



Intellectual Property Law Section

State Bar of Texas

Special Issue - 2013 SBOT Annual Meeting CLE Report

SBOT Annual Meeting – IP Law Section Activities

The State Bar of Texas Annual Meeting was held on Thursday and Friday June 20-21, 2013, at the Hilton Anatole, in Dallas, Texas. In keeping with past tradition, the IP Law Section offered its members a full day of CLE as well as several social opportunities at this event.

Thursday Reception

The IP Law Section began its SBOT Annual Meeting activities with the traditional welcome reception. The reception provided a pleasant and relaxed atmosphere to chat with friends, renew acquaintances and meet new people.

Friday Morning CLE Session

Trademark Update

Ms. Molly Buck Richard, of the Richard Law Group in Dallas, Texas, opened the State Bar of Texas IP Law Section Annual Meeting CLE with an update on trademark law. Ms. Richard began her presentation by summarizing trademark cases currently pending before the Trademark Trial and Appeal Board. The pending cases included a variety of registration denials, from the commonly encountered refusals, such as those based on a likelihood of confusion, to less common refusals, such as those based on procedural issues (e.g., lack of standing).



Molly Buck Richard



Thursday's reception was well attended.

Ms. Richard also covered three significant federal court trademark rulings from 2012. In the first case, *Louis Vuitton Mallatier S.A. v. Warner Brothers Entertainment, Inc.*, 868 F. Supp. 2d 172 (S.D.N.Y. 2012), the court dismissed the complaint finding that the First Amendment outweighed any minimal likelihood of confusion. In the second case, *Maker's Mark Distillery, Inc. v. Diageo North America, Inc.*, 102 U.S.P.Q.2d 1693 (6th Cir. 2012), the Sixth Circuit affirmed the district court's finding that the defendant had infringed upon Maker's Mark's red dripping wax seal. In the last, and most famous case of the year, *Christian Louboutin S.A. et al v. Yves Saint Laurent America Holding, Inc. et al*, 103 U.S.P.Q.2d 1937 (2nd Cir. 2012), the Southern District of New York denied the plaintiff's request for a preliminary injunction. The court held that Christian Louboutin's trademark covering its red lacquered outsole on a woman's shoe was likely unenforceable because in the fashion industry, a single color can never serve as a trademark. On appeal, the Second Circuit noted that the Supreme Court's decision in *Qualitex*

effectively held that color could sometimes be protected as a trademark, as it acts as an identifying source and not as a significant function. Focusing on the *per se* rule of functionality for color marks in the fashion industry, the Second Circuit held that the district court erred in finding that a single color can never function as a trademark in the fashion industry. The Second Circuit went further and held that Louboutin's red lacquered outsole, as applied to a shoe of a different color, had come to acquire a secondary meaning. Given that the Yves Saint Laurent red sole was on a monochromatic red shoe, the Second Circuit declined to address whether there was a likelihood of confusion or whether the modified mark was functional.

Lastly, Ms. Richard addressed a recent amendment to the federal trademark laws. On October 5, 2012, President Obama signed legislation clarifying whether holding a federal trademark registration is a complete bar to bringing an anti-dilution action or cancellation proceeding before the Trademark Trial and Appeal Board. Prior to this legislation, it was unclear whether a federal registration was a complete bar to an action brought under either federal or state law. The new amendment provides that a federal registration is a complete bar to a case brought by a trademark owner under state law only.

Recent Trend Toward Using the Computer Fraud and Abuse Act to Punish Former Employees

Mr. Joshua Bennett and Mr. Sean Hamada, both with Carter Stafford Arnetta Hamada & Mockler, PLLC, gave a presentation on the effectiveness of using the Computer Fraud and Abuse Act (CFAA) to sue former employees for trade secret theft.



Joshua Bennett

The presentation began with an overview of the nature of trade secret theft. Ninety-percent of all trade secret theft cases filed in 2008 were against employees and insiders (e.g. contractors, vendors). In 2010, intellectual property (IP) theft losses were greater than physical theft losses. The presentation then moved on to briefly discuss the inadequacy of non-compete and non-disclosure agreements, which are disfavored in most jurisdictions. Further, trade secret litigation is the second most costly form of litigation.



