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

21st Annual Intellectual Property Law & Policy Conference
www.fordhamipconference.com

Fordham University School of Law
Thursday and Friday, April 4-5, 2013

Hugh C. Hansen
Director

Learn Debate Have Fun

Conference Program
Subject to Change

Wednesday, April 3

Reception & Dinner for Faculty and Sponsors
Reception: 12th Floor, Lowenstein
6:15 PM to 7:30 PM
Dinner: 12th Floor, Lowenstein
7:30 PM to 9:00 PM
Thursday Morning, April 4

Breakfast
Platt Atrium
7:00 AM – 9:00 AM

Sponsored by:
Crowell & Moring LLP

Registration
Platt Atrium
7:00 AM – 8:00 AM

Please note: Doors to the McNally Amphitheatre will close at 8:00 AM. People arriving after 8:00 AM should go to Room 311. Registrants not yet seated will be escorted to Room 311.

Welcoming Remarks:
Thursday 8:00 AM – 8:05 AM
McNally Amphitheatre

Prof. Hugh C. Hansen
Fordham University School of Law, New York

SESSION 1: Plenary Session
Thursday 8:10 AM – 1:00 PM
McNally Amphitheatre

1A. Governmental Leaders in IP: Can Individuals Make a Difference?
Thursday 8:10 AM – 9:10 AM (60 minutes)
McNally Amphitheatre

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  
(up to 15 minutes)

Antonio Campinos  
President of OHIM, OHIM, Alicante  
(up to 15 minutes)

Panelists:
Maria Martin-Prat  
Head of Unit – Copyright, DG Internal Market & Services, European Commission, Brussels
Prof. Ralph Oman  
The George Washington University Law School, Washington D.C.

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

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

1B. Views from the Judiciary
Thursday 9:15 AM – 10:15 AM (60 minutes)
McNally Amphitheatre

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 Peter Charleton  
High Court of Ireland, Dublin

Hon. Denny Chin
Dr. Klaus Grabinski  
Federal Supreme Court, Karlsruhe

Lord Hoffmann  
Honorary Professor of Intellectual Property, Queen Mary, University of London

Hon. Roger T. Hughes  
Federal Court of Canada, Ottawa

Hon. Rian Kalden  
Vice President, District Court of The Hague, The Hague

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

Hon. Shinji Oda  
Intellectual Property High Court, Tokyo

Hon. Robert Van Peursem  
Court of Appeal The Hague, Netherlands

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

Break  
10:15 AM – 10:40 AM

1C. Multilateral / FTA Issues & Policy  
Thursday 10:40 AM – 11:40 AM (60 minutes)  
McNally Amphitheatre

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:  
Michele Woods  
Director, Copyright Law Division, World Intellectual Property Organization, Geneva
**Multilateral Progress At WIPO In The Copyright Area**

After a twelve-year gap in diplomatic conferences, the Standing Committee on Copyright and Related Rights (SCCR) adopted the text of a treaty to protect audiovisual performers in June 2012 and is preparing for another diplomatic conference to conclude a treaty on exceptions and limitations for the visually impaired and print disabled in June 2013. The SCCR also has an ambitious agenda and workplan on topics including protection for broadcasting organizations, exceptions and limitations for libraries and archives, and exceptions and limitations for research and educational institutions and other persons with disabilities.

(up to 10 minutes)

**Pedro Velasco Martins**

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

(up to 10 minutes)

**Stanford McCoy**

Assistant U.S. Trade Representative for Intellectual Property, Office of the U.S. Trade Representative, Washington D.C.

**Intellectual Property and Innovation in the 2013 U.S. Trade Policy Agenda**

The U.S. Administration has laid out an ambitious trade Policy Agenda for 2013, including major trade negotiations with countries in the Pacific Rim, and planned negotiations with the EU. Stan McCoy will discuss how the Administration sees intellectual property issues playing a role in these and other trade policy initiatives in the year ahead.

(up to 10 minutes)

Panelists:

**Prof. Justin Hughes**

Senior Advisor to the Undersecretary of Commerce for Intellectual Property; Professor of Law, Cardozo Law School, New York

**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.)

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

**1D. General Counsel Roundtable: The View from the Top**
Thursday 11:45 AM – 1:00 PM (75 minutes)
McNally Amphitheatre

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:
Paul T. Cappuccio
Executive Vice President and General Counsel, Time Warner, Inc., New York

Rick Cotton
Executive Vice President and General Counsel, NBC Universal Media LLC, New York

Louise Pentland
Executive Vice President, Chief Legal Officer, Nokia, Dallas

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

Kent Walker
Senior Vice President & General Counsel, Google Inc., Palo Alto

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

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Lunch
Platt Atrium & 12th Floor Lounge, Lowenstein Building
1:00 PM – 2:20 PM

Sponsored by:
Fulbrook Capital Management, LLC

Speaker
Hon. Jed S. Rakoff
U.S. District Court, Southern District of New York, New York
Thursday Afternoon, April 4

THREE CONCURRENT SESSIONS:
Patents, Copyright, Trademarks & Multilateral

SESSION 2: PATENT LAW
Concurrent Session
Thursday 2:30 PM – 6:30 PM
10 on the Park*

*10 on the Park requires that our attendees complete a bag screening. Please plan to arrive a few minutes in advance of the session start time.

2A. Global Patent Developments
Thursday 2:30 PM – 3:30 PM (60 minutes)
10 on the Park*

*10 on the Park requires that our attendees complete a bag screening. Please plan to arrive a few minutes in advance of the session start time.

Moderator:
Prof. John R. Thomas
Georgetown University Law Center, Washington D.C.
(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:
Hon. Roger T. Hughes
Federal Court of Canada, Ottawa
Canada’s Promise of Patent Doctrine
Canada's highest Court has confirmed in two recent decisions that a Patent is based on a bargain between the inventors and the state. The inventor gets a limited term monopoly in the claimed invention in return for disclosure of the invention. However,
the invention must live up to the promise made in the disclosure as to what the invention will accomplish. Failure to do so means that the invention lacks the promised utility and is invalid.

(up to 8 minutes)

Prof. Dr. Heinz Goddar
Boehmert & Boehmert, Munich
Occlusion Device” in German Federal Court of Justice – A Change of Tide for Doctrine of Equivalents and File Wrapper Applicability in Germany?
Since the decision "Occlusion Device" of the German Federal Court of Justice (May 2011), the applicability of Doctrine of Equivalents in Germany has changed. Whatever is only in the specification, but not in the claims, cannot be covered by DOE. Furthermore, a file wrapper consideration in case of differences between a published version of application and its specification is becoming easier.

(up to 8 minutes)

Dr. Jürgen Dressel
Head Patents, Litigations ex US, Novartis Pharma AG, Basel
Development of established drugs for new indications – compensation by IP-exclusivity fit for purpose?
The value of new medical indications has been recognized by patent systems in most of the developed countries. However enforcement has been critically undermined in most of those countries by a complex mixture of issues including carve-out of patented uses by Generics, mandatory or incentivized substitution as well as prescription and reimbursement mechanisms. This presentation will highlight the issues across jurisdictions and propose possible solutions which provide certainty and fairness to all stake-holders.

(up to 8 minutes)

Panelists:
Hon. Annabelle Bennett
Federal Court of Australia, Sydney
Brian P. Murphy
Edwards Wildman Palmer LLP, New York

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

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

2B. The European Unitary Patent and the Unified Patent Court
Thursday 3:35 PM – 4:50 PM (75 minutes)
10 on the Park*

*10 on the Park requires that our attendees complete a bag screening. Please plan to arrive a few minutes in advance of the session start time.

