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Patent Litigation 2016

Introducing New and Enhanced Topics

- **NEW!** Demonstration of an effective opening statement in a patent case from the plaintiff and from the defendant, including commentary from a jury consultant
- Recent developments affecting patent litigation practice and case strategies
- Two separate sessions with District Court Judges sharing their views on managing patent litigation, recent trends, and tips for efficient case disposition
- Strategies for multi-party litigation, joint defense groups, indemnification, and indirect and divided infringement claims
- Trends in patent remedies; advanced strategy and tactics in the complex world of patent litigation, parallel PTO proceedings and business considerations

Chicago, October 13-14, 2016

New York City, November 16-17, 2016

Atlanta, Cleveland and New Brunswick Groupcast Locations,
November 16-17, 2016

Live Webcast, November 16-17, 2016

Patent Litigation 2016

Why You Should Attend

Rapid changes in patent law make it necessary that, whether you are the plaintiff's or defendant's counsel, you are up to date on the current state of the law and can quickly develop successful litigation strategies and tactics. This program is taught by a faculty of both outside and in-house lawyers who have earned national reputations in patent litigation by trying and managing a wide variety of bench and jury patent trials, as well as U.S. Patent Office post-grant trial proceedings, and provides comprehensive coverage of every phase of these patent matters. This year's program also features views from U.S. District Court Judges, who will provide their insights on the state of patent litigation, management of patent litigation, as well as practical tips for litigants. Through this comprehensive program, you will be able to hone your patent litigation skills in just two days.

What You Will Learn

Introducing New and Enhanced Topics

- Recent developments affecting patent litigation practice and case strategies, including current and future impacts of key Supreme Court and Federal Circuit decisions, as well as proposed legislation
- District Court Judges share their views on managing patent litigation, recent trends, and tips for efficient case disposition (featuring two separate Judges sessions!)
- **NEW!** Demonstration of an effective opening statement in a patent case from the plaintiff and from the defendant, including commentary from a jury consultant
- Strategies for multi-party litigation, joint defense groups, indemnification, and indirect and divided infringement claims
- A session directed to advanced strategy and tactics in the complex world of patent litigation, parallel PTO proceedings and business considerations
- Trends in patent remedies: damages, injunctions and ongoing royalties where an injunction is not granted

Special Feature

- Earn one hour of Ethics credit!

Who Should Attend

Patent litigators and lawyers in patent firms who advise clients in disputes that may lead to litigation, examination or post-grant proceedings at the Patent Office; general business litigators whose practice includes patent trials; patent prosecutors whose actions in preparing and prosecuting patents are critical in providing support for the proper claim construction and in assessing infringement and invalidity issues; and corporate counsel who will have the responsibility for supervising patent litigation, interpreting its progress for management, and pursuing opportunities for settlement, as well as those who are responsible for a company's overall patent strategy.

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Counsel – Corporate Litigation
IBM Corporation
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PROGRAM SCHEDULE

Day One: 9:00 a.m. – 5:00 p.m.

Morning Session: 9:00 a.m. – 12:30 p.m.

9:00

Program Overview

CHI: Jeanne M. Gills

NYC, ATL, CLE, NB & WEB: Christopher K. Hu

9:15

Recent Developments and Their Effects on Patent Litigation

This session is a broad review of the important decisions of the Supreme Court, Federal Circuit and District Courts over the past year, as well as of still-emerging and developing effects of the America Invents Act (AIA) and proposed legislation to address concerns about the uses and misuses of patent litigation as an economic weapon. Key trends and developing patent law doctrines will also be covered. A particular focus will be on the Supreme Court's increased interest in patent cases and the effect of recent Supreme Court decisions, how and if they differ from existing Federal Circuit jurisprudence and whether they clarified the law.

CHI: Brent A. Hawkins, Sharon A. Hwang

NYC, ATL, CLE, NB & WEB: Elaine Herrmann Blais

10:15

Acts of Multiple Parties – When Do They Constitute Patent Infringement?

In a world that is increasingly connected by networks with services provided by multiple entities, and in which complex products are made up of components from numerous sources, issues of infringement based on the acts of multiple parties arise far more frequently. This session will cover the constantly evolving law following the Supreme Court's ruling in *Limelight v. Akamai* relating to infringement where not all steps are performed or all components supplied by one entity. The relationship between the entities necessary for a finding of infringement will also be covered, including the effect of the recent Federal Circuit decisions. This session will also discuss recent cases on the standards for determining other forms of multi-party infringement, including inducement of infringement and contributory infringement, and the impact of the Supreme Court's ruling in *Commil v. Cisco*.

