

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

**23rd Annual Intellectual Property Law & Policy
Conference**

www.fordhamipconference.com

Cambridge University Faculty of Law
Wednesday and Thursday, April 8-9, 2015

Hugh C. Hansen
Director

Learn Debate Have Fun

CONFERENCE PROGRAM

Subject to Change

Tuesday, April 7

Reception & Dinner for Faculty and Sponsors

Reception: The Lawn at King's College*

6:15 PM to 7:30 PM

Dinner: The Hall at King's College*

7:30 PM to 9:00 PM

Sponsored by:

Allen & Overy LLP

*SHUTTLE BUSES:

Robinson College to King's College, 5:30 PM to 7:00 PM;

Return: 9:00 PM to 10:30 PM

Wednesday Morning, April 8

Continental Breakfast

Faculty of Law, Atrium
7:00 AM – 9:00 AM

Sponsored by:

Crowell & Moring LLP

Registration

Faculty of Law, Atrium
7:00 AM – 8:00 AM

Please note: Doors to LG 19 will close at 8:00 AM.

Welcoming Remarks:

Wednesday 8:00 AM – 8:05 AM
LG 19

Prof. Hugh C. Hansen

Fordham University School of Law, New York

SESSION 1: Plenary Session

Wednesday 8:10 AM – 1:10 PM
LG 19

1A. IP and China

Wednesday 8:10 AM – 9:40 AM (90 minutes)
LG 19

Moderator:

Prof. Hugh C. Hansen

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

Speakers:

David J. Kappos

Cravath, Swaine & Moore LLP, New York

Evolving Policies and Practices, Impact for China and the World

These remarks will address China's current approaches to important IP topics including service inventions, bio/pharma disclosure requirements, utility model patents, indigenous innovation, judicial developments, and tradeseecrets. Recent events/progress will be discussed, as well as current challenges for China's IP system.

(up to 14 minutes)

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

Dr. Thomas Pattloch

Taylor Wessing, Munich

China and Competition Law: Protectionist or just finding it's way: a practitioner's viewpoint

(up to 9 minutes)

He Jing

AnJie Law Firm, Beijing

China IP under "New Normal"

Chinese leadership uses "New Normal" to capture the way it sees where China is and where China goes. How does the China IP world fit into the new reality? "New Normal" calls for innovation and more "rule of law" elements. We will examine some new changes, on the ground learnings, and predict what is to come.

(up to 9 minutes)

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

Prof. Mark Cohen

Fordham University School of Law, New York; Senior Counsel, United States Patent and Trademark Office, Alexandria

To what extent are government bureaucracies a serious impediment to progress in IP policy?

(up to 9 minutes)

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

Panelists:

Steven M. Tepp

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

Richard Vary

Head of Litigation, Nokia, Guildford

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

1B. Governments and IP

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

LG 19

Moderator:

Prof. Hugh C. Hansen

Fordham University School of Law, New York

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

Speakers:

Lord Hoffmann

Queen Mary, University of London, London

IP and the courts: Can judges achieve a harmonized IP law?

(up to 9 minutes)

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

Hon. António Campinos

President, Office of the Harmonization in the Internal Market, Alicante

Legislative reform in the EU: The role of OHIM

(up to 9 minutes)

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

Maria Martin-Prat

Head of Unit – Copyright, DG Connect, European Commission, Brussels

Announced review of EU copyright policy: What are the goals and how do we achieve them?

(up to 9 minutes)

Ted Shapiro

Wiggin LLP, Brussels

Copyright in the EU: What can be expected? Who stands to benefit?

The European Commission is considering legislative measures to achieve its political goal of imposing cross-border access to and portability of online content services in

the European Union. A number of options are available to the Commission to achieve this goal ranging from relatively minor legislative fixes to the adoption of an EU Copyright Law. What does this mean? What measures might be taken to ensure that any policy initiatives do not undermine the content sector's ability to finance, produce and distribute the exciting new works and services demanded by consumers in the European Union?

(up to 9 minutes)

Panel discussion: 8 minutes (speakers, panelists and members of the audience)

Karyn Temple Claggett

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

U.S. copyright review: Risks and rewards

(up to 9 minutes)

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

Panelists:

Carlo Scollo Lavizzari

Lenz & Caemmerer, Basel

Paul Maier

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

Shira Perlmutter

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

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

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

Break

11:15 AM – 11:40 AM

1C. Intergovernmental Organizations, Multilateral, Plurilateral and Bilateral Agreements

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

LG 19

Moderator:

Prof. Hugh C. Hansen

Fordham University School of Law, New York

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

Speakers:

Probir J. Mehta

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

IP Trade issues: U.S. government perspective

(up to 10 minutes)

Pedro Velasco Martins

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

IP Trade issues: The EU perspective

(up to 10 minutes)

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

Antony Taubman

Director, Intellectual Property Division, World Trade Organization, Geneva

20 years of TRIPS: An overview and some views about the future

A look at TRIPS and multilateralism in the context of (i) the actual experience of TRIPS (what the trade lawyers call the 'applied regime'); and (ii) the significance of bilateral and regional norm setting – with a particular focus on dispute settlement, including the "big trademark" one.

(up to 10 minutes)

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

Michele Woods

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

WIPO and multilateral issues: Impasse, or is progress realistically possible?

(up to 10 minutes)

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

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

Lunch

Robinson College
1:10 PM – 2:20 PM

Sponsored by:

Nokia

Wednesday Afternoon, April 8

THREE CONCURRENT SESSIONS:

Patents, Copyright, Enforcement, Trademarks & Multilateral

SESSION 2: PATENT LAW

Concurrent Session

Wednesday 2:30 PM – 6:30 PM

LG 19

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

Wednesday 2:30 PM – 4:00 PM (90 minutes)

LG 19

Moderator:

Paul England

Taylor Wessing LLP, London

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

A. VIEW FROM THE TASK FORCE AND JUDICIARY

Speaker:

Johannes Karcher

Head of Task Force, EU-Patent and Unified Patent Court, Federal Ministry of Justice and Consumer Protection, Berlin

Rules of Procedure of the Unified Patent Court – The European Injunction

The Unified Patent Court (UPC) will grant injunctions with Europe wide effect. The talk will address the question of the discretion the Court has when granting such measures. What are the differences with regard to provisional measures and permanent injunctions? The presentation will also take a look at a possible "injunction gap".

(up to 12 minutes)

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

Roundtable Discussion:

Hon. Mr. Justice Birss

Chancery Division, High Court, London

Lord Hoffmann

Queen Mary, University of London, London

Rt. Hon. Prof. Sir Robin Jacob

Faculty of Laws, University College London, London

Hon. Rian Kalden

Court of Appeal of The Hague, The Hague

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

Roundtable discussion: 25 minutes (speaker, panelists and members of the audience)

B. THE UNITARY PATENT AND THE UPC IN PRACTICE

Speaker:

Paul England

Taylor Wessing LLP, London

What patent laws should apply in the UPC?

The Unified Patent Court (UPC) is likely to come into existence in the next couple of years. A feature of the UPC will be that its panels mix judges from different contracting Member States. Each of these judges will bring to the UPC the knowledge and experience of their own national patent law regimes; many of which vary widely. In addition, the details of the applicable law in the UPC are to be drawn from a wide

variety of sources, including national laws. Which of these sources should the judges apply to a given issue? The panel will discuss their views on the following aspects of this question: what substantive law approaches should the UPC apply to obviousness and insufficiency? Should a doctrine of equivalents be used to assess scope of protection of claims in the UPC? What other key areas of difference between national infringement approaches must be resolved? What factors will be most important to the UPC when considering the grant of preliminary injunctions? Finally, given the varying legal approaches and skill sets possessed by European practitioners, what skills and knowledge in law and practice will be particularly required from those conducting UPC proceedings?

(up to 12 minutes)

Roundtable Discussion:

Giovanni Casucci

Bardehle Pagenberg, Milan

John Temple Lang

Cleary Gottlieb Steen & Hamilton LLP, Brussels

Miquel Montaña

Clifford Chance LLP, Barcelona

Cordula Tellmann-Schumacher

Arnold Ruess, Düsseldorf

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

Roundtable discussion: 25 minutes (speaker, panelists and members of the audience)

Break

4:00 PM – 4:25 PM

2B. Global Patent Developments

Wednesday 4:25 PM – 5:25 PM (60 minutes)

LG 19

Moderator:

John Richards

Ladas & Parry LLP, New York

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

Speakers:

Hon. Ryuichi Shitara

Chief Judge, Intellectual Property High Court, Tokyo

Is a judgment a singular effective way for solution of the patent conflict?

It is not easy to persuade the parties and settle the cases in patent litigations. In Japan settlement by the court plays a very important role at the final stage of the patent litigations especially in a case when the patentee has a good chance to win the case. This is the cause of the low winning rate of the patentee in judgments of the Japanese courts, but the substantial winning rate of the patentee in the Japanese patent litigations is not low.

(up to 10 minutes)

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

Hon. Roger T. Hughes

Federal Court of Canada

Patent Invalidity: For the Courts or for the Patent Office to decide? The UK and Canada as examples

Patent validity traditionally has been decided by the Courts of the country granting the patent. Recently this tradition has been disturbed, e.g. in the UK where a decision of the Supreme Court of the UK was effectively overturned by the European Patent Office in the Virgin case. In Canada Eli Lilly, whose patent was invalidated by a final decision of the Canadian Courts, is seeking redress in the UN Commission on Int'l Trade and NAFTA

(up to 10 minutes)

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

Carlos Aboim

Licks Advogados, Rio de Janeiro

(up to 10 minutes)

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

Panelists:

Junichi Kitahara

Abe, Ikubo & Katayama, Tokyo

Clara Pombo

Clarke, Modet & C^o, Madrid

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

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

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

Wednesday 5:30 PM – 6:30 PM (60 minutes)

LG 19

Moderator:

Prof. Martin J. Adelman

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

Speaker:

Dimitrios T. Drivas

White & Case LLP, New York

Current Developments in US Patent Law

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

(up to 25 minutes)

Panelists:

Kenneth R. Adamo

Kirkland & Ellis LLP, Chicago

Patricia A. Martone

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

Wendy E. Miller

Cooper & Dunham LLP, New York

John Richards

Ladas & Parry LLP, New York

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

General discussion: 25 minutes (speaker, panelists and members of the audience)

Reception

The Fitzwilliam Museum*
Trumpington Street
6:30 PM – 8:30 PM

Sponsored by:
Freshfields Bruckhaus Deringer LLP

*SHUTTLE BUSES:
Faculty of Law to Fitzwilliam Museum, 5:45 PM to 7:30 PM;
Return to Robinson College: 7:30 PM to 9:30 PM

SESSION 3: COPYRIGHT LAW

Concurrent Session

Wednesday 2:30 PM – 6:30 PM

LG 18

3A. Canadian Copyright Update

Wednesday 2:30 PM – 3:00 PM (30 minutes)

LG 18

Moderator:

Nathalie Théberge

Director General, Canadian Heritage, Québec

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

Speaker:

Howard P. Knopf

Macera & Jarzyna LLP, Ottawa

(up to 10 minutes)

Panelist:

Hon. Roger T. Hughes

Federal Court of Canada, Ottawa

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

General discussion: 10 minutes (speaker, panelist and members of the audience)

3B. Court of Justice of the European Union Developments

Wednesday 3:05 PM – 4:30 PM (85 minutes)

LG 18

Moderator:

Ted Shapiro

Wiggin LLP, Brussels

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

Speakers:

Dr. Eleonora Rosati

University of Southampton, e-LAWnora, and IPKat, London

EU Copyright Law

Over the past few months the Court of Justice of the European Union has issued a number of judgments that have touched upon topical areas, ranging from the notion of parody to exhaustion, from contractual freedom to private copying levies.

*Meanwhile the new EU Commission has announced its intention to ameliorate EU copyright, and also the EU Parliament appears engaged in discussing reform plans. The question thus becomes whether what is current being proposed at the EU policy level to update the existing *acquis* is both feasible and desirable.*

(up to 10 minutes)

Maria Martin-Prat

Head of Unit – Copyright, DG Connect, European Commission, Brussels

(up to 8 minutes)

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

Prof. Jonathan Griffiths

Queen Mary, University London, London

Allposters and the Distribution Right

Recently, the CJEU gave its judgment in (C-419/13) Arts & Allposters. It held that the distribution right was not exhausted when a poster reproduction of a work, distributed with the right-holders' consent, was transferred onto canvas by the defendant and marketed. The case raises a number of significant questions about the development of EU copyright law.

(up to 8 minutes)

Prof. Jan Rosén

Stockholm University, Stockholm

Linking after Svensson

(up to 8 minutes)

Panel discussion: 8 minutes (speakers, panelists and members of the audience)

Panelists:

Benoit Van Asbroeck

Bird & Bird, Brussels

Dr. Mihály Ficsor

Honorary President, Hungarian Copyright Council; International Legal Consultant,
Budapest

Prof. Bernt Hugenholtz

Faculty of Law, University of Amsterdam, Amsterdam

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

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

Break

4:30 PM – 4:55 PM

3C. European Union Member State Law

Wednesday 4:55 PM – 5:35 PM (40 minutes)

LG 18

Moderator:

Ted Shapiro

Wiggin LLP, Brussels

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

Speakers:

Tom Rivers

Copyright consultant, London

UK Copyright Law

(up to 10 minutes)

Sergio Miralles

Intangibles Legal SLP, Barcelona

Google tax

Spain has recently introduced a new ancillary right in favour of press publishers for the aggregation of news and other copyrighted content available online by means of a statutory limitation that authorizes the aggregation of online contents subject to an unwaivable equitable compensation. This talk will compare the Spanish legislation with prior developments (Germany, France and Belgium) and discuss some more general topics, such as the linking to freely available online content (C-466/12 Svensson), the eligibility of copyright protection of short excerpts (C-5/08 Infopaq) and the implications of the non-waivability of rights granted to right holders by statute.

(up to 8 minutes)

Panelists:

Benoit Van Asbroeck

Bird & Bird, Brussels

Prof. Bernt Hugenholtz

Faculty of Law, University of Amsterdam, Amsterdam

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

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

3D. Copyright Software Protection: In Peril or just in Flux?

Wednesday 5:40 PM – 6:30 PM (50 minutes)

LG 18

Moderator:

Anderson J. Duff

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

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

Speakers:

Terry Hart

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

Google v. Oracle

(up to 8 minutes)

Prof. Jan Bernd Nordemann

Humboldt University; Boehmert & Boehmert, Berlin
Lessons from CJEU SAS Institute/World Programming.
(up to 8 minutes)

Panelists:

Prof. Lionel Bently

Faculty of Law, University of Cambridge, Cambridge

Esa Kaunistola

Director, EMEA Trade and IP Policy, Microsoft Corp., Helsinki

Stevan Mitchell

Director, Office of Intellectual Property Rights, International Trade Administration,
Washington D.C.

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

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

Reception

The Fitzwilliam Museum*
Trumpington Street
6:30 PM – 8:30 PM

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Freshfields Bruckhaus Deringer LLP

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Faculty of Law to Fitzwilliam Museum, 5:45 PM to 7:30 PM;
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SESSION 4: TRADEMARK & MULTILATERAL

Concurrent Session

Wednesday 2:30 PM – 6:30 PM

LG 17

4A. ICANN

Wednesday 2:30 PM – 3:15 PM (45 minutes)

LG 17

Moderator:

N. Cameron Russell

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

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

Speakers:

Mary W. S. Wong

Senior Policy Director, ICANN, Los Angeles

ICANN Developments

(up to 10 minutes)

Gareth Dickson

Cooley LLP, London

(up to 10 minutes)

Panelist:

Martin Schwimmer

Leason Ellis LLP, White Plains

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

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

4B. Multilateral Developments: WIPO

Wednesday 3:20 PM – 4:20 PM (60 minutes)

LG 17

Moderator:

Antony Taubman

Director, Intellectual Property Division, World Trade Organization, Geneva
(up to 5 minutes to introduce the subject matter; intro of speakers –
just name and affiliation, please see bios in print materials and online.)

Speakers:

Michele Woods

Director, Copyright Law Division, World Intellectual Property Organization, Geneva
(up to 8 minutes)

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

Prof. Justin Hughes

Loyola Law School, Los Angeles
The Lisbon Revision
(up to 8 minutes)

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

Panelists:

Prof. Irene Calboli

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

Pedro Velasco Martins

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

Shira Perlmutter

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

Hon. Weerawit Weeraworawit

Deputy Secretary General, National Human Rights Commission, Thailand

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

Break

4:20 PM – 4:45 PM

4C. Multilateral Developments: TPP/TTIP and WTO

Wednesday 4:45 PM – 6:30 PM (105 minutes)

LG 17

Moderator:

James Pooley

James Pooley, A Professional Law Corporation, Silicon Valley
(up to 5 minutes to introduce the subject matter; intro of speakers –
just name and affiliation, please see bios in print materials and online.)

A. TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP/ TRANS-PACIFIC PARTNERSHIP

4:45 PM – 5:40 PM

Speakers:

Pedro Velasco Martins

Deputy Head of Unit, Intellectual Property and Public Procurement, DG Trade,
European Commission, Brussels
(up to 8 minutes)

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

Probir J. Mehta

Acting Assistant U.S. Trade Representative for Intellectual Property and Innovation,
Office of the United States Trade Representative, Washington D.C.
(up to 8 minutes)

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

Hon. Weerawit Weeraworawit

Deputy Secretary General, National Human Rights Commission, Thailand
(up to 8 minutes)

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

Panelists:

James Love

Director, Knowledge Ecology International, Washington D.C.

Stevan Mitchell

Director, Office of Intellectual Property Rights, International Trade Administration,
Washington D.C.

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

B. 20 YEARS OF WORLD TRADE ORGANIZATION

5:45 PM – 6:30 PM

Speakers:

Wolf Meier-Ewert

Counselor, Intellectual Property Division, World Trade Organization, Geneva
(up to 8 minutes)

Dr. Mihály Ficsor

Honorary President, Hungarian Copyright Council; International Legal Consultant,
Budapest

This talk describes the unfolding cooperation between WIPO and the WTO and how the very first WTO IP dispute was settled in 1996 on the basis of an opinion prepared by the WIPO Secretariat. However, the main topic is the WTO panel report which interpreted the three-step for the first time, on the basis of the negotiation history of Article 9(2) of the Berne Convention, the way it is provided for exceptions to patent rights in Article 30 of the TRIPS Agreement. It is compared with the report of another WTO panel which four months later interpreted the test for copyright exceptions and limitations under Article 13 of the Agreement.

(up to 8 minutes)

Panelists:

Pedro Velasco Martins

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

Probir J. Mehta

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

General discussion: 16 minutes (speakers, panelists and members of the audience)

Reception

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Freshfields Bruckhaus Deringer LLP

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Thursday Morning, April 8

Continental Breakfast

Faculty of Law, Atrium
7:00 AM – 9:00 AM

Sunrise Seminars

Sunrise Seminar I: Views from the Judiciary

Thursday 7:30 AM – 8:40 AM (70 minutes)
LG 19

Moderator:

Prof. Hugh C. Hansen

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

Panelists:

Hon. Annabelle Bennett

Federal Court of Australia, Sydney

Hon. Mr. Justice Birss

Chancery Division, High Court, London

Hon. Mr. Justice Charleton

Supreme Court of Ireland, Dublin

Lord Hoffmann

Queen Mary, University of London, London

Hon. Roger T. Hughes

Federal Court of Canada, Ottawa

Rt. Hon. Prof. Sir Robin Jacob

Faculty of Laws, University College London, London

Hon. Rian Kalden

Court of Appeal of The Hague, The Hague

Hon. Ryuichi Shitara

Chief Judge, Intellectual Property High Court, Tokyo

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

General discussion: 70 minutes (panelists and members of the audience)

Sunrise Seminar II: IP Wars: Where are the Jedi When You Need Them?

Thursday 7:30 AM – 8:45 AM (75 minutes)

LG 18

Moderator:

Paul Maier

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

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

Speakers:

Paul Maier

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

(up to 10 minutes)

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

George E. Badenoch

Kenyon & Kenyon LLP, New York

Can high-tech companies ever be pro-patent?

