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## FEDERAL CIRCUIT SUMMARIES

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### **Mere Potential for Future Appeal Does Not Prevent Triggering Estoppel of *Inter Partes* Reexamination When Party Fails to Seek Relief in the First Instance**

In [Virnetx Inc. v. Apple Inc.](#), Appeal Nos. 2017-1591, -1592, -1593, the Federal Circuit determined that failure to petition for certiorari on the issue of invalidity triggers estoppel of parallel *inter partes* reexamination proceedings even if Federal Circuit remands on other non-validity issues.

VirnetX sued Apple for infringement of its patents relating to secure communication links. Apple filed requests for *inter partes* reexamination of two of the asserted patents (“Apple reexams”). At the district court, the jury found the asserted claims infringed and not invalid and Apple appealed. The Federal Circuit affirmed the jury’s finding of no invalidity but vacated the infringement finding for the two patents at issue and remanded. Apple did not file a request for rehearing or a petition for writ of certiorari on the invalidity or infringement issues. After the Federal Circuit’s decision, VirnetX petitioned the Board to terminate the Apple reexams based on the estoppel provision of pre-AIA § 317(b), which provides that once a “final decision” has been

entered that “the party has not sustained its burden of proving invalidity” then a reexamination requested by that party “may not thereafter be maintained.” The Board denied the petition and affirmed the Examiner’s finding that the claims were unpatentable. VirnetX appealed the Board’s decision.

The Federal Circuit affirmed the Board’s decision in part, vacated in part, and remanded. Regarding the issue of whether § 317(b) estoppel applied, the Federal Circuit rejected Apple’s argument that there was no “final decision” of the issue of validity because Apple may choose to file a petition for certiorari of the other non-validity issues to be decided on remand and, when doing so, Apple may also ask the Supreme Court to consider the invalidity issues from the first appeal. While acknowledging that the Supreme Court would have the ability to hear issues raised on the first appeal, the court reasoned that its earlier decision, *Fairchild (Taiwan) Corp. v. Power Integrations, Inc.*, 854 F.3d 1364 (Fed. Cir. 2017), implicitly foreclosed Apple’s argument with regards to § 317(b) estoppel. The court explained that *Fairchild* held that “all appeals” regarding issues of validity had terminated despite the fact that other issues in that case were remanded and thus remained pending for potential appeal. In addition, the court reasoned

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that the statutory text and purpose of § 317(b) does not support Apple's position since the statute requires a final decision only on the issue of whether a party has "sustained its burden of proving invalidity," and Apple's position would essentially require a final decision on all issues. Thus, the court found that § 317(b) estoppel applied to the Apple reexams and vacated and remanded with instructions to terminate Apple reexams with respect to the claims considered at trial. Regarding the claims not subject to estoppel, the court rejected VirnetX's "kitchen sink approach" and affirmed the Board's finding that the claims not subject to estoppel were unpatentable.

Judge Reyna dissented in part, distinguishing *Fairchild* because it did not consider the possibility of Supreme Court review on a second appeal.

## **Absent Exceptional Circumstances, A Party Cannot Raise New Issues on Appeal**

In [Hylete LLC v. Hybrid Athletics, LLC](#), Appeal No. 2017-2057, the Federal Circuit decided that absent exceptional circumstances, an argument raised for the first time on appeal is waived.

In October 2013, Hybrid Athletics, LLC filed a notice of opposition to Hylete, LLC's stylized "H" design mark on the grounds of likelihood of confusion with its stylized "H" mark. Hybrid alleged its stylized "H" mark was used in connection with fitness classes club services. Hybrid also alleged that it had common law rights based on its use of the same mark on athletic apparel since August 1, 2008. Hybrid's examples of its use of the stylized "H" mark on athletic apparel also included the words "Hybrid Athletics" and several dots.

During the opposition proceedings, Hylete focused on the differences in appearance between the two stylized "H" designs and argued there was no likelihood of confusion between the designs. The Board sustained Hybrid's opposition to Hylete's registration, determining that Hylete's mark would likely cause confusion with Hybrid's "previously used mark ... on some of the same goods[.]" The Board's decision was based solely on Hybrid's prior common law rights relating to its use of the mark on athletic apparel. Hylete filed a request for reconsideration of the Board's decision, but did not argue that the Board's analysis should have compared its mark to anything other than Hybrid's stylized "H" design mark. The Board denied the request for rehearing.

On appeal, Hylete argued that the Board should have characterized Hybrid's mark as a composite common law mark, including Hybrid's stylized "H" design as well as the words "Hybrid Athletics" and series of dots below the stylized "H". Hybrid responded that this argument was not raised before the Board and was therefore waived. The Federal Circuit agreed that Hylete's argument was waived and affirmed the Board's decision.

The Federal Circuit noted that federal appellate courts do not consider new issues that were not presented to the lower tribunal, absent exceptional circumstances. Specifically, the Federal Circuit noted that arguments made for the first time on appeal may be considered (1) when new, retroactive legislation is passed while an appeal is pending, (2) when there is a change in jurisprudence of the reviewing court or the Supreme Court after consideration of the case by the lower court, (3) when the issue is properly before the court but the parties did not argue the correct law, in which case the court may nevertheless apply the correct law, and (4) in some circumstances where the party appeared *pro se* before the lower court. The Federal Circuit found that none of these circumstances applied to Hylete's argument. Hylete also contended that its argument regarding the common law mark was not waived because the Board raised the issue of Hybrid's common law rights *sua sponte* in its final decision. The Federal Circuit disagreed, finding that Hylete had the opportunity to raise this argument in its request for reconsideration and failed to do so.

## **Litigation Costs Exceeding Potential Damages Is Not Exceptional Per Se**

In [Aten International Co., Ltd. v. Uniclass Technology Co., Ltd.](#), Appeal No. 2018-1922, the Federal Circuit held that a case is not *per se* exceptional under 35 U.S.C. § 285 because (1) the cost of litigation exceeds plaintiff's potential damages or (2) a party's legal argument was rejected on summary judgment.

ATEN and Uniclass sold competing switch systems that allow a user to control multiple computers from a single keyboard, video device, and mouse. After Uniclass stopped making payments under a license agreement, ATEN sued Uniclass for infringing two patents, seeking damages and an injunction. The district court granted Uniclass's motion for summary judgment on ATEN's lost-profits theory. At trial, ATEN presented a reasonable-royalty theory seeking

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damages of \$678,000. A jury found that Uniclass did not infringe the asserted claims and found the asserted claims of one of the patents invalid. The district court denied Uniclass's motion to declare the case exceptional under 35 U.S.C. § 285, and Uniclass appealed.