CHI: John A. Marlott, Laura Beth Miller

NYC, ATL, CLE, NB & WEB: Carol White

11:15 *Networking Break*

11:30

The Emergence of 101 and 112 as Viable Defenses in Patent Litigation

Given the recent *Alice*, *Nautilus* and *Williamson* decisions, have patents become more vulnerable on § 101 and § 112 grounds? Did the U.S. Supreme Court's *Alice* decision adequately clarify the law with respect to the patentability of business methods or other software-implemented inventions? Similarly, has the Supreme Court provided enough of a roadmap in *Nautilus* on the thorny issue of indefiniteness? Even in the § 112, § 6 context, the issue of indefiniteness continues to be explored more in contentious patent litigation, e.g., *Williamson v. Citrix*. This session will discuss the current state of the law in this area and winning strategies for both plaintiffs and defendants when § 101 and § 112 claims are raised, including whether venue matters on whether a dispositive motion on one of these issues will be granted/denied.

CHI: G. Courtney Holohan, Neil C. Jones

NYC, ATL, CLE, NB & WEB: Carolyn H. Blankenship

12:30 *Lunch Break*

Afternoon Session: 1:45 p.m. – 5:00 p.m.

1:45

Parallel Patent Office Proceedings

Initially post-grant proceedings in the U.S. Patent Office continue to be a strategy for parties against whom a patent has been asserted. A Patent Office proceeding might be initiated in anticipation of litigation or filed soon after litigation has begun. A parallel Patent Office proceeding is often a basis for seeking a stay of the more costly district court proceeding and/or used to bring the patentee to the bargaining table. Recent statistics reflect the continued popularity of filing of *inter partes* review (IPR) and covered business method review (CBM) proceedings following AIA, as well as a high rate of success. Patent Office proceedings are also attractive because a more specialized tribunal may be beneficial for certain technical defenses.

This session will also address the effects of any such post-grant proceedings on litigation, including stays, as well as the potential effects on collateral estoppel, claim construction positions, willfulness charges, inequitable conduct claims, and on damages and intervening rights.

CHI: Jeff Costakos, James D. Smith

NYC, ATL, CLE, NB & WEB: Richard F. Martinelli

2:45

Strategy and Tactics in Patent Litigation – What You Didn't Learn from Books

Patent litigation is an expensive, complex, disruptive and potentially economically fatal undertaking. Even before a patent litigation begins, both potential plaintiffs and defendants must make numerous judgment calls. For plaintiffs, these decisions include the extent of pre-suit (Rule 11) investigations, which defendant or defendants to sue, whether to negotiate with the other side, choice of forum, whether to seek a preliminary injunction, whether to initiate a parallel ITC proceeding, how aggressively to pursue the case, and when to file dispositive motions. For defendants, issues include whether to negotiate, initiate a proceeding in the U.S. Patent Office, or file a declaratory judgment action, and when to file dispositive motions.

Common issues include the number and type of depositions to take (individual, Rule 30(b)(6) corporate designees and non-party), the timing of claim construction and the timing of dispositive motions. This session will feature a panel of experienced litigators who will discuss their views on the many judgment calls that must be made where there are no answers in the books.

CHI: Meredith Martin Addy

NYC, ATL, CLE, NB & WEB: Jeffrey K. Sherwood,

Moderator; Tamera L. Fair, Samir Pandya

3:45 *Networking Break*

4:00

Joint Defense and Indemnification in Patent Litigation – How to Work with Others in the Same or a Sunken Boat

Parallel patent infringement actions are often brought at the same time against multiple defendants. Joint defense agreements are often entered into for efficiency and consistency in defending the actions. However, there are negatives as well as positives and numerous possible pitfalls in entering into joint defense arrangements.

This session will discuss the legal and practical considerations of working efficiently with co-defendants and their counsel, including negotiating joint defense agreements; managing costs and responsibilities among numerous parties where positions may conflict; strategies for when to take the lead and when to ride the wave; and managing related issues of indemnification.

CHI: Reginald J. Hill

NYC, ATL, CLE, NB & WEB: Jeffrey T. Zachmann

5:00 *Adjourn*

*Please plan to arrive with enough time to register before the conference begins.
A networking breakfast will be available upon your arrival.*

Day Two: 9:00 a.m. – 5:00 p.m.

Morning Session: 9:00 a.m. – 12:15 p.m.

9:00

Patent Remedies (Including Injunctions): The Aftermath of Recent Federal Circuit Decisions

Recent Federal Circuit and District Court decisions reflect a trend towards damages awards based less on application of rules than on evidence of actual harm sustained. This session will review recent cases on all forms of remedies in the aftermath of recent Supreme Court Federal Circuit decisions, including the current state of the patent exhaustion doctrine. Other cases on lost profits, reasonable royalty, attorneys' fees and other monetary damages and relief will be analyzed. The session will also discuss the practical ability to obtain injunctive relief ten years post-*eBay* and recent cases like *Apple v. Samsung*.