Sean Hamada

The CFAA was first enacted in 1984 as a very narrow law protecting "federal interest" computers, but continued to evolve. In 1994, the CFAA was amended to include a private right of action. An important milestone occurred in 1996 when the CFAA was amended, and the term "federal interest" computer was replaced with the much broader "protected" computer, which included just about any computer connected to the Internet.

After a handful of early victories using the CFAA to pursue trade secret theft cases, it became viewed as a "silver bullet." But, by 2005, this CFAA silver bullet was beginning to tarnish. By 2009, half the CFAA cases were decided in favor of the employer trade secret owner, and half were decided in favor of the defendant employee. Now, the CFAA cases are more likely to be decided in favor of the employee.

The presentation ended with suggested strategies for both employers and employees. Employers should plead their "loss" as narrowly as possible, ensure the "loss" was incurred "by reason of" the employee's violation of the CFAA, create access-based restrictions to satisfy the formalistic approach to authorization, and consider state-law equivalents of the CFAA.

Employees sued under the CFAA should challenge the authorization (access to the trade secret information) and loss allegations at the pleading stage, file motions to dismiss, file summary judgment motions, and consider venue transfer motions when information is stored in multiple jurisdictions.

What is Left of Injunctions in Patent Cases?

Mr. David Healey of the Houston office of Fish and Richardson presented a discussion on the continuing fallout of *eBay Inc. v. MercExchange L.L.C.*, 547 U.S. 388 (2006). In *eBay*, the Court found that there was no



David Healey

presumption of irreparable harm to patent owners for the continuing infringement of patented claims. This effectively elevated the standard of obtaining a permanent injunction by forcing patent owners to provide evidence and proof to show that irreparable harm is present.

Mr. Healey noted that direct competitors are typically still awarded injunctions as evidence tends to be readily available to show harm. However, there may be some room for expansion in the types of evidence that may show irreparable harm for non-competitors. For example, in a recent case a plaintiff's sales were not harmed by infringement, however, the infringing article had the potential to damage the patent owner's reputation and the Federal Circuit noted that such actions should be considered.

Mr. Healey also discussed changes in preliminary injunctions, which considers the vulnerability of a patent to invalidity as opposed to showing that a likelihood of success is present, e.g. the "vulnerability rule."

Finally, Mr. Healey commented that ITC proceedings take into account other considerations, which effectively balance harm based on the circumstances of the case and how there is some uncertainty as to how the Federal Circuit will handle the ITC's current analysis.

Social Media Accounts and Ownership Rights – What's Yours is Yours?

Mr. David Bell of the Dallas office of Haynes and Boone presented a discussion on social media and ownership issues arising in the context of an employment dispute. For example, in one case a company executive



David Bell

established a social media account to promote herself and the company that she established. After changing positions within the company, the company effectively took over this social media account. The executive sued on various causes of action, such as, conversion, tortious interference, and the like. While not necessarily successful because of the specific facts of this case, the case shows that there are many different legal issues that may be involved in these types of situations.

In another case, an employee established a large following on a social media account that included the company's name. Upon leaving the company, the employee kept the account and his followers, but removed the company's name from the user name. This raised ownership and trade secret issues, among other things. Similar cases have also raised privacy, confidentiality, misappropriation, contract, trademark and false endorsement issues.

Mr. Bell noted that there are a myriad of legal issues that may arise when dealing with an employee having a social media account. Many of these claims have

currently not been litigated. In the context of a work-related account, it appears that the company may own the user account names for a social media account, whereas the employee may own certain content (access, follower list, etc.), unless otherwise agreed to by the employee and employer. These agreements should delineate the appropriate actions and ownership lines with employees.

Mr. Bell also provided an overview regarding issues arising with the use of third party logos, names, and the like, by individuals and companies on a social media website. Such use may be subject to the terms of service of the particular provider and ownership of this content and/or account names may be uncertain.

