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Subject: Footwear IP Digest - June 2015
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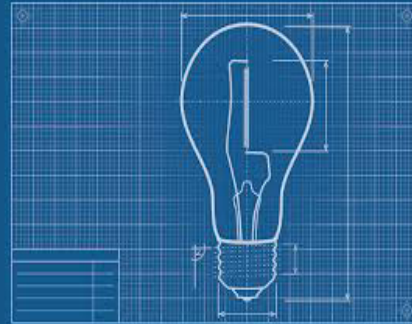


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FDRA

FOOTWEAR DISTRIBUTORS AND RETAILERS OF AMERICA

Intellectual Property Digest



May 2015

Legislation

The House Judiciary Committee approved the Innovation Act (H.R. 9) on June 11th by a vote of 24-8. The bill is designed to address increasing abuse of the U.S. patent system by entities known as "patent trolls," who obtain weak patents and then file frivolous lawsuits in the hopes of forcing companies to settle, often resulting in millions spent in legal fees. FDRA sent a letter to the House Judiciary Committee in support of the Innovation Act and put out a press release as soon as it passed the committee. The bill is expected to head to the full House for a vote in the coming weeks.



[Read the FDRA letter to the House Judiciary Committee](#)

Litigation

In re Columbia Insurance Company, 2015 TTAB LEXIS 139 (TTAB May 13, 2015). Synopsis: The Trademark Trial and Appeal Board affirms a refusal to register the mark LYTNING for protective boots and industrial shoes because of a likelihood of confusion with the mark LIGHTNING GLOVES for protective gloves.



In re Packed House Publications, LLC, 2015 TTAB LEXIS 142 (TTAB May 13, 2015). Synopsis: The Trademark Trial and Appeal Board affirms a refusal to register the mark MASTERBAITER for shoes, boots, and other goods because of a likelihood of confusion with the mark MASTERBAIT for footwear and other goods.

USPTO

Utility patents issued in the month of May:

Pat. No.	Title	Assignee
9,038,288	Athletic Footwear w/ Ball Control Portions	NIKE, Inc.
9 038 287	Article of Footwear w/ Integral Inner and Sole	NIKE Inc



9,038,287	Article of Footwear w/ Integral Upper and Sole	NIKE, Inc.
9,038,286	Footwear Accessory	None
9,038,285	Footwear Sole w/ Midsole Protrusions	Converse Inc.
9,032,647	Shoe Housing	adidas AG
9,032,646	Energy-Return Shoe System	None
9,032,645	Support Features for Footwear	NIKE, Inc.
9,032,644	Shoe and Process Ssing an Insert Piece	Dynasty Footwear, Ltd.
9,032,643	Elastic Strap Sandal	None
9,032,642	Insert for Vapor-Permeable, Waterproof Soles	GEOX S.p.A.
9,032,583	Anti-Slip Shoe Accessory for Court Sports	None
9,030,335	Smartphones App-Controlled Config. of Soles	None
9,027,262	Shoe w/ Integral Pump	Efferent Technologies, LLC
9,027,261	Ventilated Motorcycle Boot	Alpinestars Research SRL
9,027,260	Footwear w/ Upper w/ Knitted Component	NIKE, Inc.
9,021,723	Waterproof Breathable Boot	None
9,021,722	Sole for a Golf Shoe	ECCO Sko A/S
9,021,721	Footwear	Ariat International, Inc.
9,021,720	Fluid-Filled Chamber w/ a Tensile Member	NIKE, Inc.
9,021,719	Shoe Spring and Shock Absorbing System	None
9,021,718	Boot Assembly	Aqua-Lung America, Inc.