Uniclass argued on appeal that the district court abused its discretion in denying the motion for an exceptional case because (1) the cost of litigation was greater than ATEN's potential recovery and (2) the district court failed to weigh ATEN's baseless lost-profits theory that was rejected on summary judgment. The Federal Circuit held there was no abuse of discretion by the district court. First, the Federal Circuit noted that there is no *per se* rule that a case is exceptional where litigation costs exceed the plaintiff's potential damages. The Federal Circuit listed several reasons patentees may file infringement suits, including competitive deterrence or to obtain an injunction. Second, the Federal Circuit noted that the district court had considered ATEN's lost-profits theory in its decision. The district court noted that there were shortcomings in ATEN's positions, but these did not amount to an exceptional case determination.

## **A Reference is Not Prior Art Where Evidence Fails to Establish Availability Prior to Critical Date**

In [\*Aten International Co., Ltd. v. Uniclass Technology Co., Ltd.\*](#), Appeal No. 2018-1606, the Federal Circuit held that, when a reference is available in the same year as the critical date, the defendant must show the reference was available before the critical date to establish the reference as prior art.

ATEN sued Uniclass for infringing its patents directed to switch systems that allow a user to control multiple computers from a single keyboard, video device, and mouse. At trial, Uniclass argued that it did not infringe ATEN's patents and that they were anticipated by two prior art references. The jury found that the patents were not infringed and that one of the patents was anticipated. ATEN filed a motion for judgment as a matter of law ("JMOL") regarding invalidity and non-infringement. The district court denied the motions, and ATEN appealed.

The Federal Circuit reversed the district court, holding that there was not substantial evidence to support the jury's finding that its patent was anticipated by the two references under § 102(b). For the first reference, the Federal Circuit noted that Uniclass never

presented evidence that the reference predated the patent's critical date of July 24, 2006. While Uniclass called an expert witness who testified that the reference was prior art and available in 2006, the witness never testified to what day or month the reference existed. Thus, there was not substantial evidence to show the reference predated the critical date. For the second reference, the Federal Circuit noted that Uniclass failed to present any evidence that the reference disclosed a specific claim limitation. Accordingly, the Federal Circuit held that the jury could not have reasonably concluded that either reference anticipated ATEN's patents.

Regarding infringement, the Federal Circuit affirmed the district court's denial of JMOL. ATEN argued that the jury was confused due to the testimony of Uniclass's expert on the scope of the terms. The Federal Circuit affirmed the district court's determination that ATEN waived this argument by failing to object to the expert's claim-construction testimony during trial.

## **Court Declines to Apply Prosecution History Estoppel Based on the Tangential-Relation Exception**

In [\*Ajinomoto Co., Inc. v. ITC\*](#), Appeal Nos. 2018-1590, 2018-1629, Ajinomoto filed a complaint against CJ America, Inc. with the International Trade Commission ("ITC"), alleging that CJ used several strains of *E-coli* bacteria to make products imported into the United States that infringed its patent. The ITC determined that two of CJ's *E-coli* strains infringed the asserted patent under the doctrine of equivalents. The ITC found that Ajinomoto did not surrender the equivalent during prosecution because the tangential-relation exception applied. CJ appealed.

Claim 1 originally recited a protein defined as either (A) comprising the amino acid sequence shown in SEQ ID NO:2; or (B) comprising the amino acid sequence including deletion, substitution, insertion or addition of one or several amino acids in the amino acid sequence shown in SEQ ID NO:2. Claim 1 was rejected as anticipated by a reference that disclosed the language of (B), but not (A). The language of (B) was amended to overcome the reference and instead recite: "an amino acid sequence that is encoded by a nucleotide sequence that hybridizes with the nucleotide sequence of SEQ ID NO:1 under stringent conditions." Later during prosecution, Claims 9 and 15 were subsequently added, with Claim 9 including the language of (A) and Claim 15 including the language of amended (B).

CJ's *E-coli* strains did not include the precise amino acid sequence required by the language of (A). Ajinomoto argued that CJ nevertheless infringed under the doctrine

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of equivalents. CJ argued that the amendment of (B) created prosecution history estoppel on the language of (A). While never reaching the question of whether prosecution history applied at all, the Federal Circuit disagreed. Under the tangential-relation exception, the question is “whether the reason for the narrowing amendment was peripheral, or not directly relevant, to the alleged equivalent.” Here, the Federal Circuit held that the reason for the narrowing amendment was limiting the amino-acid makeup of the proteins included in one of the alternatives covered by the claim. This reason was unrelated to choosing the DNA sequences that encode a given protein. Accordingly, there was no surrender of the equivalent by the amendment to (B).

Judge Dyk dissented in part on the ground that the tangential-relation exception did not apply because the equivalent was directly related to the reason for the amendment.

## Jurisdiction Over Foreign Entities and Foreign Sovereigns

In [\*Genetic Veterinary Sciences v. Laboklin GmbH & Co. KG\*](#), Appeal No. 2018-2056, the Federal Circuit determined that if a foreign entity is not subject to jurisdiction in any state’s courts of general jurisdiction, but the claims against the entity arise under federal law and the exercise of jurisdiction comports with due process, then personal jurisdiction may exist over the foreign entity in any federal court in the U.S. The court also held that a foreign sovereign which engages in licensing a U.S. patent and/or threatens enforcement of the patent may be subject to jurisdiction of U.S. courts under the commercial-activity exception to the doctrine of sovereign immunity.

The University of Bern (“University”), a public university of the Swiss Confederation, is the owner of a U.S. patent. The University granted an exclusive license for the patent to German company Laboklin. The license agreement required Laboklin to commercialize the invention in North America. The agreement also required the University and Laboklin to work together to enforce the patent. Laboklin subsequently granted sub-licenses to the patent to entities in California and Michigan. With the University’s consent, Laboklin sent a cease-and-desist letter to Paw Prints Genetics (“PPG”), a Washington state corporation, alleging infringement of the U.S. patent and related German and European patents. PPG then brought suit against Laboklin and the University in the Eastern District of Virginia, requesting a declaratory judgment of patent

ineligibility under Section 101. Laboklin and the University moved to dismiss the complaint for lack of personal jurisdiction and subject matter jurisdiction. After an evidentiary hearing, the district court found that it could properly exercise personal and subject matter jurisdiction over the defendants. At the conclusion of trial, the court issued a judgment as a matter of law that the asserted claims in the patent were patent-ineligible under Section 101. Laboklin and the University appealed the district court’s findings on personal and subject matter jurisdiction.

The Federal Circuit first addressed Laboklin’s argument that the district court lacked personal jurisdiction over Laboklin because Laboklin lacked sufficient contacts with the forum. Courts may exercise personal jurisdiction pursuant to FRCP 4(k)(2) over a nonresident if (1) the claim arises under federal law, (2) the defendant is not subject to jurisdiction in any state’s courts of general jurisdiction, and (3) the exercise of jurisdiction comports with due process. In determining whether the exercise of jurisdiction comports with due process, the forum is the United States rather than just the state in which the district court sits. Here, the parties agreed that the present claim arose under federal patent law, and that the nonresident company Laboklin was not subject to jurisdiction in any state’s courts of general jurisdiction. Thus, the only question was whether the exercise of jurisdiction comported with due process. The Federal Circuit found that the exercise of jurisdiction comported with due process because Laboklin directed its activities at residents of the U.S. by licensing the patent commercially in the U.S. and by sending a cease-and-desist letter in the U.S. Laboklin availed itself of the benefits of U.S. laws through these licensing and enforcement activities. Therefore, the Federal Circuit affirmed the district court’s finding of personal jurisdiction over Laboklin.

Next, the Federal Circuit addressed the appellants’ argument that the district court lacked personal and subject-matter jurisdiction over the University because it is a foreign sovereign. Although a foreign state is presumptively immune from the jurisdiction of U.S. courts, a foreign state is not immune if it engages in commercial activity in the U.S. Prior Federal Circuit precedent established that obtaining and enforcing a U.S. patent constitutes commercial activity. Thus, the University’s acts of obtaining a U.S. patent and enforcing the patent in collaboration with Laboklin constituted commercial activity, triggering the exception to the sovereign-immunity doctrine. Therefore, the Federal Circuit affirmed the district court’s finding of personal and subject-matter jurisdiction over the University.

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## The Tangential Exception to Prosecution History Estoppel

In *Eli Lilly and Company v. Hospira, Inc.*, Appeal Nos. 2018-2126, 2018-2127, a narrowing claim amendment did not surrender all equivalents of the claim element where the prosecution history showed that an equivalent was merely tangentially related to the amendment.

Eli Lilly brought two separate infringement suits under the Hatch-Waxman Act against Hospira and Dr. Reddy's Laboratories ("DRL") alleging that their new drug applications for a composition comprising pemetrexed ditromethamine infringed Eli Lilly's patent. That patent had claims directed to a method of chemotherapeutic treatment which required administering "pemetrexed disodium." In the parent application, Eli Lilly had narrowed "antifolate" to "pemetrexed disodium" in response to a reference that disclosed the antifolate "methotrexate." Following a bench trial on the claims against DRL, the district court found infringement under the doctrine of equivalents because pemetrexed ditromethamine met the pemetrexed disodium claim limitation. For the case against Hospira, the district court granted summary judgment of infringement under both literal infringement and the doctrine of equivalents.

In a combined appeal, the Federal Circuit reversed the district court's finding of literal infringement against Hospira, but affirmed both findings of infringement under the doctrine of equivalents. The Federal Circuit found that it was clearly erroneous for the district court to have held that the step of administering pemetrexed disodium was literally infringed by pemetrexed ditromethamine, as they are different pemetrexed salts.

As for the doctrine of equivalents, the Federal Circuit found that the presumption of prosecution history estoppel, which attaches to narrowing amendments, was overcome because the patent's prosecution history showed that the amendment from "antifolate" to "pemetrexed disodium" was made to distinguish pemetrexed from antifolates generally rather than to distinguish between pemetrexed salts. Furthermore, using different pemetrexed salts was merely a tangential change with no consequence for pemetrexed's administration or mechanism of action within the body, and therefore the pemetrexed salts were equivalents.

## Arguments During Prosecution Can Limit the Scope of a Coined Term With No Ordinary and Customary Meaning

In *Iridescent Networks, Inc. v. AT&T Mobility, LLC*, Appeal No. 2018-1449, Iridescent sued AT&T and Ericsson for infringement of a patent relating to network communication that provided guaranteed bandwidth, while minimizing data delay and loss. Iridescent argued the term "high quality of service connection" means a connection in which at least one of bandwidth, latency, or packet loss are assured from end-to-end. AT&T argued the term was a coined term of degree referring to a connection that assures connection speeds above a certain threshold and packet loss/latency below certain thresholds. The district court agreed with AT&T because the patentee had argued specific thresholds in overcoming a rejection during prosecution. Based on that construction, the parties jointly stipulated to noninfringement. Iridescent appealed.

The Federal Circuit affirmed. The Federal Circuit acknowledged that the term was not sufficiently clear on its face to provide guidance to a person of ordinary skill in the art, and noted that Iridescent relied on certain minimum-connection parameters to overcome the examiner's enablement rejection.

## Corresponding Structure in the Specification Does Not Render a Means-Plus-Function Term Structural

In *MTD Products Inc. v. IANCU*, Appeal NO. 2017-2292, Toro petitioned for IPR of a MTD Products patent relating to lawnmowers. MTD argued the term "mechanical control assembly" was a means-plus-function term. The Board concluded the disputed phrase was primarily functional, but that a person skilled in the art would have understood the term to denote structure based on the specification and prosecution history. Thus, the Board determined the term was not a means-plus-function term and held the challenged claims were obvious.

The Federal Circuit disagreed. Interpreting a means-plus-function limitation involves two steps. The first step is to determine whether the limitation is a means-plus-function limitation. If so, the second step is to look to the specification to identify structure that performs the claimed function(s). The Board correctly found the term was primarily functional, but erred in determining that corresponding structure in the specification meant the term was not a means-plus-function term. As the Federal Circuit explained, "this view would seem to leave § 112 ¶ 6 without any application: any means-plus-function limitation that met the statutory requirements . . . would end up not being a means-plus-function limitation at

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all.” While the specification and file history are relevant, they did not clearly disclaim that the claim limitation was a means-plus-function limitation. Thus, the Federal Circuit vacated and remanded for further consideration.

## Failure of ITC to Follow Its Own Rules May Constitute Harmless Error

In [Swagway, LLC v. ITC \[REVISED OPINION\]](#), Appeal No. 2018-1672, the Federal Circuit held that the ITC failure to follow its own rules may constitute harmless error, and it withdrew its prior holding that ITC decisions on trademark issues do not have preclusive effect.

Segway filed a complaint with the International Trade Commission (“ITC”) alleging that Swagway’s products marketed under the names SWAGWAY and SWAGTRON infringed Segway’s trademarks. During the investigation, Swagway moved for partial termination on the basis of a consent-order stipulation agreeing not to sell or import SWAGWAY-branded products. Segway opposed the proposed consent order. After a hearing, the ALJ issued an Initial Determination (“ID”) finding that Swagway’s use of the SWAGWAY mark infringed Segway’s marks and declining to adopt the proposed consent order. The ITC affirmed the ALJ’s finding of trademark infringement, but declined to review the ALJ’s denial of the consent-order motion.

The Federal Circuit affirmed the ITC’s infringement finding. With respect to the consent-order motion, the Federal Circuit accepted Swagway’s conditional withdrawal of its argument in view of the Federal Circuit’s holding that the ITC’s trademark determinations do not have preclusive effect. Segway filed a petition for panel rehearing and rehearing *en banc* regarding the Federal Circuit’s decision on the preclusive effect of the ITC’s trademark decisions. The Federal Circuit granted Segway’s petition for rehearing and vacated its original decision on this issue.

In its modified opinion, the Federal Circuit withdrew its holding that the ITC’s trademark determinations have no preclusive effect. The Federal Circuit then considered Swagway’s arguments that the ITC should have granted its motion for a consent order and that denial of its motion in the ID violated ITC procedural rules. The Federal Circuit noted that the ITC’s rules grant an ALJ the discretion to terminate a § 337 investigation by consent order, taking into consideration the impact on the public interest. Furthermore, the

ITC’s rules specify that a grant of a consent order motion must be in the form of an issuance of an ID, but a denial must be in the form of an order.

The Federal Circuit determined that the ALJ did not abuse its discretion in denying the consent motion because, by the time the briefing was complete on the proposed consent order, the parties had expended considerable resources completing fact and expert discovery, finalizing exhibits and witness statements, and preparing for the hearing. However, the Federal Circuit found that the ALJ failed to follow the ITC’s rules by denying the consent order motion in the ID rather than in a separate order, and the ITC propagated that error by refusing to correct the ALJ’s mistake on review. The Federal Circuit found no harm stemming from the error in the form of the denial, and thus affirmed the denial of Swagway’s consent-order motion.

## Disclaimed Patent Claims Fail to Give Rise to an Article III Case or Controversy

In [Sanofi-aventis U.S., LLC v. Fresenius Kabi USA, LLC](#), Appeal Nos. 2018-1804, -1808, -1809, the district court lacked the authority to declare disclaimed patent claims invalid because no case or controversy existed with respect to such claims.

Sanofi sued generic pharmaceutical companies (“Defendants”) for patent infringement related to applications to market generic versions of Jevtana®. While the district court case was pending, the Patent Trial and Appeal Board instituted *inter partes* review of one of the asserted patents. After trial began, the Board held the claims of the patent were obvious and denied Sanofi’s motion to amend its claims. As a result of these proceedings, Sanofi filed a statutory disclaimer of several claims of the patent, and appealed the Board’s denial of its motion to amend. Despite the statutory disclaimer, the district court concluded that a case or controversy existed with respect to the disclaimed claims, and held that these disclaimed claims were invalid as obvious.

The Federal Circuit vacated the district court’s decision. The Federal Circuit explained that, to have standing, Defendants must have suffered an injury that was “actual and imminent, not conjectural or hypothetical.” Further, the actual controversy must have existed at all stages of review, not merely when the complaint was filed. Although the Defendants alleged that if the Court vacated the district court’s judgment of invalidity, Defendants would lose the possible benefit of an issue preclusion defense if Sanofi was able to amend the claims, the Federal Circuit held that the relevance of the disclaimed

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claims to a possible issue preclusion defense was merely speculative because, at the time of the district court's decision, the Board had denied Sanofi's motion to amend. Any future assertion of amended claims was based on a hypothetical appellate reversal or vacatur of the Board's *inter partes* review decision. The Federal Circuit also concluded that Defendants had failed to demonstrate any material impact that vacatur of the district court's judgment regarding the disclaimed claims would have had on its potential issue-preclusion argument.

## A "Substantially Equivalent" Disclosure May Satisfy the Written Description Requirement

In [\*Nalpropion Pharmaceuticals, Inc. v. Actavis Laboratories FL, Inc.\*](#), Appeal No. 2018-1221, the Federal Circuit held that a "substantially equivalent" disclosure may satisfy the written description requirement, where the equivalent disclosure relates only to resultant parameters rather than operative claim steps.

Nalprion filed suit against Actavis for patent infringement related to an application to market a generic version of *Contrace*®. In response, Actavis challenged one patent as invalid for lack of adequate written description. The challenged patent was directed to a method of treating overweight or obesity, and was drawn to use of a specific dosage of active agents that achieve a specific dissolution profile. Actavis argued that the claimed dissolution profile required the use of one dissolution method ("USP 2"), while the data in the specification was obtained using a different method ("USP 1"). Actavis further challenged two other patents as invalid as obvious. The district court held each claim not invalid and infringed. Actavis appealed.

The Federal Circuit affirmed the district court's findings on written description, holding that the district court did not clearly err in finding that the inventors had possession of the invention. The Federal Circuit explained that the patent recited a method of treating overweight or obesity by carrying out specific, positive steps, and that the claimed dissolution profile related only to the measurement of resultant parameters (the dissolution data resulting from the formulation), not to the operative steps (the administration of the formulation). Thus, irrespective of the method of measurement (USP 1 or 2) used, the specification showed that the inventors possessed the invention of treating overweight or obesity. There was also no error in the district court's finding of "substantially equivalence" between the USP 1 and USP 2 meth-

ods. The Federal Circuit recognized that, as a general matter, the written description requirement cannot be satisfied by equivalent disclosures. But, here, where the equivalence related only to resultant dissolution parameters, rather than to operative claim steps, and was supported by the district court's fact finding, the district court did not err in finding the patent was not invalid for lack of written-description support. The Federal Circuit then went on to reverse the district court's holding of obviousness of the two other patents.

Chief Judge Prost dissented in part, disagreeing that the dissolution clause did not relate to operative claim steps and stating that the majority's holding that a "substantially equivalent" disclosure may satisfy the written description requirement is inconsistent with the Federal Circuit's precedent.

## A District Court May Not Ignore a Claim Construction Dispute Raised During a Section 101 Challenge

In [\*MyMail, Ltd. v. ooVoo, LLC\*](#), Appeal Nos. 2018-1758, 2018-1759, the Federal Circuit determined that if the parties litigating a § 101 challenge at the pleading stage raise a claim construction dispute, the district court must either adopt the non-moving party's construction or resolve the dispute to whatever extent is needed to conduct the § 101 analysis.

MyMail sued ooVoo and IAC Search & Media (collectively, "Defendants") for patent infringement. The asserted patent claimed methods of modifying toolbars that are displayed on Internet-connected devices. Defendants each filed a motion for judgment on the pleadings, asserting that MyMail's patents were directed to patent-ineligible subject matter under § 101. MyMail opposed both motions, arguing that the claimed inventions were patent-eligible based in part on a construction of the term "toolbar" rendered in an earlier proceeding involving one of the same patents. Defendants opposed that construction. The district court did not construe "toolbar" or otherwise address the parties' claim construction dispute. Instead, the court granted the motions, holding the MyMail patents invalid under § 101.

The Federal Circuit found that the district court erred by declining to address the parties' claim construction dispute before adjudicating patent eligibility. The Federal Circuit explained that "[d]etermining patent eligibility requires a full understanding of the basic character of the claimed subject matter" and, "[i]f the parties raise a claim construction dispute at the Rule 12(c) stage, the district court must either adopt the non-moving party's constructions or resolve the dispute to the extent needed to con-

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duct the § 101 analysis.” The Federal Circuit therefore vacated and remanded the case for further proceedings.

Judge Lourie dissented, arguing that the MyMail patent claims were abstract regardless of claim construction and that the Federal Circuit therefore should have affirmed the district court’s decision.

## **Amended Complaint May Relate Back to Original Complaint Despite Asserting Different Patents**

In [\*Anza Technology, Inc. v. Mushkin, Inc.\*](#), Appeal No. 2019-1045, the Federal Circuit determined that patent infringement claims in an amended complaint may relate back to the date of an original complaint that asserted different patents if the facts underlying the original infringement claims gave notice to the defendant of the nature of the allegations in the amended complaint.

Anza filed a complaint against Mushkin alleging patent infringement. Subsequently, Anza filed its first amended complaint to join an additional party. After the first amended complaint was dismissed, Anza filed its second amended complaint, in which it omitted the previously asserted patent and alleged infringement of two new patents. Anza also omitted ten of the sixteen products that had been accused in the original complaint and added two new products. The district court dismissed the second amended complaint, finding that the claims in that complaint did not relate back to the date of the original complaint and were therefore time-barred.

On appeal, the Federal Circuit applied Federal Circuit law to the district court’s application of the relation-back doctrine. Reviewing the issue *de novo*, the court considered: “the overlap of parties, the overlap in the accused products, the underlying science and technology, time periods, and any additional factors that might suggest a commonality or lack of commonality between the two sets of claims.” Based on these factors, the Federal Circuit held that the claims in the second amended complaint against the six products that had been accused in the original complaint related back to the date of the original complaint.

The Federal Circuit explained that the infringement claims based on the previously asserted patent gave adequate notice of the infringement claims based on the newly asserted patents because all of the patents were “focused on solving the same problem by the

same solution.” Thus, as to the six originally accused products the Federal Circuit reversed the dismissal. As to the newly accused products, the Federal Circuit vacated and remanded to the district court to determine whether the allegations relating to those products related back to the filing date of the original complaint.

## **PTAB’s Characterization of Petitioner’s Argument Did Not Introduce New Theory of Invalidity**

In [\*Arthrex, Inc. v. Smith & Nephew et al.\*](#), Appeal No. 2018-1584, the Board’s invalidity decision did not need to track the exact wording in the IPR petition so long as the Board’s characterization of the invalidity theory was consistent with the theory presented in the petition.

Smith & Nephew filed an IPR petition challenging a patent owned by Arthrex. In the petition, Smith & Nephew argued that a POSITA would have combined two references because the combined feature was made using a “well-known technique [whose use] would have been a simple design choice.” The petition relied on a reference passage describing the claimed technique and a second technique as alternatives. The Board agreed with Smith & Nephew and pointed to the same reference passage, but the Board characterized the first technique as the “preferred option.” The Federal Circuit warned that the PTAB may not change invalidity theories mid-stream without giving respondents an opportunity to argue under the new theory. But here the Federal Circuit determined that the Board had not changed the invalidity theory presented in the petition. Although Smith & Nephew had not characterized the claimed technique as the “preferred option,” this did not raise a new issue or theory of invalidity because (1) the Board relied on the same portion of the reference as the petition, (2) the Board ruled on the same combination of features presented in the petition, and (3) the Board “ruled on the same theory of obviousness presented in the petition”—that the combination was a “simple design choice.” Thus, “the mere fact that the Board did not use the exact language of the petition” did not violate of the Administrative Procedure Act.

## **Patent Claims Directed to Wireless Transmission of Content Are Abstract and Patent-Ineligible**

In [\*The Chamberlain Group, Inc. v. Techtronic Industries Co.\*](#), Appeal Nos. 2018-2103, 2018-2228, a system or method for communicating status information wirelessly was not patent-eligible subject matter. The Federal Circuit also held that a PTAB decision not to institute an IPR may

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be admissible at trial with a limiting jury instruction.

The Chamberlain Group sued several companies for patent infringement, resulting in, among other things, a jury verdict finding infringement and validity of the asserted patents, an injunction, and awards of enhanced damages and attorney fees. The challenged patent claimed an apparatus and method for communicating information about the status of a movable barrier (e.g., a garage door). The district court denied Techtronic's JMOL motion for patent ineligibility under § 101. The court also denied Techtronic's motions for a new trial, finding no error in (1) the denial of Techtronic's motion to transfer venue and (2) the admission into evidence of PTAB's decision not to institute an IPR.

The Federal Circuit reversed-in-part, finding the challenged patent invalid under § 101. Under step one in the *Alice/Mayo* test, the challenged claims merely recited the abstract idea of communicating status information wirelessly. The challenged patent also failed under step two in the *Alice/Mayo* test because the claims were directed to the abstract idea itself, and the ordered combination added nothing more when the steps were considered separately. The district court did not abuse its discretion in finding that the venue objection was waived, where the objection came thirty days after *TC Heartland* and just two months before trial. The district court also did not abuse its discretion in admitting the PTAB's non-institution decision because the district court gave a limiting jury instruction explaining the different legal standard used by the PTAB. But the Federal Circuit warned that, in general, "denials of institution provide limited probative value that is likely to be outweighed by the prejudice to the opposing party, and limiting instructions to the jury do not necessarily cure the prejudice."

## Terms of Degree With Objective Boundaries Are Not Indefinite

In [Guangdong Alison Hi-Tech Co. v. ITC](#), Appeal No. 2018-2042, the Federal Circuit determined that a term of degree is not indefinite so long as the written description provides objective boundaries.

Aspen Aerogels, Inc. ("Aspen") filed a complaint with the International Trade Commission alleging that Guangdong Alison Hi-Tech Co. ("Alison") was importing certain composite aerogel insulation materials that infringe Aspen's patents. Alison argued Aspen's claims were invalid as indefinite because they con-

tained the phrase "lofty . . . batting." The ALJ rejected this argument and construed the phrase to mean "[a] fibrous material that shows the properties of bulk and some resilience (with or without full bulk recovery)," a definition taken directly from the specification. The ALJ noted that the "bulk" and "resilience" aspects were further explained in the specification. Upon Alison's petition, the Commission affirmed the ALJ's construction and declined to review the ALJ's indefiniteness determination. Alison appealed to the Federal Circuit.

On appeal, Alison argued that "lofty . . . batting" is an indefinite term of degree that lacked a precise boundary. While the Federal Circuit agreed that "lofty . . . batting" was a term of degree, the panel concluded that the written description provided sufficient objective boundaries to avoid indefiniteness. Thus, the Federal Circuit affirmed the Commission's finding that the claims were not indefinite and, having rejected Alison's remaining invalidity arguments, affirmed the Commission's final determination.

## Decision of PTAB to Reconsider Earlier Decision Instituting *Inter Partes* Review Is Not Reviewable by the Court of Appeals

In [Biodelivery Sciences Intl. v. Aquestive Therapeutics, Inc.](#), Appeal Nos. 2019-1643, -1644, -1645, the PTAB had the unreviewable discretion not to institute *inter partes* review despite a showing of reasonable likelihood of success with respect to at least one challenged claim.

BioDelivery filed three separate petitions for *inter partes* review ("IPR") of a single patent owned by Aquestive. The petitions contained a combined 17 grounds. The PTAB instituted review on a single ground in each of the three IPR petitions and found that BioDelivery had failed to establish a reasonable likelihood of prevailing on the merits of the remaining grounds. The PTAB issued final written decisions sustaining patentability, and Biodelivery appealed. After oral argument in the appeals, the Supreme Court issued its decision in *SAS Institute, Inc. v. Iancu*, 138 S. Ct. 1348 (2018), and BioDelivery moved to remand the proceedings in view of the decision in SAS. On remand, the PTAB modified the institution decisions. Instead of including all grounds in the IPR proceedings, the PTAB denied the three IPR petitions and terminated the proceedings. BioDelivery appealed, arguing that the PTAB could not reconsider its decision to institute on remand.

Aquestive moved to dismiss on the basis that review of the institution decision was barred under 35 U.S.C. § 314 (d). The Federal Circuit granted the motion to dismiss,

# FEDERAL CIRCUIT CASE SUMMARIES

noting that the PTAB has the discretion to not institute review, even if there is a “reasonable likelihood of success with respect to at least 1 claim challenged.” The Federal Circuit noted that the additional proceedings would have related to the 14 additional challenges that the PTAB did not believe met the threshold standard for institution and would have likely led to the same outcome. If the Federal Circuit required the PTAB to go through with these proceedings, it would contravene the Director’s statutory charge to consider the efficiency of the Patent Office.

Judge Newman dissented, stating that while the PTAB had discretion to decline institution of the IPR’s, the PTAB had already instituted them and issued final written decisions. Accordingly, the PTAB failed to comply with the Federal Circuit’s remand order to merely implement the Supreme Court’s holding to provide a final written decision addressing all challenged claims.

## The Sometimes Limiting Effect of “Wherein” Clauses

In [Allergan Sales, LLC v. Sandoz, Inc.](#), Appeal No. 2018-2207, a “wherein” clause was limiting because it was material to patentability.

Allergan Sales, LLC and Allergan, Inc. (collectively, “Allergan”) sued Sandoz, Inc. and Alcon Laboratories, Inc. (collectively, “Sandoz”), alleging that Sandoz’s Abbreviated New Drug Application (“ANDA”) for a generic version of Allergan’s Combigan® drug infringed three of Allergan’s patents. The district court granted Allergan a preliminary injunction, and Sandoz appealed.

The independent claims at issue recited both an efficacy “wherein” clause (“wherein the method is as effective as the administration of 0.2% w/v brimonidine tartrate monotherapy three times per day”) and a safety “wherein” clause (“wherein the method reduces the incidence of one o[r] more adverse events selected from the group consisting of conjunctival hyperemia, oral dryness, eye pruritus, allergic conjunctivitis, foreign body sensation, conjunctival folliculosis, and somnolence when compared to the administration of 0.2% w/v brimonidine tartrate monotherapy three times daily”). The district court construed the “wherein” clauses as limiting.

Sandoz appealed and argued that the “wherein” clauses merely stated the intended results of administering Combigan® and the recited results were not

material to patentability. The Federal Circuit noted that the shared specification of the patents at issue demonstrated that the increased efficacy and safety of Allergan’s claimed methods were material to patentability. Allergan also relied on the efficacy and safety of the claimed methods when responding to the Examiner’s rejection during prosecution. Furthermore, the Examiner explicitly relied on the “wherein” clauses to explain that the claims in the patents at issue were novel and non-obvious over the prior art.

The only issue in dispute regarding the grant of a preliminary injunction was whether the “wherein” clauses were limiting. Thus, the Federal Circuit affirmed the district court’s grant of Allergan’s motion for preliminary injunction.

Judge Prost issued a concurring opinion. While she agreed with the affirmance of the district court’s decision, she believed the plain language of the claim compelled a rejection of Sandoz’s position that the “wherein” clauses were mere statements of intended results.



