Session 2: PATENT LAW

Concurrent Session

Thursday, 11:45 AM - 3:30 PM

2A. Subject Matter Eligibility

Thursday 11:45 AM – 12:55 PM (70 minutes)

Moderator:

Adam Mossoff

Antonin Scalia Law School, George Mason University, Arlington
(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios online.)

Speakers:

David J. Kappos

Cravath, Swaine & Moore LLP, New York

The Long Road to Section 101 Reform — Prospects for the New Congress

The mess that is section 101 is not fixing itself. The district courts are lost. The Federal Circuit continues to struggle with fractious, split decisions. The Supreme Court won't step in. Reform in Congress has proven elusive. What efforts have been underway recently, what efforts are underway now, and what is coming in the ongoing effort to somehow fix section 101? This module will answer these questions.

(up to 7 minutes)

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

John B. Pegram

Fish & Richardson, P.C., New York

Let's Seek a Neutral § 101

Patent eligibility under 35 U.S.C. § 101 is a mess, which the courts cannot resolve. Efforts to revise Section 101 are stalled because there is no consensus. Today, let's consider the potential for a neutral Section 101, broadly defining the outer limits of patentability.

(up to 7 minutes)

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

Shimako Kato

Abe, Ikubo & Katayama, Tokyo

(up to 7 minutes)

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

Michael Williams
Gilbert + Tobin, Sydney
(up to 7 minutes)

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

Panelists:
TBA

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

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

2B. Patents and the Pandemic

Thursday 1:00 PM – 2:10 PM (70 minutes)

Moderator:
Penny Gilbert
Powell Gilbert LLP, London
(up to 5 minutes to introduce the subject matter; intro of speakers –
just name and affiliation, please see bios online.)

Speakers:
Joshua D. Sarnoff
DePaul University College of Law, Chicago
TRIPS Waiver: Needed but Not Nearly Enough!
As a recent suit against Pfizer has shown, if patent rights had been enforceable but for the Bolar exception, they might have prevented or delayed vaccine development. This should illustrate the reason why the TRIPS Waiver should be adopted, but it is opposed even though it would have the same effects on development, and may be needed (but is not the limiting step) for broader production and distribution. What is clearly needed is mandatory sharing of know-how to produce and distribute vaccines, and the TRIPS Waiver will not begin to address that important need. Rather, only governments can compel such know-how sharing, and should do so immediately!
(up to 7 minutes)

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

John Todaro

Merck & Co., Inc., Kenilworth, New Jersey

The Role of IP Rights in the Development and Production of Medicines in Response to the Pandemic

The Covid-19 pandemic has confronted the modern world with a unique public health challenge. Innovative pharmaceutical companies have responded to the pandemic by entering into collaborations and sharing intellectual property to develop vaccines and therapeutics. These efforts have demonstrated the value of intellectual property protections in encouraging innovation.

(up to 7 minutes)

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

James Love

Knowledge Ecology International, Washington, D.C.

The Response to the COVID-19 Pandemic

(up to 7 minutes)

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

TBA

Panelists:

Miquel Montañá

Clifford Chance LLP, Barcelona

TBA

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

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

2C. U.S. Patent Developments

Thursday 2:20 PM – 3:30 PM (70 minutes)

Moderator:

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 online.)

Speakers:
Dimitrios T. Drivas
White & Case LLP, New York
U.S. Patent Developments Overview
(up to 25 minutes)

Panelists:
Nicholas P. Groombridge (invited)
Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York
Adam Mossoff
Antonin Scalia Law School, George Mason University, Arlington
Laura Sheridan
Google, New York
TBA

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

General discussion: 40 minutes (speaker, panelists and members of the audience)

Session 5: PATENT LAW
Concurrent Session
Friday, 8:00 AM - 1:25 PM

5A. Remedies
Friday 8:00 AM – 9:10 AM (70 minutes)

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

Speakers:
Maximilian Haedicke
Albert-Ludwigs-Universität Freiburg, Freiburg
Proportionality and Injunctive Relief in German Patent Law – A Paradigm Shift?
Whereas proportionality has not been applied in German patent infringement proceedings over a long time, recent case law has considered proportionality in cease and desist claims. Moreover, the German legislator is willing to implement proportionality into the Patent Act but many questions are yet unsolved.
(up to 7 minutes)

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

Marleen van den Horst
BarentsKrans, The Hague
(up to 7 minutes)

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

Adrian Howes
Nokia, London
Anti-Suit Injunctions: A New Fad or Here to Stay?
This talk will review the context of the current spate of anti-suit injunctions (SEPs and global licensing), provide a summary of recent cases in the battle over jurisdiction from the U.S. to China, and discuss how this might develop in the future.
(up to 7 minutes)

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

Paul R. Michel
Former Chief Judge, U.S. Court of Appeals for the Federal Circuit, Washington, D.C.
Limiting Injunctions Destroyed Voluntary Licensing Incentives, Devalued IP Rights, and Overburdened Ill-Informed Courts
Unrealistic doctrinal decisions by ill-informed appellate courts have hobbled the Constitutionally-sanctioned "exclusive right" for authors and inventors. This right forms the necessary foundation for widespread licensing that enables sharing while rewarding creators. Legislative correction of serious judicial error is even more crucial with the advent of additional economic disruption from Covid 19.
(up to 7 minutes)

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

Panelists:
Ralf Uhrich
Google, München
Wolrad Waldeck
Freshfields Bruckhaus Deringer LLP, Düsseldorf
David J. Kappos
Cravath, Swaine & Moore LLP, New York

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

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

5B. Patent Litigation

Friday 9:15 AM – 10:25 AM (70 minutes)

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 online.)