Patent applications published in the month of May:

Pub. App. No.	Title	Applicant
20150143724	Modifiable Footwear Cover	Juan Rivera
20150143723	Molded Foam Article, Foamed Sole, and Shoe	Junichiro Tateishi
20150143722	Flexible Footwear	Crocs, Inc.
20150143721	Footwear for Use in Relation to a Pedicure	Jennifer Marie Ortega
20150143720	Sole Structure w/ Side Stiffener for Footwear	NIKE, Inc.
20150143719	Temporary Footwear Modification Device	Jon Fosbrook
20150143718	Three Toed Footwear	Surf 9, LLC
20150143717	Shoelace Retention Devices	Clipzeez. Inc.
20150143716	Footwear w/ Knitted Component w/ Body, Heel	NIKE, Inc.
20150143715	Component for an Article of Footwear	NIKE, Inc.
20150143714	Foot Balancing Device	Varithotics Co., Ltd.
20150143713	Multi-Function Shoe Pad	Hsien-Hsiung Cheng
20150135558	Shoe Sole Having Diagonal Groove	Asics Corporation
20150135557	Buttress for Removable Cleats	Cleats LLC
20150135556	Ski Boot	Calzaturificio
20150135555	Footwear w/ Angled Tensile Strand Elements	NIKE, Inc.
20150135554	Footwear w/ Chamber, Able to Hold Vacuum	Timothy J. Smith
20150135553	Toe Protection Insert for an Athletic Shoe	Mark Sturgis
20150135552	Lock For Shoe w/ Interchangeable Heels	Joshua F. Morell
20150135551	Footwear w/ an Adaptive Fluid System	NIKE, Inc.
20150135550	Adjustable Bladder System w/ External Valve	NIKE, Inc.
20150128457	Protective Heel Enclosure Device	Denise Wright
20150128456	Functional Shoe for Preventing Slip	Young Keun Park
20150128455	Outsole Tread Pattern	Shoes For Crews, LLC
20150128454	Shoe and Shoe Ornamenting Devices	William Lange Skyes
20150128453	Surface Structure for Sports Boots and Method	Laszlo Orosz
20150128452	Articulated Sole Structure w/ Sipes, Hexagonal	NIKE, Inc.
20150128451	Footwear w/ a Removable Heel Member	NIKE, Inc.
20150128450	Open Shoe Comprising Textile Layer, Fixation	Alistair Fronhoffs
20150128449	Shoe Structure and Manufacturing Method	Chung-Kuang Lin
20150128448	Footwear and a Part Thereof	Redbacks Cushioning Ltd.
20150128447	Modular Footwear Platform	Steven N. Verona
20150128335	Flexible Polyurethane and Foam Materials	Ghassan Dehni
20150121727	Dry Booth	Kharashma Bhagwandeem
20150121726	Shoe	John Muniz
20150121725	Snowshoe	Fabrizio Vignati
20150121724	Shoe	Ho Dong Sung
20150121723	Shoe Product w/ Removable Cuff	Ada Duran

[20150121722](#) [Insole for Footwear](#)
[20150121721](#) [Insole Improvement](#)

Winning One Co., Ltd.
Lucas Knorst

Design patents issued in the month of May:

Pat. No.	Title	Assignee
D730,038	Shoe spacer	None
D730,037	Footwear	Sorel Corporation
D730,036	Footwear	Columbia Sportswear
D730,035	Shoe sole	Cole Haan LLC
D730,034	Footwear Outsole	Cole Haan LLC
D730,033	Sole for Footwear	Calzaturificio Casadei S.P.A.
D730,032	Sole for Footwear	J. Choo Limited
D730,031	Footwear with Grid Pattern	JAV-JR LLC
D730,030	Shoe	Tod's S.p.A.
D730,029	Upper for a Shoe	Columbia Insurance Company
D730,028	Modular Shoe	None
D730,027	Upper for a Shoe	Columbia Insurance Company
D730,026	Shoe	ECCO Sko A/S
D730,025	Dance Shoe	None
D730,024	Boots w/ Receptacle for Interchangeable Inserts	None
D730,023	Boot Flip Flop	None
D730,022	Footwear	Crocs, Inc.
D730,021	Shoe	Vibram S.p.A.
D730,020	Shoe	Vibram S.p.A.
D729,509	Insole	Premier Brands of America
D729,508	Shoe Insert	S.C. Johnson & Son, Inc.
D729,507	Shoe	Christian Louboutin
D729,506	Shoe	Christian Louboutin
D729,505	Shoe	Tod's S.p.A.
D729,504	Boot	None
D729,503	Canvas Shoe w/ Toe Cover, Stripes	Payless ShoeSource
D729,393	Outsole for an Orthopedic Device	Ossur HF
D728,918	Shoe Flap	None
D728,917	Footwear	Sorel Corporation
D728,916	Insole Bottom	VCG Holdings Ltd.
D728,915	Sole	ECCO Sko A/S
D728,914	Sole	ECCO Sko A/S
D728,913	Footwear Tread	Shoes For Crews, LLC
D728,912	Sole	ECCO Sko A/S
D728,911	Footwear	Sorel Corporation
D728,910	Sole	ECCO Sko A/S
D728,909	Sole for Shoe	Kenney Sport, LLC
D728,908	Shoe	Tod's S.p.A.
D728,907	Shoe	Tod's S.p.A.
D728,906	Shoe	Tod's S.p.A.
D728,905	Shoe	Tod's S.p.A.
D728,904	Sandal	Superfeet Worldwide, Inc.
D728,903	Surf Boot	None
D728,902	Shoe	Vibram S.p.A.
D728,901	Footwear	None
D728,214	Buckle for Footwear	Coach, Inc.
D728,213	Golf Shoe	Acushnet Company
D728,212	Golf Shoe Upper Portion	Acushnet Company
D728,211	Heel	Nicholas Kirkwood Limited
D728,210	Shoe Outsole	Kumkang Shoe Co., Ltd.
D728,209	Shoe	None
D728,208	Slipper	IdeaVillage Products Corp.
D728,207	Protective Heel Enclosure Device	None
D728,206	Shoe	None
D728,205	Golf Shoe	Acushnet Company
D728,204	Footwear	Crocs, Inc.

*Trademarks published in the month of May:
(Note: 0 = design mark only)*

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STONED REPUBLIC

GOLDMIST

JA YOE

APPEARANCE

THE GREAT LOOK

TEA & CRUMPETS

SEX SOMETHING EXPENSIVE

MEMORY FOAM COMFORT SUPPORT PERFORMANCE

GLEESH

TWO HIGH THC CLOUDS

V VUE SUR MER UPPER CASUAL

I LOVE RAINY DAYS

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KIDZERTS GO, GROW, PLAY

VIE SAUVAGE

CHACO

GOT SOUL

EXTEND YOUR LIMITS

ITTY GRITTY

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GOLF WELL

CLIMAHEAT

SOCK TOPS

GIGGLE

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AMERICAN CUFF

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WE CREATE CHANGE

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BALL BAND

C2 BY CALIBRATE

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DSGL
SEVEN 7
7 7
SEACELL TIME TO RELAX
SEACELL
PLAY HARD PRAY HARDER
FIREBUG
HEYS
URBAN UTILITY
YOUTUBE
YOU TUBE
SHAUN WHITE
FITAFIED
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General News

Robots Could Restore 'Made in Germany' Label to Adidas Shoes

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Emma Thomasson



German cobbler Adi Dassler revolutionised running when he started hammering spikes into track shoes almost a century ago. Today most of the 258 million pairs of shoes produced each year by his firm Adidas are made in low-cost Asia.

That could soon change as cheaper, faster and more flexible robots mean manufacturing - including producing fiddly footwear - could be brought closer to consumers in high-wage countries like Germany, speeding up delivery and slashing freight costs in what some call a fourth industrial revolution.

Adidas is working with the German government, academics and robotics firms on new technologies it hopes will trigger a significant shift in the footwear industry as the move led by its arch rival Nike to produce in Asia decades ago.

The project is part of a broader drive by Adidas to catch up with Nike, which has extended its lead as the world's biggest sportswear firm in recent years with innovative products such as its "Flyknit" shoes made out of machine-knitted fibre.

"We will bring production back to where the main markets are," Adidas Chief Executive Herbert Hainer said in March. "We will be the leader and the first mover there."

Adidas hopes to be able to produce a custom-made running shoe from scratch in a store in Berlin by next year, using a stitching machine and a foamer to make the sole.

Nike, which has long faced criticism for using Asian sweat shops to produce its pricey footwear, is also investing heavily in new manufacturing methods. But it has not yet put a date on when it expects that to result in more US-based production.

JOBS AT RISK

Key to moving footwear manufacturing closer to Western markets are technologies which cut the need for workers to piece together shoes. A machine can now "knit" an upper like a sock, robots can already complete more of the final assembly of the shoe, while 3-D printing could soon allow the production of a customised sole.

That could threaten millions of jobs in the footwear industry in countries like China, Brazil and Vietnam, but potentially create new positions elsewhere, albeit for more highly skilled labourers working alongside robots.

Robots, now used mainly in auto production, could soon cut labour costs by 18 per cent or more by 2025 in other sectors, the Boston Consulting Group (BCG) predicts.

The new technology is being closely guarded: photographers were not invited to an investor presentation at the Adidas innovation centre, where it demonstrated a

robot that could stick its trademark three stripes to a running shoe.

Nike, for its part, tried to stop Adidas producing a knitted shoe that it said violated patents for the "Flyknit" technology it launched in 2012. However, a German court ultimately allowed Adidas to resume production of its "Primeknit" shoes.

Nike says it can make "Flyknit" shoes with half the labour input of a typical "cut-and-sew" shoe as it has 80 per cent fewer components, also resulting in 70 per cent less waste as it no longer needs to cut pieces from a pattern and discard the rest.

Nike co-founder Philip Knight shook up the sporting goods industry that Adidas has dominated until the 1970s after putting into practice his thesis paper arguing that sneakers from lower-cost Japan could compete with pricier German-made versions.

Today, Asia produces 87 percent of all footwear, with China by far the biggest manufacturer, followed by India, Brazil and Vietnam, according to APICCAPS, the association of Portuguese footwear manufacturers that compiles global industry figures.

INCREASING SPEED TO BOOST MARGINS

Nike and Adidas each rely on more than 1 million workers in contract factories worldwide to make their shoes.

While the need for speed is one motivating factor, rising wage costs, particularly in China, are also driving the shift.

"That element is going up dramatically," said Glenn Bennett, head of global operations for Adidas who leads the project aimed at getting products to shoppers faster than the six weeks needed for shipments to arrive from Asia.

Adidas is working with companies like automotive supplier Johnson Controls, robotics experts Manz and knitting machine maker Stoll on new processes as it targets prototype in-store manufacturing by next year.

Adidas says more local manufacturing should leave it with less surplus stock it has to discount, helping to lift its operating margin above 10 per cent from 6.6 per cent in 2014, still behind the 13 per cent Nike recorded last year.

Nike, which saw sales in North America dampened earlier this year by delays to deliveries from Asia due to labour disruption at ports on the US West Coast, is unlikely to allow its German rival to get much of a headstart on localised production.

During a visit by US President Barack Obama to Nike headquarters last month, the firm promised to create 10,000 jobs in the United States in the next decade by producing more in its home market if a trade deal with Asian countries is approved.

"We are putting a lot of money and a lot of resources against how our supply chain evolves to increase speed and make sure we deliver to consumers as quickly and innovatively as we can," Trevor Edwards, Nike brand president, said in March.

Beyond knitting and 3-D printing, other innovations helping to speed up production include bonding and gluing technologies to fuse together fabrics as well as waterless dyeing which allows pigments to penetrate textiles more quickly.

Yves-Simon Gloy, an expert from the Institute for Textile Technology at Aachen University who is collaborating with Adidas and sees the dawning of a fourth

industrial revolution due to the emergence of "cyber physical systems", machines equipped with sensors, cameras and motors that can be adjusted using the Internet in real time.

But Bennett and Gloy do not expect these smart machines to completely usurp human workers.

"The breakthrough will probably happen in finishing the product close to the consumer," said Bennett. "Not moving the whole of the operation".

Chinese Court Stuns New Balance with \$16 Million Verdict: Lessons on Doing Business in China

Lexology

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Wilson Elser

On April 24, 2015, Guangzhou Municipal Intermediate People's Court in south China's Guangdong Province stunned Xinbailun Trade (China) Co., the local sales company for the well-known U.S. sports brand New Balance, with a \$16 million verdict for violating the trademark rights of a Chinese individual, Zhou Yuelun (Zhou or plaintiff). In addition to the \$16 million verdict, to avoid further consumer confusion, the Court ordered the Chinese affiliate of New Balance to stop using the "Xin Bai Lun" term to market its product in China and required them to publicly apologize for the harm caused to Zhou.

