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Intellectual Property Perspectives: Fall 2010

IP Law Program
George Washington University

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IP’s 2nd Annual Symposium Continues Successful Tradition

The George Washington University Law School, along with Howrey LLP and Cornerstone Research, presented the second annual Symposium on Intellectual Property Law on May 11 at the Law School.

The symposium brought together colleagues from private practice, the judiciary, government, economic consulting groups, and academia to address current issues and recent developments in intellectual property law. The symposium was well attended by approximately 150 people, including in-house counsel, private attorneys, and GW Law students.

After introductory remarks by Dean Frederick M. Lawrence and Alan Grimaldi, co-chair of the intellectual property practice at Howrey LLP.
The Spring 2010 IP Speaker Series brought Professors Laura Heymann of William and Mary, Jonathan Zittrain of Harvard Law School, and Mark Janis of Indiana University Maurer School of Law to the Law School. In addition, Michael Ryan, who currently serves as a director of GW’s Creative and Innovative Economy Center, participated in the series.

The series began with Professor Heymann presenting her paper “Naming, Identity, and Trademark Law.” In her talk, she explored the various ways in which the law reacts to naming decisions both for individuals and as a matter of trademark law, and she discussed whether there are any useful lessons from one realm that might be applicable to the other. Professor Heymann’s visit to the Law School was particularly special as she is a former Frank H. Marks Fellow for IP Law. It is a testament to the strength of GW Law's IP program that it attracts such strong candidates to the fellowship, candidates who go on to have impressive careers in the nation's top law schools.

The series continued with a presentation by Michael Ryan. Director Ryan explored the evolution of patent law in Brazil. In what proved to be a very interesting talk—particularly to the LL.M. students from Brazil and other foreign countries—Director Ryan explored how the Brazilian legal system has changed and how interest in stronger IP protections grew with the rise of home-grown industries.

The third speaker of the series, Jonathan Zittrain, discussed his paper “Minds for Sale.” During his talk, he delved into the legal and moral problems associated with the technology-enhanced ability to recruit individuals to perform seemingly innocuous tasks that, when taken together, could be turned to nefarious ends. Professor Zittrain discussed a case in which individuals are paid to match photographs appearing on the screen and how the results of such matching are used (unbeknownst to the participants) to persecute individuals appearing in the photos. He questioned whether the participants should have any legal right to limit the uses of their work product.

The series closed with a presentation by Professor Mark Janis, whose paper focused on the role of Daniel Webster in developing patent jurisprudence. The fascinating historical account cast a new light on several cases in which Daniel Webster was involved.

Our plans to feature Professor Abraham Drassinower of University of Toronto Law School in the IP Speaker Series were postponed due to the massive snowstorms that paralyzed Washington, D.C., last winter. Professor Drassinower has rescheduled his visit for September 23 (for details, see page 5).

Spring 2010 IP Speaker Series A Success

Professor Laura Heymann of William and Mary Law School presented her paper, “Naming, Identity, and Trademark Law,” for the IP speaker series.


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Munich Summer Program Enjoys Record Enrollment

This summer, the IP Program’s seventh annual study-abroad program in Munich, Germany, boasted its highest enrollment to date. The four-week program, which is a collaborative effort between GW Law, the Munich Intellectual Property Law Center (MIPLC), and the Max Planck Society, offers eight two-week courses. Over 35 students attended at least one of the two-week sessions.

The very diverse group included students from GW Law and other U.S. law schools, as well as those from other countries including Italy, Brazil, and Pakistan. In addition to the eight courses offered in the program, the summer school provided an opportunity for students to enjoy study visits to various IP-related entities in Munich. During the course of the four weeks, students visited Siemens AG, BMW, the European Patent Office, and the Munich office of Fish & Richardson. The study visits gave students exposure to various aspects of intellectual property law practice in Europe. As a result of GW Law’s renowned IP program, we were able to attract star faculty to teach in the summer school.

Professor Dan Burk of University of California, Irvine taught Cross-Border Trade

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IP Program Hosts Receptions at BIO and INTA

Fellow intellectual property alumni and friends of GW Law gathered at Brasserie JO in Chicago on May 4, for a reception co-hosted by Steptoe & Johnson LLP and held in conjunction with the annual international Biotechnology Industry Organization (BIO) convention. Approximately 80 guests enjoyed cocktails, hors d’oeuvres, and GW Law giveaways. Chief Judge Randall R. Rader (J.D. ’78) of the U.S. Court of Appeals for the Federal Circuit and Associate Dean for Intellectual Property Studies John Whealan attended the reception and enjoyed greeting alumni and friends of the IP program. A second reception for alumni and friends was held May 24 in conjunction with the International Trademark Association (INTA) annual meeting. Along with Kramer & Amado, PC, GW Law hosted the reception at the Top of the Hub & Skywalk at the Prudential Center in Boston. Robert Brauneis, professor and co-director of the IP program, attended the reception and was joined by over 60 guests, who enjoyed cocktails and hors d’oeuvres along with stunning city views.

Upcoming Events

Fall 2010 IP Speaker Series

GW Law’s Dean Dinwoodey Center for Intellectual Property Studies will present four luncheon lectures featuring IP scholars from around the world. Each event will begin at 12 noon and will include lunch and the scholars’ presentations and discussions of their current research.

THURSDAY, SEPTEMBER 9
“Patents, Presumptions, and Public Notice”
Timothy Holbrook, Emory University School of Law Faculty Conference Center, 5th Fl. Burns

THURSDAY, SEPTEMBER 23
“What’s Wrong with Copying?”
Abraham Drassinower, University of Toronto Faculty of Law Faculty Conference Center, 5th Fl. Burns

THURSDAY, OCTOBER 7
“Copyright in Memoriam”
Julie Cromer Young, Thomas Jefferson School of Law Faculty Conference Center, 5th Fl. Burns

THURSDAY, NOVEMBER 17
“Who Should Own Government-Funded Inventions? A Reconsideration of the Pre—Bayh-Dole Kennedy Policy for Technology Transfer”
Sean O’Connor, University of Washington School of Law Tusher Great Room, 1st Fl. Burns Library

Details on future lunches can be found at www.law.gwu.edu/ipevents. RSVP to iplaw@law.gwu.edu at least three days prior to the event.
Faculty News of Note

The GW Law IP faculty continues to make an impact on the development of the law outside the classroom. Here are examples of our faculty’s notable events:


Professor Orin Kerr served as a special advisor to Senator John Cornyn for the nomination of Justice Elena Kagan to the Supreme Court. This is the second time Professor Kerr has taken on such an assignment. Last year, he served as a special advisor for the confirmation of Justice Sonia Sotomayor.

Associate Dean for Intellectual Property Studies John Whealan will argue again before an en banc session of the Federal Circuit. Dean Whealan is counsel in Therasense, Inc. v. Becton, Dickinson & Co. and is scheduled to argue the case on November 9. For the first time in 20 years, the en banc court will address the proper standard to be applied to the inequitable conduct doctrine. This is the second time in less than 12 months that Dean Whealan will appear before the en banc session of the Federal Circuit; in December 2010, he argued in Ariad v. Lilly, a case addressing the written description requirement of 35 U.S.C. § 112.

Judge Randall R. Rader (J.D. ’78), who has taught Patent Law at the Law School for over a decade, became the sixth Chief Judge of the U.S. Court of Appeals of the Federal Circuit on June 1, following the retirement of the previous Chief Judge Paul R. Michel. GW Law is proud to have an alumnus and a member of its faculty as the Chief Judge of the preeminent patent court in the world.★

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the Hon. David Kappos, undersecretary of commerce for intellectual property and director of the U.S. Patent and Trademark Office (USPTO), delivered the keynote address. The opening panel followed, with a discussion of tips and trends for litigating patent cases. The four-person panel included three district court judges who have presided over a significant number of patent cases: the Hon. Joan Ericksen, District of Minnesota; the Hon. Jeremy Fogel, Northern District of California; and the Hon. Marilyn Huff, Southern District of California. The panel was moderated by Mary A. Woodford, vice president of Cornerstone Research.

A second panel discussed the written description and enablement interplay, specifically in the biotech and hi-tech fields, and included panelists Todd Dickinson, executive director of the American Intellectual Property Law Association (AIPLA) and former director of the USPTO; Sherry Knowles, senior vice president and chief intellectual property counsel, GlaxoSmithKline PLC; Kevin Kramer, associate general counsel, Intellectual Property Litigation and Conflicts, Yahoo! Inc; Hans Sauer, associate general counsel for intellectual property, Biotechnology Industry Organization; and Willem Hoyng, managing partner Europe, Howrey LLP.

An afternoon panel discussed the Bilski v. Kappos case. Panelists Matt Wolf, partner, Howrey LLP; Mark Glueck, chairman, CapAnalysis Group, LLC; and Professors John Duffy and Scott Kieff (Professor Kieff is also senior fellow, Hoover Institution, Stanford University) explored the case from multiple industry standpoints.

The Hon. Chief Judge Paul R. Michel, U.S. Court of Appeals for the Federal Circuit, gave the luncheon address in which he provided valuable insight on the challenges facing the patent system and the judiciary.

Associate Dean for Intellectual Property Studies John Whealan commented, “This symposium is a great addition to GW Law’s IP program, and Howrey and Cornerstone were great partners in creating and executing the conference.”

The next conference will be held in May 2011.★

IP Loses Member of its Family, Edward J. Kondracki

Edward (Ed) J. Kondracki (1932-2010) graduated from GW Law in 1963 and was a well-known Washington, D.C., area intellectual property attorney. For many years, he practiced as a name partner in the boutique ultimately known as Kerkam, Stowell, Kondracki & Clarke, P.C., and most recently was of counsel to Miles & Stockbridge. Ed was one of the numerous successful patent graduates of GW Law to go into private practice in the D.C. area. He had been active in various bar associations, and for several years was a regular participant in the Patent Lawyers Club of Washington, D.C. It is with sadness that we note Ed’s passing.★
SIPLA Going Strong at GW Law

The Student Intellectual Property Law Association (SIPLA) offers networking and professional development opportunities for students interested in all facets of intellectual property law. Through SIPLA events, students may network with one another and with IP law practitioners. Last school year, SIPLA hosted panels to discuss tips for taking finals, interviewing for an IP job, and registering for IP classes. SIPLA also regularly hosts happy hours and sponsors a mentor-mentee program to facilitate networking. In addition to hosting events, SIPLA helps educate students about IP-related events hosted by various Law School departments and offices.

This year, SIPLA plans to sponsor a trip to hear oral arguments at the Federal Circuit and a visit to the USPTO. The 2010-2011 SIPLA officers include Stefani Meyer, president; Jason Fitzsimmons, vice president; Bob Lichter, treasurer; Sam Muralidhar, secretary; Thara Russell, programming chair; and Kiri Feldman, mentoring chair.

IP Welcomes New Benefactors: Fish & Richardson, Kramer & Amado

GW Law’s IP Benefactors contribute greatly to the school’s IP program. The benefactors program includes IP corporations and law firms that designate a member to serve on the school’s IP Advisory Board (IPAB), which provides counsel to the school on the IP program. This year, four additional law firms became IP Benefactors—Fish & Richardson, Kramer & Amado, Perkins Coie, and Lee & Hayes—as another way to strengthen their ongoing relationships with the Law School. