

LAIPLA BULLETIN

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In This Issue

President's Message & Spring Seminar
Notice 1

Event Summary: April 12 & 14, 2011 2

Article: Patent Reform - House vs.
Senate 3

Article: A Key Victory For Keyword
Ad Programs 5

Article: Picture My Bag 8

Article: In Re BP Lubricants USA, Inc:
The Recent Surge In False Marking
Cases Has Met Its Match 9

Employment Opportunities 11

Intellectual Property Services 13

LAIPLA Sponsor Opportunities 15

Spring Seminar Brochure 16

AIPLA Spring Seminar Flyer 22

Membership Applications 24

Upcoming Events

June 3-5, 2011
Spring Seminar

President's Message

by Alexander R. Schlee

Welcome to the May issue of the LAIPLA Bulletin. With our annual Spring Seminar from June 3-5 only a month away, you should have received the final brochure by mail. We attached an electronic version to this Bulletin.

Some Spring Seminar facts: We have several high profile speakers, including Former Federal Circuit Chief Justice Paul R. Michel and USPTO Director David Kappos. LAIPLA and SDIPLA have joined forces for this Seminar, both having a powerful membership base. As a result we already have about forty early bird registrants. We also have marketing support from the American Intellectual Property Law Association (AIPLA), and we are pursuing other marketing avenues. We have tried to make the event very social including, as usual, one complementary guest accompanying a registered meeting participant to all social functions. You may want to sign up early, since all indications are that we will fill up our room block this year. Thursday, May 12th is the cutoff date for hotel reservations. Also, after May 12th, the registration fee will bump up by \$50. If you feel like attending a homemade Southern Californian IP event at a great and convenient location, I promise you it won't get much better than this one at the historic Hotel Del Coronado.

Thanks to our brochure sponsor Lexis Nexis, we were able to print and mail a sleek brochure. LAIPLA and SDIPLA have jointly mailed out 2,000 brochures, designed with great skill by Spring Seminar committee member Mark Treitel. If you have not received one, please send your mailing address to LAIPLAoffice@aol.com so that we can mail you a brochure for next year's event.

Some other good news: AIPLA, has accepted LAIPLA complementarily as an "in-kind" Bronze sponsor, meaning that AIPLA will promote our event to their members by e-mail blasts and recognition in AIPLA's e-Bulletin with a circulation of 17,000. We will explore other possibilities for cross-marketing or co-sponsoring, or maybe even co-organizing, events with AIPLA. Please note that AIPLA will have its Spring Seminar from May 12-14 in San Francisco, right before the INTA crowd invades town. You should have received an announcement for the AIPLA Spring Seminar, and now you know why: because we help each other to get the word out on our events. In general, we have learned that working well with other organizations benefits both organizations, and particularly our membership.

Continued on page 2

Event Notice: Spring Seminar 2011

June 3-5, 2011
Hotel del Coronado, San Diego

The Los Angeles Intellectual Property Law Association and San Diego Intellectual Property Law Association are proud to announce our upcoming Annual Spring Seminar *June 3-5, 2011 at the Hotel del Coronado* in San Diego.

PROGRAM HIGHLIGHTS:

- Keynote Speaker - Paul R. Michel, Former Chief Justice, Federal Circuit
- Special Guest David Kappos, Director, PTO
- Frontiers of Biotechnology
- Year In Review - Patent, Trademark, and Copyright

and much more!

The event brochure and registration form is attached to this Bulletin. We look forward to seeing you there!

Event Summary: April 12 & 14 Joint Events with FBA/OC

By: Scott Hansen
Fulwider Patton

The LAIPLA worked with the Orange County Chapter of the Federal Bar Association to jointly present a program on current national issues in patent law, as well as issues specific to patent litigation in the Central District of California. The special event was held at the UC Irvine School of Law on April 14, 2011. Four past presidents of the LAIPLA attended: Keith Newburry, Paul Tripodi, Ed Poplawski & Laurence Pretty. Two federal judges were also present: Judge Andrew Guilford (who spoke) and Judge Josephine Tucker, who both have chambers in Santa Ana.

On behalf of the LAIPLA, Board member Scott Hansen briefly addressed the audience, noting the deep roots of the LAIPLA in Orange County. He indicated that past and incoming Presidents of the LAIPLA practice law in Irvine, and that an LAIPLA Board member lives nearby. Mr. Hansen added that the LAIPLA was especially pleased to jointly present a high-caliber patent program in a beautiful region of Southern California densely populated with technology companies.

Mr. Pretty then gave a memorable presentation on issues in flux in patent law - a talk that he had given two days earlier at an LAIPLA dinner meeting in Los Angeles at the California Club. He reviewed numerous patent cases pending before the U.S. Court of Appeals for the Federal Circuit and the U.S. Supreme Court. Mr. Pretty, an avid collector of art, enlivened many of his slides with eye-catching artwork.

Judge Guilford of the Central District (Southern Division) finished up the meeting with an animated and informative discussion of patent litigation in the Central District. The Judge, a distinguished trial attorney for many years prior to ascending to the bench, pointed to statistics showing the Central District as one of the most popular districts in the United States for filing patent lawsuits. He also explained that there is a current discussion at the Central District as to whether to adopt local patent rules and, if so, what their provisions should be. The Court is open to commentary and suggestions from the Bar.

A lively discussion period followed, with a thoughtful and open exchange between members of the audience and the popular jurist. The crowd was fairly large and distinguished, filling most of a new lecture hall at the highly-regarded School of Law. By all accounts, the event was a big success for both the Federal Bar Association and the LAIPLA.

This meeting concluded a laudable year of regular LAIPLA meetings, featuring many strong programs on a variety of intellectual property topics, in locations ranging from downtown Los Angeles, to Beverly Hills, to Orange County.

President's Message

Continued from page 1

Speaking of such joint efforts, we teamed up with the Orange County Chapter of the Federal Bar Association for our last monthly meeting on April 12th. Former LAIPLA President Laurence Pretty gave an excellent talk in downtown Los Angeles, as well as a sequel on April 14th in Orange County. For more details on that, see the report in this Bulletin from our Monthly Meeting chair Scott Hansen. Also worth mentioning is that the Chapter was so kind as to let us promote our Spring Seminar to its membership.

Last but not least, our April 12th meeting was also our annual meeting, confirming the new slate of LAIPLA Board Members and Officers. Congratulations to the new Board of Director members and Officers. The vote was unanimous, following our Nomination Committee's suggestions. The new LAIPLA Board will be:

Officers

Brian Arnold	President
Monica Scheetz	Vice President and President Elect
Marsha Mullin	Secretary
Darren Franklin	Treasurer

Board of Directors

Alex Schlee	Immediate Past President
Scott Hansen	2 nd year Director
Lauren Schneider	2 nd year Director
Michelle Kim	2 nd year Director
Bitra Rahebi	Incoming 1 st year Director
Laura Burson	Incoming 1 st year Director
Brian Horne	Incoming 1 st year Director

We would also like to thank Franklin Kang of Latham Watkins, who is coming off the board. Among other activities, Frank chaired an excellent Spring Seminar in 2009 and helped with LAIPLA's website.

Article: Patent Reform - House vs. Senate

By: James J. Mullen III and Colette R. Verkuil
Morrison & Foerster LLP

The view and opinions expressed in this article are those solely of the author(s) and are not of the Los Angeles Intellectual Property Law Association or its members.

Law360, New York (April 13, 2011) — The House of Representatives entered the recent debate on patent reform March 30 with the introduction of H.R. 1249 by Representative Lamar Smith, R-Texas. The release of this bill was widely anticipated and had been foreshadowed by a draft version of the bill, which began circulating on the Internet recently. This bill follows on the heels of the Senate's passage of S. 23 (The America Invents Act). If completed, this would be the first major overhaul to the patent system in almost 60 years.

Comparing H.R. 1249 to S. 23

H.R. 1249 largely tracks S. 23. As with the Senate's bill, the House's bill revises the patent code on a range of issues, including the best mode of defense and the residency requirement of Federal Circuit judges. Below, we summarize the similarities and distinctions between the two bills on the larger areas of patent reform.

S. 23

- "First to file" not "first to invent"
- Post-grant opposition system
- Greater power for patent office to set its own funding

H.R. 1249

- "First to file" not "first to invent"
- Slightly different post-grant opposition system
- Greater power for patent office to set its own funding (with conditions?)
- Expansion of prior use defense

"First to File"

As with S. 23, H.R. 1249 proposes transforming the United States patent system from a "first to invent" system to a "first to file system." The language of H.R. 1249 and S. 23 on this issue is virtually identical. What this means is that in order to gain patent protection for his or her invention, an inventor must be the first person to actually file a patent application on the invention.

Under current law an inventor may challenge a patent application through the interference process by arguing that he or she can document an invention date prior to the applicant's filing date. Changing the law to "first to file" would harmonize the United States' patent system with that of every other major jurisdiction around the world.

Critics of the "first to file" system say that it disadvantages independent inventors, who frequently lack the resources to support early patent filings for their inventions. This issue was hotly contested in the Senate with respect to S. 23, and will likely be vigorously debated in the House.

Post-Grant Opposition System

Like S. 23, H.R. 1249 proposes a post-grant opposition system. H.R. 1249's proposal, however, contains some subtle differences from the system proposed in S. 23. The post-grant review system of H.R. 1249 increases the window within which a challenge may be filed to 12 months after the issuance (or reissuance) of a patent. The post-grant review process proposed in S. 23 provides a nine-month window.

As with S. 23, the post-grant review process of H.R. 1249 allows a third party to challenge the patent on a broader range of

Article: Patent Reform - House vs. Senate

Continued from page 3

issues than are currently available to re-examination petitioners. The process proposed in the House's bill provides the same standard for the PTO to apply when determining whether or not to accept the post-grant review. The petitioner must show that "it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable." H.R. 1249 also provides the petitioner with the alternative of persuading the PTO to accept the petition if the "petition raises a novel or unsettled legal question that is important to other patents or patent applications."

Unlike S.23, however, H.R. 1249 provides (in very limited situations) an automatic stay of civil litigation if the litigated patent is also the subject of post-grant review. Under the House's bill, this automatic stay would arise in declaratory judgment ("DJ") actions that challenge the patent's validity, where the DJ plaintiff is also the real party-in-interest in petitioning for post-grant review of the same patent. The stay would be automatically entered in the litigation until either the patent owner requested it to be lifted, the patent owner filed a counterclaim in the civil action alleging that the petitioner infringed the patent, or the petitioner moved to dismiss the civil action.

The House bill also lists factors for a district court to consider in determining whether to grant a discretionary stay when a post-grant review had been accepted and there is a co-pending litigation involving the same patent. These factors are the same as those that district courts routinely apply when considering whether to grant a stay pending reexamination proceedings: 1) whether the stay would streamline issues for trial; 2) whether discovery is complete and a trial has been set; 3) whether the stay would unduly prejudice the nonmoving party or present a clear tactical advantage for the moving party; and 4) whether a stay or denial thereof will reduce the burden of litigation on the parties and the court.

Patent Office Funding

As with S.23, the House's bill includes a provision that provides the Patent Office with more authority to set its own funding. H.R. 1249's provision to empower the Patent Office to set its own funding and to end fee diversion is very similar to the corresponding provision of S. 23. This additional power would likely result in fee hikes by the PTO, but would also result in greater resources to help the speed and quality of the examining process. The current backlog of patent applications has been estimated at over 700,000 and insufficient funding is frequently identified as a causative factor for the backlog.

H.R. 1249 includes an additional section, which details the fees to be set for Patent Services (Section. 10). Section 10 would revise current 35 U.S.C. 41 to update the statute to reflect the current fees charged by the PTO. The inclusion of precise fee amounts in H.R. 1249 may appear to some to be at odds with the provisions of the bill that provides the PTO with greater latitude with its fee setting authority. It seems more likely, however, that section 10 was included to clean up the statute as it currently reads and is not a limitation to the fee-setting authority otherwise provided in the bill.

Expansion of the Prior Use Defense

In its current form, 35 U.S.C. 273 provides prior users of a method with a defense to infringement in the event that someone obtains a patent for that method. Right now, this defense is available only as against method patents. H.R. 1249 would extend the prior use defense to all patents. This defense implicates broader intellectual property strategies.

Currently, people are faced with a choice between keeping an invention as a trade secret, or disclosing it to the public in exchange for a patent on that invention. The down side for someone that chooses to keep an invention secret is if another party gains patent protection for that invention, the prior user may be subject to a suit for patent infringement. Under the House's bill, the prior user would be able to rely on its prior use of the invention as a defense to infringement.

Opponents of this change will argue that it will harm innovation by weakening patent rights by providing this additional defense and by dissuading innovators from disclosing their inventions to the public. The Senate did not include this expansion of the prior use defense in its bill, and this issue is likely to spur debate in the House.

What's Next for Patent Reform

The debate of H.R. 1249 will begin in the House Judiciary Committee, which is chaired by Rep. Smith. Once the bill makes it out of the Committee, it will head to the House for a full debate. If H.R. 1249 is passed by the House in its current form, it will need to be reconciled with S. 23 before patent reform can be presented to President Obama to be signed into law.

Article: A Key Victory For Keyword Ad Programs

By Sheldon H. Klein and Amy Salomon
Arent Fox LLP

The view and opinions expressed in this article are those solely of the author(s) and are not of the Los Angeles Intellectual Property Law Association or its members.

Law360, New York (April 15, 2011) — On March 8, the U.S. Court of Appeals for the Ninth Circuit decided *Network Automation Inc. v. Advanced Systems Concepts Inc.*, No. 10-55840, 2011 WL 815806 (9th Cir. March 8, 2011) (Network Automation). The ruling is significant because it limits trademark holders' ability to challenge competitors and, by extension, search engines, who use the trademark holders' marks as "keywords" in search engine advertising programs. The court found insufficient evidence of a likelihood of confusion to support a preliminary injunction in the case. The decision provides a significant boost to keyword advertising because it strongly implies that the use of others' trademarks in programs such as Google AdWords and Microsoft Bing search ads is not inherently deceptive or likely to cause consumer confusion.

Network Automation Inc. ("Network") and Advanced Systems Concepts Inc. ("Systems") sell competing job-scheduling and management software, which they both advertise on the Internet. Network brought a declaratory judgment action against Systems, seeking a holding that Network's purchase of Systems' federally registered trademark, ACTIVEBATCH (and similar terms), as a keyword that triggered ads on search engine results pages from Google and Bing did not amount to trademark infringement. The ads did not display the mark in their text; rather, they contained phrases such as "Job Scheduler," "Intuitive Job Scheduler" and "Batch Job Scheduler," and included a link to Network's website.

Systems counterclaimed for trademark infringement and the district court granted a preliminary injunction halting the ads, finding a likelihood of "initial interest confusion" on the part of consumers. The Ninth Circuit has now vacated the injunction, reverses the lower court and remands for further proceedings.

Significantly, the court noted that it was required to review the granting of the preliminary injunction under an abuse of discretion standard, explaining that the district court's order should only be reversed if it was based on an erroneous legal standard or clearly erroneous findings of fact. The decision finds errors of both law and fact.

The larger significance of this decision lies in four areas: (1) a pronouncement that using a mark to trigger keyword advertising qualifies as "use" of a mark under the Lanham Act; (2) the demise of the so-called "Internet troika" of likelihood of confusion factors, at least as applied to cases that do not involve domain name-based trademark infringement, and its replacement, in keyword advertising cases, with a "keyword quartet" of factors; (3) the narrowing of the initial interest confusion doctrine, especially as applied in the Internet context; and (4) the implicit holding that trademark-triggered keyword advertising is not, by its nature, a deceptive or infringing activity, and that it can be accomplished in a manner that is not likely to confuse consumers.

