Chief Judge urges inequitable conduct review

Chief Judge Paul Michel of the Court of Appeals for the Federal Circuit yesterday appealed to patent practitioners to help the Court clarify the doctrine of inequitable conduct. He was responding to criticisms of the interpretation of the doctrine and some calls for reform.

Speaking on a panel alongside experienced IP litigators, Michel said the issue was of great concern to him: “When there’s this level of disagreement among this level of litigators we have a serious problem.” But he called on practitioners to bring relevant cases before the courts. “We can’t develop issues unless you raise them.”

Michel acknowledged that patent applicants and others need “a reasonable level of consistency and predictability” but said: “I don’t think we’re anywhere near those reasonable levels.” He admitted he felt a “burden of responsibility” to address the mess, particularly over the interpretation of materiality and intent-to-deceive. “There are four different standards of materiality. That’s a terrible train wreck right there and makes the problem four times harder,” he said.

The Chief Judge said the Federal Circuit had addressed inequitable conduct in detail in at least four recent patent cases as well as in this year’s Bose trademark case. But he added: “We need to be careful and precise in how we read these cases.” And he said that the September 2008 Praxair case, which has generated a lot of comment among practitioners, “is not a very big precedent.” “There are a lot of limitations contained in it,” he said. He also pointed out: “Concurrences and dissents are not the law, and not precedential, so don’t put too much weight on them.”

Two of the lawyers who argued the Praxair case took part in the panel discussion. Christopher J Harrett of Ropes & Gray, who represented plaintiff Praxair, said the law “is moving in the right direction” in recent cases by making it harder for defendants to prove inequitable conduct. He argued passionately that alleging inequitable conduct in litigation is “unsporting”: “Reputable practitioners should not willfully be charged with wrongdoing. I’ve never charged anyone with inequitable conduct. I don’t like the defense and district judges must not like seeing it.”

Brimelow backs PCT reform to beat backlogs

Reforming the Patent Cooperation Treaty is “the most important game in town” when it comes to addressing backlogs, EPO President Alison Brimelow said yesterday in a lunchtime speech. She also warned that creating a plurilateral patent prosecution highway could “involuntarily damage” the PCT.

Brimelow said patent offices are “struggling to cope” with backlogs, which stand at 500,000 in the EPO and as much as 900,000 in the JPO. The unrelenting growth in applications “threatens the function of the system itself,” she said. Although the EPO has seen an 8% fall in applications this year, since 1996 filings have gone up 200%.

Brimelow said much of the problem is that some 250,000 applications are pending simultaneously in more than one of the trilateral offices, and this is “hamstringing” the patent system and increasing uncertainty. “Our foremost task is rapid, decisive and effective action to streamline and improve the IP infrastructure.”

This must be achieved through international cooperation, she added, with measures to avoid unnecessary duplication. These include using the European Patent Network (which provides searching resources), extending patent prosecution highways and combining these with the PCT. “It is hugely important to plug the PCT into this process.”

The EPO President, whose term ends next June, also said that the Office is seeing more applications being abandoned in the final phase of procedure, especially in the pharmaceuticals and semiconductor industries. But she argued that “Abandoning means cost us money.”

Moreover, the EPO is losing revenue as the average patent life is falling (from 10 years to eight years according to recent figures) and annuity fees are set individually by its 36 member states. Without these renewal fees, the
Japan visited the country’s IP High Court.

Continued from page 1

Japanese court quashes conviction over file-sharing software

The Osaka High Court last week acquitted the designer of peer-to-peer file-sharing software of charges of intentionally assisting copyright infringement. The decision overturns a 2006 district court ruling that imposed a fine of ¥1.5 million ($17,000) on Isamu Kaneko, who created software named Winny that allows users to exchange files without revealing their internet protocol addresses.

"This decision is correct. Software innovation in a fair manner should not be prohibited," said Masakazu Izawaka, a partner of Nishimura & Asahi in Tokyo. Kaneko, a former researcher at the University of Tokyo, was arrested in 2004 by the Kyoto prefectural police. In December 2006 the Osaka District Court found him guilty of intentionally assisting copyright infringement. He appealed.

According to Kyodo news agency, Judge Masazo Ogura of the High Court ruled in his verdict that it "cannot be said that the defendant published the software to encourage copyright infringement". The Association of Copyright for Computer Software criticised the decision and said in a statement: "It is crystal clear that allowing people to use this network further encourages copyright violation".