Trademark Counterfeiting Enforcement Issues

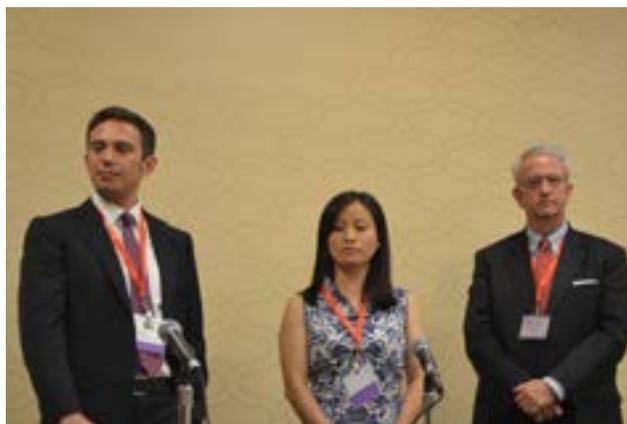
Next on the agenda was a panel discussion that included Mr. Charles M. Hosch from Strasburger & Price, LLP, Ms. Sophia Hou from Rouse IP in Guangzhou City, China, and Mr. Joshua Mandell, from Rouse IP, Beijing, China. The panel discussed the challenges currently faced by brand owners marketing goods in China, particularly given the increased sophistication of counterfeiters in China.

Mr. Hosch opened the panel discussion with speaker introductions. Mr. Mandell spoke next, followed by Ms. Hou. The panel concluded with a question and answer session.

Mr. Mandell's and Ms. Hou's presentations both touched upon China's dedication to creating a strong foundation of intellectual property law in the last few years. They explained, however, that despite China's increased focus on intellectual property law, counterfeiters have made great strides in producing counterfeit goods of increasingly similar quality. As such, brand owners who

sell goods in China continue to face increased enforcement issues.

While both Mr. Mandell and Ms. Hou agreed that counterfeiting still remains rampant in China, they approved of the recent legislation passed by the Chinese government to aid brand owners in enforcing their trademark rights by allowing them to seize counterfeit goods within the Chinese borders. Ms. Hou even shared her own experiences of being present during raids where counterfeit goods and the equipment to manufacture such goods were seized.



Joshua Mandell, Sophia Hou and Charles Hosch.

Mr. Mandell and Ms. Hou also discussed specific methods brand owners may use to navigate the common difficulties that foreign brand owners often face in China. One difficulty faced by brand owners is unprepared counsel as most counsel lack experience in trademark infringement actions. The panel members noted that providing your local counsel with opinions published from higher courts in China may avoid the issue of unprepared counsel.

Other difficulties commonly faced were corruption at local government levels. The panel members stressed that brand owners should keep in close contact with local authorities and the court itself in order to achieve successful prosecution. Brand owners should also lobby for visits to the locales where suspected infringement is



Hope Shimabuku presents one of the scholarship awards to Alexandria Serra.



Eugeina (Genie) Hansen and Shannon Bates at the 2011 SBOT Annual Meeting.



After introducing the Tom Arnold Lifetime Achievement award, Paul Morico (right) presents a commemoration plaque to Tom's son, Gordon Arnold.



Michelle LeCointe and Guy Birkenmeier present the inventor of the year award to Victor Johnston, Ph.D.



Paul Morico, right, presents the Tom Arnold Lifetime Achievement Award to Scott Hemingway on behalf of Genie Hansen.



Neil Chowdhury accepts the Chair Award from Scott Breedlove.



Paul Morico accepts the gavel from Scott Breedlove, becoming the new Chair of the IP Law Section.

occurring and keep in close contact with the reviewing authorities or embassies in those areas. In general, all brand owners should encourage aggressive prosecution and final judgments if they hope to change the general counterfeiting enforcement mindset and landscape in China.

Section Luncheon and Business Meeting

Section Chair Scott Breedlove opened the Section's Luncheon and Business Meeting by welcoming the attendees.

The meeting progressed to the presentation of several awards.

Ms. Hope Shimabuku presented the 2012 Women and Minority Scholarship award to Alexandria Serra, from the SMU Dedman School of Law. A scholarship was also awarded to Ms. Qiong Wang, from the University of Texas Law School, who was unable to attend.

Paul Morico introduced the Tom Arnold Lifetime Achievement Award. A plaque commemorating the award was presented to Tom's son, Gordon Arnold. Then, the first Tom Arnold Lifetime Achievement Award was presented to Eugenia "Genie" Hansen, who had passed away on October 29, 2012. Scott Hemingway, an attorney with whom

Genie Hansen had worked with for many years accepted the award on her behalf.

