address the presence of infringing material online. Issues addressed will include: 1) what information must notices include? 2) what are the obligations of intermediaries upon receipt of notices? 3) what are the consequences of sending improper notices? and 4) how effective are the various systems in actually removing infringing material from the Internet – and keeping it down?
(up to 8 minutes)

Alexander Tsoutsanis

Institute for Information Law (IViR) University of Amsterdam, DLA Piper,
Amsterdam

Why copyright and linking can tango

This talk will explain the latest developments of how EU copyright law gets to grips with linking.
(up to 8 minutes)

Panelists:

Program Updated on April 22, 2014

Dr. Kristina Janušauskaitė

Senior Legal Counsel, IFPI European Office, Brussels

Prof. Dr. Jan Bernd Nordemann

Boehmert & Boehmert, Berlin

Dr. Silke von Lewinski

Max Planck Institute for Intellectual Property and Competition Law, Munich

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

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

9C. Aereo

Friday 5:40 PM – 6:45 PM (65 minutes)

McNally Amphitheater

Moderator:

Britton Payne

Bronson Lipsky 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:

Jacqueline C. Charlesworth

General Counsel and Associate Register of Copyrights, U.S. Copyright Office, Washington D.C.

ABC v. Aereo: Public Performance or a Long Cord?

Aereo retransmits over-the-air television broadcasts by capturing and copying them using thousands of small antennas, then streaming the individual copies over the internet to paying subscribers. Is Aereo making public performances or merely supplying consumer-friendly technology? This talk will review the parties' positions in the case now pending before the U.S. Supreme Court, as well as the views of the United States government.

(up to 8 minutes)

Joseph C. Gratz

Durie Tangri LLP, San Francisco

Preserving Consumer Rights As Home Equipment Moves to the Cloud

Aereo's technology provides a consumer the ability to use a remotely located individual antenna to access free-to-air broadcasts, make a personal copy of a program on a remote DVR and play back that copy only to him or herself. Since the dawn of television, consumers have had a fundamental right to watch over-the-air

broadcast television via an individual antenna, and they have had the right to record copies for their personal use since the Sony decision in 1984. These are rights that should be protected and preserved. The Copyright Act provides no justification to curtail those rights simply because the consumer is using modern, cloud-based equipment.

(up to 8 minutes)

Robert K. Kry

MoloLamken LLP, Washington D.C.

Cablevision and the Case for a Middle Ground on Public Performance

The Aereo case has evoked extreme positions on both sides: Aereo relies on technical details to avoid a license for a system that falls squarely within the intent of the 1976 Act, while the broadcasters advance expansive arguments that threaten numerous lawful cloud technologies. There is a strong case for a middle ground: that the Second Circuit's transmission-based interpretation in Cablevision was correct but that Aereo should lose even under that standard.

(up to 8 minutes)

Panelists:

Prof. Irene Calboli

Visiting Professor, National University of Singapore, Singapore; Marquette University Law School, Milwaukee

Prof. Jane C. Ginsburg

Columbia Law School, New York

Terry Hart

Director of Legal Policy, Copyright Alliance, Washington D.C.

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

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

CLOSING RECEPTION

Platt Atrium

6:30 PM – 8:30 PM

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SESSION 10: TRADEMARK LAW

Concurrent Session

Friday 2:30 PM – 6:45 PM

Room 302

10A: IP Industries' Contribution to Economic Performance and the Public's Perception Thereof

Friday 2:30 PM – 3:20 PM (50 minutes)

Room 302

Moderator:

Prof. Coenraad Visser

University of South Africa, Pretoria

(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:

Paul Maier

Director, The European Observatory on Infringement of Intellectual Property Rights (OHIM), Alicante

EU studies on economic importance of IP and consumer perception

(up to 12 minutes)

Dr. Shlomo Cohen

Dr. Shlomo Cohen & Co., Bnei Brak

The anti-IP Campaign

For the first time in 400 years IP is subject to serious and wide ranging challenges focusing on its basic premises and underlying principles. Is this a normal development typical of this age, or have IP owners, or some of them, earned it?

(up to 8 minutes)

Panelist:

Louise Pentland

Executive Vice President and Chief Legal Officer, Nokia, Dallas

Prof. Susan Scafidi

Fordham University School of Law, New York

Elizabeth Weiswasser

Weil, Gotshal & Manges LLP, New York

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

Program Updated on April 22, 2014

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

Break

3:20 PM – 3:45 PM

10B. Global Trademark Developments

Friday 3:45 PM – 5:30 PM (105 minutes)

Room 302

A. EU RECENT DEVELOPMENTS

Moderator:

James Nurton

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:

Hon. Gordon Humphreys

Member of the Boards of Appeal, OHIM, Alicante

Recent case law of the General Court on designs: The trade mark and copyright dimension

Given the possibility of overlapping rights, it is hardly surprising that cases involving conflicts between designs and other earlier IP rights are starting to come before the General Court. While free-riders have shown a keen interest in using or imitating earlier trade marks to obtain RCDs, the trade mark infringement tests developed in this area sit uncomfortably with designs. Recent case law suggests that showing unauthorized use of a copyrighted work in an RDC is possibly a more straight forward matter but invalidity applicants must be vigilant in bringing forward the necessary evidence of national copyright law and not expect OHIM to do their job for them.