Trademark-Triggered Keyword Advertising Involves Use of a Mark in Commerce

Prior to the Second Circuit's decision in *Rescuecom Corp. v. Google Inc.*, 562 F.3d 123 (2d Cir. 2009), lower courts had split on the threshold question of whether trademark-triggered keyword advertising constitutes use of a mark in commerce. Indeed, some courts had dismissed cases on these grounds. The *Rescuecom* decision resolved the question in the Second Circuit, holding that this is, indeed, trademark use that is regulated by the Lanham Act. Lower courts in the Ninth Circuit have presumed this to be the case even prior to *Rescuecom*, as this position seemed implicit in previous rulings by the Ninth Circuit. In *Network Automation*, the Ninth Circuit cites and explicitly follows the Second Circuit's ruling on this question.

It is interesting to note that, in an important case pending before the U.S. Court of Appeals for the Fourth Circuit, *Rosetta Stone Ltd. v. Google Inc.* (lower court decisions at 730 F. Supp. 2d 531 and 732 F. Supp. 2d 628 (E.D. Va. 2010)), Google did not even raise the question of "use in commerce" in its successful motion for summary judgment below, and the issue has not been presented on appeal. Accordingly, it appears that the "use in commerce" issue is largely resolved.

Farewell to the "Internet Troika" Likelihood of Confusion Factors; Hello to the New "Keyword Quartet"

In *Brookfield Commc'ns Inc. v. West Coast Entm't Corp.*, 174 F.3d 1036 (9th Cir. 1999), the Ninth Circuit elevated three of the eight factors from its *Sleekcraft* likelihood of confusion test, see *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348-349 (9th Cir. 1979), to being most important when analyzing likelihood of source confusion in cases involving Internet domain names. These factors are: (1) the similarity of the marks, (2) the relatedness of the good or services, and (3) the simultaneous

Article: A Key Victory For Keyword Ad Programs

Continued from page 5

use of the Internet as a marketing channel. These factors came to be known as the “Internet trinity” or “Internet troika.” Over the years, these three factors have been emphasized by many courts, both in the Ninth Circuit and beyond, in trademark cases involving the Internet.

The court now warns that emphasizing these three factors is only appropriate, if at all, for domain name cases and that, indeed, they were never intended to be applied exclusively even in those cases, let alone for cases involving other types of infringement on the Internet. As phrased by the court:

“Given the multifaceted nature of the Internet and the ever-expanding ways in which we all use the technology, however, it makes no sense to prioritize the same three factors for every type of potential online commercial activity. The ‘troika’ is a particularly poor fit for the question presented here.” *Network Automation*, 2011 WL 815806, at *8.

In finding that Systems did not present sufficient evidence of a likelihood of confusion to warrant the issuance of a preliminary injunction, the court discussed all eight of the Sleekcraft factors (while reminding that even those factors were always intended to be non-exhaustive). It then dismissed the importance of the “Internet troika,” and found that the other factors were either too fact-intensive to support a likelihood of success on the merits by the trademark owner, Systems, or else favored Network.

The court then proceeded to establish a new “keyword quartet” (authors’ characterization) set of factors, which it deemed to be most important to this case and, implicitly, other similar keyword advertising trademark cases: “(1) the strength of the mark; (2) the evidence of actual confusion; (3) the type of goods and degree of care likely to be exercised by the purchaser; and (4) the labeling and appearance of the advertisements and the surrounding context on the screen displaying the results page.” See *Network Automation*, 2011 WL 815806, at *13.

Given the court’s express displeasure with the use by some courts, until now, of the “Internet troika” as a shortcut in Internet infringement cases, one has to wonder why it would now present another reduced set of factors as being the most important in keyword cases. Also, is it really true that none of the other Sleekcraft factors — i.e., similarity of the marks, relatedness/proximity of the goods/services, marketing channels used, intent of the accused infringer in selecting the mark, and likelihood of expansion of the product lines — are important in keyword advertising cases? While the opinion does emphasize the need for flexibility in analyzing likelihood of confusion in the Internet context, the court seems to violate its own instruction by elevating the new “keyword quartet.”

A fascinating recurring theme of the *Network Automation* decision concerns the court’s ruling that the nature of the Internet, and the manner and frequency with which it is used by consumers, has changed markedly since *Brookfield* was decided in 1999. The court noted that, in many cases, convergent marketing channels increase the likelihood of confusion and that, in the early days of e-commerce, the nature of the Internet marketplace itself, and its newness, could have contributed to likelihood of confusion (an implicit reason for including this factor in the original troika). Today’s consumers, however, are quite sophisticated in the ways of e-commerce. The fact that both parties to this case advertise and offer their software over the Internet is deemed to have little significance. While it is a shared channel of trade, it is no more unique than any other traditional trade channel and, indeed, it is a channel that is so ubiquitous and multifaceted that consumers expect to see all types of products advertised and offered there.

It is not only Internet e-commerce that is ubiquitous; the results page of an inquiry to a search engine — especially Google’s — is equally common. Indeed, these pages are encountered by typical consumers tens if not hundreds of times a day. The *Network Automation* decision discusses the overall context in which consumers see keyword ads, i.e., on the same screen — yet separated from — as what consumers understand are the “natural” search results. This context was deemed important by the court. Echoing one part of last year’s keyword advertising decision by the EU’s Court of Justice, see *Joined Cases C-236/08, C-237/08 & C-238/08, Google France SARL v. Louis Vuitton Malletier SA*, 2010 ECJ EUR-Lex LEXIS 119 (Mar. 23, 2010), the Ninth Circuit found that the nature of Google’s (and Bing’s) search results page must be considered. The implication is that the typical results page’s arrangement acts to further mitigate confusion, even in cases where the source of the ad is not clearly indicated in its text. The court cited with approval a comment by Judge Berzon in her concurring opinion in *Playboy Enters. Inc. v. Netscape Commc’ns Corp.*, 354 F.3d 1020 (9th Cir. 2004), in which she strongly implies that the set-up of the search results page, in and of itself, “informs” a consumer that a product or web link is not related to that of the trademark holder. See *Network Automation*, 2011 WL 815806, at *7.

Continued on page 7

Article: A Key Victory For Keyword Ad Programs

Continued from page 6

The Initial Interest Confusion Doctrine is Narrowed for Cases Involving the Internet, Particularly Trademark Keyword Cases

The initial interest confusion doctrine was first applied in the Internet context in the Brookfield case. There, the court held that the use of a competitor's trademark in the metatags of one's website in order to draw consumers that are actually searching for the competitor's site did not cause a likelihood of source confusion, since consumers would realize, once they reached the site, that it was not the site they were seeking. There was, however, a likelihood of initial interest confusion, and the other party derived improper benefit from the goodwill that had been developed in the trademark.

Again citing Judge Berzon's concurring opinion in *Playboy*, the court referred to a portion of that opinion that analogizes the experience of browsing "clearly labeled keyword advertisements" to shopping in a department store, whereby a shopper searching for one brand may walk by and stop to examine a store brand with a clearly labeled but more prominent display, and never even reach the brand that was originally sought. This type of "mere diversion" that does not involve likely confusion is said not to be infringing. Furthermore, the court cautioned: "... it would be wrong to expand the initial interest confusion theory of infringement beyond the realm of the misleading and deceptive to the context of legitimate comparative and contextual advertising." See *Network Automation*, 2011 WL 815806, at *7. Clearly, the *Network Automation* decision limits the usefulness and applicability of initial interest confusion as a tool for trademark holders in the Internet context, and expressly declines to apply it to trademark-triggered keyword advertising that is not otherwise deceptive.

The Future of Trademark-Triggered Keyword Advertising seems Bright for Google and Microsoft, et al., and for Advertisers who do not Include Deceptive Text in their Ads. While a number of trademark-triggered keyword advertising lawsuits have come and gone, and several remain pending, not many have reached the point of a decision on the question of likelihood of confusion. See, e.g., *Rosetta Stone Ltd. v. Google Inc.*, supra, and *Gov't Employees Ins. Co. v. Google Inc.*, 1:04CV507, 2005 WL 1903128 (E.D. Va. Aug. 8, 2005) ("*GEICO v. Google*"). *Network Automation* signals that a significant and convincing level of proof will be required, at least in the Ninth Circuit. A recent trial court decision in the circuit may provide a road map as to the types of facts required to find liability.