The Texas Inventor of the Year Award was presented to Victor Johnston, Ph.D., with Celanese Corp., for his inventions relating to the production of non-food source ethanol. Several of Dr. Johnston's inventions relate to the conversion of natural gas to ethanol. Natural gas sourced ethanol uses less water than other ethanol processes. Some of the processes he has developed actually produce water as a byproduct of the ethanol production.

Scott Breedlove presented the Chair Award to Indranil "Neil" Chowdhury for his many years of service to the Section, and for "never saying 'no'" when asked to do something for the Section.

Section Business

After unanimous affirmation by the Section members present, the proposed slate of officers was approved, and the Section Chair gavel was passed from Scott Breedlove to new Chair Paul Morico.

Afternoon CLE Session

Smartphone Wars: The Past, Present, and Future of Smartphone Litigation

Mr. Keith Davis of the Dallas office of Jones Day presented a discussion regarding the active smartphone litigation cases and the issues that arise in these cases. These cases arise in the context of a highly competitive



Keith Davis

environment and are an extension of the relevant companies efforts to obtain/retain market share. These cases have become very complex in light of the multitude of patents and different technologies.

Mr. Davis noted that a few issues in the

present litigation have become important from a strategic perspective. One example is the preliminary injunction and the fact that it is difficult to show that the infringement of particular aspects of IP (*i.e.*, the presence of a specific feature on a smartphone) is the cause of a loss of market share. Without such a showing of nexus, preliminary injunctions are difficult to obtain.

Standards essential patents, which read on a particular standard, are also raising issues with respect to damages and injunctions. For damages, because standards organizations require fair royalties to all, damages may be reduced to reflect a fair royalty rate (referred to as a FRAND rate). With respect to injunctions, because it is given that licenses are required to be granted, injunctions are not generally granted because disputes are generally centered around what the FRAND rate should be. Courts have utilized the *Georgia Pacific* factors to determine such rates. However, injunctions relating to infringement of standard essential patents may be available via ITC actions based on current pending cases.

Mr. Davis discussed how a broad spectrum of rights have been asserted (e.g. utility, design, and trade dress) and that some of the less common rights, such as trade dress, have been valuable. Discovery has also been a large part of these cases and companies with greater document retention have generally benefitted from having the additional documentation.

Mr. Davis concluded by commenting that the smartphone wars will continue due to the high levels of competition in the industry. And while the market share of these competitors are generally due to the products themselves, IP litigation will continue to be important in maintaining market share.

Recognizing Trademark and Copyright Issues in Your Day-to-Day Work

Mr. William Raman of Fleckman & McGlynn led a panel discussion on tips and techniques for identifying potential trademark and copyright issues. In addition to Mr. Raman, the panel consisted of Ms. Valerie Verret, trademark counsel for ExxonMobil, and Ms. Jeannette Zimmer, trademark counsel at PepsiCo. As in-house counsel, Ms. Verret and Ms. Zimmer focused on their interaction with management and marketing departments concerning various trademark, copyright, and social media issues.



Jeanette Zimmer, Valerie Verret and William Raman.

Ms. Verret explained her company's general trademark search strategy. When presented with a potential mark that her company would like to use, she first conducts a knockout search of the Trademark Office database, state registrations, and a limited internet search looking for obvious red flags to ExxonMobil's use of the proposed marks. Assuming she finds no obvious issues, she next conducts a more comprehensive search that includes trade journals and an extensive common law search. Third, with an international company like ExxonMobil, she must understand and review the potential foreign implications of use and get foreign trademark counsel involved if necessary.

Ms. Zimmer stressed that simply because a potential mark may be generic or descriptive does not obviate the need for a search. In her words, "search early, search often." She also elaborated on when it may be important

to conduct a search for a mark that is already in use. Specifically, she used an example of recent modernizing of Doritos® packaging that featured slight changes in the design elements on the bag. In that case, even the change in the way the chips were lined up on the exterior the bag justified a search.

The panel also touched on strategies for dealing with unfavorable search results. The panel suggested further investigating any registrations discovered during a search to determine whether the mark in question is still used. If you confirm a mark is still used, determine the nature of the use, which may mean your proposed mark can coexist with the senior mark. In some cases, consider requesting consent to use or a license, but the panel cautioned that once you go down this path, be prepared to adopt a different mark if the senior user declines, as such a request could later be interpreted as an admission of likelihood of confusion.