How and why did this happen? The source of the issue may emanate from China's first-to-file system and the cultural and linguistic inconsistencies between the English and Mandarin languages. The Chinese Court's decision highlights a significant lesson about use of Chinese character marks and the importance of filing early in China, irrespective of the marks' use in China.

Cultural and Linguistic Inconsistencies

Some cultural and linguistic explanation is necessary to understand this landmark decision. The name used by the New Balance affiliate was ??? pronounced "Xin Bai Lun." "Xin" means "New" in Chinese and "Bai Lun" is a phonetic translation of "Balance." The plaintiff owns the trademarks ?? pronounced "Bai Lun" and ??? pronounced "Xin Bai Lun." "Bai Lun" was registered as a trademark in China in 1996 for certain merchandise (in International Class 25), including "clothes, footwear, and headgear." International trademark classification and the headings of the international trademark classes are established by the Committee of Experts of the Nice Union. Thus, Class 25 is essentially the same in the United States when used by the U.S. Patent and Trademark Office.

In 2004, Zhou applied to register the trademark for "Xin (new) Bai Lun" for similar merchandise in International Class 25, the registration issued in January 2008. Zhou had an established brand of men's shoes using the names "Bai Lun" and "Xin Bai Lun" that are sold in local Chinese department stores.

In 2004, New Balance attempted to oppose the registration of Zhou's "Xin Bai Lun" mark on the basis that New Balance used an identical version of the mark, ??? pronounced "Xin Bai Lun," since 2003. To New Balance's detriment, the Chinese trademark office rejected their opposition and as a result, Zhou's "Xin Bai Lun" mark registered in Class 25 for clothing, shoes and hats. Although Zhou owned the rights to the "Bai Lun" and "Xin Bai Lun" marks, New Balance continued to use the marks to promote their brand, which led to Zhou filing the lawsuit and the Court's significant damages award.

China's First-to-File System and Its Effects on the Lawsuit

Unlike in the United States, where trademark rights are based on use, Chinese law does not recognize or protect a trademark unless it is registered with the Chinese Trademark Office (CTO). This Court's decision highlights a significant lesson about use of Chinese character marks and the importance of filing early in China, irrespective of the marks' use in China.

In the lawsuit, Zhou claimed that New Balance used "Xin Bai Lun" on shoes without authorization, and New Balance's unauthorized use led customers to believe that all shoes so marked were New Balance shoes. The alleged unauthorized use included the use of the name "Xin Bai Lun" on New Balance's official China website as well as printing "Thank you for buying Xin Bai Lun products" on the store receipts in the retail outlets in China. Zhou maintained that New Balance's behavior hampered his ability to build and develop his own brands of "Bai Lun" and "Xin Bai Lun" in China.

New Balance took the position that "Xin Bai Lun" was used in good faith as part of its name and was a direct transliteration of the English "New Balance." New Balance further argued its use of "Xin Bai Lun" as a sale label predated the plaintiff's use of "Xin Bai Lun" in commerce. Finally, New Balance argued that its use of "Xin Bai Lun" did not produce any confusion to the consumer and therefore did not amount to infringement as alleged.

Findings

The Court initially determined that the plaintiff's and the defendant's products were substantially similar, thereby providing a basis for the trademark infringement/dilution claims. The Court then found that the "Bai Lun" trademark registered in 1996. Since the CTO makes trademark filings and registrations readily available to the public, the Court opined that the defendants should have known that the "Bai Lun" and "Xin Bai Lun" marks had previously registered in the name of the plaintiff. Furthermore, the Court found that New Balance opposed the registration of the plaintiff's trademark application for "Xin Bai Lun" in 2007, and obviously was aware of the dispute. Finally, the Court determined that since New Balance was aware of the existence of the trademarks of "Bai Lun" and "Xin Bai Lun," and since New Balance continued to trade on the plaintiff's registered trademarks, they did so in bad faith. In view of these findings, the Court rejected New Balance's argument for fair use and first use.

Significantly, the Court also rejected New Balance's argument that "Xin Bai Lun" is a translation of the company name, finding that a proper translation for New Balance should have been "Xin (new) Ping Heng (balance) or ???," which is also the name of the New Balance affiliate, Xin Ping Heng Athletic Shoe, Inc. Finally, the Court pointed out that New Balance previously used another name "Niu Ba Lun ???," which is the phonetic translation of New Balance and therefore found New Balance's argument that "Xin Bai Lun" is the company's name in Mandarin is not supported.