Moderator:
James Nurton
Managing Intellectual Property, London
(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:
Hon. Robert Van Peursem
Court of Appeal The Hague, Netherlands
This discussion will provide a helicopter view on the European Unitary Patent and the Unified Patent Court. It will include a delineation of the set-up and tasks of the Preparatory Committee of the Unified Patent Court and an inquiry into its future, especially regarding when and how it will proceed, if it ever does.
(up to 10 minutes)

Dr. Myles Jelf
Bristows, London
Unified Patent Court Agreement and Draft Rules: Strategic Observations
The possibility of the new courts’ embracement of bifurcation will be explored, including an inquiry into how much of an effect it may have. The strategic options which the new framework appears to provide to patents through licensee litigation will also be discussed along with how the absence of any power to amend a partially valid patent may affect litigation before the new courts.
(up to 6 minutes)

David Laliberté
Director, Intellectual Property Policy, Intellectual Property Group, Legal and Corporate Affairs, Microsoft Corporation, Redmond
A discussion on the application/renewal/maintenance fees for the new unitary patents and the need to resist the political pressure to set these fees at an excessive level. Otherwise it is quite possible that the new unitary patent system will remain unused by the industry.
(up to 6 minutes)

Pierre Véron
Véron & Associés, Paris
Unified Patent Court: a single court for patent disputes in Europe?
Some weeks ago, a majority of Member States of the European Union decided to create a European Patent with Unitary Effect and a Unified Patent Court. Will this be the beginning of a new era for patent litigation in Europe? Will the new system be adopted enthusiastically by the users? Or will they “opt-out” as is possible? Will the new rules about jurisdiction allow less or more forum shopping? Will the cards be reshuffled between the capitals of patent litigation in Europe?

(up to 6 minutes)

Gabriel Cuonzo
Trevisan & Cuonzo, Milan
(up to 6 minutes)

Christoph de Coster
Taylor Wessing, Munich
Unitary Patent and the Unified Patent Court: Strategic Considerations for the Patentee
This discussion will include the following issues: choice of patent between the unitary patent, European patent, national patents, and divisionals; stay-in or opt-out options for European patent owners during the transitional period of the Unified Patent Court; and forum shopping and multiple actions against the same product under the Unified Patent Court.
(up to 6 minutes)

Panelist:
Dr. Klaus Grabinski
Federal Supreme Court, Karlsruhe

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

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

Break
4:50 PM – 5:15 PM

2C. U.S. Patent Law: Recent Developments
Thursday 5:15 PM – 6:45 PM (90 minutes)
10 on the Park*
*10 on the Park requires that our attendees complete a bag screening. Please plan to arrive a few minutes in advance of the session start time.

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:

Dimitrios T. Drivas  
White & Case LLP, New York  
**Current Developments in US Patent Law**  
(up to 25 minutes)

Alexander Macgillivray  
General Counsel, Twitter, Inc., San Francisco  
**The Twitter “Innovator’s Patent Agreement”**  
Twitter’s Innovator’s Patent Agreement will be described, including why it was Adopted and what it signifies regarding other similar initiatives about software patents  
(up to 7 minutes)

Bruce M. Wexler  
Paul Hastings, New York  
**Formulation patents typically raise significant issues in pharmaceutical patent litigation. With respect to questions of infringement, unlike the situation of active ingredient patents, generic drug companies often have some room to attempt to design-around and the FDA has authority for leeway in formulation differences. In these situations, innovators must at times rely on the doctrine of equivalents, a controversial doctrine under U.S. patent law. There have been some interesting recent developments in this doctrine and a surprising trend, which shows that the doctrine is very much alive in US patent law. Examples of significant recent decisions illustrating this trend are: Pozen Inc. v. Par Pharm., Inc., 696 F.3d 1151 (Fed. Cir. 2012); Adams Respiratory Therapeutics, Inc. v. Perrigo Co., 616 F.3d 1283 (Fed. Cir. 2010).**  
(up to 7 minutes)

Panelists:

Noah M. Leibowitz  
Simpson Thacher & Bartlett LLP, New York

John Pegram
Fish & Richardson P.C., New York

Prof. John R. Thomas
Georgetown University Law Center, Washington D.C.

Harold C. Wegner
Foley & Lardner LLP, Washington D.C.

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

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

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

Sponsored by:
Freshfields Bruckhaus Deringer LLP

SESSION 3: COPYRIGHT LAW
Concurrent Session
Thursday 2:30 PM – 6:45 PM
McNally Amphitheatre

3A. EU Copyright: Recent Developments
Thursday 2:30 PM – 3:40 PM (70 minutes)
McNally Amphitheatre

Moderator:
Prof. Jane Ginsburg
Columbia Law School, 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:
Julie Samnadda
Member, Legal Service, European Commission, Brussels
Hon. Mr. Justice Peter Charleton  
High Court of Ireland, Dublin  
**The Oracle Speaks**  
Once again a surprise from Europe's highest court; a licence agreement for computer software is turned into a sale. The decision is based on economic reasoning: what is not copyright, such as a broadcast of a football match, can be interpreted to attract protection because of the expense involved and what is copyright can lose protection because there has been sufficient economic return through first sale? Where is Europe on all of this and would not a fair use defence be better than a clash of rights jurisprudence that is unpredictable?  

(up to 8 minutes)

Dr. Mihály Ficsor  
President, Hungarian Copyright Council; International Legal Consultant, Budapest  
**The Inundation of the CJEU by Copyright Referrals and the Dangers of 'Creeping Harmonization'**  
This talk intends to deal with three structural and "constitutional" problems: (i) the referral system results in too early and unnecessary jumping to the highest EU judicial level which may be an obstacle to healthy case-law development; (ii) it is a collateral effect of not allowing the clarification of certain legal issues at lower judicial levels - even if with some possible transitional contradictions - that sometimes the CJEU itself adopts conflicting decisions; and (iii) time and again the CJEU enters the field of law-making which is not its task, and it may also go so far as to de facto amending certain existing provisions of directives. My intention is to state these problems in a short cover paper (corresponding also to the contents of my ppt.) to which I would attach three annexes consisting in short studies to illustrate these problems on the basis of concrete cases; namely (i) the Oreal/eBay - Scarlet - Netlog chain of decisions on intermediary liability to illustrate emerging contradictions in the CJEU decisions; (ii) the referral of the Tribunal of Milan to the CJEU in the Nintendo ("modchip") case as an example of unnecessary burdening the CJEU; (iii) the UsedSoft decision where, in my opinion, the CJEU has adopted a decision which is in conflict with a clear (and duly justified) provision of the Information Society (Copyright) Directive.  

(up to 8 minutes)

Panelists:  
**Trevor Cook**  
Bird & Bird, London  
**Dr. Silke von Lewinski**  
Max Planck Institute for Intellectual Property and Competition Law, Munich  
**Christopher Stothers**  
Arnold & Porter LLP, London
Panelists have no individual time allocated; they take part in the general discussion.

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

3B. Copyright Developments in Canada
Thursday 3:45 PM – 4:55 PM (70 minutes)
McNally Amphitheatre

Moderator:
Hon. Roger T. Hughes
Federal Court of Canada, Ottawa
(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:
Gilles Daigle
General Counsel and Head of Legal Services, Society of Composers, Authors and Music Publishers of Canada, Ottawa

Recent Canadian Supreme Court Copyright Decisions
This talk will provide a brief description of six copyright cases rendered by the Supreme Court of Canada in 2012, including the Court’s interpretation of the communication right and the fair dealing exemption. This talk will also discuss ongoing litigation resulting from one of the cases in relation to ringtones.
(up to 10 minutes)

Howard Knopf
Macera & Jarzyna, LLP, Ottawa

Canada’s 2012 Copyright Modernization Act: Impact in Canada and Abroad
The new Canadian copyright legislation that has been in gestation for 15 years is now in force. On the one hand, it includes tough anti-circumvention provisions dealing with technical protection measures as well as strong anti-enabler provisions aimed at certain types of websites. On the other hand, it includes a broad new fair dealing exception for “education” and limits the availability of statutory minimum damages to a maximum of $5,000 for all non-commercial infringing activity by any person or entity prior to commencement of any proceedings. Is this legislation balanced? Is it sustainable? What effect will it have elsewhere?
(up to 10 minutes)

Panelists:
Steven J. Metalitz
Mitchell, Silberberg & Knupp, LLP, Washington D.C.