# DISTRICT COURT & PTAB HAPPENINGS

Contributors:  
Akin Gump

## Judge Gilstrap Issues Standing Order Governing Subject Matter Eligibility Contentions

by Jason Weil & Charles Everingham IV

Patent Trial and Appeal Board, 35 U.S.C. § 102, 35 U.S.C. § 103, Eastern District of Texas

For nearly two decades, the Eastern District of Texas has been a hotbed of patent litigation. Even after the Supreme Court's 2017 *TC Heartland* decision narrowed a plaintiff's venue options, the Eastern District of Texas still sees more patent infringement cases than almost any other jurisdiction. It has controlled its docket by, among other things, adopting local patent rules that require early disclosure of Infringement and Invalidity Contentions. For example, Patent Rule 3-3 requires each party opposing a claim of patent infringement to serve Invalidity Contentions detailing the party's allegations that each challenged claim is invalid under 35 U.S.C. §§ 102, 103 or 112. Last month, Chief Judge Gilstrap augmented this rule with a standing order that requires a party to serve "Eligibility Contentions" if the party intends to allege that any claim is directed to unpatentable subject matter.

Under the standing order, a party's Eligibility Contentions are due at the same time as its Rule 3-3 invalidity contentions and must include:

Charts identifying (a) the eligibility exception to which the challenged claims are allegedly directed (e.g., abstract idea, law of nature or natural phenomenon) and the factual and legal bases supporting that contention; (b) the industry in which each challenged claim was allegedly well understood, routine and conventional, and a description of how each element of each challenged claim (individually or in combination with the other claim elements) was well understood, routine and conventional in that industry at the relevant time, as well as the factual and legal bases supporting those contentions; and (c) other factual or legal bases for how the challenged claims are otherwise ineligible for patent protection; as well as detailed information about, and production of, all materials on which the challenger intends to rely.

Like a party's Invalidity Contentions based on Sections 102, 103 and 112, Eligibility Contentions may be amended without leave of court only within 50 days of the court's claim construction ruling and only if either (1) a party files Amended Infringement Contentions pursuant to Patent Rule 3-6(a) or (2) the party challenging subject matter eligibility believes in good faith that the court's claim construction ruling requires amendment of the contentions. Any other amendment to a party's Eligibility Contentions may be made only with leave of court upon a showing of good

cause.

Practice Tip: Defendants should evaluate their subject matter eligibility positions carefully as soon as possible after being served with a patent infringement complaint and should understand that, as with contentions asserting other grounds for invalidity, the ability to amend Eligibility Contentions will be limited.

## No Estoppel in District Court on Prior Art that Differs Substantively—and in a Manner Germane to Invalidity—from that Asserted in IPR

by Brooks J. Kenyon, Matthew George Hartman & Rubén H. Muñoz

District Court, Patent Trial and Appeal Board, Invalidity, 35 U.S.C. § 315(e)(2) estoppel, Inter Partes Review, Central District of California

A Central District of California judge has clarified his prior ruling on summary judgment that estoppel under 35 U.S.C. § 315(e)(2) that applies to certain obviousness invalidity grounds raised by Defendants. In the prior ruling, the court found that Defendants could not side-step estoppel by characterizing a reference previously used in an *inter partes* review (IPR) as prior art that was "known or used by others" pursuant to pre-AIA § 102(a)—i.e., an invalidity ground not subject to estoppel. In doing so, the court estopped Defendants from raising all but one obviousness invalidity ground.

On Defendants' motion for reconsideration, the court clarified its prior ruling. As an initial matter, the court noted that the parties disagreed on how to distinguish invalidity grounds that could have been raised in an IPR petition with those not subject to IPR estoppel. The Federal Circuit, as the Court explained, has not addressed this dispute, nor have district courts dealt with the specific question at issue: whether IPR estoppel can preclude a patent challenger from relying on a "known or used" invalidity ground that is related to the printed publications that were asserted before the Patent Trial and Appeal Board (PTAB). The court, nevertheless, considered how other district courts have determined when estoppel should apply to prior art products and systems.

In one instance, the Central District of California declined to extend estoppel to a physical machine when the machine disclosed features not included in the printed publication. *Star Envirotech, Inc. v. Redline Detection, LLC*, No. 8:12-cv-01861 (C.D. Cal. Jan. 29, 2015). That court considered the machine a "superior and separate" reference. In another instance, the

## DISTRICT COURT & PTAB HAPPENINGS

Northern District of Illinois found that “the relevant inquiry [was] not whether the ground is redundant of a ground that was asserted but, rather, whether the ground reasonably could have been raised.” *Clearlamp, LLC v. LKQ Corp.*, No. 1:12-cv-02533 (N.D. Ill. Mar. 18, 2016). That court found the defendant was attempting to “cloak” the underlying datasheet of a product (i.e., a printed publication) as an invalidity ground based on the product itself.

The court here declined to adopt the “superior and separate reference” standard. As the court explained, this standard would likely extend the reach of IPR estoppel beyond its intended scope. And it ignores a commonly found practice in patent litigation: using one prior art reference to meet the same claim limitations in a number of different invalidity arguments. Instead, the court favored the analysis in *Clearlamp*, finding that there must be *some substantive* difference between the two invalidity grounds that is germane to the invalidity dispute at hand to avoid estoppel. Ultimately, even with the clarification, the court arrived at the same conclusion—namely, that IPR estoppel applied to all but one invalidity ground.

Practice Tip: A district court defendant that asserts a “known or used by others” invalidity theory should be prepared to articulate the substantive differences in the prior art from that asserted at the PTAB in order to avoid IPR estoppel. In doing so, defendants should focus on differences that are germane to invalidity. *Cal. Inst. of Tech. v. Broadcom Ltd., et al.*, No. 2:16-cv-03714 (C.D. Cal. Aug. 9, 2019).



# INTERNET SIGHTINGS

by **Frederic M. Douglas and James E. Hawes**

This column highlights some of the more notable recent online notices, newsletters, and blogs dealing with IP prosecution issues.

**IPWatchdog** – a patents and patent law blog – [IPwatchdog.com](http://IPwatchdog.com)

- On August 30, 2019, a post discussed the Federal Circuit opinion relating to the written description requirement, *Nalpropion Pharms., Inc. v. Actavis Labs. FL, Inc., No. 2018-1221, 2019 U.S. App. LEXIS 24281 (Fed. Cir., Aug. 15, 2019)* (<http://www.cafc.uscourts.gov/sites/default/files/opinions-orders/18-1221.Opinion.8-15-2019.pdf>). The opinion held that a “substantially equivalent” disclosure in a specification may satisfy the written description requirement if the equivalence applies only to nonlimiting parameters rather than to operative claim steps. (<https://www.ipwatchdog.com/2019/08/30/substantially-equivalent-disclosure-may-satisfy-written-description-requirement-circumstances/id=112821/>).