(up to 8 minutes)

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

Robert Levine

Author, New York

The Copyleft is Anything But

We have started to think of the anti-copyright movement as essentially progressive: The name and rhetoric of the “copyleft” pits the public against large corporations, and the idea of “the commons” promotes a shared resource akin to a public good. Whatever you think about copyright law, however, it’s hardly inherently conservative. Although copyright is thought of in the Anglo-American world as a property right, it also functions as a labor right - it gives working creators something to sell, and collective licensing organizations like ASCAP and BMI allow for what are essentially collective negotiations. In the Continental tradition, creators rights function outside the market - moral rights cannot be sold, which is hardly a conservative notion. Most important, copyright regulates markets - it does this by establishing other markets, but still - which is a progressive idea. The copyleft promotes the idea of public resources, which seems progressive, but it does little to help those who create them. In fact, if you consider how much technology companies make on artistic works they pay less than market rate for, they start to look like exploiters of labor. Perhaps most important, the metaphor of the commons is wrongheaded and confusing; the classic metaphor is a public square that everyone uses to graze cattle but the Internet is dominated by a few big companies that, if you’ll forgive the metaphor, graze their cattle on public land. After awhile, the technology companies that make money on copyrighted works begin to look like they are socializing costs and privatizing gains.
(up to 8 minutes)

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

Prof. Shlomit Yanisky-Ravid

Ono Law School, Israel; Yale Information Society Project (ISP) Fellow; Fordham Law School, Visiting Professor

The Hidden Justification of Distributive Justice and its Flourishing Role in Multilateral Agreements

(up to 8 minutes)

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

Panelists:

Tony Clayton

Retiring Chief Economist, UK IPO, London; Visiting Researcher, Imperial Business School, London

Dr. Shlomo Cohen

Dr. Shlomo Cohen & Co., Bnei Brak

Prof. Bernt Hugenholtz

Faculty of Law, University of Amsterdam, Amsterdam

Fiona Phillips

Executive Director, Australian Copyright Council, Sydney

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

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

THREE CONCURRENT SESSIONS:

Patents, Competition, Enforcement & Trademarks

SESSION 5: PATENT LAW

Concurrent Session

Thursday 8:50 AM – 1:10 PM

LG 19

5A: Competition and Intellectual Property Interplay

Thursday 8:50 AM – 10:00 AM PM (70 minutes)

LG 19

Moderator:

Prof. Hugh C. Hansen

Fordham University School of Law, New York

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

Speakers:

Cecilio Madero Villarejo

Deputy Director-General for Antitrust, Directorate-General for Competition,
European Commission, Brussels

Competition and IP: The view from DG Competition

(up to 10 minutes)

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

Rt. Hon. Prof. Sir Robin Jacob

Faculty of Laws, University College London, London

Ants and grasshoppers: Why competition authorities' support for grasshoppers is a threat to innovation

(up to 8 minutes)

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

Koren W. Wong-Ervin

Counsel for Intellectual Property and International Antitrust, Office of International Affairs, Federal Trade Commission, Washington D.C.

(up to 8 minutes)

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

Panelists:

Carlos Aboim

Licks Advogados, Rio de Janeiro

Logan M. Breed

Hogan Lovells, Washington D.C.

Jürgen Dressel

Novartis Pharma AG, Basel

John Temple Lang

Cleary Gottlieb Steen & Hamilton LLP, Brussels

Prof. Ioannis Lianos

Faculty of Laws, University College London, London

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

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

5B. Second Medical Use

Thursday 10:05 AM –11:10 AM (65 minutes)

LG 19

Moderator:

Brian Cordery

Bristows LLP, London

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

Speakers:

Marleen H.J. van den Horst

BarentsKrans N.V., The Hague
(up to 8 minutes)

Nicola Dagg

Allen & Overy LLP, London

Enforcement of Second Medical Use Patents

Second medical use patents provide critical incentives for R&D investment in new medical indications for known active ingredients. Case law in this area has been evolving rapidly and is currently one of the most hotly contested issues in patent law – sitting as it does at the intersection of IP law and public policy. We look at enforcement of second medical use patents, considering challenges around product packaging, ‘over-stickering’, prescribing guidance and contractual provisions in supplier contracts. We will illustrate the vital importance of ongoing communications with public and industry bodies and conclude by providing a brief overview of global developments in this exciting area.

(up to 8 minutes)

Jürgen Dressel

Novartis Pharma AG, Basel
(up to 8 minutes)

Shimako Kato

Abe, Ikubo & Katayama, Tokyo

Medical Use Patent in Japan -Tips for obtaining and enforcing patents in Japan

Japan is one of the jurisdictions which have the biggest pharmaceutical markets. In Japan, a product or a process with a limitation of second medical use is patentable, but there are some points to be taken care of with regard to obtaining and enforcing patents. The presentation covers some tips for obtaining and enforcing patents with a limitation medical use in Japan in light of some recent decisions.

(up to 8 minutes)

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

Break

11:10 AM – 11:35 AM

5C. Priority Issues

Thursday 11:35 AM – 12:20 PM (45 minutes)

LG 19

Moderator:

Tiffany Mahmood

Kenyon & Kenyon LLP, New York

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

Speakers:

Justin Watts

Freshfields Bruckhaus Deringer LLP, London

Is the priority system failing us?

It is certainly under close examination in Europe on several fronts. The Enlarged Board of Appeal has been asked to consider the controversial question of whether a patentee whose claims are not entitled to priority find that the patent is invalid because he has filed a divisional claiming the same priority (poisonous divisionals). Does the current strict test for priority - not just in relation to poisonous divisionals - fail to recognise the early stage in enunciating an invention at which the priority document is written? What justification is there for insistence on strict formalities in relation to assignments from the inventor, and particularly when the application of that test differs between the US and Europe and creates another trap for patentees?

(up to 12 minutes)

Donald R. Steinberg

Wilmer Cutler Pickering Hale and Dorr LLP, Boston

Where do priority issues arise in the United States?

With applications typically filed in the name of the inventor, the issues typically relate to differences in disclosure rather than ownership. For example, when a provisional (or other priority) application is not as detailed as a later utility application, and does not disclose all elements of the claims. What are these issues surrounding priority in general in the US? And how, during the first thirty months of the America Invents Act, are we seeing priority arise in post-grant proceedings, where priority often cannot be raised directly?

(up to 10 minutes)

Panelists:

Penny Gilbert

Powell Gilbert LLP, London

Prof. Cyrill P. Rigamonti

University of Bern, Bern

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

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

5D. Patent Valuation

Thursday 12:30 PM – 1:10 PM (40 minutes)

LG 19

Moderator:

Patricia A. Martone

Law Office of Patricia A. Martone P.C., New York
(up to 5 minutes to introduce the subject matter; intro of speakers –
just name and affiliation, please see bios in print materials and online.)

Speakers:

Prof. Adam Mossoff

George Mason University School of Law, Arlington

Patent Valuation in Licensing and Litigation

Patents are commercial assets, and their valuation for licensing, and, by implication, for determinations of reasonable royalty rates after litigation is an issue of increasing importance in the innovation industries. This talk addresses an all-important issue in patent law that is often overlooked or is too-often not addressed in a serious empirical way in the many debates about remedies and other matters in patent litigation. This talk will discuss the differing approaches to patent valuation and how this impacts both licensing and patent litigation.

(up to 10 minutes)

Patricia A. Martone

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

Is the hypothetical license negotiation standard for reasonable royalty patent damages dead, and if so, why should we care? --the increasing disconnect between current damages law and real world patent license negotiations.

Where once we had largely compatible systems for setting royalty rates for licensing and litigation, there is an increasing disconnect between the two. Given that the Georgia Pacific analysis is meant to mirror real world licensing, the current case law disrupts that connection. This is problematic because the value of a patent in a particular transaction should be assessed consistently within and without litigation.