Barry B. Sookman
McCarthy Tétrault, Toronto
Panelists have no individual time allocated; they take part in the general discussion.

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

Break
4:55 PM – 5:20 PM

3C. View from the Copyright Office & U.S. Recent Developments including Kirtsaeng
Thursday 5:20 PM – 6:45 PM (85 minutes)
McNally Amphitheatre

Moderator:
Michael Shapiro
Senior Counsel for Copyright, U.S. Patent and Trademark Office, Alexandria
(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:
Maria Pallante
Register of Copyrights, U.S. Copyright Office, Washington D.C.
The View from the U.S. Copyright Office
This talk will address the general state of affairs within the United States regarding copyright revision discussions, including the divergent views of stakeholders, key policy studies of the Copyright Office, statutory and regulatory challenges, the role of Congress in weighing the public interest and the role of the Copyright Office itself.
(up to 15 minutes)

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

Thomas Kjellberg
Cowan Liebowitz & Latman, New York
Recent Developments in U.S. Copyright Case Law including Kirtsaeng v. John Wiley & Sons
(up to 20 minutes)

Panelists:
Tod Cohen
eBay, Inc., Palo Alto
**Panelists have no individual time allocated; they take part in the general discussion.**

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

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

**Sponsored by:**
**Freshfields Bruckhaus Deringer LLP**

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**SESSION 4: TRADEMARK LAW AND MULTILATERAL**

**Concurrent Session**
Thursday 2:30 PM – 6:30 PM
Room 311

**4A. The new gTLDs**
Thursday 2:30 PM – 3:35 PM (65 minutes)
Room TBA

**Moderator:**
**Martin Schwimmer**
Leason Ellis, White Plains
(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. Mary Wong**  
University of New Hampshire, Concord

*Trademark Protections In An Expanded Internet Domain Name System*

In 2008 the Board of Directors for the Internet Corporation for Assigned Names & Numbers (ICANN), the international body responsible for managing the Internet domain name system (DNS), approved an unprecedented, massive expansion of the DNS. With the cooperation of many trademark and brand owners, several rights protection policies were developed prior to the launch of the program in January 2012 in order to provide anticipated protection to trademarks and brands at both the top level (the right of the dot) and the second level (the left of the dot). New issues have since emerged that may necessitate a change to some of these policies as well as new protections. What are the shortcomings of the current policies? What needs to be changed to ensure adequate protection for trademarks and brands while safeguarding consumer rights and interests? Is there a risk that ICANN policies will replace traditional judicial and legislative solutions for trademark protections?  
(up to 15 minutes)

Panelists:

**Dickerson M. Downing**  
Crowell & Moring LLP, New York

**Steven J. Metalitz**  
Mitchell Silberberg & Knupp LLP, Washington D.C.

**David Weslow**  
Wiley Rein LLP, Washington D.C.

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

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

**Break**  
3:35 PM – 4:00 PM

**4B. Multilateral Developments**  
Thursday 4:00 PM – 5:15 PM (75 minutes)  
Room 311

**Moderator:**  
**Michael Schlesinger**  
Mitchell, Silberberg & Knupp, New York
Speakers:

Prof. Justin Hughes  
Senior Advisor to the Undersecretary of Commerce for Intellectual Property;  
Professor of Law, Cardozo Law School, New York  
(up to 8 minutes)

James Love  
Director, Knowledge Ecology International, Washington D.C.  
The global regulation of exceptions to rights reflects both expressions of national interests and values, and industry lobbying efforts, with the later often taking center stage in the United States and the European Union. Why is the value of expanding robust exceptions weakly appreciated by negotiators from countries that use and benefit from exceptions the most?  
(up to 8 minutes)

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

Hon. Weerawit Weeraworawit  
Deputy Secretary General, National Human Rights Commission, Thailand  
The Role of Developing Nations in Multilateral Negotiations  
The TRIPS Agreement is a result of hard-fought multilateral negotiations and the spirit of gives and takes. Unfortunately, the basis principles and objectives of this Agreement have been much overlooked by developed nations in their bilateral and multilateral negotiations with developing countries on IPRs. It is desirable for developing countries to not only reinvigorate but also realize such balanced principles and objectives in the multilateral negotiations.  
(up to 8 minutes)

Panelists:  
Dr. Mihály Ficsor  
President, Hungarian Copyright Council; International Legal Consultant, Budapest  

Stanford McCoy  
Assistant U.S. Trade Representative for Intellectual Property, Office of the U.S. Trade Representative, Washington D.C.  

Pedro Velasco Martins  
Deputy Head of Unit for Intellectual Property and Public Procurement, DG Trade, European Commission, Brussels  

Michele Woods  
Director, Copyright Law Division, World Intellectual Property Organization, Geneva
(Panelists have no individual time allocated; they take part in the general discussion.)

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

4C. Trade Secrets: National & International Developments
Thursday 5:20 PM – 6:45 PM (85 minutes)
Room 311

Moderator:
Daan G. Erikson
Senior Research & Conference Fellow, Fordham IP Institute, New York
(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:
Stanford McCoy
Assistant U.S. Trade Representative for Intellectual Property, Office of the U.S. Trade Representative, Washington D.C.
The Administration’s strategy on mitigating theft of trade secrets, with a particular focus on trade policy elements
(up to 8 minutes)

Matt Rainey
Director of the Innovation Division, World Intellectual Property Organization, Geneva
(up to 8 minutes)

Richard Rainey
Executive Counsel for IP Litigation, General Electric Corp., Fairfield
(up to 8 minutes)

Paul B. Keller
Allen & Overy LLP, New York
Tinker Emailer Downloader Spy: A Snapshot of Misappropriation of Trade Secrets Law in the US
Today, trade secrets can represent the most valuable assets in a company's IP portfolio. However, they commonly are under-protected and can be taken with relative ease using today's standard technology. This talk will briefly describe the value of trade secrets, how they are created and protected, and what can be done if they are taken.
(up to 8 minutes)
Rutger M. Kleemans
Freshfields Bruckhaus Deringer, Amsterdam
(up to 8 minutes)

Panelist:
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.)

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

Reception
10 on the Park
Time Warner Center
North Tower, 10th Floor
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6:30 PM – 8:30 PM

Sponsored by:
Freshfields Bruckhaus Deringer LLP

Friday Morning, April 5

Breakfast
Platt Atrium
7:00 AM – 9:00 AM

Sponsored by:
Paul Hastings
Sunrise Seminars

Sunrise Seminar I: Valuing and Extracting Value from Patents: A Brave New World
Friday 7:30 AM – 9:10 AM (100 minutes)
Room 312

Moderator:
Michael Lubitz
CEO and Chairman, Global Technology Transfer Group, Inc. (GTT Group),
Portland, Oregon
(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 Anderson
Vice President, Corporate Development, RPX, San Francisco
Role of non-practicing entities in patent monetization, transaction costs in the patent
“market” including costs of litigation, role of defensive aggregators, trends in the
patent market and patent monetization.
(up to 7 minutes)

Peter Holden
Senior Vice President, Corporate Development and Investments, IPValue,
Bridgewater, New Jersey
Investment Banking, private equity, hedge fund type investing in and financing of
transactions in patent rights (including brief history, and projection for future)
(up to 7 minutes)

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

Daniel Ilan
Cleary Gottlieb Steen & Hamilton LLP, New York
Patent monetization and bankruptcy - Nortel, Kodak and the next case:
Recent high-profile bankruptcy filings by global technology companies, such as
Nortel and Kodak, were followed by the offering for sale of all or a significant portion
of their patent portfolios. The risks, challenges and potential opportunities associated
with purchasing patents out of bankruptcy will be discussed.
Jose Esteves  
Skadden, Arps, Slate, Meagher & Flom LLP, New York  
*IP monetization techniques: trends and challenges*  
(up to 7 minutes)

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

Owen Byrd  
Director of Sales & Marketing, Lex Machina, Palo Alto  
*Valuing patent rights and chances of success in litigating and enforcing the rights (including brief history, and projection for future)*  
(up to 7 minutes)

Selvyn Seidel  
Chairman and CEO, Fulbrook Capital Management, New York  
*Third Party Financing has a pivotal role to play in evaluating IP claims, and extracting value from those claims. A qualified Third Party Funder can assist in valuing the claim, both outside of and within litigations, and enhancing that value. It can also match capital and skill with worthy claims to support prosecuting those claims. Beyond this, it can assist in or be a principal in, trading the claims -- whether that entails evaluating the claims, buying the claims, and/or selling, pledging, advising on, acting as an intermediary, or otherwise dealing in the claims (comparable to dealing with other assets in other asset categories, although commercial claims are a new asset class that is in its early days).*  
(up to 7 minutes)

Panel discussion including wrap up: 22 minutes (speakers, panelists and members of the audience)

*Sunrise Seminar II: Digitization and Aggregation: Fair Use or Foul?*  
Friday 7:30 AM – 8:25 AM (55 minutes)  
McNally Amphitheatre

Moderator:  
Nick Bartelt  
Fordham Intellectual Property 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.)
Speaker:

Christian Liedtke
Independent IP Consultant, Newport Beach

*A Modern Fairy Tale: Fair Use and News Aggregators*  
This talk will analyze the compensation entitlement of publishers for use of their original content by news aggregators such as Google News and Meltwater in the light of empiric evidence, presently pending court proceedings in the US and UK and solutions found elsewhere around the world.  
(up to 10 minutes)

Prof. Ralph Oman  
The George Washington University Law School, Washington D.C.  

*Georgia State and HathiTrust: Trend or Diversion?*  
(up to 8 minutes)

Panelists:  
Dr. Roya Ghafele  
The University of Edinburgh School of Law, Edinburgh  

Howard Knopf  
Macera & Jarzyna, LLP, Ottawa

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

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

Sunrise Seminar III: IP: Should Trademark, Copyright and Patent Protection Overlap?  
Friday 7:30 AM – 8:40 AM (70 minutes)  
Room 311

Moderator:  
Prof. Marshall Leaffer  
Maurer School of Law, Indiana University, Bloomington  
(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speaker:

Prof. Justin Hughes  
Senior Advisor to the Undersecretary of Commerce for Intellectual Property;  
Professor of Law, Cardozo Law School, New York  
(up to 8 minutes)
Jeff Handelman
Brinks, Hofer, Gilson & Lione, Chicago
Combining Different Branches of IP Protection without Jeopardizing Your Case
A business can strengthen its legal position by asserting trademark, copyright and design patent protection in the same subject matter. All of these IP rights are harmonious and serve to complement each other. When it comes to adding utility patents into the mix, however, there are important pitfalls to be avoided.
(up to 6 minutes)

Ken Germain
Wood Herron & Evans L.L.P, Cinninnati
Climbing Onto Multiple Branches of IP Protection (for Product Design Trade Dress) Will Leave You Hanging--Without Constitutional Support!
Traditional doctrine--approved by the CCPA/Federal Circuit and many other courts--allows for multiple protections (specifically, trademark/trade dress, copyright, and design patent) for "nonfunctional" product designs. (These same courts clearly recognize that "functional" designs are protectable only via trade secrets or utility patents.) But virtually no courts have considered whether there might be an implicit constitutional prohibition of allowing more than one type of protection, either concurrently or consecutively. This presentation shows that multiple protections are, indeed, unconstitutional.
(up to 6 minutes)

Giovanni Casucci
Bardehle Pagenberg, Milan
Product design and trade dress: strategic issues within Design, 3D Trademarks and Copyrights
A product’s appearance is one of the most relevant marketing tools to attract prospective consumers. This presentation will address the available IP doctrines that can protect the exclusive use of a trade dress and product design.
(up to 6 minutes)

Martin Schwimmer
Leason Ellis LLP, White Plains
The Law of Shapes To Come: The Protection of Shapes.
This presentation will address how 3D Printing has the potential to do for 3D objects what the photocopier did to books, the VCR did to movies, and the MP3 did to music – namely create great possibilities for creativity, but also possibilities for infringement.
(up to 6 minutes)

Panelist:
Elizabeth Weiswasser
Weil, Gotshal & Manges LLP, New York

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

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

THREE CONCURRENT SESSIONS:
Patents, Competition, Trademarks, Trade & Enforcement

SESSION 5: PATENT LAW
Concurrent Session
Friday 9:15 AM – 1:10 PM
Room 312

5A. Supplementary Protection Certificates
Friday 9:15 AM – 10:15 AM (60 minutes)
Room 312

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

Speaker:
Hon. Rian Kalden
Vice President, District Court of The Hague, The Hague
The Aftermath of Medeva
The Medeva and further rulings of the Court of Justice of the European Union on the “protected by a basic patent in force” requirement of article 3(a) of SPC Regulation 469/2009. Further uncertainties and how do national patent offices and courts deal with it?
(up to 10 minutes)

Brian Cordery
Bristows, London
Other Settled and Outstanding Issues
A discussion on the prospect of Second Medical Use Supplementary Protection Certificates, squatting, and other issues such as the recent issue on adjuvants referred by Arnold J.
Panelists:
Laëtitia Bénard
Allen & Overy LLP, Paris
Christine Kanz
Reimann Osterrieth Köhler Haft, Düsseldorf
Shimako Kato
Abe, Ikubo & Katayama, Tokyo

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

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

Break
10:15 AM – 10:40 AM

5B. Administrative & Substantive Patent Office Harmonization
Friday 10:40 AM – 11:55 AM (75 minutes)
Room 312

Moderator:
Gonzalo Ulloa
Gómez-Acebo & Pombo Abogados, Madrid
(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:
Yuichiro Nakaya
Deputy Director, International Affairs Division, Japan Patent Office, Tokyo

JPO’s efforts in Patent Harmonization
International discussions on patent harmonization have been revitalized by enactment of the AIA and IP offices in the world including the JPO are now engaging such international discussions. In such discussions, Grace Period is one of major topics. Japan revised its Patent Act to enlarge a scope of grace period and started the new grace period system since April 2012. The JPO gathered some statistical data regarding implementation of the new system.

(up to 8 minutes)
Shoichi Okuyama
Okuyama & Sasajima, Tokyo
JPO has decided to revive the post-grant opposition system once again after it was abandoned in 2003. This talk would outline facts that occurred after 2003 and led to the revival, and point out differences among the proposed Japanese system, the AIA post grant proceedings and EPO oppositions.
(up to 8 minutes)

Shira Perlmutter
Chief Policy Officer and Director for International Affairs, United States Patent and Trademark Office, Alexandria
(up to 8 minutes)

Matt Rainey
Director of the Innovation Division, World Intellectual Property Organization, Geneva
(up to 8 minutes)

Jeremy Phillips
IPKat, London
Patent quality: do we really want it?
The words “patent quality” have become a significant slogan in the current debate as to how to reform the patent system. Curiously, while the cause of “patent quality” has been taken up by so many people, it has no agreed meaning and may mean quite different things to patent examiners, judges, businesses, competition regulators and investors. This presentation will review the issues and pose questions that require further analysis.
(up to 8 minutes)

Panelists:
John Pegram
Fish & Richardson P.C., New York
Harold C. Wegner
Foley & Lardner LLP, Washington D.C.