The panel also discussed potential copyright issues in their experience, with the general advice to assume that all content is protected and work backwards—especially with internet content. When contracting with third parties to develop content, make sure you have an obligation to assign in a written agreement. The panel also advised designating a DMCA agent as a way of minimizing liability for third party content that might inadvertently appear on your website.

The panelists integrated commercials from their companies into the discussion as examples of how to avoid potential trademark, trade dress, and copyright issues. Ms. Verret showed a 1972 commercial designed to inform the public of the company's name change to Exxon. Ms. Zimmer showed some entries to PepsiCo's popular "Crash the Superbowl" campaign, in which her customers can submit their advertisements for Doritos® chips.

The panel closed with a discussion on the difficulties presented by social media and provided an overview of what they considered to be best practices for a website and social media presence. The panel cautioned about employees inadvertently disclosing confidential corporate information online, and urged that there should be a corporate social media policy to address these issues within an organization.

Trademark Appeals and Disputes: A Primer of Ex Parte Appeals, Inter Partes Proceedings, and Federal Court Litigation

Ms. Lisa Meyerhoff of Baker & McKenzie gave a presentation on the available options after a final refusal to register, *inter partes* proceedings, and litigation in trademark disputes.



Lisa Meyerhoff

With respect to action after a final refusal, Ms. Meyerhoff explained the various options, including a request for reconsideration that includes new arguments or additional evidence. She stressed the importance of getting all of the evidence you intend or might want to use before the examining attorney during prosecution, as the appellate process before the TTAB will not permit introduction of evidence at that time.

She also stressed that a request for reconsideration will not toll the time for filing a notice of appeal. An applicant may want to file a request for reconsideration with a notice of appeal and ask the Board to suspend the appeal until the examining attorney has reconsidered the arguments. Usually the Board will do so, which means the applicant will not have to file an appeal brief until after the examining attorney's response is received.

If the applicant elects to appeal, the

applicant may also want to request an oral hearing, even if one seems not to be necessary. An applicant is entitled to an oral hearing, and an examining attorney will sometimes be more inclined to look for common ground with the applicant to allow the application in order to avoid the necessity of an oral hearing or an appeal brief.

Regardless, because the TTAB has a 75% affirmance rate, an appeal may not always be the best option. An applicant may want to consider reapplying for the mark in stylized form or with additional design elements to provide more distinctions over a cited registration.

Ms. Meyerhoff suggested that trademark attorneys tend not to try to negotiate with the examining attorney as much as patent attorneys may do with a patent examiner. She suggested that applicants be proactive in looking for opportunities to resolve issues through negotiations with the examining attorney, and provide any additional evidence to the examining attorney as soon as it becomes available. In some cases, the examining attorney may even allow otherwise inadmissible evidence (*i.e.*, evidence not timely filed) if it has probative value that will resolve the case without the need for a response brief and an oral hearing.

Next, Ms. Meyerhoff discussed *inter partes* proceedings. She cautioned about the nuances of the rules in such proceedings and the importance of introducing all evidence you intend to use to prove your case during the testimony period. If, however, a party needs a second bite at the apple, request an oral hearing. Regardless, these proceedings can take a long time, and from an applicant's (or registrant's) perspective, one might spend a lot of time resisting the proceeding, which is time the applicant (or registrant) could be using and

to build up goodwill in another mark.

She also noted that, in her experience, at least 50% of the time after a cancellation or opposition proceeding, the applicant (or former registrant) continues to use the mark. Thus, from the perspective of an opposer or petitioner, one should monitor the applicants or former registrant's use of the mark in question even after the proceeding concludes.

Finally, Ms. Meyerhoff discussed infringement and available remedies. She noted a tendency to automatically file an action in federal court to litigate federal registrations without thinking about the possible benefits of litigating the case in state court, which has concurrent jurisdiction. She cautioned that a party should consider the possible benefits of a state court proceeding, such as the favorability of the judges or juries in the area.

Outside to In-House Counsel – Making the Switch and Lessons Learned

Ms. Kirby Drake, with Klemchuk Kubasta LLP, moderated a panel discussion by Mr. Jody Bishop of GENBAND, Ms. Monica Brown of Lennonx International, Inc., and Mr. Quintin Cassady of Galderma



Kirby Drake Laboratories, L.P. The panel discussed their lessons learned in making the transition from outside counsel to in-house counsel. Each panel member had their unique perspective, and the means by which they found their in-house counsel position was different. However, some common themes emerged during the discussion.

