



The Great Debate: The Changing Face of IP
Monday, September 29, 2008
Westin Times Square, New York, NY

8:30 a.m. Registration and Continental Breakfast

9:00 a.m. – 9:15 a.m. Welcome/Opening Remarks
Sharon Barner, Chair of IP Department, Foley

9:15 a.m. – 10:30 a.m. IP Value: What's It Worth?

IP owners must continually weigh the costs and benefits of procuring, protecting, and enforcing IP assets through to litigation. In today's economic climate, some companies have been forced to reduce their R&D budget as well as their legal spending. As a result, in-house counsel and business executives must often build a case internally within their company as to why the procurement, protection, and maintenance of IP assets is a sound investment.

In this session, participants will canvas the challenges faced when trying to maximize the value of their IP including:

- IP Budgets: Which line items are critical and which are dispensable?
- What's the best way to make the internal business case to defend your IP budget?
- When should companies litigate to enforce IP assets and when should they walk away?
- How can companies and their outside counsel better predict a realistic budget for IP litigation cases?
- What is a sound matrix for procuring and maintaining IP assets?

Panelists: **Alexander Arato**, Vice President, Associate General Counsel, CA, Inc.
Valerie Calloway, Chief Intellectual Property Counsel, Polymer Group, Inc.
Paul Hunter, Partner, Electronics Practice
Jeannie McCarver, Associate General Counsel, U.S. Bancorp
Renee Rymarz, Senior Counsel, Global IP - Patents, Kraft Foods Inc.
Jonathon Spivey, Partner, IP Litigation Practice
Michael Whitehead, Chief Counsel - Intellectual Property, The Lincoln Electric Company

10:30 a.m. – 10:45 a.m. Break

10:45 a.m. – 12:15 p.m. Recent Court Efforts: Strengthened or Curtailed Patent Rights?

While commentators might disagree over the magnitude of change, there is little dispute that over the last two years, the U.S. Supreme Court and the Federal Circuit have rendered decisions that have impacted the manner in which plaintiffs and defendants have approached patent infringement claims. Some feel these recent decisions strengthen patent rights, while others feel they limit the scope of



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patent protection and discourage innovation. Were these decisions the result of increased litigation involving patent licensing companies (the so-called patent trolls), or the result of curtailing bad patents?

This panel will discuss recent cases applying these decisions and their impact on their company's strategy:

- The Aftermath of *KSR*: How to succeed with, or defeat, an obviousness challenge
- *In re Bilski*: Must a business method be tied to an apparatus or machine to be patentable, and do we stifle innovation by having this requirement?
- To Enjoin or Not Enjoin in view of *eBay*: Has this decision unfairly limited a patentee's ability to get an injunction?
- Is There a Contractual Solution to *MedImmune?*: Can you craft appropriate license clauses to discourage licensees from challenging a patent's validity later?
- Value of Opinions Post-*Seagate*: Are opinions of counsel still worth the paper they are written on?

Panelists: **Andrea Augustine**, Partner, IP Litigation Practice
John Gutkoski, Partner, IP Litigation Practice
Charles Kwalwasser, Vice President and Intellectual Property Counsel, Lehman Brothers Inc.
David Moyer, Senior Counsel, Litigation, Chevron Global Upstream & Gas
Michael Springs, Assistant General Counsel, Bank of America
Earle Thompson, Chief Intellectual Property Counsel, SanDisk Corporation

12:15 p.m. – 12:45 p.m. Lunch Served

12:45 p.m. – 2:00 p.m. IP Gone Wild? [Luncheon presentation]
IP rights can be used for both good and evil. The spectrum of IP law encourages innovation, creativity, and brand promotion. However, some critics believe IP rights have gone too far and are being used by IP owners in manners that impinge other social interests, such as the freedom to create new IP, fair use, the right to share information, and the right to speak freely. During this interactive lunch session, thought leaders will debate:

- Has the scope of patentable subject matter become too broad?
- Can IP rights be too easily used for anti-competitive purposes?
- Have IP rights been allowed to stifle innovation and creativity?
- Is the fair use doctrine in copyright and trademark law effective to protect free expression and socially-desirable uses of IP?



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- Does the definition of trade secrets need to be curtailed to avoid abuse?
- What role should government agencies play in balancing the rights of IP owners, competitors and the public?

Panelists: **Andrew Baum**, Partner, Trademark, Copyright & Advertising Practice
Andrew Gasper, General Counsel, The Topps Company, Inc.
Jeanne Gills, Vice Chair, IP Litigation
F. Kinsey Haffner, Vice President - Intellectual Property & Licensing, Raytheon Company
Anne Sabourin, Assistant General Counsel, BASF Corporation
J. Bruce Schelkopf, Chief Counsel, Global IP, Cummins Inc.
D. Travis Wilson, Patent Counsel, McCarthy Legal Services

2:00 p.m. – 2:15 p.m. Break

2:15 p.m. – 3:45 p.m. Trademark & Copyright Issues on the Internet

The Internet has become a powerful environment for companies to promote their products and services, distribute their content, and conduct business. But, protecting a company's IP, particularly its trademarks and copyrights, in the online world can be a challenge. In this session, leading experts will debate cutting edge topics affecting trademark and copyright rights on the Internet:

- The Digital Millennium Copyright Act: Is it satisfactory to balance the rights of content owners and online service providers, or does the statutory scheme need updating as Internet services have become more interactive?
- Internet keyword advertising: Is the sale and purchase of a competitor's trademark as an Internet keyword a "use" in commerce? And if so, does it constitute trademark infringement?
- Domain name enforcement: How willing should trademark owners be to pay cybersquatters, typosquatters, and other domain name abusers to recover infringing domain names? Or are trademark owners better off pursuing legal action via UDRP proceedings or district court proceedings?

Panelists: **Vanessa Cooper**, Associate General Counsel, IP & Privacy, Kaplan, Inc.
Keith Hunt, Legal Counsel, Labatt Breweries of Canada
Luke Paglia, Associate General Counsel, American Eagle Outfitters Inc.
Stanley Pierre-Louis, Vice President and Associate General Counsel, Viacom Inc.
Katherine Tabor, Senior Counsel, IP Litigation Practice
Robert Weisbein, Partner, IP Litigation Practice



3:45 p.m. – 5:00 p.m. Trade Dress v. Design Patent Rights: Clash of the IP Rights

Both trade dress rights and design patents can be used to protect product designs and packaging. But is one a better form of IP protection than the other? Hear leading practitioners debate the merits of trade dress and design patent rights, including:

- Which IP right works best for different types of products and industries?
- When is it worth devoting the time and resources to procure a design patent?
- What is the appropriate test for design patent infringement: the “point of novelty” test or “the ordinary observer test”?
- Which IP right is more powerful for enforcement and as a remedy in litigation?

Panelists: **Nancy Lee Carter**, Senior Counsel- Trademark & Copyright, Kimberly-Clark Corporation
Karen Feisthamel, Senior Legal Counsel - Intellectual Property, CVS Caremark Corporation
Cynthia Franecki, Senior Counsel, IP Litigation Practice
Kamau King, Worldwide Licensing & Retail Operations Counsel, The Coca-Cola Company
Gregory Norrod, Partner, IP Litigation Practice
Daniel Shulman, Chief Intellectual Property Counsel, Assistant General Counsel, Pactiv Corporation

5:00 p.m. – 5:10 p.m. Closing Remarks

5:10 p.m. – 6:30 p.m. Reception