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

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

5C. Secondary and Collective Liability in Patents
Friday 12:00 PM – 1:00 PM (60 minutes)
Room 312
Moderator:
Dr. Myles Jelf
Bristows, 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:
Wendy Miller
Cooper & Dunham LLP, New York
This talk will begin with a brief, definitional discussion of direct infringement, joint and divided infringement, and indirect infringement by inducement in the context of the patent statute. It then will review the recent Federal Circuit holding that indirect infringement by inducement may be based on underlying acts of direct infringement that are performed by multiple actors, as set forth in the Federal Circuit’s en banc decision in the companion cases of Akamai Technologies, Inc. v. Limelight Networks, Inc. and McKesson Technologies, Inc. v. Epic Systems Corp.
(up to 10 minutes)

Trevor Cook
Bird & Bird, London

Tailoring the contributory infringement regime for patents in Europe to different technologies

The doctrine of contributory infringement of patents in Europe is on its face broad in that it does not even require that there be a primary infringer. Its features have been explored in a number of recent cases in the English, German and Dutch courts, which have in general given expansive interpretations of its scope. One emerging issue is that its practical breadth as established in the context of mechanical engineering and medical devices risks undermining the scope for generic pharmaceutical manufacturers to make effective use of the provisions in medicines regulatory legislation allowing for "skinny labels" which omit patented indications from the marketing authorisation in order to avoid infringement of medical use patents.
(up to 10 minutes)

Panelist:
James Bollinger
Troutman Sanders LLP, New York

Edmund J. Haughey
Fitzpatrick, Cella, Harper & Scinto, Washington D.C.

(Panelists have no individual time allocated; they take part in the general discussion.)
Panel discussion: 25 minutes (speakers, panelists and members of the audience)

Lunch
Platt Atrium & 12th Floor Lounge, Lowenstein Building
1:10 PM – 2:20 PM

Speaker
Teresa Stanek Rea
Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office, Alexandria (up to 15 minutes)

SESSION 6: COMPETITION LAW
Concurrent Session
Friday 8:30 AM – 1:10 PM
McNally Amphitheatre

6A. Competition Overview and Recent Developments
Friday 8:30 AM – 9:30 AM (60 minutes)
McNally Amphitheatre

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.)

Speaker:
Prof. Eleanor Fox
New York University School of Law, New York
The IP/Competition Wars – Why is there a tug of war when we all share the same goal – an inventive, competitive economy?
These remarks will present an overview of the big battlefields and identify the factors that may cause the weary soldiers to pledge allegiance to one flag or the other – more competition, or more IP protection. Pay for delay, standard essential patents, and
refusals to deal will all be fodder. Examples will be taken from the US, the EU, and developing countries.
(up to 20 minutes)

**Monika Tomczak-Górlikowska**
Miller Canfield P.L.C., Gdynia, Poland

**EU Competition Recent Developments**
The last year or so has presented a number of competition themes and topics. Some of these developments include an abundance of Article 102 cases (abuse of dominant position), the Technology Transfer Block Exemption Regulation (TTBER), the rise of commitments and settlements in EU competition policy, and issues related to effective judicial review.
(up to 8 minutes)

Panelists:
**Prof. Randal C. Picker**
University of Chicago School of Law, Chicago

**Joseph F. Wayland**
Simpson Thacher & Bartlett, New York

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

Panel discussion: 27 minutes (speakers, panelists and members of the audience)

**Break**
9:30 AM – 9:55 AM

**6B. Pharma & Competition**
Friday 9:55 AM – 10:55 AM (60 minutes)
McNally Amphitheatre

**Moderator:**
**Prof. Daryl Lim**
The John Marshall Law School, Chicago
(up to 4 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

**Speakers:**
**Dr. Steven J. Lee**
Kenyon & Kenyon LLP, New York

*Reverse payments in the US, including the Watson case*
Christine L. White  
Senior Staff Attorney, Northeast Regional Office, Federal Trade Commission, New York  
(up to 8 minutes)

Romano Subiotto  
Cleary Gottlieb Steen & Hamilton LLP, Brussels  
*Reverse payments in the EU, including the Lundbeck case*  
The EU Commission’s current review of reverse payment patent settlement agreements in the pharmaceutical sector creates many issues to discuss, playing into the worldwide discussion of pharmaceuticals and competition.  
(up to 8 minutes)

Panelists:  
Prof. Kent Bernard  
Adjunct Professor, Fordham University School of Law, New York  
Prof. Michael Carrier  
Rutgers School of Law, Camden  
Nicola Dagg  
Allen & Overy LLP, London

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

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

**6C. Smartphones: FRAND, Injunctions and Other Issues**  
Friday 11:00 AM – 1:10 PM (130 minutes)  
McNally Amphitheatre

Moderator:  
Justin Watts  
Freshfields Bruckhaus Deringer 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. FORDHAM WIPO REPORT ON SMARTPHONES

Speaker:  
Prof. Joel Reidenberg
Fordham University School of Law, New York

The impact of the acquisition and use of patents in the Smartphone Industry

This presentation will discuss conclusions from this paper prepared for the WIPO. The paper was an empirical study of patents in the smartphone industry including data from patent records, litigation records, industry market share reports, corporate public records and a survey concerning the acquisition and use of patents in the smartphone industry. The study sought to make an assessment of the openness of the smartphone market and the impact that the ownership and enforcement of large patent portfolios has on the market.

(up to 10 minutes)

B. DEVELOPING CASE LAW ON INJUNCTIVE RELIEF, ANTI-SUIT INJUNCTIONS AND COURT DETERMINATIONS OF FRAND ROYALTIES

Speakers:

Hon. Shinji Oda
Intellectual Property High Court, Tokyo

Recent Japanese Cases Concerning FRAND
Recently Tokyo District Court decided that a patent owner who submitted FRAND declaration is not allowed to collect monetary damages from an infringer who proposed detailed license terms, unless the owner faithfully paid effort to enter into a license. This presentation explains the Japanese case law on FRAND and discusses the implications thereof.

(up to 8 minutes)

Heinz Polsterer
Senior Vice President, Deutsche Telekom, Austria

Injunctions, NPEs, and Downstream Commerce: What Should be the Availability of Injunctive Relief?
In contrast to patent assertions by manufacturers, patent assertions by non-practising entities in some jurisdictions sometimes target downstream commerce in goods said to infringe. Is the availability of injunctive relief appropriate in relation to downstream commerce, especially where a commitment to license the patents in suit has been given and it is open to the manufacturer to either remove the accused functionality or acquire a licence, and thus no further infringing downstream dealing will necessarily take place?

(up to 6 minutes)

Kenneth R. Adamo
Kirkland & Ellis LLP, Chicago

FRAND Issues: What is the Court’s Appropriate Role?
The last 12 months have seen an increased use of the U.S. courts in relation to FRAND issues. There are now debates on the availability of anti-suit injunctions, and determinations underway in which the Courts themselves set the FRAND terms and conditions that should apply as between parties who have indicated that they are willing to enter into a licence. Is a single-Court resolution of FRAND issues the future for telecoms battles?

Joseph F. Wayland
Simpson Thacher & Bartlett, New York
A Perspective from the Department of Justice, Antitrust Division
The Antitrust Division has expressed views on several points related to smartphones. The government, across several agencies, is increasingly concerned that the use of injunctions can cause significant competitive harm through the extraction of excessive royalties, unfair licensing terms, and the exclusion of directly competing products. The government will focus increasingly on the SSOs as a vehicle to restrain perceived anticompetitive practices. Also, the government has developed theories of harm and seeks factual data and analysis to test theories.

Panelists:
David L. Cohen
Special Counsel, Vringo, New York
Carey Ramos
Quinn Emmanuel Urquhart & Sullivan LLP, New York
Luis Jorge Romero
Director General, ETSI, Sophia Antipolis, France
Richard Vary
Head of Litigation, Nokia, Guildford

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

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

Moderator:
Ari Laakkonen
Powell Gilbert 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.)
C. DEVELOPING CASE LAW ON PRINCIPLES FOR THE DETERMINATION OF FRAND ROYALTIES

Speakers:

Dr. Tobias Hahn
Reimann Osterrieth Köhler Haft, Düsseldorf
*Principles for the evaluation of FRAND terms and conditions set forth in German decisions*
Has the Orange Book decision of the Supreme Court led to an impasse? What methods have the German courts used in recent cases to determine whether there has been an anti-competitive refusal to license?
(up to 6 minutes)

T. Andrew Culbert
Associate General Counsel, United States Litigation, Microsoft Corporation, Redmond
*A Framework for the Judicial Resolution of FRAND Disputes*
Mr. Culbert will discuss the establishment of a framework for the judicial resolution of FRAND disputes. His presentation will discuss the creation of a mechanism for establishing reasonable royalties for FRAND-commited patents, as well as the meaning of the patentee's obligation to license on non-discriminatory terms.
(up to 6 minutes)

Warren S. Heit
White & Case LLP, Silicon Valley
*Determination of a FRAND royalty in the context of an unwilling licensee*
Mr. Heit will discuss the balance between the right of SEP holders to recoup their R&D investment and fair value for their patents and the right of implementers to obtain reasonable rates for use of a SEP. His presentation will discuss the “Georgia-Pacific” hypothetical negotiation as well as how “hold-up” and “royalty stacking” factor into this determination.
(up to 6 minutes)

Noreen Krall
Chief Litigation Counsel, Apple, Cupertino
*A reasoned and formulaic approach to calculating RAND/FRAND royalties*
There are two prongs of the discussion around SEP abuse, injunctions and rates. Much of the focus has been on the injunction prong, with significant developments in the US, Europe and Asia over the last 12 -15 months. This presentation will focus on FRAND royalties, and in particular, describe a predictable formula that could be used by the parties and courts to determine a RAND/FRAND royalty using an appropriate rate and common base.
(up to 6 minutes)

Panelists:

**Sarah Guichard**  
Vice President and Associate General Counsel, BlackBerry, Waterloo, Ontario, Canada

**Alex Sinclair**  
Chief Technology Officer, GSMA, Cambridge, United Kingdom

**Olivier Thirard**  
Deputy Legal Director, Intellectual Property, Orange, Paris

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

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

Lunch
Platt Atrium & 12th Floor Lounge, Lowenstein Building  
1:10 PM – 2:20 PM

**Speaker**

**Teresa Stanek Rea**  
Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office, Alexandria  
(up to 15 minutes)

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**SESSION 7: TRADEMARK LAW**

**Concurrent Session**
Friday 8:45 AM – 1:10 PM  
Room 311

**7A. EU and U.S. Design Law Including a Discussion of Apple v. Samsung**
Friday 8:45 AM – 9:45 AM (60 minutes)  
Room 311

**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:

**Gordon Humphreys**
Member of the Boards of Appeal, OHIM, Alicante

*Selected topics of current EU design law: Gnomes, radiators and technical function*
This presentation looks briefly at the two cases that have come before the EU Courts in Luxembourg in the last 12 months before going on to discuss issues that have arisen at the level of OHIM Boards of Appeal in cases involving technical function and the quest for harmonization.
(up to 10 minutes)

**Alain Strowel**
Covington & Burling, LLP, Brussels

*Design law as a weapon in the smartphone wars on the EU battleground*
The European decisions relying on design protection will be briefly reviewed, with a focus on the infringement test. Does the case law adequately balance the need to protect product shapes and the need for a vibrant competition on the smartphone market? The presentation will also show how design is more and more used to protect graphic user interfaces. GUIs might well be at the centre of the next smartphone battles.
(up to 8 minutes)

**John Richards**
Ladas & Parry LLP, New York

*Design Patents*
The smart phone wars have revived interest in an often-neglected form of IP protection: the design patent. Long thought of as providing very narrow protection, recent case law has shown that by use of the right drawings and title, effective protection of significant breadth may be obtained. As with all broad patent claims, however, this expands the relevant prior art base from which the design patent may be attacked.
(up to 10 minutes)

Panelists:

**Dr. Myles Jelf**
Bristows, London

**Prof. Dr. Annette Kur**
Max Planck Institute for Intellectual Property and Competition Law, Munich

**Jeremy Phillips**
IPKat, London
(Panelists have no individual time allocated; they take part in the general discussion.)

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

**Break**
9:45 AM – 10:10 AM

**7B. Video Games: IP Issues and Strategies**
Friday 10:10 AM – 11:30 AM (80 minutes)
Room 311

**Moderator:**
**Anderson J. Duff**
Wolf, Greenfield & Sacks, P.C., Boston
(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

**Speakers:**
**Prof. Greg Lastowka**
Rutgers School of Law, Camden
The scope of copyright in digital games is a controversial subject. Game developers alternately lament and celebrate the common practice of “cloning” online games: making a new online game, often with original artwork and software code, that is clearly based on a prior online game, yet that avoids clearly infringing the original game’s copyright. Supporters of cloning practices argue that it promotes price competition and improves consumer access to new forms of creativity in the marketplace. Critics argue that it allows opportunistic game companies to free-ride on the investments of true innovators. Another controversial question in the game industry is the legality of certain forms of “user-generated content,” such as modding, machinima, and fan works. Fans of online games often make modifications (“mods”) of game software or use online games as platforms for video production (called “machinima”). While these practices may technically fall afoul of copyright law, game owners will often encourage these activities, which can also be viewed as voluntary labor that sustains public interest in the game.
(up to 8 minutes)

**Christian Genetski**
Senior Vice President and General Counsel, Entertainment Software Association
(up to 8 minutes)

**Christopher G. Reid**
The Law Offices of Christopher G. Reid, New York
Right of Publicity
(up to 8 minutes)

Dr. Mihály Ficsor
President, Hungarian Copyright Council; International Legal Consultant, Budapest
(up to 8 minutes)

Jonathan Colombo
Bereskin & Parr LLP, Ontario
Dealing with Game Developers to Secure IP: A Canadian Perspective
(up to 8 minutes)

Panelists:
Prof. Ron Lazebnik
Fordham University School of Law, New York

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

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

7C. The EU Observatory on Infringements of IP Rights
Including a Discussion of Piracy
Friday 11:35 AM – 1:10 PM (95 minutes)
Room 311

Moderator:
Paul Maier
Director, The European Observatory on Infringement of Intellectual Property Rights, 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, Alicante
The EU Observatory: A First Response to the Challenges of IP?
The EU Observatory has four major fields of intervention. It's first task is to provide solid and reliable economic data on the importance of IP for the EU economy. Secondly it must study the perception of IP by European consumers and then propose a new narrative on IP and awareness campaigns. The third area is to help in the
enforcement of IP rights through specific projects destined to support EU enforcement authorities (customs, police, judges,...). Last but not least, it must provide training to enforcement authorities and national IP offices through the OHIM Academy.
(up to 12 minutes)

Karen Thorland
Motion Picture Association of America, Inc., Sherman Oaks

_Piracy 2.0_

This talk will explore how the piracy landscape has evolved from peer-to-peer (P2P) websites based on the simple concept of individuals sharing what they have on their computers with others (Piracy 1.0) to a sophisticated, profit-driven and global endeavor that has brought us millionaires like Kim Dotcom. While P2P continues to account for a significant portion of internet traffic and remains a substantial threat to content owners, the new model relies on a symbiotic relationship between link aggregators (linking sites) and their sources for content (largely cyberlockers). The talk will explore how P2P works, how linking sites and cyberlockers operate, why linking sites appeal to consumers, the key players, how the money is made, and the legal challenges presented by Piracy 2.0.
(up to 10 minutes)

Joris van Manen
Hoyng Monegier, Amsterdam

Action against on-line intermediaries in Europe: The Pirate Bay, Kino.to and AltusHost cases.

Two recent EU directives have opened new possibilities for action against “intermediaries who’s services are used by third parties to infringe”. As legal action against the source of the on-line IP infringement often is not available, these new possibilities have cause ground breaking case law in Europe. The EUCJ will render a landmark decision on website blocking by the end of this year. One of the lawyers central in this EU litigation will give you the latest.
(up to 8 minutes)

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

Marcus von Welser
Vossius & Partner, Munich

The EU-Council’s Proposal for a Customs Enforcement Regulation

In January 2013, the EU-Council proposed a new Customs Enforcement Regulation. The presentation gives an overview about the main changes with a focus on factory overruns, i.e. goods produced by the manufacturer in excess of the quantities agreed to by the right holder. The presentation summarizes the current practice and contrasts these with the proposed changes.
Panel discussion: 10 minutes (speakers, panelists and members of the audience)

Panelists:
Leanne O’Donnell  
   Senior Attorney, Melbourne
Bret Parker  
   Vice President and Associate General Counsel, Elizabeth Arden, New York
Michael Schlesinger  
   Mitchell, Silberberg & Knupp LLP, Washington D.C.