(up to 8 minutes)

Prof. Dr. Peter Ruess

International School of Management, Frankfurt; Arnold Ruess, Düsseldorf

Recent CJEU case law

(up to 8 minutes)

Prof. Dev Gangjee

Faculty of Law, University of Oxford, Oxford

Dilution Developments in the EU

(up to 8 minutes)

Prof. Spyros Maniatis

Queen Mary, University of London, London

Dilution in Europe: Setting the Threshold for Blurring

The judgment of the CJEU in Environmental Manufacturing LLP v OHIM reconfirms that establishing blurring in Europe is not easy. There is a contrast to be made between blurring and free ride in Europe, between blurring cases in Europe and the USA, and finally regarding the nature of 'dilution' in Europe and the USA.

(up to 8 minutes)

Panelist:

Prof. Dr. Annette Kur

Max Planck Institute for Intellectual Property and Competition Law, Munich

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

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

B. GLOBAL LEGISLATIVE DEVELOPMENTS

Moderator:

James Nurton

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

European trademark law reform – back to status quo?

With the elections for the European Parliament being imminent, EU trademark law reform is stuck half-way in the legislative process. However, it has already become apparent that some of the Commission's proposals are not likely to survive, such as multilingual examination and restriction of double identity protection to the origin function. On the other hand, trademark owners could claim a much-celebrated victory over the European Parliament's Legal Committee's efforts to liberalize the Commission proposal on transit.

(up to 8 minutes)

Prof. Guan H. Tang

Program Updated on April 22, 2014

Shanghai University of Finance and Economics; Visiting Professor, Queen Mary, University of London, London

The New Chinese Trademark Law: Subject Matter and the Public Interest

The amendments to Chinese trademark law will come into effect on 1 May 2014. They are considered to be a milestone instrument for international business seeking to protect their trademarks in China since the first promulgation of the law in 1982.

From a public interest perspective, it is significant that sound marks were added to the scope of registrable marks. And the exclusion of smell marks as subject matter of trademarks reveals the distinctive Chinese approach to trademark protection.

(up to 8 minutes)

Panelists:

Prof. Dev Gangjee

Faculty of Law, University of Oxford, Oxford

Hon. Gordon Humphreys

Member of the Boards of Appeal, OHIM, Alicante

Prof. Spyros Maniatis

Queen Mary, University of London, London

Prof. Dr. Peter Ruess

International School of Management, Frankfurt; Arnold Ruess, Düsseldorf

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

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

10C. ICANN Update and U.S. Recent Developments

Friday 5:35 PM – 6:45 PM (70 minutes)

Room 302

A. ICANN UPDATE

Moderator:

Anderson J. Duff

Wolf, Greenfield & Sacks, P.C., Boston

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

Speaker:

Mary W. S. Wong

Senior Policy Director, ICANN, Los Angeles

ICANN Update: What Next for Trademark Owners?

ICANN has announced plans for its internationalization, and just last month the US Government made public its intention to hand over its stewardship of the IANA function (currently performed by ICANN) to the global multi-stakeholder community. How will these developments affect trademark owners in their attempts to combat infringement and enforce their rights through the domain name system? What are the various projects and initiatives ongoing at ICANN that implicate these needs? This session will include a brief update on these developments, to set the scene for a discussion on how trademark owners and their counsel can ensure their ongoing participation as an important stakeholder group at ICANN.

(up to 8 minutes)

Panelists:

Gareth Dickson

Edwards Wildman Palmer UK LLP, London

Michael Schlesinger

Mitchell, Silberberg & Knupp, Washington D.C.

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

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

B. U.S. RECENT DEVELOPMENTS

Moderator:

Anderson J. Duff

Wolf, Greenfield & Sacks, P.C., Boston

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

Speakers:

Prof. Marshall Leaffer

Maurer School of Law, Indiana University, Bloomington

Cases of significance in the last year

The first is Kraft Foods Food Grp. Brands LLC v. Cracker Barrel Old Country Store, Inc., 735 F.3d 735 (7th Cir. 2013). The main interest in the case is Judge Posner's critique of Kraft's consumer survey that was introduced to demonstrate customer confusion. The second case is Starbucks Corp. v. Wolf Brother's Coffee, Inc., 736 F.3d 198 (2d Cir. 2013). After twelve years of litigation, this is the third and probably the last time that an appeals court will rule on whether Starbucks dilutes Starbucks. Similar to Judge Posner's skeptical view of survey evidence, the Second Circuit gave little credence to Starbucks's telephone survey that purported to prove consumers associate the two marks thus creating actionable dilution.

(up to 8 minutes)

Prof. Barton Beebe

New York University School of Law, New York

Trademarks in Virtual Reality Environments

Brown v. Electronic Arts, 724 F.3d 1235 (9th Cir. 2013), rather significantly improved the ability of third parties to make unauthorized uses of trademarks in virtual reality environments. The case significantly expanded the scope of the Rogers v. Grimaldi test in U.S. trademark law.

(up to 8 minutes)

Prof. Jeremy Sheff

St. John's University School of Law, New York

Dilution at the Patent and Trademark Office

This talk examines the impact of anti-dilution rights on registration practice before the USPTO. Looking at TTAB opinions and historical applications data, the finding is that the dilution doctrine has had almost no effect on application rates or outcomes, despite being frequently asserted in inter partes proceedings. The only effect suggested by the data is a slight decrease (on the order of 5-30 applications per year) in the number of successful registrations of extremely famous marks to parties other than their owners. Even if this effect could be causally attributed to dilution doctrine, it would not justify the burden and expense of pointlessly litigating (usually meritless) dilution claims in inter partes proceedings.

(up to 8 minutes)

Panelists:

Eric A. Prager

K&L Gates LLP, New York

Robert L. Raskopf

Quinn Emanuel Urquhart & Sullivan, LLP, New York

Mary W. S. Wong

Senior Policy Director, ICANN, Los Angeles

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

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

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