A 2006 report by the Recording Industry Association of Japan claims that more than 3 million software named Winny that allows users to exchange files without revealing their internet protocol addresses.

The Osaka Public Prosecutors Office has not yet said whether it will appeal the decision to Japan’s Supreme Court.

Information sharing

The Committee’s annual Spring trip to Japan is just part of the work the Committee does to ensure that information on new cases and law changes is shared by IP practitioners in the U.S. and Japan. This year, U.S. members talked about the impact of the Rambus decision on standards and antitrust, Bilski, inequitable conduct and the Bose trademark fraud case.

Japanese lawyers have also had plenty to discuss. Important recent developments have included an interim injunction decision by the IP High Court on June 29 on a patent for a golf club that involved looking at the doctrine of equivalents. The IP High Court has also issued a decision on patent term extensions for medical products that may cause the Japan Patent Office to review its practice on how it assesses extension applications.

As in the U.S., Japan is also considering amending its patent law. But a new JPO Commissioner, Tetsushiro Hosono, began work on July 14 this year and, with a new government recently elected, "it is not clear if that is going to stall or accelerate," said committee co-chair Mark Guetlich.

But the previous government did manage to pass reforms to the country’s Copyright Act that will come into effect on January 1 next year. Under Japan’s Copyright Act, it was technically illegal for search engines to store information on their servers.

Although this was never enforced, the legal uncertainty hampered the development of Japanese search engines. The amendments now allow search engines to operate and permit other forms of caching or temporary internet copying.

The amended law also makes it easier to obtain clearance to use so-called orphan works, where it is unclear who owns the copyright. At present, it is possible to obtain clearance, but the system is overly rigid, according to copyright lawyers in Japan. The new system still requires the would-be user to get clearance, but should be far simpler. The amendments also contain an exception to infringement when making work more accessible for disabled people.

While those reforms were widely welcomed, attempts to crack down on downladers of copyright infringing content have proved more controversial. At present it is a criminal offence to upload copyright-infringing content but there is no penalty for downloading.

The new amendments add a new offence of selling or offering to sell pirated materials, which can be punished by up to five years in prison or a fine. Knowingly downloading illegal content is also illegal, but this offence has no criminal penalty. "It will be difficult to prove intent in court," said Kozo Yabe, a partner of Yuasa & Haro in Tokyo. Yabe added that this creation of an offence without criminal penalties suggested there had been a disagreement within the committee of the Ministry of Culture that proposed the amendments. "Opinon was quite seriously split," he said.

Two other proposed amendments did not make it into the final law because a consensus could not be reached. Attempts to introduce a levy on digital recording devices such as Apple’s iPod and to introduce the concept of fair use into Japan’s Copyright Act were both dropped.

Although the legislation shows intent on the part of the government to crack down on online infringement, on October 8 the Osaka High Court overturned a decision to convict the creator of a popular software used by file sharers of intentionally assisting copyright infringement (see box).

Highways and harmonisation

The Japan Patent Office has been one of the most determined to translate talk of global patent harmonisation into action. The country has led the charge to develop patent prosecution highways (PPHs), enabling IP offices to share the work generated by the first patent office where a counterpart application is filed with the second office.

The JPO now has a permanent PPH with the USPTO and Korean IP Office, as well as pilot programs with the patent Offices in the UK, Germany, Denmark, Finland, Russia, Australia, Singapore, Hungary and Canada. "They ran into a fair bit of skepticism, but they have overcome the sceptics," says Guetlich. He argues that the next stage is to work on how examination of a live, pending application can be shared by the different offices.

The Japanese government has also been one of the driving forces behind the Anti Counterfeiting Trade Agreement (ACTA), a plurilateral attempt to improve IP enforcement. The latest round of negotiations took place in Morocco in July this year.

The 20th anniversary of this Committee has provided a good opportunity to see how far the committee has come and how much has been achieved. If there is to be a coordinated, global attempt to streamline and harmonise the patent system then there will be plenty of work to do over the next 20 years.

The AIPLA IP Practice in Japan Committee meets today from 4:30 – 5:30 pm, Virginia B, Lobby Level

YOUR VIEWS

Is Alison Brimelow right to say that decisive action is needed to deal with backlogs?

Margaret Anderson
Lee & Hayes
Austin, Texas
Yes – I think the Offices should hire more people. If they offer an acceptable wage in this economy, it’s feasible, although it may be a lower wage than would have been offered in the past. There are a lot of highly-educated people who need jobs right now.

Howard Speight
Houston, Texas
It’s definitely necessary. Her idea about front-loading costs is a good one. Of course, applicants would hate it, but it seems like it’s the natural direction, given that patent terms are shrinking because people aren’t renewing anymore.

Le-Nhung McLeland
McLeland Patent Law Office
Fairfax, Virginia
I think she’s identified the problems but not the solutions. I don’t think they can raise fees Though; fees are so high already for my clients. That would be a real disincentive because the euro is already so strong.
Does your business or do your clients have IP or cyber-insurance? Almost certainly, the answer is no. In a survey of 40 people who registered in advance for the webinar of today’s joint meeting of the Copyright Committee and Corporate Practice Committee, just two indicated that they have an IP insurance policy and only one participant has cyber-insurance.

“Insurance is quite an unfamiliar topic for patent attorneys,” says Chen Wang of DuPont, the outgoing chair of AIPLA’s Corporate Practice Committee. Today’s session is the fourth in a series of meetings or webinars organized by the committee over the past two years, and the first that will include discussion of cyber-insurance, which encompasses risks such as invasion of privacy, computer disruption and corrupted data. “Cyber-insurance is still quite a new area and it is important to educate potential policy holders about the availability of coverage and the metes and bounds of current insurance,” says Wang.

Today’s joint educational committee session will provide various views on both forms of insurance, with contributions from a carrier, an underwriter, an in-house counsel and a lawyer in private practice. Georgann Grunebach of Fox, who will moderate the session, says: “People have known about IP and cyber-insurance for some time. The problem is it is expensive and it’s not something people want to invest in. Some companies have also misunderstood what coverage they have under their existing property policies.” She adds that, as more business moves online, insuring the associated risks will become more and more important, while the risks themselves continue to evolve.

Wang asserts that responsibility lies not just with business, but also with the insurance industry, which has yet to develop attractive, cost-efficient products. For example, many policies are limited to one particular product, such as one brand, rather than a class of products. “We need to encourage the market to deliver insurance that is more user-friendly,” she explains.

The question is, who will take the lead in delivering and developing such policies – business or insurers? “It’s chicken-and-egg,” says Wang. But she adds: “IP insurance may be something that you need smaller policyholders to take on, so that the larger firms will follow. It’s also something that venture capitalists may be attracted to, to mitigate their risks – if the price is right.”

Today’s joint educational session takes place in Virginia A from 3:30 to 5:30 pm and is also available by webinar (sponsored by Lowenstein Sandler PC).

New members encouraged to get involved

New members and first time attendees enjoyed a well-earned drink after the first day of the Annual Meeting during a reception at the Washington Ballrooms last night. AIPLA President Terry Rea gave a brief speech in which she encouraged the new members to get involved in AIPLA and to meet the committee vice chairs, who were also there to welcome people. “Interact with and speak to as many people as possible,” said Rea. “The more people you get to know the more confident you will become.”

WASHINGTON INSIDER

See 60 of Man Ray’s photographs of African art, as well as the objects that feature in them, and more than 40 photos by his contemporaries at the Phillips Collection on 1600 21st St, NW. The exhibition is open daily from 10:00 am to 5:00 pm and until 8:30 pm on Thursdays.
USPTO Director David Kappos was met with vigorous applause during his address to AIPLA members yesterday after mentioning his recent announcement that he will rescind the Bush administration’s claims and continuations rules package. “As a member of the community, I was quick to say, ‘we’re not doing this anymore,’” said Kappos. He went on to explain the Administration’s plans to reduce pendency and improve patent quality “without exacting a penalty on the applicant community.”

These include: an overhaul of the examiner count system; increased emphasis on face-to-face examiner-applicant interviews; evaluation of the Office’s patent quality review standards; improved IT systems for trademark filings; speedy passage of the patent reform bill; and more efficient use of the Patent Prosecution Highway pilot program and the Patent Cooperation Treaty for international filings.

Kappos pointed to statistics showing that the PPH program between the USPTO and the JPO has seen double the first action allowance rate for international filings that do not use the PPH system, and overall allowance rates of about 90%. The average time to first action for a PPH case is about two to three months. “The PPH program is applicant-initiated, and in that regard, we need your help; if we can work together to bring PPH to scale, the results can be dramatic,” said Kappos.

When asked by an AIPLA member how he will address examiners’ tendency to err on the side of rejection in order to maintain so-called patent quality, Kappos said: “Let me be clear; quality does not equal rejection. Part of fixing the problem is resetting the culture.” He explained that, under the present system, examiners receive no penalty for issuing rejections, but face a potential penalty for allowing patents. “That’s why we’re blowing up the system,” said Kappos. “I turned the notion of quality equals rejection on its head.”

Jack Goldstein of the Law Office of Jack Goldstein said that he is encouraged by Kappos’ plans, particularly his willingness to engage with the patent community. “He’s reasonable,” said Goldstein. “Politicians [such as previous directors Jon Dudas and James Rogan] are more suspicious of the bar and wouldn’t try to see things from our point of view.”

Kappos also welcomed his new Deputy Director, Sharon Barner, who was sworn in on Tuesday, and Commissioner for Patents, Robert Stoll, saying: “The new team is going to be about action, but action taken in concert with the needs of the IP community as a whole.”

On Wednesday, Director Kappos and Senator Orrin Hatch of Utah awarded the 600,000th U.S. design patent to Goal Zero, a subsidiary of Provo Craft and Novelty—a small business located in Spanish Fork, Utah. The patent covers the design of a battery system, which works in conjunction with a solar briefcase that recharges the system using sunlight and “exemplifies the blending of green technology and appealing design,” according to the USPTO. The first design patent was issued in 1842 to George Bruce of New York City for printing types.
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Go global with IP licenses

Eileen McDermott previews today’s session on global licensing, which will include perspectives from Brazil and China as well as developments at the UN.

A s more companies turn to licensing to monetize their IP assets, it is becoming increasingly important that IP counsel understand the intricacies of licensing deals, particularly when they are global in nature. Today’s session on IP licensing trends, organized jointly by the IP in Latin America and Licensing and Management of IP Assets Committees, panels will discuss recent developments in licensing that promise to impact the way IP owners do business on a global scale.

UNCITRAL developments

Since 2002, the United Nations Commission on International Trade Law has been working on a legislative guide on secured transactions “in view of the beneficial economic impact of secured credit law.” The goal of the guide is to provide “an efficient legal regime for security interests in goods involved in a commercial activity, including inventory.”

However, at the Commission’s 39th session in 2006, it was noted that intellectual property rights were becoming an extremely important source of credit and that, as a result, they should not be excluded from a modern secured transactions law.

It was further noted that some of the recommendations in the guide were potentially inconsistent with IP laws in certain countries. As a result, the Commission’s Secretariat organized a colloquium on security rights in IP, which was held in 2007 and attended by experts on secured financing and IP law. Based on their input, Working Group VI of the Commission began work on a supplement to the guide that would specifically address potential problems for IP owners.

Robert Bauer of MacDonald Illig Jones & Britton, who will be discussing some of these issues during today’s session, says that the guide “threatens to disrupt revenue expectations of IP owners and licensors.” “The guide has the potential to allow creditors of licensees to capture some of the revenue stream,” he says.

Bauer says, “If you have IP that consists of assets that are widely distributed, any difficulties in the entire distribution chain can affect the IP owner.”

While the guide is not binding, it will provide a model law for countries to follow and could be endorsed by agencies such as the International Monetary Fund (IMF), according to Bauer. “The IMF might say you have to have a secured lending law in order to participate in certain programs and require that countries meet the terms in the guide,” he says.

Licensing battle in Brazil

Another panel will discuss a recent lawsuit in Brazil between Philips Electronics and the Brazilian PTO that has limited the Office’s ability to intervene when it comes to setting the terms of a patent licensing agreement. The decision is a favorable one for the Office’s ability to intervene when it comes to setting the terms of

Global privilege rules needed

Chris Schlicht (pictured), a partner of Philips Ormonde Fitzpatrick in Australia, explained that in his country and in Canada communication between a client and foreign patent attorneys is not covered by privilege: “for privilege to apply in these cases the patent attorney has to be registered in that country.”

Rachlin then outlined how U.S. courts look at advice offered by foreign patent practitioners. He said that the problem is that in Europe the majority of patent attorneys are technically trained but not legally qualified – similar to patent agents in the U.S.

To avoid this problem “it’s a question of balancing time, money, and risk,” he said. Options include involving a solicitor to oversee patent prosecution or routing all communication through an in-house lawyer. But even that would not work in France, Germany or Italy where there is no privilege for in-house counsel.

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An alternative approach of civil law.

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Why did you want to work with AIPLA and what do you think your background will bring to the Association?

I wanted to come back to Washington when the administration was changing. I knew an opportunity like this wouldn’t come up very often, and I knew how much fun it would be. Mike Kirk is and was a well-known presence in the IP world and knew the issues inside and out, so AIPLA wanted a continuation of that. They wanted someone with management strength and someone well-known, whose credibility and positions would continue to advance the Association’s goals.

What are your key goals for the Association?

The primary goal was to make sure the transition from Mike Kirk went smoothly. Thirteen years is a long time to have been under one person’s leadership. I think that’s gone very well so far.

This is also a change that’s coming at a time of great foment in the IP world. We have patent reform in the air, a change of US presidential administration and a new WIPO director general. So another of my goals is to guide the organization – both from the policy and advocacy side and the managerial side – through that phase.

The third goal has to do with the fact that it’s a tough time economically and I’m very proud of the fact that we have so far weathered this recession as well as we have. We have actually exceeded our budget slightly this year, which is a tribute to our management team. Other sister organizations have had some fall off, but we’ve actually exceeded our targets through all of our meetings last year, and I’m hoping that this Annual Meeting continues that trend.

Are there any specific initiatives you’ve instituted?

One great initiative that I’m proud of is expanding our communications and marketing and outreach efforts. We want to be more outward-facing and represent our members more broadly and with more impact. We believe we’re the best value in IP, and a big piece of that is communication. So we’ve established a new communications and marketing position at the manager level, and we’re on our way to enhancing our outreach efforts.

For example, we’ve just recently started a webcast segment called “Q. and A.” We’ve had great success with that so far and plan to do them once a quarter. I’m glad that we’re bringing that to our membership.

In the same vein, we recently purchased software called CapWiz, which allows our members to directly communicate with their members of Congress on issues that are important to them. We pulled the trigger on it a few months ago when Director Kappos’ nomination was pending. We sent out a memo asking members to tell their Senator to confirm Dave and to do it promptly. I think we had a good impact and I know we had a significant number of emails go out. So I would certainly anticipate that we’ll use that mechanism as a communications tool as we debate patent reform, for example.

Another way we’re expanding our outreach is by talking...
Secrets of a happy marriage

The recession has provided an opportunity to rethink how in-house and outside counsel work together, said speakers at a session yesterday. "In-house counsel need to create and maintain a relationship with their in-house partners," said Nanette Thomas, in-house for medical technology company Becton Dickinson, in a discussion on alternative career paths.

Speakers at the session gave advice on moving between in-house and private practice positions, developing strong relationships between those two positions and the advantages of pro bono work.

Thomas presented with her outside counsel, Lou Budyn, a partner of Hoffman & Baron. They invited the audience to suggest what criteria in-house and outside counsel should use to evaluate and improve their relationship (see box).

Thomas emphasized that improving the relationship is a two-way process in which the in-house counsel must get involved. For example, both sides need to work together to improve communication.

"The key term for outside counsel is accommodation," said Budyn. "Things may need to change, maybe for the better, maybe for our loss."

Budyn also stressed that it was important to understand the in-house perspective when discussing all important issues and how fees can be decreased. "The in-house isn’t trying to be punitive. They are trying to be good managers," he said.

Georgann Grunebach, legal counsel for Fox, and Bud Bedingfield, partner of Cantor Colburn, gave another real life example of how in-house and outside counsel relationship can develop.

Grunebach compared that partnership to that of a romantic relationship and gave four factors that help to ensure success: communication; mutual respect; accuracy, honest perception of skills and abilities; and dedication to make it work.

"If you choose life partners with the same characteristics, ethics, long-term vision and strategy those relationships will work out well," Grunebach said.
View from the Boston bench

Judge Patti B Saris has handed down rulings in State Street Bank, Amgen and Festo. Before taking part in tomorrow’s panel session, she told Emma Barracough why she likes IP cases and how attorneys can impress the court.

What percentage of your cases are related to IP? Do you like trying them compared to other matters?

I enjoy trying patent cases because I love to learn the science. Boston is a center for health care and the biotech industry. As a result, we get fascinating cases involving cloning, drugs and medical devices. The range of science spans handgards for M16s and computer software. At this time, I personally have three active cases involving patents, and others have recently been filed on my docket.

Have you seen the number of patent cases increasing? Do you have any statistics from your court?

At one point, we were the fourth largest patent court in the nation. However, the number of cases decreased when plaintiffs began to file cases in Texas and other fast-track jurisdictions like Wisconsin. In 2006, we had 71 new patent cases filed, but in 2008, we only had 40 new case openings. The numbers have started to trend up again, though. This year we have already had more than a 20% increase. One reason is that we implemented a local rule requested by the patent bar to make patent practice in the district more uniform, effective and speedy. Another reason is that Texas has lost some of its panache.

You have presided over some very important IP cases in the US. Which did you personally find the most interesting, and which do you think has had the most impact on the direction of IP law?

I have presided over the trial phase of three important patent cases. In Festo Corp v Shekette Kinsoku Kogyo Kabushiki Co, 535 US 722 (2002), which was appealed to the Supreme Court, the controversial doctrine of equivalents was clarified. I also presided over the trial in In re Chugai Pharm Co, 927 F2d 1200 (Fed Cir 1991), the first cloning patent case in the country. Finally in the trial phase of State Street Bank & Trust Co v Signature Fin Group, 149 F3d 1368 (Fed Cir 1998), I rejected a business method patent, and was reversed by the Federal Circuit. In some senses, this last case was the most significant and the validity of business method patents is still being debated. The Supreme Court has agreed to review the issue in the Bilski case (In re Bilski, 545 F3d 943 (Fed Cir 2008), cert granted, 2009 US LEXIS 4103 (June 1 2009).

Does your court have particular rules for handling patent cases? The courts in Massachusetts are noted for being slower than many others when it comes to patent cases. Is there a particular reason for that?

It is true that some lawyers have criticized the District for being too slow in handling patent cases. In my view, the critics are correct because it results in the reversal of almost 50% of all trial court rulings. (The statistics vary depending on the methodology.) This high reversal rate results in enormous expense for the attorneys and a waste of judicial resources. Moreover, many claim construction decisions involve findings of fact, which are uniquely the province of trial courts. Accordingly, any reform should provide a more deferential standard of review for claim construction, particularly when fact-finding is involved.

What are the biggest mistakes that attorneys make in IP litigation, and what advice would you offer them?

Attorneys need to teach the science clearly and fairly. Tutorials through video or live testimony are most helpful. When an expert is too biased toward one side, he becomes a hired gun and the court loses trust in his opinion. While an attorney is expected to be an advocate, he/she is also an officer of the court, and has an obligation not to mislead the court about the technology or the background of the patent. An increasing practice is to “hot-tub” the experts by requiring them both to be present during claim construction proceedings and permitting them to question each other. Many judges become so wary of the experts that they hire independent experts in the most complex of scientific cases.

For expedited relief understandably seek out a court that provides a so-called rocket docket.

However, it is troublesome when plaintiffs seek out courts in districts with little connection to a case because they perceive the jury and/or court as biased in their favor. The new Federal Circuit ruling should mitigate these concerns.

The US is relatively unusual in having jury trials for patent disputes. Some people say that this makes it very hard for the parties to predict the outcome, particularly in the area of damages awards. Given that, do you think there is ever a case for limiting jury trials in patent disputes?

As you know, the judge, not the jury, does the claim construction analysis. However, disputed facts are given to juries in other areas, like disputes involving infringement or obviousness. Recent case law has required judges to be gatekeepers in ensuring that the expert analysis is reliable, including expert opinions on damages. In addition, courts are required to give rigorous attention to motions for summary judgment, as discussed above. As long as the facts are reliable and the issues cannot be resolved as a matter of law, I do not agree that there is a need for limiting the right to a jury trial. In any event, it is protected by the United States Constitution.

There have been extensive debates over patent law reform in the US. Of all the proposals put forward, which three would you most like to see introduced? I believe that de novo review of claim construction is perrnicious because it results in the reversal of almost 50% of all trial court rulings. (The statistics vary depending on the methodology.) This high reversal rate results in enormous expense for the attorneys and a waste of judicial resources. Moreover, many claim construction decisions involve findings of fact, which are uniquely the province of trial courts.

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What are the biggest mistakes that attorneys make in IP litigation, and what advice would you offer them?