Each panel member recognized that it is important to learn the business. This includes learning the organization and structure of the business, the different

jurisdictions in which the business operates, learning industry and company lingo, learning the legal landscape in which the business operates, and learning what IP the company owns.

Each panel member emphasized the importance of in-house counsel's responsibility for legal budgets and results. Management needs budget forecasts for routine matters, and advanced warning when there may be litigation or when outside counsel is hired. Even when outside counsel is hired, the in-house counsel is still responsible for the results - responsibility cannot be pushed off to outside counsel.



Monica Brown, Jody Bishop and Quintin Cassady.

The panel members discussed the various “clients” within the corporation. Besides executive management, other “clients” can include various business units, and different business functions. And, as Mr. Bishop observed, sometime there can be conflicts between these clients.

At some point in the discussion, each panel member debunked the widely held belief that in-house counsel is less work than that of attorneys working in a traditional law firm environment. Ms. Brown stated that in-house counsel still work long hours. Mr. Bishop observed that expecting to work less hours or go into semi-retirement is not a reason to move to in-house counsel. Mr. Cassady noted, with lament, that becoming in-house counsel was detrimental to his golf game because he had to meet and work with with so many different people in the company.

Ms. Brown offered some advice to in-house

counsel. She recommends networking with other in-house counsel to use them as “sounding boards” and to get advice. This will help the in-house counsel to be better lawyers.

New USPTO Rules of Professional Conduct

Mr. Greg Hasley of Hasley Scarano, L.L.P., provided a presentation on the new U.S. Patent & Trademark Office Rules of Professional Conduct and how the new rules affect Texas patent attorneys.



Greg Hasley

The presentation began with an overview of the new USPTO Rules, which became effective on May 3, 2013, and which apply to all attorneys or agents that appear before the USPTO. The new rules are based upon the ABA’s Model Rules for Professional Conduct but the presentation warned that attorneys should be aware of the differences between the USPTO Rules, the Model Rules, and the Texas Disciplinary Rules for Professional Conduct.

Mr. Hasley pointed out that there is a correlation between the rule numbering that helps compare the differences. While all the USPTO Rules are of the format 11.xxx, the portion after the decimal point correlates with the other rules. For example, USPTO Rule 11.102, ABA Model Rule 1.2, and Texas Rule 1.02 are comparable rules.

Mr. Hasley then reviewed relevant case law that shows that while in some situations, the USPTO Rules may trump Texas Rules for Texas patent attorneys, the law does not provide a clear line of demarcation between whether Texas patent attorneys must follow the USPTO Rules versus the Texas Rules, and vice versa. The presenter advised reviewing both sets of rules and proceeding with a course of conduct that would satisfy

either rule if possible.

Finally, the presentation then reviewed specific areas of difference between the new USPTO Rules and the Texas Rules, including: (1) inclusion of patent agents in the USPTO Rules; (2) differences in confidentiality obligations; (3) differences in the transactions with clients; (4) the inclusion of a USPTO rule for dealing with prospective clients; and (5) significant differences in the advertising rules for lawyers.

Opposition Practice at the European Patent Office

Dr. Andrew Parker presented on EPO opposition proceedings. Dr. Parker studied experimental physics at the University of York in the United Kingdom and earned his doctorate degree in Nanoscale Physics. He is  Andrew Parker a partner with Meissner Bolte in their Munich office, and the head of its Native English Speaking Team.

After a brief history of the EPO, Dr. Parker explained the basics of opposition practice before the EPO. An EPO opposition is a centralized proceeding to the grant of a European patent. Importantly, however, a “European patent” is not a patent that can be directly enforced or invalidated, but rather represents an opportunity to extend and validate the patent in each of the thirty-eight countries that are EPO member states. Dr. Parker emphasized that member states may treat the same patent quite differently, such as where one member state finds the patent valid and infringed with an award of significant damages, whereas a second member state may find the same patent invalid.

Unlike US practice, anyone can file an opposition proceeding—no legal interest in

the patent is required. In fact, a “straw man” will commonly file an opposition, perhaps because the true opposer might also be a customer of the patentee and does not want to damage that relationship.