**Patently-O** – a blog written by Dennis Crouch – [www.patentlyo.com](http://www.patentlyo.com).

- In his August 25, 2019 post, Professor Dennis Crouch mentions that the USPTO plans to increase several fees. Of significant interest to you is a new annual active patent practitioner fee of \$340. If you have certification of continuing legal education, then the fee is \$240. If you are going to be inactive, you still have to pay \$70 annually. The Federal Register notice, 84 F.R. 37398, is at (<https://www.federalregister.gov/documents/2019/07/31/2019-15727/setting-and-adjusting-patent-fees-during-fiscal-year-2020>) (<https://patentlyo.com/patent/2019/08/uspto-proposed-changes.html>).

**AIPLA** – the profession’s national organization – see [AIPLA.org](http://AIPLA.org)

- AIPLA will hold its 2019 Annual Meeting October 24-26, 2019 in Washington, D.C. More information on this meeting and other events is available at <https://www.aipla.org/home/meetings-education/upcoming-events/expand/2019-annual-meeting>.

For more information about any of the patent topics mentioned consult Patent Application Practice. Trademark topics are discussed in Trademark Registration Practice. Both are published by West and updated twice a year. For patent prosecution or litigation questions, contact Fred Douglas at 949/293-0442 or by email at [fdouglas@cox.net](mailto:fdouglas@cox.net).



# OCIPLA's August 2019 Luncheon

## Thank You to our August 2019 Luncheon Speakers!

**Sarah E. Bro** (Partner, McDermott Will & Emery), **Jason Civaleri** (Chief Compliance Officer, MyCrypto), and **Ahsan A. Shaikh** (Partner, McDermott Will & Emery) joined OCIPLA for an informative panel discussion on the protection, enforcement, and commercialization of intellectual property in relation to blockchain technologies.



### Interested in speaking at an OCIPLA luncheon?

Submit your topic proposal at our website: <https://www.ocipla.org/speaker-topic-interest-form/>



# JOIN AN OCIPLA COMMITTEE!

## **AMICUS COMMITTEE**

This committee shall: a) scrutinize judicial decisions which involve significant issues of law or practice which affect intellectual property, (b) recommend to the Board of Directors that amicus curiae briefs be filed in appropriate cases, and (c) draft OCIPLA amicus curiae briefs.

## **PROFESSIONAL PROGRAMS COMMITTEE**

This committee shall identify and recommend curricula to the Board of Directors and assist in coordinating educational programs to be conducted during regular monthly meetings or at other times on topics which: (1) are of interest and benefit to the OCIPLA members; or (2) pertain to the professional activities of OCIPLA members and are of interest to others. The Committee will also assist the Board of Directors in obtaining speakers and otherwise preparing for the presentation of approved educational programs. The Professional Programs Committee shall include a litigation and prosecution subcommittees.

## **CORPORATE PRACTICE COMMITTEE**

This committee shall develop and disseminate information that is particularly useful to in-house attorneys, and promote efficient exchanges of best practices among in-house attorneys. *Co-chairs:*

- **MICHAEL KLINE**, michaelkline@clevelandgolf.com
- **MARK KERTZ**, mark.kertz@medtronic.com

## **MEMBERSHIP COMMITTEE**

This committee shall focus on expanding and diversifying the membership of OCIPLA, and shall work closely with other Committees and the Board of Directors to provide insights as to what IP practitioners in our IP community want from a legal organization and how OCIPLA can better the local IP community.

## **NEW LAWYERS COMMITTEE**

This committee shall focus on members in their first ten years of practice. The Committee shall provide educational and networking opportunities to new lawyers at OCIPLA. In addition, the Committee shall work closely with other Committees to provide new lawyers with opportunities to become more involved in the association, including participating in planning for OCIPLA meetings, coordinating networking events and other social activities for OCIPLA, assisting in research & writing projects, and developing educational materials.

***OCIPLA seeks volunteers to serve on Association Committees, whose respective missions are set forth on this page. If you have a few hours a month, we invite you to contact a member of our Board of Directors or the Committee Chairs (identified below) to discuss opportunities to help strengthen the OCIPLA community.***

# MAKE OCIPLA EVEN BETTER!

## **LAW STUDENT COMMITTEE**

This committee shall serve the law students in the local community, with particular focus on communicating their concerns to the Board of Directors and to welcome more law students to join the association as active members. The Committee shall also work closely with other Committees to provide law students with opportunities to become more involved in the association, including participating in planning for OCIPLA meetings, coordinating networking events and other social activities for OCIPLA, assisting in research & writing projects, and developing educational materials.

## **NEWSLETTER COMMITTEE**

This committee shall identify, recommend to the Board of Directors and prepare high quality, educational material for the OCIPLA Newsletter. *Co-Chairs:*

- **BROCK WILSON**, *bfwilson@akingump.com*
- **CLARK GORDON**, *cgordon@akingump.com*

## **TRADEMARK PRACTICE COMMITTEE**

This committee shall consider all aspects of the practice of trademark law before the United States Patent and Trademark Office, aid in the institution of improvements in the administration of the trademark laws by the USPTO; monitor proposed changes in the USPTO Rules of Practice relating to trademark law and, with the advice and consent of the Board of Directors, inform the USPTO as to the position of the Association regarding such proposed changes; receive and coordinate views of members in connection with any existing problems or suggestions for improvements in the USPTO administration, and with the advice and consent of the Board of Directors, forward these views to the USPTO, and make recommendations to the Board of Directors regarding these duties.

## **COPYRIGHT PRACTICE COMMITTEE**

This committee shall consider all aspects of the practice of copyright law before the Copyright Office of the Library of Congress, and to make recommendations to the Board of Directors regarding same.

## **FORMER PRESIDENT'S COMMITTEE**

- **EHAB SAMUEL**, *esamuel@mannatt.com*
- **MATT LAPPELL**, *matt@lappellubell*

## **WOMEN IN IP COMMITTEE**

This committee shall promote the role of women in IP law practice in and around Orange County. Membership and participation are open to men as well.

All committees shall consist of members appointed by the Board of Directors for a two-year term.



***OCIPLA seeks volunteers to serve on Association Committees, whose respective missions are set forth on this page. If you have a few hours a month, we invite you to contact a member of our Board of Directors or the Committee Chairs (identified below) to discuss opportunities to help strengthen the OCIPLA community.***

# OCIPLA 2019 Board of Directors

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## OCIPLA Newsletter

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We hope that the Newsletter is informative, entertaining, and interesting. Comments, ideas, announcements, proposed articles, suggestions and any other communications concerning the content, form or other aspect of this Newsletter may be directed to:

Sarah Bro  
2019 OCIPLA Newsletter Editor