CHI: *Tiffany P. Cunningham, Allan J. Sternstein*

NYC, ATL, CLE, NB & WEB: *Paul R. Gupta, Peter Schwachheimer*

10:00

Patent Litigation – Views from the Bench, Part 1

Patent litigation has long been recognized as a form of federal civil litigation that is typically more complex and expensive than the ordinary case. Because of this, much has been written about patent litigation, some of it complimentary and some not so flattering. On one hand, patent cases have been described as among the best-litigated of all federal cases. On the other hand, patent cases have been characterized as over-litigated, excessively contentious, tedious affairs during which far too many issues are raised at both the trial and appellate levels. District Court Judges present their views of patent litigation, including what's good, what's bad and what's unnecessary. The Judges will discuss such topics as Local Patent Rules and Practice, managing multi-party litigation including scheduling issues, use of experts in patent cases, mediation and settlement of patent cases, and general practice tips for patent counsel.

CHI: *Kara E.F. Cengar, Moderator; Hon. Rubén Castillo, Hon. John W. Darrah, Hon. Jeff Kaplan, Hon. Roy Payne*
NYC, ATL, CLE, NB & WEB: *George E. Badenoch, Moderator; Hon. Renee Marie Bumb, Hon. Rubén Castillo, Hon. Stanley R. Chesler, Hon. Loretta A. Preska*

11:00 *Networking Break*

11:15

Patent Litigation – Views from the Bench, Part 2

The Judges will continue to provide their views regarding patent litigation in district courts, the impact of parallel PTAB proceedings, how pre-trial motion practice can promote or prolong case disposition, the increasing costs of discovery practice, and the timing and best tips for success with mediation and court-ordered (or encouraged) settlement conferences.

CHI: *David K. Callahan, Moderator; Hon. Rubén Castillo, Hon. John W. Darrah, Hon. Jeff Kaplan, Hon. Roy Payne*
NYC, ATL, CLE, NB & WEB: *Gene W. Lee, Moderator; Hon. Renee Marie Bumb, Hon. Rubén Castillo, Hon. Stanley R. Chesler, Hon. Loretta A. Preska*

12:15 *Lunch Break*

Afternoon Session: 1:45 p.m. – 5:00 p.m.

1:45

Delivering An Effective Opening Statement in Patent Cases (Plaintiff v. Defendant)

Many skilled patent trial lawyers usually start crafting their opening statements well in advance of trial. In so doing, it gives you the best chance to streamline and simplify your case, weed out unpersuasive facts or arguments, and organize a coherent story in a timeline or other manner that the jury and Judge can follow. Even though most patent cases involve complex technical subject matter, numerous documents, and conflicting experts, an effective opening statement can provide a roadmap for the jury to follow and illuminate the key issues. This session will pit two skilled trial lawyers against one another in a live demonstration of a plaintiff's and defendant's opening statement in a patent case. Each counsel will be critiqued not only by the audience, but also by a jury consultant and a District Court Judge who will resolve any objections that are raised. The session will cover the most important components of an opening statement, and common mistakes made or missed opportunities by both plaintiff's and defense counsel in delivering these statements.

CHI: *Ahmed J. Davis, Mark L. Levine*

NYC, ATL, CLE, NB & WEB: *Gil Calvillo, Candice C. Decaire, Keith R. Hummel*

2:45

NPEs – The Special Issues Arising from Disputes with NPEs

This panel will provide perspectives on litigating on behalf of, or against, non-practicing entities (NPEs). Plaintiff's counsel will offer perspectives on representing litigants with patent rights that may or may not have deep pockets, as well as effective strategies when the opponent is the larger, more entrenched entity, including ways to manage multi-party litigation and discovery. Defense counsel will share tips on evolving legal and practical strategies to mitigate the impact of abusive tactics by some NPEs, including early resolution/disposition techniques, smart motion practice and effective use of joint defense groups.

CHI: *Clinton H. Hallman, Jr., Julianne M. Hartzell, Michael R. La Porte*

NYC, ATL, CLE, NB & WEB: *Aaron B. Bernstein, Christopher J. Horgan, Eric J. Lobenfeld*

3:45 *Networking Break*

4:00

Ethics Issues in Patent Litigation

In-house and outside counsel face ethical issues in patent litigation at every step of the process, from pre-suit Rule 11 compliance, throughout the discovery process, and continuing through to trial and appeal. The sometimes fuzzy boundary between ethical transgression and zealous advocacy will be explained, including whether such actions impact a party's ability to convince a court that the court should find a case exceptional under § 285, warranting an attorneys' fees award. Ethical issues relating to conflicts will also be covered. USPTO ethical rules that apply to practitioners licensed by the USPTO – even when practicing in another forum – will likewise be addressed.

CHI: *Melissa A. Anyetei, Darrick J. Hooker*
NYC, ATL, CLE, NB & WEB: *Speaker TBA*

5:00 *Adjourn*

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