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

Lunch
Platt Atrium & 12th Floor Lounge, Lowenstein Building
1:10 PM – 2:20 PM

Speaker
Teresa Stanek Rea  
Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office, Alexandria  
(up to 15 minutes)

Friday Afternoon, April 5

Three Concurrent Sessions:
Patents, Copyright & Trademarks

SESSION 8: PATENT LAW
Concurrent Session
Friday 2:30 PM – 6:30 PM
McNally Amphitheatre
8A. Remedies: Including the Current State of Injunctions

Friday 2:30 PM – 4:10 PM (100 minutes)
McNally Amphitheatre

Moderator:
Robert J. Goldman
Ropes and Gray LLP, East Palo Alto
(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. Klaus Grabinski
Federal Supreme Court, Karlsruhe
Nine years after Ebay – Should German courts have discretion when deciding on injunctions in patent infringement litigation?
In Ebay the US Supreme Court held that the decision to grant or deny an injunction is an act of equitable discretion by the court. The talk will deal with the question how injunctions are dealt with in German patent infringement litigation where the concept of equitable discretion is not known but where alternative approaches exist.
(up to 8 minutes)

Laëtitia Bénard
Allen & Overy LLP, Paris
Cross-border injunctions for registered IP rights in Europe: an overview of recent developments
Laëtitia Bénard will review the rules applicable to cross-border injunctions at the European level and outline the existing differences between trademarks, designs and patents. In particular, she will comment two recent CJEU judgments concerning Community trademarks (DHL/Chronopost) and European patents (Solvay/Honeywell). In the light of a few national precedents, she will then put forward some remaining obstacles to pan-European injunctions. Finally, she will present the relevant provisions of the Unified Patent Court Agreement and conclude on their potential impact on cross-border patent litigation in the upcoming years.
(up to 8 minutes)

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

Patricia Martone
Morrison & Foerster LLP, New York
Differing Damages between Non-Practicing Entities and Practicing Entities
In the past three years, the Federal Circuit has issued a series of decisions on damages issues, particularly on the determination of a reasonable royalty. The goal of the decisions is obviously to make it difficult to sustain outsize jury awards obtained by patent trolls. However, these decisions have so weakened the damages law that companies suing competitors will find that their remedies have been seriously undermined. If injunctive relief is unavailable because damages are adequate, and the damages law has made it impossible to prove anything other than nominal damages, then the statutory framework for remedies for patent infringement has been eviscerated.

Gerald J. Flattmann, Jr.
Paul Hastings LLP, New York

Generic Manufacturers May Be Subject To The Remedies of the ANDA Statute Even In The Absence Of A Paragraph IV Certification

This presentation will survey some of the surprising recent case law from the Federal Circuit and the District Courts that establish this proposition and the perhaps even more surprising proposition that even final approval of an ANDA prior to issuance of an Orange Book listed patent does not preclude application of the statutory remedy of withdrawal or stay of approval under the ANDA statute. This trend in the case law is likely to significantly impact the strategies of branded and generic drug manufacturers in patent litigation.

Eiji Katayama
Abe, Ikubo & Katayama, Tokyo

New Judgment of Presumption Clause of Damages in Japan

Grand panel of IP High Court of Japan rendered a new judgment on presumption clause of damages. Under this interpretation, patentee, especially foreign patentee, may assert damages claim using presumption clause easier than before.

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

Prof. John M. Golden
The University of Texas School of Law, Austin

A Patent Small Claims Court for the U.S.?

In December 2012, the USPTO requested comments on “whether the United States should develop a small claims proceeding for patent enforcement.” 77 Fed. Reg. 74830. The USPTO has extended the deadline for filing comments to April 30, 2013. I will discuss both some reasons for considering the development of such a proceeding and potential ways in which it might be implemented.
Panel discussion including wrap up: 10 minutes (speakers, panelists and members of the audience)

Break
4:10 PM – 4:35 PM

8B. Patentable Subject Matter: Are Software and Gene Patents still “Under the Sun”?  
Friday 4:35 PM – 6:45 PM (130 minutes)
McNally Amphitheatre

A. SOFTWARE PATENTS

Moderator:
John Richards
Ladas & Parry, 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. John F. Duffy
University of Virginia School of Law, Virginia
(up to 7 minutes)

Laura Sheridan
Patent Counsel, Google Inc., New York
Sections 101 and 112: Important Tools for Improving Software Patent Quality
For too long, applicants have been granted software patents with claims amounting to no more than an abstract idea, and without ample support in the specification for the claimed functions. The proper application of sections 101 and 112 to software patents provides a substantive check, ensuring that only those claims having proper coverage and clear scope are issued or upheld.
(up to 7 minutes)

William Chandler
Member, Board of Appeal, European Patent Office, Munich
(up to 7 minutes)

Jay Zakaib
Gowling Lafleur Henderson LLP, Ottawa
Panelists:

**James Bollinger**  
Troutman Sanders, New York

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

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

**B. GENE PATENTS**

**Moderator:**  
**John White**  
Cooper & Dunham LLP, New York  
(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

**Speakers:**

**Prof. John R. Thomas**  
Georgetown University Law Center, Washington D.C.  
(up to 8 minutes)

**Lord Hoffmann**  
Honorary Professor of Intellectual Property, Queen Mary, University of London  
(up to 8 minutes)

**Shimako Kato**  
Abe, Ikubo & Katayama, Tokyo  
*The Japanese View about Subject Matter Eligibility of Gene Patents - Should the bar be raised? -*  
According to the previous decisions and examination guidelines, the requirement of “usefulness” is important for gene patents to grant subject matter eligibility. Is there any further point to be considered with regards to the eligibility?  
(up to 8 minutes)

**Panelists:**

**Prof. Martin J. Adelman**  
The George Washington University Law School, Washington D.C.

**Nicholas Groombridge**
Panelists have no individual time allocated; they take part in the general discussion.

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

CLOSING RECEPTION
Platt Atrium
6:30 PM – 8:30 PM

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SESSION 9: COPYRIGHT LAW
Concurrent Session
Friday 2:30 PM – 6:30 PM
Room 312

9A. Access to Information & the Public Domain
Friday 2:30 PM – 3:30 PM (60 minutes)
Room 312

Moderator:
Prof. Sonia Katyal
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:
Prof. Randal C. Picker
University of Chicago Law School, Chicago

With the emergence of major digital scanning projects for works in the public domain, we are at a point of possibly unparalleled practical access to the public domain. But there is an emerging shadow control regime for the public domain—a regime situated in contracts and terms of use, in the DMCA and in the Computer Fraud and Abuse Act—that will determine the scope of the actual access to the public domain that emerges and in the extent of
competition on the provision and use of the public domain. This talk considers and assesses that regime.
(up to 15 minutes)

Panelists:
David Carson
Executive Vice President, Global Legal Policy, IFPI, London
James Love
Director, Knowledge Ecology International, Washington D.C.
Joris van Manen
Hoyng Monegier, Amsterdam
Prof. Coenraad Visser
University of South Africa, Pretoria

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

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

Break
3:30 PM – 3:55 PM

9B. View from the European Commission; Copyright & Collective Licensing
Friday 3:55 PM – 5:25 PM (90 minutes)
Room 312

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

Speakers:
Maria Martin-Prat
Head of Unit – Copyright, DG Internal Market & Services, European Commission, Brussels
(up to 20 minutes)

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

Jerker Ryden
Senior Legal Adviser, National Library of Sweden, Stockholm

**Collective Rights Management and Extended Collective Licensing - a prerequisite for mass usage of Audiovisual Works?**

New technology and business models enable mass usage of copyright protected works. The answer is collective rights management. But works by so called Outsiders (non members and Orphan Works) can not be licensed the traditional way. You need a licensing solution which solves the problem with the Outsiders - Extended Collective Licensing.