On Jan. 25, 2011, following a bench trial in a case involving competing law firms, the U.S. District Court for the Central District of California ruled that, not only had the plaintiffs demonstrated likelihood of confusion, false advertising and unfair competition — they were entitled to actual damages, treble damages and attorneys' fees. *Binder v. Disability Group Inc.*, CV 07-2760-GHK SSX, 2011 WL 284469 (C.D. Cal. Jan. 25, 2011). That case involved the use of the mark in the text of the competitor's trademark-triggered keyword ad, a finding of actual confusion and other bad facts for the defendant.

As noted above, the Fourth Circuit is currently considering the case of *Rosetta Stone Ltd. v. Google Inc.* In that case, rather than suing its competitors (who included sellers of counterfeit language instruction software) for unauthorized use of its trademarks as keywords, the plaintiff challenged the keyword advertising program head-on, suing Google directly in the U.S. District Court for the Eastern District of Virginia (the same court that heard the *GEICO v. Google* case in 2004). The lower court granted a decisive victory to Google on summary judgment, finding that the sale of *Rosetta Stone's* trademarks as keywords did not result in direct, contributory, or vicarious trademark infringement, or in trademark dilution. In an unusual (and questionable) twist, the lower court found that keywords have an essential indexing function for Google's search engine and, therefore, Google's sale of keywords was protected by the functionality doctrine, prohibiting a finding of trademark infringement. A slew of amici, representing both sides of the debate, have filed briefs in the case, which is set for oral argument in May.

When considered together, these cases indicate a trend toward courts protecting keyword advertising programs as they are currently structured. Search engines as well as advertisers have prevailed when efforts are made to insure that trademark-triggered ads are not deceptive or misleading. However, as the *Binder* case illustrates, advertisers must assure that their ads, and the pages linked to the ads, are not deceptive in order to avoid liability. In the (perhaps unlikely) event that the Fourth Circuit reverses the district court in the *Rosetta Stone* case (on issues other than functionality) in a manner which conflicts with a core holding of the Ninth Circuit's *Network Automation* decision, the legality of keyword advertising programs could become ripe for Supreme Court review.

Continued on page 8

Article: A Key Victory For Keyword Ad Programs

Continued from page 7

Conclusion

We made reference earlier to the fact that Web-based e-commerce, specifically retail e-commerce that relies heavily on search engines, is now a ubiquitous and unremarkable trade channel that serves increasingly sophisticated and discerning consumers. Indeed, there is no doubt that Google itself, along with retailers such as Amazon, eBay, and traditional brick-and-mortar stores such as JC Penny, have played an enormous role in this normalization process.

Additionally, it could be argued that Google has changed the factual and legal reality of trademark-triggered search results advertising. By successfully resisting, for years, attempts to prevent it from selling trademarked keywords, Google has succeeded in making the advertisements and the practice ubiquitous. This fact had a significant impact in the Network Automation decision, and confirms the wisdom and success of Google's long-term legal strategy.

Trademark owners wishing to challenge the practice of trademark-triggered keyword advertising are going to be hard-pressed to develop convincing evidence of likelihood of confusion in all but the most egregious situations. Advertisers and Google will argue that consumers are quite accustomed to seeing these ads, and understand well that such sponsored links very often do not originate from the trademark owner.

Article: Picture My Bag

The view and opinions expressed in this article are those solely of the author(s) and are not of the Los Angeles Intellectual Property Law Association or its members.

By: Mark A. Fischer and Meg Sallay
Duane Morris LLP

Law360, New York (April 12, 2011) — For the woman with a great sense of style and a not-so-great budget, how can she get a famous Hermes Birkin bag? The iconic and sought-after Birkin is a special piece. It has been a must-have item for decades. Many consumers would love to hold — and be seen carrying — the distinctive, handcrafted fashion accessory that has been featured in Allure, Vogue, Vanity Fair, Style and People magazines and has appeared in episodes of “Sex and the City,” “Will and Grace” and “Gossip Girl.” Faced with prices starting at \$6,000 and subject to a waiting list over a year long, what's a shopper to do? Thursday Friday Inc. had an idea.

The “Together bag,” available for purchase through the Thursday Friday Inc. website, is a screen-printed, cotton tote bag featuring on each of its five surfaces corresponding images of what appears to be a genuine Birkin (back, front, bottom and sides). Thursday Friday calls its product an “extra bag to supplement our ‘real’ bags” for carrying groceries or gym clothes, describing it as a “surreal design that references luxury” and contending that the Together bag comments on the Birkin. Priced at only \$35 and available in blue, red or brown, this “lo-fi carryall” allows almost any shopper to be seen with the coveted status symbol (or at least an image of it) on her person. It is a bag on a bag. The Together bag's popularity has taken off, with write-ups in The New York Times, Glamour and Elle — and now has its own three-month waitlist. Hermes is not amused. It's not easy being Hermes orange.

The Lawsuit

On Jan. 28, Hermes filed a five-count complaint against Thursday Friday in the Southern District of New York, alleging violations of federal and state laws for trademark infringement, unfair competition, false designation of origin and dilution by tarnishment. Hermes apparently believes Thursday Friday's Together bag takes advantage of the French company's famous image and reputation without its permission, perhaps even implying its endorsement. And Hermès wants it to stop.

The Birkin design itself is protected under U.S. trademark law. The registration covers the strapped and padlocked closure. The registration has become an incontestable U.S. trademark, meaning it is immune from a challenge regarding its descriptiveness.[1] Hermes — known for keeping a keen eye out for rip-offs of its famous designs and for vigorously protecting its mark — has waged and prevailed in past legal battles in New York over knock-offs of the Birkin, based on the bag's recognizable shape.[2]

When it comes to knock-offs, infringement of a registered trademark design or trade dress is a relatively straightforward issue on a very basic level — especially when the rights holder has successfully protected its design against copycats in

Continued on page 9

Article: Picture My Bag

Continued from page 8

past legal actions. It is generally a question of consumer confusion: Will people at point of sale or post-sale be confused, and thus believe that its origin is the same as the original? Is the intent of the defendant to intentionally copy the design and sell knock-offs of the originals, deliberately trading off the name and products of the plaintiff?

The question in this case, however, may be somewhat different. Is it actually accurate to call the Together bag a knock-off? Though it is an over-the-shoulder bag like the Birkin, is the rectangular canvas tote actually likely or intended to promote customer confusion? Will people think the Together bag is part of the Birkin line or that it is made or licensed by the same company? Is that the intention of its creators? It is not entirely clear. The Together bag is not what one typically would call a knock-off or a counterfeit.

Given the quality and style of the Together bag, the key legal issue is perhaps more properly framed as whether an image of a product (uncopyrightable as a useful article) can be protected via trademark or trade dress theory when placed on another product. If that is the issue, is putting a picture of an Hermes Birkin bag on a non-Hermes bag any different than putting such an image on a t-shirt without permission? Hermes' greatest fear seems to be that consumers will be duped into thinking that Hermes has granted approval to use the Birkin design or has been involved in some kind of sponsorship of the Together bag, "giv[ing] into the temptation to license its famous trademark for mass market goods." [3]

The story and mission of the Together bag, according to Thursday Friday, might be viewed more in a light of commentary than copycatting. Thursday Friday says on its website, "Yeah, we're inspired by consumerism, class and iconography, but that doesn't mean we're putting out precious, abstract concepts." Rather, the company prefers to think of its product as an "anti-status status symbol." [4] It sounds like the Together bag may be an attempt to say something about the Birkin bag, rather than an attempt to be a Birkin. Except in cases involving obscenity, the Second Circuit has a history of being generous toward unauthorized use if it is legitimate trade dress parody. [5]

If making such a claim, perhaps the most significant example for Thursday Friday to reference is the Cliffs Notes case. [6] In that case, the popular study-guide series Cliffs Notes sued over a parody, "Spy Notes," which had an extremely similar cover. The Second Circuit invoked a balancing test, weighing public interest in free expression against consumer confusion when an expressive work (like a parody) is alleged. The court specified that "the expressive element of parodies requires more protection than the labeling of ordinary commercial products," and held in favor of the creator of Spy Notes. The channels of commerce for each of the products in the Birkin bag case are likely to be very different. One would find it difficult to find anything at an Hermès shop priced at \$35 or less.

In this case involving much more than accusations of a "knock-off," the outcome remains to be seen. The Together bag appears to make a statement about the Birkin bag and the status surrounding it. But is it homage, parody or just a rip-off? Either way, is it likely there would be a three-month waiting list for this cotton tote if it did not have the Birkin bag images on it?

As a practical matter, if someone decides to reproduce an image of another's valuable product without permission, do not expect the originator of the product to be pleased. A lawsuit should not be a surprise. For trademark owners, registering distinctive product designs can be of great help when the designs are used, even in unexpected contexts.

Article: In Re BP Lubricants USA, Inc.: The Recent Surge In False Marking Cases Has Met Its Match

By: Sarah S. Brooks
Zuber & Taillieu LLP

The view and opinions expressed in this article are those solely of the author(s) and are not of the Los Angeles Intellectual Property Law Association or its members.

Although the Federal Circuit's decision in *Stauffer v. Brooks Brothers*, 619 F. 3d 1321 (Fed. Cir. 2010), brought a noticeable surge in false marking cases, a more recent Federal Circuit decision will almost certainly result in many of these false marking cases being dismissed.

After *Stauffer*, many would-be qui tam plaintiffs (mostly patent attorneys) actively looked for patented articles that were marked with expired patents and quickly brought suit against large companies, including Monsanto, BIC Corporation, and Graco, just to name a few. See *Brinkmeier v. Bic Corporation, et al.* 2010 WL 3360568 (D. Del. August 25, 2010); *North Carolina Farmers' Assistance Fund, Inc. v. Monsanto Co.*, 2010 WL3853181 (M.D.N.C. Sept. 27, 2010); and *Brinkmeier v. Graco Children's Prods. Inc.*, 684 F. Supp. 2d 548 (D. Del. Feb. 16, 2010).

Continued on page 10

Article: In Re BP Lubricants USA, Inc.: The Recent Surge In False Marking Cases Has Met Its Match

Continued from page 10

However, in *In re BP Lubricants USA, Inc.*, 97 U.S.P.Q.2d 2025 (Fed. Cir. 2011) the Federal Circuit found, in an issue of first impression, that Federal Rule of Civil Procedure Rule 9(b)'s particularity requirement **does** apply to false marking claims and that a complaint alleging only conclusory allegations of intent to deceive is insufficient. Many of these hastily brought false marking suits did not contain specific allegations of intent to deceive, including the complaint at issue in the *In re BP Lubricants* case. Although many district courts were already dismissing false marking suits based on a failure to plead intent to deceive with particularity, the Federal Circuit's opinion in *BP* makes clear that Rule 9(b)'s particularity requirement does apply to false marking cases.

What is not as clear, however, is how much particularity is enough to survive a motion to dismiss at the complaint stage. In the *BP* case, Thomas A. Simonian ("Simonian"), a patent attorney, filed a *qui tam* false patent marking suit against BP on behalf of the United States. In the complaint, Simonian alleges that "BP knew or should have known that the patent expired" and that "BP is a sophisticated company and has experience applying for, and obtaining and litigating patents." The district court held that these allegations met the requirements of Rule 9(b).

BP argued that the intent to deceive element was insufficiently pled in the complaint and brought a motion to dismiss in the District Court. The District Court denied BP's motion to dismiss finding that the general allegations of the complaint were sufficient.

However, the Federal Circuit noted that the complaint failed to allege any facts that showed that BP was **aware** of the patent's expiration. In fact, the Federal Circuit criticized the District Court for relying on the general statement that "BP knew or should have known" of the patent's expiration. The Court noted that this "bare allegation" was clearly not sufficient to survive a motion to dismiss. Instead, for a false marking case, the plaintiff must provide some allegation from which one could infer that the defendant had knowledge that the patent expired. In the *BP* case, the plaintiff had not done so.

The Federal Circuit issued a writ of mandamus, directing the District Court to dismiss the complaint with leave to amend to correct the pleading requirements.

Clearly, based on this new Federal Circuit decision, plaintiffs bringing false marking claims should be careful to plead the intent to deceive element with sufficient particularity. Allegations that the defendant "knew or should have known" are obviously not sufficient. Instead, the plaintiff should be careful to plead particular facts showing that the defendant was aware that the patent had expired.

However, this type of knowledge is difficult to plead at the complaint stage without first conducting discovery. One question is whether intent be inferred based on the age of the patent, as in the *Stauffer* case, where the patent was over 50 years old? In addition, the plaintiff in the *BP* case did allege that BP was a sophisticated company that had experience applying for and obtaining patents. But, the Federal Circuit held that this too was insufficient.

In *Brinkmeier v. Bic Corporation, et al.* 2010 WL 3360568 (D. Del. August 25, 2010), mentioned above, the plaintiff pled that:

BIC is a sophisticated company that has many decades of experience applying for, obtaining, and litigating patents. BIC has an in-house legal department, which is responsible for its intellectual property, marketing, labeling, and advertising law and who regularly litigate[s], or oversee[s] litigation of, patent infringement and false advertising claims. BIC has previously accused companies of (and itself has been accused of) patent infringement. Plaintiff alleges that BIC knows, or reasonably should know, of the requirements of the marking statute and laws pertaining to product marking. Plaintiff further alleges that BIC reviews and revises the patent markings on the products identified [] above and therefore knows, or should know, that one or more of the patents marked on the products identified [above] are expired.

The District Court found these allegations to be insufficient and granted defendant's motion to dismiss. Although the Federal Circuit did not rule on the *Brinkmeyer* case, it is likely that the court would deem these allegations to be sufficient as well due to "knew or should have known" language.

While the Federal Circuit in the *BP* case clearly states what is not sufficient, it is not entirely clear what is sufficient to survive a motion to dismiss in a false marking case.

Employment Opportunities

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Fulwider Patton LLP is the oldest IP boutique in Los Angeles. Our attorneys have expertise in all facets of intellectual property, including patent drafting, trademark prosecution, copyright registration, trade secret protection, rights of privacy and publicity, infringement and validity opinions, litigation, and the IP aspects of acquisitions and divestitures.

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LAIPLA Announces Sponsor Opportunities

Sponsorship: A Good Way To Support LAIPLA and Highlight Your Firm

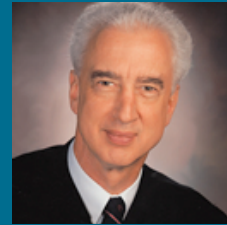
We have several opportunities for firms or companies to publicize their organization by being a sponsor at one of our upcoming events. Sponsors are needed for our Monthly Meetings (one sponsor allowed each month), at the Washington in the West Program (4-5 sponsors needed), at our Annual Spring Seminar (7-8 sponsors needed), and at Judges' Night. If you are interested in being a sponsor by contributing to the general budget, by contributing to a specific event, or by being a tabletop sponsor at the Washington in the West, Spring Seminar or Judges' Night, please contact Scott Hansen at 310-824-5555 or shansen@fulpat.com. Show your support, and feature your firm or company at the same time.

Newsletter Submissions

Have a short article, news item, or announcement that you would like to share with the Association? Send your submissions to the Editor of the LAIPLA Bulletin: Oral Caglar, oral.caglar@yahoo.com. Please direct advertising inquiries to the Administrator, MCE International, at LAIPLAOffice@aol.com.