Next, Dr. Parker discussed some of the substantive issues involved in an EPO opposition proceeding. There are only three bases for opposition: (1) unpatentable subject matter (*i.e.*, the subject matter is not novel or lacks inventiveness), (2) insufficient disclosure such that the invention could not be practiced by a person of ordinary skill in the art, or (3) the subject matter of the patent extends beyond the content of the application as filed. Other bases for opposition, however, may be considered during subsequent national proceedings, such as the clarity of a claim.

Dr. Parker presented the EPO opposition process as a highly cost-effective option, which requires only a one-time filing fee of €745 for the entire proceeding. Any additional cost is the cost of one’s representatives. For a very detailed case with a large amount of correspondence filed by the parties, €15,000 is a good estimate. A more typical case could be estimated for €10,000. Moreover, there is no risk of damages being awarded against an opposer, which differs significantly from a court action in a national patent office attacking the validity of a validated portion of a granted European patent.

Finally, Dr. Parker provided a comparison of the EPO opposition proceeding with the new US Post Grant Review process. Post Grant Review and the EPO opposition are structurally similar, but there are significant differences. Perhaps most importantly, EPO decisions have no impact on decisions of the national offices of its member states. An unsuccessful Post Grant Review, however, may result in an inability to later challenge the validity of a patent in court.

A special thanks to our contributing writers who shared their summaries of the CLE presentations for this edition of the SBOT IP Law Section Annual Meeting CLE Report.



Neil Chowdhury

Indranil "Neil" Chowdhury is a principal in the Houston office of Chowdhury & Georgakis, P.C. Mr. Chowdhury has a comprehensive intellectual property practice that includes patent preparation and prosecution, counseling, licensing, and litigation in high-technology matters.



Greg Hasley

Greg Hasley is an attorney with Hasley Scarano, L.L.P. Mr. Hasley has a general intellectual property practice that includes prosecution, litigation, and transactional matters.



Peggy Keene

Pei-Chih "Peggy" H. Keene, Associate, works with clients in all aspects of trademark law, including domestic and foreign prosecution, opposition and cancellation proceedings, and general enforcement. Ms. Keene prepares various intellectual property agreements, including licensing and assignments, mergers and acquisitions transactions, domain name disputes, Internet website policies, and copyrights. She also provides litigation support for intellectual property trials and assists with representing clients in trademark disputes and proceedings before the Trademark Trial and Appeal Board. She earned a J.D. from Southern Methodist University, Dedman School of Law, and a Bachelor of Arts Degree from Duke University.



Michael Paul

Michael Paul is an attorney with Gunn, Lee & Cave, P.C., a San Antonio boutique intellectual property firm. He holds a J.D. from St. Mary's, as well as a B.S. in Electrical Engineering and an MBA from Texas A&M.



Nathan Rees

committee of the

Nathan Rees is an attorney with Fulbright & Jaworski. Mr. Rees generally handles patent prosecution matters in the electrical and mechanical arts and also specializes in handling reexamination and other post-grant proceeding matters. Mr. Rees is also the current chair of the Patent Legislation/USPTO practice committee of the SBOT IP section.



Mike Sebastian

Michael Sebastian is a Principal Software Engineer for Link Simulation & Training where he specializes in rehosting avionics software for flight simulators. He is a graduate of Texas Wesleyan School of Law, and an active member of the IP Law Section's Newsletter Committee.

The above reports express the views of the authors and not that of the State Bar of Texas IP Law Section.



Mark Your Calendar

The 9th Annual Patent Litigation Course will be held July 25-26, 2013, at the Hyatt Regency Tamaya Resort and Spa outside Albuquerque, New Mexico. For information, go to tinyurl.com/AdvPatent13.

The 51st Annual IP Law Conference will be held November 11-12, 2013, at The Center for American and International Law in Plano, Texas. Program details and registration information is available at www.cailaw.org.

Austin Intellectual Property Law Association. August CLE lunch will be held at the Westwood Country Club in Austin on August 20, 2013 beginning at 11:30 a.m. For more information, go to www.austin-ipla.org.

State Bar of Texas 2014 Annual Meeting will be held on June 26-27, 2014 at the

Hilton Austin, in Austin, Texas. On Friday, June 27, our section will once again offer a full day of high-quality CLE. Block out June 26 and 27 now, and make plans to attend the Annual Meeting in Austin.

TexasBarCLE

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