(up to 10 minutes)

Panelists:

Philip David (invited)

General Counsel, ARM, Cambridge

Nigel Swycher

Chief Executive Officer, Aistemos, London

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

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

Lunch

Robinson College
1:10 PM – 2:20 PM

Sponsored by:

WilmerHale

SESSION 6: COMPETITION LAW

Concurrent Session

Thursday 8:50 AM – 1:10 PM
LG 18

6A: Competition and Intellectual Property Interplay

Thursday 8:50 AM – 10:00AM PM (70 minutes)
LG 19

Moderator:

Prof. Hugh C. Hansen

Fordham University School of Law, New York

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

Speakers:

Cecilio Madero Villarejo

Deputy Director-General for Antitrust, Directorate-General for Competition,
European Commission, Brussels

Competition and IP: The view from DG Competition

(up to 10 minutes)

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

Rt. Hon. Prof. Sir Robin Jacob

Faculty of Laws, University College London, London

Ants and grasshoppers: Why competition authorities' support for grasshoppers is a threat to innovation

(up to 8 minutes)

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

Koren W. Wong-Ervin

Counsel for Intellectual Property and International Antitrust, Office of International Affairs, Federal Trade Commission, Washington D.C.

(up to 8 minutes)

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

Panelists:

Carlos Aboim

Licks Advogados, Rio de Janeiro

Logan M. Breed

Hogan Lovells, Washington D.C.

Jürgen Dressel

Novartis Pharma AG, Basel

John Temple Lang

Cleary Gottlieb Steen & Hamilton LLP, Brussels

Prof. Ioannis Lianos

Faculty of Laws, University College London, London

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

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

6B. Competition and Patent Privateering

Thursday 10:05 AM – 10:55 AM (50 minutes)

LG 18

Moderator:

Logan M. Breed

Hogan Lovells, Washington D.C.

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

Speakers:

Dr. Tobias Hahn

Reimann Osterrieth Köhler Haft, Düsseldorf

Privateering in the EU

(up to 8 minutes)

Prof. D. Daniel Sokol

University of Florida Law School, Gainesville

(up to 10 minutes)

Theo Blomme

Hoyng Monegier, Amsterdam

NPEs and their right to an injunction – a European perspective

(up to 8 minutes)

Panelist:

Erich Andersen

Vice President and Deputy General Counsel, Microsoft Corp., Redmond

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

Break

10:55 AM – 11:15 AM

6C. Patent Openness and Transparency

Thursday 11:15 AM – 11:55 AM (40 minutes)

LG 18

Moderator:

Logan M. Breed

Hogan Lovells, Washington D.C.

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

Speakers:

Nigel Swycher

Chief Executive Officer, Aistemos, London

Who owns what - getting to the root of patent ownership

Ownership information at the patent offices is inaccurate. There are many reasons for this, ranging from data quality issues (there are 28 patents recorded in the name of _!) to the fact that it is not mandatory to record assignments, and many companies do not. In between, there is legal ambiguity due to the total absence of legal identifiers. The panel will discuss whether mandatory rules e.g. the proposed US Attributable Owner reforms, or voluntary initiatives will improve the position. While many promote openness and transparency as an end in itself, will improvements in patent quality have any measurable economic impact? Should transparency initiatives target only NPEs, or is this a fundamental requirement for the evolution of IP into a functional asset class? What are the legitimate reasons why some patent holders would elect to withhold assignment information for their patents?

(up to 12 minutes)

David J. Kappos

Cravath, Swaine & Moore LLP, New York

Facilitating a Secondary Market Through Information Accuracy

These remarks will summarize the desirability of improving the accuracy and transparency of patent assignment data. Practical and policy impediments will be discussed, as well as ways available to work around these impediments.

(up to 8 minutes)

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

Panelist:

Theo Blomme

Hoyng Monegier, Amsterdam

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

General discussion: 18 minutes (speakers, panelist and members of the audience)

***6D. FRAND Royalties and Injunctions in the U.S. and EU:
Convergence or Divergence?***

Thursday 12:00 PM – 1:10 PM (70 minutes)

LG 18

Moderator:

Prof. Daryl Lim

The John Marshall Law School, Chicago

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

Speaker:

David Por

Allen & Overy LLP, Paris

FRAND Royalties and Injunctions

(up to 10 minutes)

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

Roundtable Discussion:

James Aitken

Freshfields Bruckhaus Deringer LLP, London

Christian Harmsen

Bird & Bird, Duesseldorf

Paul Lugard

Baker Botts, Brussels

Hon. Ryuichi Shitara

Chief Judge, Intellectual Property High Court, Tokyo

Prof. D. Daniel Sokol

University of Florida Law School, Gainesville

Roundtable discussion: 50 minutes (speaker, panelists and members of the audience)

Lunch

Robinson College
1:10 PM – 2:20 PM

Sponsored by:
WilmerHale

SESSION 7: ENFORCEMENT AND TRADEMARK LAW

Concurrent Session

Thursday 8:30 AM – 1:10 PM
LG 17

7A. Enforcement

Thursday 8:30 AM – 10:05 AM (95 minutes)
LG 19

Moderator:

N. Cameron Russell

Executive Director Center on Law and Information Policy, New York
(up to 5 minutes to introduce the subject matter; intro of speakers –
just name and affiliation, please see bios in print materials and online.)

Speakers:

Neville Cordell

Allen & Overy LLP, London
Website Blocking and Copyright Infringement
(up to 8 minutes)

Simon Baggs

Wiggin LLP, London
Cartier, Montblanc and Richemont v. BSKyB, and others
(up to 8 minutes)

Prof. Peter Ruess

International School of Management, Frankfurt; Arnold Ruess, Düsseldorf
Trademark Rights and the Individual – new rules after ECJ's Blomqvist v. Rolex decision?

(up to 8 minutes)

Panel discussion: 12 minutes (speakers, panelists and members of the audience)

Laura Popp-Rosenberg

Fross Zelnick Lehrman & Zissu, P.C., New York

Are Injunctions an Endangered Species in U.S. Trademark Enforcement?

Ever since the Supreme Court's decision in the patent case eBay v. MercExchange, LLC, 547 U.S. 388 (2006), injunctions have been increasingly difficult for trademark owners to procure, especially at the preliminary injunction stage, but also even after full judgment in the trademark owner's favor. The injunction landscape again possibly shifted with the Ninth Circuit's decision in La Quinta Worldwide LLC v. Q.R.T.M., S.A. de C.V., 762 F.3d 867 (9th Cir. Aug. 6, 2014), which held that the parties' coexistence in Mexico had to be factored into a weighing of the equities before an injunction could be granted in the U.S. Given the dual purpose of trademark law – to protect the public as well as the trademark owner's investment – does it make sense that injunctions should no longer be a standard remedy in trademark cases?

(up to 8 minutes)

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

Richard Vary

Head of Litigation, Nokia, Guildford

The novel use of Chinese trustees in the Microsoft Nokia acquisition: Is this problematic and cause of concern?

Following Microsoft's acquisition of Nokia's mobile device business, the Ministry of Commerce (MOFCOM) imposed obligations on each party. It has appointed trustees to monitor compliance with those obligations. But those obligations extend to more than just the Chinese patents or the parties activities in China. Are we seeing a new trend amongst regulators to intervene in matters beyond their traditional geographic jurisdictions? Is this beneficial for the operation of industry, or merely another form of protectionism?