Speakers:

Simon Holzer

Meyerlustenberger Lachenal AG, Zurich
(up to 7 minutes)

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

Marjan Noor

Allen & Overy LLP, London
Use of Divisionals to Stifle Competition? UK Patent Court's Flexibility Provides the Antidote – Issue Estoppel and Broad Arrow Declarations
With innovator vs innovator disputes increasing in the biologics space, patentees can use the uncertainty of pending divisionals to create leverage. We will analyse recent decisions by the UK court introducing a new means of clearing the way of divisionals based on issue estoppel principles and also extending the scope of Arrow declarations to facilitate their use against a broad alleged inventive concept rather than a specific product or process.
(up to 7 minutes)

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

TBA

Panelists:

TBA

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

General discussion: 30 minutes (speaker, panelists and members of the audience)

5C. International Patent Developments

Friday 10:30 AM – 12:00 PM (90 minutes)

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 online.)

Speakers

Robin Jacob

Former Lord Justice of Appeal of the Court of Appeal, London; Faculty of Laws, University College London, London

New Uses for Old Medicines: How to Incentivise Research

To a doctor a new use for an old medicine is the same as a new medicine for that new use. To find and prove new uses takes time and money but only around a quarter of the cost in time and money to find and prove a new medicine for the first time. The incentive to find new uses for old medicines which are or shortly about to be generic are not good. What's to be done?

(up to 7 minutes)

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

Christopher Floyd

Former Lord Justice of Appeal of the Court of Appeal, London

Regeneron: Adequate Protection for Ground-Breaking Inventions?

In Regeneron, the UK Supreme Court held (by a majority) that a patent was insufficient for failing to enable more sophisticated embodiments of the invention than it had described. All such embodiments would, however, have made use of the inventor's essential idea. Lord Hoffmann, a retired Supreme Court judge said recently that he was "startled" by the result and that it was "obviously wrong." Was the Supreme Court right?

(up to 7 minutes)

Lennie Hoffmann

Former Second Senior Lord of Appeal in Ordinary; Queen Mary University of London, London

(up to 7 minutes)

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

Dirk Bühler

Maiwald, Munich
(up to 7 minutes)

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

Heinz Goddar

Boehmert & Boehmert, Munich
Second Medical Use Patents and Compulsory Cross-Licenses
Second medical use patents could/should be looked at as covering important improvements of patents directed to the "substance as such" and/or first medical use patent. In that case, opening clauses like in Art. 24 (2) of German Patent Act (GPA), entitling the "improover" in a compulsory cross license (possibly with balancing royalty stream(s) between primary and secondary patentee) might be suitable to make the improvement invention available to mankind. Similar provisions, of course, exist also in other countries, like e.g. India.
(up to 7 minutes)

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

Gustavo de Freitas Morais

Dannemann Siemsen Bigler & Ipanema Moreira, São Paulo
Enforcing patents in Brazil
Brazil often seems like a tough place to enforce a patent. Although it certainly has its peculiarities, one should bear in mind that, as a rule, it is much easier to obtain a preliminary injunction in Brazil than in other jurisdictions. In order to increase the chances of a preliminary injunction grant, one should pay attention to venue and expert selection, among other issues.
(up to 7 minutes)

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

<u>Panelists:</u>
TBA

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

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

5D. PTAB

Friday 12:20 PM - 1:25 PM (65 minutes)

Moderator:

Kenneth R. Adamo

Law Office of KRAdamo, Chicago
(up to 5 minutes to introduce the subject matter; intro of speakers – just name and affiliation, please see bios online.)

Speakers:

George E. Badenoch

Hunton Andrews Kurth LLP, New York

Discretionary Denial of Inter Partes Review

Current US law allows anyone to petition for inter partes review (IPR) of a patent, allows multiple IPRs to be filed against the same patent, and allows the Administrative Law Judges (ALJs) that preside over IPR proceedings to refuse to institute proceedings for discretionary reasons unrelated to the merits of the petition. This system creates problems for defendants in multi-party cases, because the discretionary factors considered in deciding whether to institute tend to favor instituting only the first petition to be filed, whether or not it relies on the best prior art, presents the strongest arguments or is controlled by the party with the most at stake. The system can also be problematic for patent owners, because it allows companies in an industry to fund independent IPR filing firms that file IPRs against patents asserted against the companies without binding those companies to the result.
(up to 7 minutes)

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

Patricia Martone

NYU Law Engelberg Center on Innovation Law & Policy, New York

Has the AIA Finally Hit the Wall in the Arthrex Cases?

The Arthrex cases before the Supreme Court highlight the fundamental structural dichotomy on which the IPR is built. It is an adjudicative proceeding cloaked in an administrative proceeding. The AIA created administrative judges with the same powers as Article III judges to determine patent validity. A Supreme Court decision holding that the appointment and/or oversight of PTAB judges is unconstitutional would require either the Court or Congress to fix the problem. The result would be disruptive but necessary to restore confidence in our patent system.
(up to 7 minutes)

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

John Richards

Ladas & Parry LLP, New York
(up to 7 minutes)

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

Panelists:
TBA

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

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