Conclusion

It has been a common practice for U.S. companies to adopt a Chinese name when entering the ever-expanding Chinese market. The older convention in China was for the company to adopt a phonetic translation, such as "Suo Ni" (Sony) and "Mai Dang Lao" (McDonald's). As the Chinese consumers have become more sophisticated, for marketing reasons a straightforward phonetic translation is sometimes foregone and in this case a mixture of translated meaning ("Xin" = "New") and phonetic ("Bai Lun" = "Balance") was adopted. Companies struggle to navigate between using a name that is marketable in a foreign language and yet recognizable to the consumers to connect to the original U.S. brand name. From a

practical standpoint, companies should ensure that their choice of names to be used in China - the use of names (on websites or press releases) and the products associated - go through trademark clearance and due diligence procedures just as they would in the United States. As the Chinese market continues to expand and more U.S. companies sell their products in China, it is to be expected that the landscape of intellectual property claims will expand as well.

Furthermore, companies and individuals exploring opportunities in China should consider the following:

- Act early in registering your trademarks.
- File trademarks in English and in Chinese characters.
- Consider the use of Chinese language variations.
- Consult with experienced Mandarin/English speakers, so that trademark versions adopted properly reflect your brand.

In New Twist, Shoe Maker Sues Patent Troll Rather than Paying \$45,000 Licensing Fee
PalmBeachPost.com
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The patent troll playbook is simple but effective: Send a "demand letter" threatening a lawsuit for patent infringement, then wait for the cowed target to reluctantly sign a check to avoid costly litigation.

Shoes for Crews, a West Palm Beach maker of footwear, flipped the familiar script last week, when it sued a Boynton Beach patent troll.

The dispute started April 11, when patent holder Eclipse IP LLC of Boynton Beach sent a demand letter to Shoes for Crews Chief Executive Matthew Smith. Eclipse IP accused Shoes for Crews of using an online ordering notification that infringes on a patent held by Eclipse IP.

In the letter, Eclipse IP's Atlanta-based attorney threatened litigation but offered to forget the whole thing for a "discounted lump sum fee of \$45,000."

Instead of paying, Shoes for Crews launched its own litigation. On April 23, Shoes for Crews filed a suit in federal court calling Eclipse IP a "'patent troll' which essentially uses patents to extract money from target companies." Shoes for Crews asks the judge to rule that Eclipse IP's patent is "invalid and unenforceable."

Eclipse IP, headed by Pete Sirianni of Delray Beach, is a plaintiff in more than 100 federal suits filed since 2011. An Eclipse IP executive declined to comment.

While Eclipse IP is usually the plaintiff in federal disputes, Shoes for Crews isn't the first company to turn the tables.

In March, Michigan trucking firm Con-Way filed a federal suit against Eclipse IP. Also last month, online retailer Overstock.com put out a statement saying that it had successfully battled Eclipse IP. And last year FedEx sued Eclipse IP.

"It's not typical, but it is definitely a growing trend," said Jeremy Elman, a patent attorney at DLA Piper in Miami. "The idea is that other patent trolls will see they're waking a sleeping tiger."

The arcane world of intellectual property disputes grabbed headlines in June, when President Barack Obama lamented the rising number of suits filed by patent trolls, companies that exist to collect licensing fees on inventions registered with the U.S. Patent and Trademark Office. Obama announced several executive orders "to

protect innovators from frivolous litigation."

Shoes for Crews, which makes skid-proof soles for workers who toil on slippery surfaces, has sold millions of pairs of shoes to workers at McDonald's, KFC, Taco Bell, P.F. Chang's, Ruth's Chris Steak House and other restaurant chains. The company says its secret formula makes the stickiest soles on the market, but Shoes for Crews refuses to file for a patent, fearing the process would reveal valuable clues to rivals.

Barnes & Thornburg LLP. If you have questions regarding any article, would like further information, or have suggestions about future articles, please contact David Spooner at david.spooner@btlaw.com

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