(up to 8 minutes)

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

Panelists:

Hon. Mr. Justice Arnold

Chancery Division, High Court, London

Steven M. Tepp

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

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

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

7B. EU Trademark Developments

Thursday 10:10 AM – 11:30 PM (80 minutes)

LG 17

Moderator:

James Nurton

Managing Editor, Managing Intellectual Property, London

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

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

Speakers:

Hon. Gordon Humphreys

Chairperson of the Fifth Board of Appeal, OHIM, Alicante

Highlights from Luxembourg: A Selective Review of Recent CJEU Trade Mark Case Law

This presentation will review four CJEU judgments. First, in considering judgment of 10 July 2014 in Case C-421/13 Apple Inc. v Deutsches Patent- und Markenamt(representation of the layout of a retail store), it will be asked whether the Court has set new boundaries for trade marks. Second, an analysis will be made of the judgment of 11 December 2014 in Case C-31/14 P, Office for Harmonisation in the Internal Market v Kessel medintim GmbH, in which the Court considered the role of therapeutic indication of pharmaceuticals against the backdrop of an allegedly unclear and imprecise restriction of goods based on the criterion of ‘non-prescription medicines’. Third, in looking at the judgment of 20 November 2014 in Joined Cases C-581/13 P and C-582/13 P Intra-Press SAS v OHIM and Golden Balls Ltd, in which the Court held there to be some conceptual similarity between ‘ballon d’or’ [French for ‘Golden Ball’, the European Footballer of The Year Award] and ‘Golden Balls’, the question will be asked whether a doctrine of foreign equivalents is now emerging in the EU. Finally, the ramifications of the Court’s ruling of 18 September 2014 in Case C-205/13, Hauck GmbH & Co. KG v Stokke A/S and others (the representation of the Tripp Trapp chair), will be considered for the prohibition of

registering signs consisting of a shape that confers substantial value on the goods and a shape which results from the nature of the goods themselves.

(up to 10 minutes)

Prof. Dev Gangjee

Faculty of Law, University of Oxford, Oxford

Is Functionality Functional in the EU?

We now have guidance from the Court of Justice relating to all three policy objections prohibiting the registration of certain 3D or shape trade marks; namely shapes which (a) produce a technical result (Philips, Lego); (b) result from the nature of the goods; or (c) add substantial value to the goods (Hauck v Stokke). This presentation reviews recent cases which apply the teachings of Philips and Lego and also identifies some of the difficulties arising from the CJEU's approach in Hauck.

(up to 8 minutes)

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

Prof. Spyros Maniatis

Queen Mary, University of London, London

The Interflora saga

(up to 8 minutes)

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

Hon. Mr. Justice Charleton

Supreme Court of Ireland, Dublin

*The law on passing off predated trademark protection but has remained in European legal systems as a kind of sweeper remedy for those cases which do not involve an enforceable trademark or where there is a more general trespass by a competing business on the goodwill of another's product, even if such theft of goodwill was not intended: *McCambridge Limited v Joseph Brennan Bakeries* [2012] IESC 46. What is the usefulness and what are the limits of passing off as a remedy, especially where the English High Court have sought to confine passing off to its original role as a form of the tort of deception, thus requiring deliberate conduct *Moroccanoil Israel Limited v Aldi Stores Limited* [2014] EWHC 1686, and the Commercial Court in Ireland have severely limited the availability of an account of profits from the infringing party to such extra profits as has been made from the wrong (*McCambridge Limited v Joseph Brennan Bakeries*[2014] IEHC 269).*

(up to 10 minutes)

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

Panelist:

Prof. Peter Ruess

International School of Management, Frankfurt; Arnold Ruess, Düsseldorf

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

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

Break

11:30 AM – 11:55 AM

7C. Trademark Potpourri

Thursday 11:55 AM – 1:10 PM (75 minutes)

LG 19

Moderator:

Prof. Coenraad Visser

University of South Africa, Pretoria

(up to 5 minutes to introduce the panelists –

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

Speakers:

Hon. Mr. Justice Birss

Chancery Division, High Court, London

Recent cases on celebrity endorsement and character merchandising

(up to 10 minutes)

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

Hon. Gordon Humphreys

Chairperson of the Fifth Board of Appeal, OHIM, Alicante

Bad Faith in Trademarks in Europe

(up to 8 minutes)

Anderson J. Duff

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

Bad Faith in Trademarks in the U.S.

(up to 8 minutes)

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

Panelists:

Dr. Tobias Timmann

Freshfields Bruckhaus Deringer LLP, Düsseldorf

James Nurton

Managing Editor, Managing Intellectual Property, London

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

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

Lunch

Robinson College
1:10 PM – 2:20 PM

Sponsored by:

WilmerHale

Thursday Afternoon, April 9

Three Concurrent Sessions:

Patents, Copyright, Trade Secrets & Trademarks

SESSION 8: PATENT LAW

Concurrent Session

Thursday 2:30 PM – 6:30 PM

LG 19

8A. Biosimilars

Thursday 2:30 PM – 3:15 PM (45 minutes)

LG 19

Moderator:

John Richards

Ladas & Parry LLP, New York

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

Speakers:

Eric A. Stone

Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York

What Took You So Long? Biosimilars Come to The U.S. An overview of how patent disputes are to be handled under the U.S. Biologics Price Competition and Innovation Act.

(up to 9 minutes)

Penny Gilbert

Powell Gilbert LLP, London

Biosimilars – a UK perspective: no patent choreography here!

The regulatory process for biosimilars in the EU is well established but despite the approval of over 20 products there has been comparatively little UK patent litigation. What can we learn from the cases so far and how does this differ from the small molecule generic scenario?

(up to 9 minutes)

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

8B. U.S. Patent Potpourri

Thursday 3:20 PM – 4:35 PM (75 minutes)

LG 19

Moderator:

Prof. Martin J. Adelman

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

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

Speakers:

John Richards

Ladas & Parry LLP, New York

Post-grant amendment of patents

The problem is that when filing a patent application one will carry out a search, but it will be a relatively cheap one. The patent is granted and becomes important. Those who are or who feel threatened by the patent carry out a much more expensive search. This may result in prior art that knocks out part but not all of a claim. How is this to be resolved? The PTAB has taken a very strict view on amendment in IPR and CBMR cases. It would, I think be useful to look at how others address this problem.
(up to 10 minutes)

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

Kenneth R. Adamo

Kirkland & Ellis LLP, Chicago

Use, In Parallel or Sequence, of the different post-grant proceedings: USPTO IPR/CBMR/PGR Post-Grant Proceedings, EPO Oppositions, and/or New JPO Opposition Proceedings

Various countries have implemented procedures for administrative challenges to patent validity: in the U.S., a petitioner may file requests for inter partes review, covered business review, and/ or post-grant review, depending on the circumstances at hand; in Japan, a petitioner may request a JPO Opposition; and in Europe, a petitioner may attempt to institute an EPO Opposition. Multiple challenges to the same patent may also be instituted and proceed in parallel. In the U.S., for example, a patent may be challenged in a litigation in a U.S. district court and in an IPR, CBMR, and / or PGR at the Patent Office, again, depending on the circumstances at hand. These proceedings will be contrasted and their potential interplay will be discussed.
(up to 10 minutes)

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

Robert J. Goldman

Ropes & Gray LLP, East Palo Alto

Teva v. Sandoz: Peace at last?