Los Angeles Intellectual Property
Law Association &

San Diego Intellectual Property
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Keynote Speaker:
Paul R. Michel
Former Chief Justice,
Federal Circuit



Special Guest:
David Kappos
USPTO Director

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Join our LinkedIn Group www.tinyurl.com/SpringSeminar2011

WELCOME



Philip J. Graves
Spring Seminar Chairman
Graves Walton, Partner

Welcome everyone. We are tremendously excited that so many items on our wish list have come to fruition. Our committee of LAIPLA members **Nikki Ma, Sanjesh Sharma, Mark Treitel** and SDIPLA members **Jo Dale Carothers, Kurt Kjelland** and **John Peterson** have spent countless hours and late nights

ensuring we're offering a non-stop weekend of truly dynamic seminar programs and events. Whether this is your first Spring Seminar or your tenth... we have something planned for you.

This calendar of MCLE programs, presented by the LAIPLA/SDIPLA as a service to the profession, offers a rich variety of topics of importance to law professionals who have an interest in Intellectual Property Law. An annual favorite among LAIPLA members, this year's Spring Seminar program will feature a keynote presentation by former CAFC Chief **Judge Paul R. Michel**, a special presentation from USPTO Director, **David Kappos** and includes an array of local in-house attorneys as panelists, and once again concludes with an entire day devoted to the latest developments in Patent, Trademark and Copyright law.

As an IP organization, we wanted to utilize the social networks to enhance your experience. We have started a group on the LinkedIn network so that our attendees can interact with each other prior, during and after the Spring Seminar. You can join our group at www.tinyurl.com/SpringSeminar2011.

We are also cognizant of our attendees' needs to network and socialize. Hotel Del Coronado is a perfect place to spend a weekend and we will make sure you enjoy every minute of your time at our conference. Enjoy! - Phil



Alexander R. Schlee
LAIPLA President
Schlee IP International, P.C.

The Los Angeles Intellectual Property Law Association is ecstatic to welcome **SDIPLA** and its members to our annual Spring Seminar. **Phil Graves** and his stellar committee have gone above and beyond to program what will surely be a memorable event.

LAIPLA has served the greater Los Angeles intellectual property community since 1934. We are a volunteer organization that prides itself on its many dynamic committees. I'm so happy to see the Spring Seminar committee work hand in hand with the Sponsorship Committee (**Keith Newbury** and **Scott Hansen**). Without our generous sponsors, putting together this conference would be an impossibility. Special thanks to **Lexis/Nexis** for sponsoring printing, postage and mailing this brochure to LAIPLA and SDIPLA members.

Please let me take a moment and thank my colleague, **John Peterson** and the **SDIPLA Board**. We are grateful that they are part of this event this year. We hope to build relationships and learn from each other throughout the weekend. Of course I can't exclude **Linda** and **Lisa**, who have worked tirelessly to make sure our programs go off without a hitch.

I am especially excited about meeting our first time LAIPLA attendees and telling them all about the many types of programming that LAIPLA does throughout the year. From our Washington in the West winter conference, to our monthly dinners and informative newsletters, we want to give back to the greater Los Angeles IP community. Please visit our website at www.laipla.net.

I look forward to seeing everyone in San Diego. I can't wait! - Alex

Whether this is your *first* or *tenth* Spring Seminar... We have something planned for you



John E. Peterson, PhD.
SDIPLA President

Greetings! The San Diego Intellectual Property Law Association (SDIPLA) is proud to join with the LAIPLA to bring you the 2011 Spring Seminar program.

On behalf of the SDIPLA, I welcome all area lawyers with an interest in IP law to attend this exciting and informative program. And, because it will be held in San Diego, local attorneys have the unique opportunity to attend the program without the added cost of a hotel. Enrollment is open to all interested attorneys – you do not need to be a member of the LAIPLA or the SDIPLA to attend. SDIPLA members, however, can register at the lower, LAIPLA member price.

I am proud of the members of the SDIPLA Board, consisting also of **Ken Jenkins** (Vice-President), **Kurt Kjelland** (Secretary), **Marc Morley** (Treasurer) and **Jessica Mitchell** (Past President), who have worked tirelessly to make this program a success. I am also delighted to work with the LAIPLA Board, and specifically, the members of the LAIPLA Spring Seminar planning committee, who made this event possible, particularly **Alex Schlee**, LAIPLA President.

Once again, welcome to the 2011 LAIPLA/SDIPLA Spring Seminar program and thank you for your interest in this event. We look forward to seeing you in June! - John

Linda Cain & Lisa Benavidez
Spring Seminar Event Planners
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The Spring Seminar is always the highlight of LAIPLA's year, but this Seminar is special. The world class Hotel Del Coronado offers amenities and beauty unique in California.

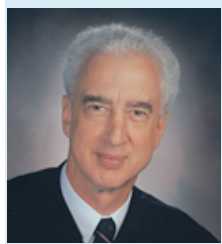
We are planning fantastic events such as our **San Diego After Dark Poker Tournament** with professional dealers and bartender, where you can win the new Apple iPad 2, iPod touch and other fantastic prizes. You can't go to San Diego without a walk along the beach, so we're having our opening cocktail hour on the sandy beach for you and your guest. And after listening to Judge Michel's keynote speech, we'll have a beach bonfire, a classic highlight to an incredibly planned weekend.

Your ticket allows you and your guest to partake in the cocktail hours, breakfast, bonfire and keynote dinner. We also chose this location because of the many activities the hotel has to offer, such as golf, boating, spa treatment, pool, yoga and shopping. And we are aware of that many attendees are bringing their families. The hotel will have child care available during the two evening programs. Last but not least, we will make sure you receive your MCLE certificates. We look forward to you joining us in what looks to be our best year yet.

See you soon,

Linda & Lisa
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PROGRAM HIGHLIGHTS

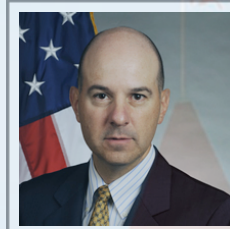


Keynote Speaker: Paul R. Michel, Former Chief Justice, Federal Circuit

Judge Michel served on the United States Court of Appeals for the Federal Circuit from 1988 until 2010, and presided as its Chief Judge from 2004 until his retirement last year. During Judge Michel's tenure, he participated in many of the Federal Circuit's most important decisions. He is also the recipient of the 2010 LAIPLA IP Person of the Year. We are truly honored that Judge Michel will be speaking, thanks to our generous sponsor **Legal Metric**. The Keynote Dinner is open to each attendee and their guest.

Kappos Comes to California, Special Guest: David Kappos, USPTO

As Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, Kappos advises the President, the Secretary of Commerce, and the Administration on intellectual property matters. He is transforming the patent system as we enter the next digital age. David has been looking forward to meeting LAIPLA members face to face since *Washington in the West* that prevented him from touching down in California.



Frontiers of Biotechnology: Discuss up to the minute developments with leaders at San Diego Biotechs.

Harry Leonhardt, Vice President, Legal, Governance and Corporate Secretary, Amylin Pharmaceuticals Inc.;
Duane Roth, CEO CONNECT, Chairman and CEO of Alliance Pharmaceutical Corp., Vice-Chair of the Governing Board of the California Institute for Regenerative Medicine;
Joseph Panetta, President & CEO, BIOCUM



Patent Year in Review: Harold C. Wegner, Foley & Lardner LLP, Partner

A staple of the Spring Seminar for years, Hal's yearly round up of the Top Ten patent cases is a must-see event. Hal publishes the Patent Top Ten to IP attorneys all across the country. See his latest writings <http://www.grayonclaims.com/hal/>.

Patent Litigators: Can't Miss Sessions...

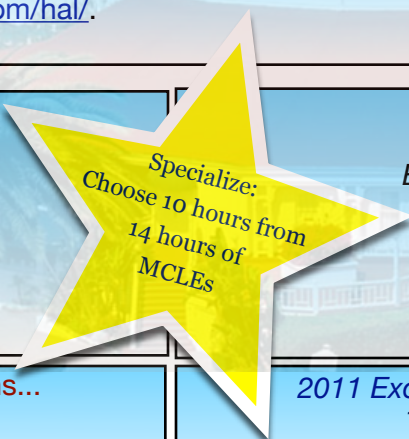
IP Trial Strategies & War Stories
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Excelsior! Marvel Enterprises Copyright issues
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2011 Exclusive: Flying Solo: Life as a Solo Practitioner

Thinking about becoming a Solo Practitioner?
 Hear from our panel of experts on how to market yourself to clients, generate business and enhance your success as you become your own boss

SOCIAL HIGHLIGHTS

How will you spend your free time? Will you...