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Judge Saris, along with Judge Ward of the Eastern District of Texas and Judge Whyte of the Northern District of California, will take part in a discussion on jury instructions tomorrow morning, starting at 11:25 am.
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TODAY’S SCHEDULE: FRIDAY, OCTOBER 16 2009

7:45–9:30 am Continental Breakfast
Exhibit Hall A Exhibition Level

Committee meetings
6:45–8:45 am Corpora Practice/Women in IP Law Breakfast Delaware AB Lobby Level
7:45–8:45 am Professionalism & Ethics (Committee Members Only) Harding Mezzanine Level
8:30 am–12:30 pm Spouse/Guest Tour: The Life of a President (tickets required)

Morning tracks
8:45–11:45 am Track #1 Best Practices for Patent and Trademark Prosecution and Patent Office Data that can improve your practice Thurgood Marshall Ballroom Mezzanine Level
8:45–11:45 am Track #2 Preparing Agreements, Considering Representations, Warranties and Negotiating IP Aspects Marriott Ballroom Salon 1 Lobby Level
8:45–11:45 am Track #3 Strategies for Resolving Global Trademark Disputes in a Cost Conscious Economy Maryland Ballroom Lobby Level

11:45 am–12:15 pm Luncheon Reception (all registrants invited) Marriott Ballroom Salon 2 & 3 Lobby Level

Luncheon (tickets required)
12:15–1:45 pm Trolls and Other Creatures of the Night! Speaker: Honorable Randall R. Rader Marriott Ballroom Salon 2 & 3 Lobby Level
1:45–2:00 pm Annual Association Business Meeting Marriott Ballroom Salon 2 & 3 Lobby Level

Afternoon tracks
2:00–3:30 pm Track #1 The Supreme Court and the Federal Circuit: What Lies Ahead and What Is the Effect on Practitioners Thurgood Marshall Ballroom Mezzanine Level
2:00–3:30 pm Track #2 Design Protection and Functionality: Ever the Twain Shall Meet? Marriott Ballroom Salon 1 Lobby Level
2:00–3:30 pm Track #3 Ethics: Fraudulent Procurement of Patents, Trademarks and Copyrights: A Minefield for the Unwary Practitioner Maryland Ballroom Lobby Level

Committee educational sessions
3:30–5:30 pm Copyright Law/Corporate Practice (Joint Session and Webinar) (115 MINUTES OF CLE AVAILABLE) Virginia A Lobby Level
3:30–5:30 pm Industrial Design (120 MINUTES OF CLE AVAILABLE) Delaware AB Lobby Level
3:30–5:30 pm IP Practice in Latin America/Licensing and Management of IP Assets (120 MINUTES OF CLE AVAILABLE) Maryland Ballroom Lobby Level

Committee meetings
3:30–4:30 pm Alternative Dispute Resolution Harding Mezzanine Level
3:30–4:30 pm Chemical Practice Virginia B Lobby Level
3:30–5:30 pm Education/Law Students/Young Lawyers (Joint Meeting) Virginia C Lobby Level
3:30–4:30 pm IP Practice in the Far East Washington Room 2 Exhibition Level
3:30–4:30 pm International and Foreign Law Taft Mezzanine Level
3:30–4:30 pm International Education Taylor Mezzanine Level
3:30–5:30 pm Inventor Issues/Patent Law (Joint Meeting) Hoover Mezzanine Level
3:30–4:30 pm Patent Agents Washington Room 1 Exhibition Level
4:30–5:30 pm America Intellectual Property Law Education Foundation (AIPLF) (Foundation Trustees Only) Harding Mezzanine Level
4:30–5:30 pm International Trade Commission Truman Mezzanine Level
4:30–5:30 pm IP Law Associations (Committee Members Only) Taylor Mezzanine Level
4:30–5:30 pm IP Practice in Japan Virginia B Lobby Level
4:30–5:30 pm Patent Cooperation Treaty Issues Taft Mezzanine Level
4:30–5:30 pm Patent-Relations with the USPTO Washington Room 1 Exhibition Level

Friday evening events
8:00–10:00 pm Dinner and Entertainment: NYC Swing “American Legends” (tickets required) Marriott Ballroom Salon 1, 2 & 3 Lobby Level
10:00 pm–12:00 midnight Dessert Reception (all registrants invited) Thurgood Marshall Ballroom Mezzanine Level

ATTORNEYS AT LAW - ENGINEERS
INTELLECTUAL PROPERTY
CORPORATE AND COMMERCIAL LAW


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