The Federal Circuit's de novo standard of review of District Court claim constructions has been a source of controversy and angst since the appellate Court announced that standard in 1998. In Teva v. Sandoz (2015), the U.S. Supreme Court ruled that District Court findings of fact subsidiary to claim construction now must be reviewed under the "clearly erroneous" standard, while de novo review applies only to the ultimate conclusion as to the meaning of the claims. How will Teva affect practice and angst levels in the District Court and the Court of Appeals?
(up to 10 minutes)

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

Panelists:

Wendy E. Miller

Cooper & Dunham LLP, New York

Donald R. Steinberg

Wilmer Cutler Pickering Hale and Dorr LLP, Boston

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

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

Break

4:35 AM – 5:00 PM

8C. Patentable Subject Matter

Thursday PM 5:00 PM – 6:30 PM (90 minutes)

LG 19

Moderator:

Myles Jelf

Bristows LLP, London

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

Speakers:

Myles Jelf

Bristows LLP, London

Patentability of software: Convergence in the EU, UK and US?

(up to 8 minutes)

Hon. William Chandler

Member, Board of Appeal, European Patent Office, Munich

When is a Software Implementation Technical?

(up to 10 minutes)

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

Erich Andersen

Vice President and Deputy General Counsel, Microsoft Corp., Redmond

Section 101 Jurisprudence: Common Sense & the Rorschach Test.

This talk will briefly examine some historical underpinnings of Section 101 jurisprudence and consider how recent cases decided in the area of software patentability are both perfectly reasonable in theory and maddeningly difficult to apply in practice. It will also compare the challenge facing inventors wishing to receive patent protection under 101 with other challenges facing patent holders in today's legal and policy environment to give some context to the magnitude of the challenge.

(up to 10 minutes)

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

Hon. Annabelle Bennett

Federal Court of Australia, Sydney

Patentable subject matter in Australia including treatment of isolated gene sequences

(up to 10 minutes)

Dr. Matthew Pavao

Cooley LLP, Boston

Myriad and Prometheus and Molecular Diagnostics – Oh My!

The presentation will discuss the key claims and decision points from Prometheus and Myriad, as well as, the U.S. Patent and Trademark Office Guidance on Patent Subject Matter Eligibility. Are the USPTO Guidelines commensurate with the Prometheus and Myriad decisions? Have the most recent Guidelines improved the framework for determining patentable subject matter? What constitutes “markedly different” and “significantly more”? The presentation will also look at recent prosecution and litigation trends before the USPTO. What are the challenges, realities and next steps for inventors, companies and practitioners attempting to obtain patent coverage in the area of personalized medicine, biomarkers and molecular diagnostics?

(up to 8 minutes)

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

Panelist:

Dr. Ute Kilger

Boehmert & Boehmert, Berlin

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

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

Closing Reception
Faculty of Law, Atrium
6:30 PM – 8:30 PM

Sponsored by:
Bristows

Thursday Afternoon, April 9

SESSION 9: COPYRIGHT LAW

Concurrent Session

Thursday 2:30 PM – 6:45 PM

LG 18

9A. Member State IP Law: An Anachronistic Supplement to EU Law or Fundamental Jurisprudence?

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

LG 18

Moderator:

Prof. Lionel Bently

Faculty of Law, University of Cambridge, Cambridge

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

Speakers:

Trevor Cook

Wilmer Cutler Pickering Hale and Dorr LLP, New York

Revisiting Sir Hugh Laddie’s “Moribund Anachronism” – The Duplication of IP Rights in Europe

The system of IP protection in Europe, with its duplication of national and EU wide unitary rights, is an artifact of history and is not one that anyone, starting with a blank slate, would devise for a single market. To national patents, utility models, and traditional European ‘bundle’ patents we shall shortly add yet a fourth type of patent right with its own subtly different substantive law; the European patent with unitary effect. In trade marks and designs we seem content to double up unitary Community rights and national rights, and artificially to sustain the national systems by

overpricing the unitary ones, without any apparent analysis of whether this makes any sense, such as whether the benefits of flexibility outweigh those of complexity. The question posed by the Sir Hugh has been largely ignored and until now remains unanswered.

(up to 10 minutes)

Prof. Bernt Hugenholtz

Faculty of Law, University of Amsterdam, Amsterdam

Breadcrumbs from Brussels and left-overs from Luxembourg: The diminishing role of the Member States' courts in IP cases

(up to 8 minutes)

Dr. Roya Ghafele

Director, Oxfirst Ltd.; Said Business School, University of Oxford, Oxford

National IP strategy: Lack of strategic thinking can be a serious problem for patent offices and others. What can be done to resolve this problem satisfactorily for all stake holders?

(up to 8 minutes)

Panelists:

Hon. Mr. Justice Arnold

Chancery Division, High Court, London

Paul Maier

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

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

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

9B. U.S. Copyright Developments

Thursday 3:35 PM – 4:35 PM (60 minutes)

LG 18

Moderator:

Nicholas Bartelt

Fordham IP Institute, New York

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

Speakers:

Shira Perlmutter

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

View from the USPTO

(up to 8 minutes)

Karyn Temple Claggett

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

(up to 8 minutes)

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

Prof. Jane C. Ginsburg

Columbia Law School, New York

Authors' Rights Under the 'Next Great Copyright Act'

As the prospect of "the next great copyright act" sparks Copyright Office and PTO studies, congressional hearings, and interest-group advocacy, a sentiment of hopeful skepticism underlies my exhortation to 'remember the authors.'

(up to 8 minutes)

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

Panelists:

Dr. Shlomo Cohen

Dr. Shlomo Cohen & Co., Bnei Brak

Steven M. Tepp

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

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

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

Break

4:35 PM – 5:00 PM

9C. Fair Use and Similar Exceptions and Limitations

Thursday 5:00 PM – 6:30 PM (90 minutes)

LG 18

Moderator:

Prof. Jeremy Sheff

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

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

Speakers:

Jon Baumgarten

Retired Partner, Proskauer Rose LLP, Washington D.C.

A Critical View of Fair Use in The United States

This talk comments on the evolution (or revolution) in application of the doctrine of fair use. Acknowledging the fundamental and growing changes in information/entertainment technologies over that time, it will question changes in implementation and role of the doctrine in the continuing development of copyright law.

(up to 12 minutes)

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

Prof. Lionel Bently

Faculty of Law, University of Cambridge, Cambridge

(up to 10 minutes)

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

Tamir Afori

Gilat, Bareket & Co., Tel Aviv

Fair Use in Israel

(up to 8 minutes)

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

Benoit Van Asbroeck

Bird & Bird, Brussels

This talk examines existing decisions in the US (e.g., American Broadcasting Companies, Inc. v. Aereo, Inc.), in the EU (i.e., ITV Broadcasting and others v. TVCatchup Ltd, C-607/11) and at national level (e.g., in Belgium, Vlaamse

Radio- en televisieomroeporganisatie and others v. Right Brain Interface),
highlighting the limits of relying on copyright exceptions and the shortcomings
of the existing legislation when considering new technologies.