Yell "Fore", pamper yourself in the spa, buy something special, swing a racket, take a dip in the pool, rent a cabana, rent a kayak, learn to jet ski, ride a bike, build a sand castle with your kids, learn to hang ten, wind surf, practice your Down Dog, take a 15 minute ride to Downtown San Diego, or relax in the world class hotel? It's up to you. It's your free time.

Cocktails on the the Beach

Network and socialize overlooking the beach where Marilyn Monroe, Jack Lemmon and Tony Curtis filmed "Some Like It Hot"

San Diego After Dark

Texas Hold 'Em Poker Tournament
Win an iPad 2, iPod Touch and other Apple products

Players compete for prizes. You don't have to play poker. You can win the same prizes with our raffle tickets!

Beach Bonfire

We can't think of a better way to top off the weekend than to cozy up to a fire with s'mores and a campfire overlooking the crashing waves

Friday, June 3rd

1:00 - 2:00 PM **Seminar Registration**

1:50 - 2:00 PM **Welcoming Remarks - Philip J. Graves**, Spring Seminar Committee Chairperson, Graves & Walton, Partner

2:00 - 3:00 PM **Frontiers of Biotechnology**

Harry Leonhardt, Vice President, Legal, Governance and Corporate Secretary, Amylin Pharmaceuticals Inc.;
Duane Roth, CEO CONNECT, Chairman and CEO of Alliance Pharmaceutical Corp., Vice-Chair of the Governing Board of the California Institute for Regenerative Medicine
Joseph Panetta, President & CEO, BIOCOM;
Moderator: **John Peterson**

3:10 - 4:10 PM

Bankruptcy and Intellectual Property: Rights and Remedies

Aram Ordubegian, Arent Fox, Partner
Steven G. Polard, Perkins Coie, Partner

Inequitable Conduct, Round 2

Patrick F. Bright, Wagner, Anderson & Bright, Partner
Frederick A. Lorig, Quinn, Emanuel, Urquhart & Sullivan, Partner
Laurence H. Pretty, Law Offices of Laurence H. Pretty
Moderator: **Sanjesh Sharma**, Connolly Bove, Of Counsel

4:20 - 5:20 PM

International Trademark Enforcement: A Primer

Danielle M. Criona, Roll Law Group, P.C., Intellectual Property Counsel

Flying Solo: Life as a Solo Practitioner

John (Jak) Griecci, Law Office of John A. Griecci
Julio Loza, Loza & Loza
Kyri Tsircou, Tsircou Intellectual Property Law
Moderator: **Karen Canady**, Canady & Lortz

6:30 - 7:30 PM **Cocktails on the Beach - LAIPLA/SDIPLA Welcome Reception** (Guest Included)

9:00 - Midnight **San Diego After Dark - Texas Hold 'Em Poker Tournament & Raffle** (Guest Included)

Saturday, June 4th

8:00 - 9:00 AM **Networking Breakfast** (Attendees Only)

8:50 - 9:00 AM **Welcoming Remarks:**

Alexander R. Schlee, LAIPLA President, Schlee IP International, P.C. & **John Peterson**, SDIPLA President

9:00 - 10:00 AM **SPECIAL GUEST: Kappos Comes to California, David Kappos**, USPTO

10:10 - 11:10 AM

The Patent Litigator: IP Trial Strategies and War Stories

Harold McElhinny, Morrison & Foerester, Partner
Adrian Pruetz, Pruetz Law Group, Partner
Moderator: **Paul Tripodi**, Sidley Austin LLP, Partner

The Patent Prosecutor: PCT-PPH (Patent Prosecution Highway) plus Pitfalls of communicating with clients using unencrypted emails

Carl Oppedahl, Oppedahl Patent Law Firm LLC

11:20 - 12:10 PM

Patent Track - Dual Actor Infringement

Drafting and enforcing telecommunication and computer science claims following *BMC*, *Muniauction*, *SIRF* and *Akamai*
Greer N. Shaw, Graves & Walton, Partner
Steven W. Smyrski, Smyrski Law Group
Moderator: **Phil Graves**, Graves & Walton, Partner

Copyright Track - Excelsior! Marvel Enterprises

Copyright issues regarding old and new media
Carole E. Handler, Lathrop & Gage, Partner and Professor at USC Law

12:30 - 1:30 PM **Lunch** (Guest tickets available for purchase)

6:00 - 7:00 PM **Pre-Keynote Cocktail Reception** (Guest Included)

7:00 - 9:00 PM **KEYNOTE DINNER - Judge Paul R. Michel** (Guest Included)

9:00 - 10:00 PM **Bonfire Beach Party** (Guest Included)

Sunday, June 5th

8:00 - 9:00 AM **Breakfast** (Guest Included)

9:00 - 10:00 AM **Trademark Year In Review - Christopher C. Larkin**, Seyfarth Shaw, Partner, USC Law School Lecturer

10:10 - 11:10 AM **Patent Year In Review - Harold (Hal) C. Wegner**, Foley & Lardner, LLP, Partner

11:20 - 12:20 PM **Copyright Year in Review - Professor Jack Lerner**, Clinical Assistant Professor of Law and Director of the USC IP and Technology Law Clinic

12:20 - 12:30 PM **Closing Remarks, LAIPLA 2011-2012 President, Brian Arnold. SEE YOU NEXT YEAR!!!**

LAIPLA/SDIPLA Spring Seminar 2011

Hotel del Coronado, San Diego, CA

Friday, June 3 – Sunday, June 5, 2011

This year's Spring Seminar is being held at the beautiful
Hotel del Coronado in San Diego.

Hotel reservations must be made directly with the resort. Call (800) 468-3533 and state you are attending the LAIPLA Spring Seminar to ensure you receive the special room rate of \$229.00 per night. **ALL HOTEL ROOMS ARE ON A FIRST-COME, FIRST-SERVED BASIS FOR GROUP RATE. Please reserve early as we expect a sold out event.**

NOTE: After 5 PM on May 12th (that's right, Thursday, May 12th not Friday May 13th) we CANNOT guarantee this Group Rate.

Please visit <http://www.hoteldel.com> for further information about the resort and activities.

PROGRAM REGISTRATION FORM

Please complete the following and return it with your payment to:
LAIPLA - 1430 South Grand Avenue, # 256, Glendora, CA 91740
OR email the form to LAIPLAOffice@aol.com
OR fax to: (626) 974-5439

Name: _____

Title: _____

Company/Firm: _____

Address: _____

City: _____ State: _____

ZIP: _____

Tel: _____ Fax: _____

Email: _____

Name(s) (for Badges): _____

Registrant: _____

Guest: _____

Accompanying Children:

Name(s)/Ages _____

Name(s)/Ages _____

Childcare available Friday and Saturday night by calling Hotel Del Concierge at 619-522-8196. 48 hour notice suggested.

"Kidtopia" available for kids ages 4-12. In-Room Childcare for kids under 4.

EVENTS INCLUDED WITH BASIC REGISTRATION

In addition to the Program, the following events are included in the registration fee for **you and one guest**, except Saturday breakfast. Please indicate which events you and/or your guest plan to attend.

Friday
6:00 p.m. – 7:00 p.m. **Cocktails on the Beach** _____ N/C
9:00 p.m. – Midnight **Poker Tournament/Bar/iPad 2 Prizes** _____ N/C
(Poker limited to first 100 Attendees applicants. Depending on response, may open more tables. Raffle open to everyone (including Guests))

Saturday
8:00 a.m. – 9:00 a.m. **Networking Breakfast (Attendees Only)** _____ N/C
12:30 p.m. – 1:30 p.m. **Lunch (Attendees only)** _____ N/C
\$ 26.00 per person for each additional Guest/family member _____ extra
6:00 p.m. – 7:00 p.m. **Pre-Keynote Cocktail Reception** _____ N/C
7:00 p.m. – 9:00 p.m. **Keynote with Judge Michel Dinner** _____ N/C
9:00 p.m. – 10:00 p.m. **Bonfire Beach Party** _____ N/C

Sunday
8:00 a.m. – 9:00 a.m. **All Attendee & Guest Breakfast** _____ N/C

INCLUDE FOOD RESTRICTIONS/VEGGIE _____

REGISTER BY MAY 13th to SAVE \$50

PRICING

\$975 LAIPLA or SDIPLA Members registering on or before **May 13, 2011** \$ _____
\$1,025 LAIPLA or SDIPLA Members registering after **May 14, 2011** \$ _____

\$1,080 Non Members registering on or before **May 13, 2011** \$ _____
\$1,130 Non Members registering after **May 14, 2011** \$ _____

MEMBER RATE NON-MEMBER RATE
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SPECIALTY (CHECK ALL THAT APPLY)

PATENT LITIGATION
 PATENT PROSECUTION
 COPYRIGHT
 TRADEMARK
 OTHER _____

LAIPLA MEMBERSHIP RENEWAL

It is time to renew your individual LAIPLA membership for the membership period July 1st, 2011 – June 31st, 2012. Renew today and save \$5.00 (No individual renewal necessary for those who benefit from a firm or company membership. New LAIPLA members benefit from the discounted Spring Seminar registration fee.)
Renew Today for \$100.00 \$ _____

I am interested in participating in one or more of the following committees:

- Law School Outreach Membership Newsletter
 Judges' Night Washington in the West
 2012 Spring Seminar Monthly Meetings Sponsorship
 Court Watch PTO/LAIPLA Relations
 Judiciary/LAIPLA Relations Website
 Marketing/Social Networking (NEW)
 Trademark Copyright

PAYMENT OPTIONS

TOTAL PAYMENT

\$ _____

Company Check Visa MasterCard Amex

Credit Card Number: _____

Exp. Date: _____ CCV Code on Card: _____

Print Name: _____

Signature: _____

HOTEL DEL CORONADO INFO

The Del offers: Shopping, Tennis, Golf, Spa Treatments, Swimming Pool, Sailboats, Speedboats, Water Skis, Paddle boats, Kayaks, Jet Skis, Boat Rentals, Bike Rentals, Boogie Boards, Volleyball, Surfboards, Kid & Teen Activities, Poolside Cabana Rentals, Yoga and a sand filled beach.

HOTEL EVENTS NOT INCLUDED WITH REGISTRATION

Please contact Hotel Del Coronado directly to sign up for additional activities.

Hotel Del Coronado: 1500 Orange Avenue, Coronado, CA 92118, in San Diego

Brochure designed by Mark Treitel

Brochure printed by Visual Ideas - call Armando at 213-280-6068
visualideas@sbcglobal.net

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Hurry Up... There's Still Time to Become a Sponsor

Contact Keith Newburry - Keith_Newburry@edwards.com - (949) 648-8836

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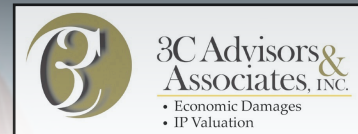
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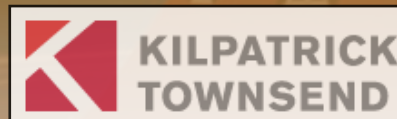


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**Los Angeles Women in
Intellectual Property**

AIPLA Spring Meeting

May 12–14, 2011
Palace Hotel
San Francisco, CA



Register Today!



[Click here to view the Spring Meeting Preview Program!](#) (PDF)

EARLY BIRD DEADLINE: Register by April 28, 2011 and take \$100 off the registration price!



Sponsor, Exhibitor and Advertiser opportunities are available-[click here](#) for more information!

[Click here](#) for the Preliminary Schedule of Events, CLE information and more

Hear AIPLA's Spring Meeting Panel Discuss Court's Refusal to Approve Settlement of Google's Scanning of Books

The District Court refused to approve the settlement in a class action copyright infringement suit brought by the Authors Guild and others against Google, Inc. The AIPLA Spring Meeting will include a panel discussion of this case on May 13 by several of the commenter's on the settlement, including William Cavanaugh, Former Deputy Assistant Attorney General for the Antitrust Division.

Don't miss this opportunity to join colleagues and thought leaders from around the globe at the AIPLA Spring Meeting. As a premiere intellectual property conference, the Spring Meeting provides attendees expert content on the latest issues and trends in IP Law.

Meeting Highlights:

Thursday Lunch Speaker: Veta T. Richardson
Executive Director, Minority Corporate Counsel Association, Washington, DC

Friday Lunch Speaker: Lord Justice Robin Jacob,
Royal Courts of Justice, London, United Kingdom

Important topics to be covered:

- Patent Damages
- Putting the New USPTO Rules to Good Use: Manage Costs, Improve Quality and Reduce Pendency
- Inequitable Conduct Issues Facing Prosecutors
- Best Practices for In-House Trademark Practitioners
- Hot Issues in Infringement Litigation
- Licensing Strategies and Solutions to Create Patent Peace
- ACTA and Global IP Enforcement Challenges
- Protecting Trade Secrets

- IP Assets and Bankruptcy
- The Inside Scoop from In-House Counsel
- The ITC--The Nation's Hottest Patent Docket: Non-Practicing Entities, Domestic Industries and Recent and Upcoming Changes in Practice at the ITC

Hotel Reservation Information

Palace Hotel
2 New Montgomery Street
San Francisco, California, 94105-3402

Room Rate: \$274 (single/double) Cut-Off Date for Room Block: April 21, 2011
Make your reservations early! Rooms sell out every year; sometimes even before the deadline. Call in your reservation today at 888-627-7196 or 415-512-1111 and ask for the AIPLA Group Rate.

To make your reservations online, [click here](#).

CLE credit

We are an approved provider by most states requiring CLE and have applied for credit for this meeting to all states requiring CLE.

Complete CLE information will be available on-site at the AIPLA CLE Booth located in the Exhibitor Area. A full list of past meetings and approved CLE credits can be obtained from our website (www.aipla.org) and in each eBulletin.

The 2011 Spring Meeting has a total of 915 CLE minutes. In states distinguishing between Ethics and Professionalism credits, the Spring Meeting will offer 120 minutes of Ethics and 30 minutes of Professionalism. In states making no distinction, a total of 150 Ethics credits will be offered:

Thursday, May 12

11:00 AM - 12:00 PM, Track 2: 60 minutes

Friday, May 13

3:55 - 4:25 PM, Track 3: 30 minutes

Saturday, May 14

11:00 - 11:30 AM: 30 minutes Ethics

11:30 AM - 12:00 PM: 30 minutes of Professionalism or Ethics

The 2011 Spring Meeting has been approved for Minimum Continuing Legal Education credit by the State Bar of California in the amount of 15.25 hours [of which a maximum of 2.5 hours will apply to Ethics credit].

The above amount is the calculation for 60-minute hour states. The maximum credit hour calculation for 50-minute hour states is 18.3 hours [of which 3.0 hours will apply to Ethics credit].

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| <input type="checkbox"/> Washington in the West | <input type="checkbox"/> Spring Seminar |
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| <input type="checkbox"/> Sponsor | <input type="checkbox"/> Trademark |
| <input type="checkbox"/> PTO/LAIPLA Relations | <input type="checkbox"/> Copyright |
| <input type="checkbox"/> Judiciary/LAIPLA Realions | |

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Thank you for your support of the LAIPLA.

* Note: If you are employed by a Firm Member or your company is an Organizational Member of LAIPLA, then you do not need to pay individual dues.

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Please feel free to let any potential new member(s) know that additional blank membership forms can be obtained at our website:

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* An LAIPLA liaison will contact you to update our records of your firm's member attorneys

Thank you for your support of the LAIPLA.