Much of the discussions have focused on Books - the mass digitisation by Google is the primary reason. Audiovisual works though by tradition are much more complex and Outsiders are in abundance. A television broadcaster could have as many as 70 000 contracts a year. A national library could have tenth of millions of hours of audiovisual works.

If the problem is the same should the remedy be the same?

( up to 10 minutes)

**Karyn Temple Claggett**

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

**Orphan Works: A View from the U.S. Copyright Office**

The presentation will include a brief overview of the difficulties caused by the problem of orphan works, previous proposals to address orphan works and the Copyright Office’s current review of the issue. We will also briefly discuss recent international developments.

( up to 8 minutes)

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

**Dr. Roya Ghafele**

The University of Edinburgh School of Law, Edinburgh

**Dinosaurs in the Digital Age? Counting the Costs of Collective Rights Management of Music Copyright in Europe**

Money is being left on the table. According to our analysis the market for music licensing revenues is valued at over 2.6 billion Euro in France, Germany and the UK alone. This constitutes a potential royalty market of 212 million Euro. Yet, only 49 million Euro in royalty revenue from online sources was collected by SACEM, GEMA and PRS for Music. The disparity between potential and actual revenue for all of the European markets suggests there are problems with the current collective rights management system. This calls for action on behalf of policy makers.

( up to 8 minutes)

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

**David Carson**  
Executive Vice President, Global Legal Policy, IFPI, London

**Carlo Scollo Lavizzari**  
Lenz & Caemmerer, Basel

**Jukka Liedes**  
Director, Department for Cultural, Sport and Youth Policy, Division for Cultural Policy, Ministry of Education and Culture of Finland, Helsinki

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

**9C. Performance Rights in Copyright: Public, Private or “Digital”?**

Friday 5:30 PM – 6:45 PM (75 minutes)

Room 312

Moderator:

**Britton Payne**  
Business Development and General Counsel, 30 Ninjas, 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. Tyler Ochoa**  
Santa Clara Law, Santa Clara  

*Distinguishing Public Performances from Private Performances*  
Public performances, including retransmissions, are covered by copyright, but private performances are not. Recent court decisions concerning new online business models have tried to draw a line between the two, with inconsistent results. Prof. Ochoa will discuss these decisions and address how online business models should be evaluated by the courts.  
(up to 10 minutes)

**Barry Sookman**  
McCarthy Tetrault, Toronto  
*Cablevision: How It and Its Doctrines Have Fared Around the World*  
(up to 15 minutes)

**Dr. Silke von Lewinski**  
Max Planck Institute for Intellectual Property and Competition Law, Munich  
*Communication to the public - does the European Court re-invent the wheel?*
To date, the European Court has developed a set of criteria to determine the term "communication to the public" and it continues to revert to them. This contribution analyses and in part criticizes the Court's way of argumentation in the recent cases, in particular in SCF and TV Catch Up, including their references to earlier case law. It also reflects about the possible "escapes" from some of the criteria.

(up to 10 minutes)

Panelists:
Prof. Susan Crawford (invited)
Cardozo Law School, New York
Janet Cullum
Cooley LLP, New York
Prof. Jane Ginsburg
Columbia Law School, New York

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

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

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SESSION 10: TRADEMARK LAW
Concurrent Session
Friday 2:30 PM – 6:30 PM
Room 311

10A. EU Trademark Law: Recent Developments Including Legislation and Genuine Use
Friday 2:30 PM – 4:00 PM (90 minutes)
Room 311

Moderator:
James Nurton
Managing Intellectual Property, London
(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios in print materials and online.)

Speakers:

Paul Maier
Director, The European Observatory on Infringement of Intellectual Property Rights, Alicante
Selected judgments from Luxembourg in trade mark cases; including genuine use and class headings
A discussion of Case C-149/11 Leno Merken on genuine use in one Member State, Case C-553/11 B. Rintisch on genuine use of a trade mark in a slightly different version and Case C-307/10 IP Translator on class headings.
(up to 10 minutes)

Prof. Spyros Maniatis
Queen Mary, University of London, London
Broad specifications and use requirements: competition and bad faith considerations.
The breadth of trade mark specifications and the existence of a use requirement prior to registration are two fundamental differences between the US and EU trade mark regimes. The paper will consider recent European jurisprudence against a practical and comparative context and explore future developments in this area.
(up to 10 minutes)

John Olsen
Edwards Wildman, London
The EU Commission’s proposals for amendment of EU trademark law including the Max Planck study
(up to 10 minutes)

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

Prof. Dr. Peter Ruess
International School of Management, Frankfurt; ARNOLD RUESS, Düsseldorf
Trademark Distinctiveness and Trademark Office Decisions: Is it time to look beyond borders?
With IP being very much an international subject, judges and legislators alike have been looking for guidance or inspiration in other jurisdictions. Trademark Offices seem not at all inclined to follow this route. OHIM or any other EU office may e.g. hold an English mark to be descriptive which was found perfectly admissible in the national office of the native-speaking country. APPLE has maintained its iPhone
mark to be descriptive in Brazil but fiercely defends it elsewhere. Is all this something we just need to accept or do we consider improvements? (up to 10 minutes)

Panelists:

**Prof. Dr. Annette Kur**  
Max Planck Institute for Intellectual Property and Competition Law, Munich

**Jeremy Phillips**  
IPKat, 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)**

**Break**  
4:00 PM – 4:25 PM

**10B. Color Marks: EU and U.S. Recent Developments**  
Friday 4:25 PM – 5:25 PM (60 minutes)  
Room 311

**Moderator:**  
**Prof. Susan Scafidi**  
Fordham Law School  
(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:**

**Gordon Humphreys**  
Member of the Boards of Appeal, OHIM, Alicante

*A Selective Review of Color Mark Issues and Case Law in the EU*  
Despite the CJEU’s statement in Libertel (C-104/01) that colors “advertise and market goods, without any specific message” commercial operators continue to seek registration of colors as trademarks. This presentation looks at when it is appropriate for a color per se to be protected, difficulties of spacial delimitation or color combinations, problems of consumer perception and obstacles in showing acquired distinctiveness through use in the EU. Additional consideration will be given to some examples of inter partes conflicts involving color marks in the EU (OHIM, UK, Austria, Poland and Germany). (up to 10 minutes)

**Prof. Marshall Leaffer**
Panelists:

Lydia Temesgien Gobena  
Fross Zelnick Lehrman & Zissu, P.C.

Matthias Koch  
Freshfields Bruckhaus Deringer, Cologne

Harley I. Lewin  
McCarter & English, LLP, New York

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

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

10C. U.S. Trademark Law: Recent Developments
Friday 5:30 PM – 6:45 PM (75 minutes)
Room 311

Moderator:  
Christian Liedtke  
Independent IP Consultant, Newport Beach
(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:

Robert L. Raskopf  
Quinn Emanuel Urquhart & Sullivan, LLP, New York
Refusing Registration/Cancellation of Marks For Disparaging Racial and Ethnic Groups
There are several recent cases in which registration has been refused ex parte, the newest of which involves the designation Anti-Islamisation; and there is the long running Redskins case making its way through the TTAB as we speak. These cases are at the center of law and politics and generate significant controversy.
(up to 8 minutes)

Prof. Marshall Leaffer  
Maurer School of Law, Indiana University, Bloomington
(up to 8 minutes)

Jeremy Sheff
St. John’s University School of Law, New York

Already v. Nike and Trademark Enforcement Strategy

In Already v. Nike the Supreme Court explored how a covenant not to sue can affect the analysis of an alleged trademark infringer’s standing to continue to assert a counterclaim of invalidity. The analysis of both the majority and concurring opinions offers both guidance and warnings to trademark owners, and suggests that some particularly aggressive enforcement strategies may need to be reconsidered if trademark owners want to avoid putting their own legal interests at risk.

(up to 8 minutes)

Eric A. Prager
K & L Gates, New York
(up to 8 minutes)

Panelist:

Jeff Handelman
Brinks, Hofer, Gilson & Lione, Chicago

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

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

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