(up to 8 minutes)

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

Panelists:

Prof. Jane C. Ginsburg

Columbia Law School, New York

Robert L. Raskopf

Quinn Emanuel Urquhart & Sullivan, LLP, New York

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

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

Closing Reception

Faculty of Law, Atrium

6:30 PM – 8:30 PM

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SESSION 10: TRADEMARK LAW & TRADE SECRETS

Concurrent Session

Thursday 2:30 PM – 6:30 PM

LG 17

10A. U.S. Trademark Law

Thursday 2:30 PM – 4:05 PM (95 minutes)

LG 17

Moderator:

Magdalena Berger

Fordham IP Institute, New York; Platz-IP, New York

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

Speakers:

Christian W. Liedtke

Acuminis P.C., Costa Mesa

Chuck's Last Stride? How a Near Century Old Shoe Design Will Clarify Key Aspects of U.S. Trademark Law

A case brought by Converse, Inc. against 30 Respondents/ Defendants before the U.S. International Trade Commission in Washington D.C. and in Federal District Court in New York has the potential to solidify existing or break new ground on important issues such as overlap of trademark protection and Art. 1 Sec. 8 of the U.S. Constitution, trademark functionality, and trade dress genericness.

Mr. Liedtke is counsel for one of the defendants/respondents.

(up to 10 minutes)

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

Prof. Jeremy Sheff

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

The Ragged Edge of the Lanham Act

Recent cases are exposing an unstable boundary between the administrative and judicial provisions of the Lanham Act. Fault lines along this boundary include the relationship between the criteria for registrability under Section 2 and the criteria for enforceability under Section 43(a), standing and justiciability issues arising under the peculiar judicial review provisions of Section 21, and the applicability of principles of deference and preclusion in disputes that spawn successive proceedings before both the TTAB and the courts. This talk explores these areas of doctrinal instability and argues that they arise out of some fundamental and unresolved questions about the trademark system. Specifically, these doctrinal puzzles reflect theoretical ambivalence as to whether registration is substantive or procedural, which generates uncertainty over the role and prerogatives of the PTO as a matter of administrative law.

(up to 10 minutes)

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

Jeffrey A. Handelman

Brinks Gilson & Lione, Chicago

A Comparative Look at Maximizing the Value of Discontinued Brands

Increasingly, brands that were once well known in the marketplace are being discontinued due to mergers, acquisitions, bankruptcies, and challenging economic conditions. If left unattended, these brands can go abandoned, becoming available for others – even competitors – to adopt and use. How can trademark owners maintain ownership rights in marks that are no longer actively used in commerce? What legal theories are available to prevent others from exploiting the residual goodwill

associated with these brands? This presentation offers a comparative view as to the strategies that brand owners can use in different jurisdictions to preserve and maximize the value of these important assets.

(up to 10 minutes)

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

Martin Schwimmer

Leason Ellis LLP, White Plains

Famous marks and article 6bis of the Paris Convention: Discussion about U.S. adherence to the Paris Convention, including *Belmora LLC v, Bayer Consumer Care AG and Bayer Healthcare LLC*

In Belmora, the U.S. District Court for the Eastern District of Virginia, in a case of first impression, held that the Article 6bis Famous Mark provision of the Paris Convention does not create an exception to the Territoriality Principle. Specifically, it does not provide protectable trademark rights under Lanham Act §§ 14(3) (misrepresentation of source); 43(a)(1)(A) (infringement of an unregistered mark); and 43(a)(1)(B) (false advertising).

Mr. Schwimmer is counsel for Belmora.

(up to 10 minutes)

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

Robert Raskopf

Quinn Emanuel Urquhart & Sullivan, LLP, New York

The Redskins case

(up to 8 minutes)

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

Panelist:

Laura Popp-Rosenberg

Fross Zelnick Lehrman & Zissu, P.C., New York

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

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

Break

4:05 PM – 4:30 PM

10B. Trade Secrets

Thursday 4:30 PM – 6:10 PM (100 minutes)

LG 18

Moderator:

Victoria Cundiff

Paul Hastings LLP, New York

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

Speakers:

James Pooley

James Pooley, A Professional Law Corporation, Silicon Valley

Harmonization of trade secret law: the EU Directive and US federal legislation

Efforts are underway on both sides of the Atlantic to strengthen trade secret remedies in response to growing industry demand. Are there lessons for the EU in the US experience? What would be the impact of a federal civil claim in the US?

The EU Directive on Trade Secrets is now being negotiated in the European Parliament. The politics are a bit challenging, and reflect the tension between a general, but abstract feeling that the EU is lacking in an increasingly important area (a feeling reinforced by industry) and the usual loss-of-sovereignty fears and lack of understanding at the political level about how IP actually works. In the meantime, the proposed amendment adding a civil claim to the Economic Espionage Act will be reconsidered in this Congress following the positive vote in the House IP subcommittee last year. There was some pointed controversy raised by opposition from a number of law professors, but the legislation looks likely to pass and could have some interesting consequences.

(up to 10 minutes)

Prof. Mark F. Schultz

Southern Illinois University School of Law, Carbondale

Enhancing and Harmonizing Trade Secret Protection Worldwide

Policymakers and businesses worldwide are increasingly interested in trade secret protection. It is the subject of a proposed EU directive, and has been an important topic in the TPP and TTIP discussion. Do the proposed changes address the perceived problems? What is the best path forward? What does the newly accumulating empirical evidence say?

(up to 8 minutes)

Panel discussion: 12 minutes (speakers, panelist and members of the audience)

Prof. Tanya Aplin

School of Law, King's College, London

Harmonisation Folly: The Proposed Trade Secrets Directive

The Proposed Trade Secrets Directive aims to tackle the legal divergences that exist when it comes to protection of trade secrets in EU Member States. The perceived benefit of the proposed Directive is that it will encourage investment in innovation, and promote collaborative cross-border research within the internal market, thereby increasing employment growth and the competitiveness of the EU economy. While the harmonisation of procedural law may be seen as a welcome step, the harmonisation of substantive law is, at best, modest and, at worst, a recipe for uncertainties that will require multiple clarifications from the CJEU. As such, the perceived benefits of this harmonisation measure may be questioned.

(up to 8 minutes)

Jan-Diederik Lindemans

Crowell & Moring LLP, Brussels

EU Trade Secrets Directive: a litigators point of view

The European parliament is scheduled to vote on the draft directive in the coming weeks. The initial draft from the European Commission has already been changed quite significantly, but there are still many flaws and loopholes, in particular with respect to enforcing these proposed new rules. Although the European Commission has thereto been cherry-picking from the IP Enforcement Directive, it appears that some of the nicest fruit has been left hanging on the tree.

(up to 6 minutes)

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

Victoria Cundiff

Paul Hastings LLP, New York

When Trade Secrets Cross Borders, Do Remedies, Too?

Monetary and equitable remedies for trade secrets misappropriation, their availability across borders, and contrasts with remedies for multi-jurisdictional patent infringement.

(up to 8 minutes)

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

Panelist:

Gabriel Cuonzo (invited)

Trevisan & Cuonzo, Milan

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

General discussion: 40 minutes (speakers, panelist and members of the audience)

Closing Reception

Faculty of Law, Atrium

6:30 PM – 8:30 PM

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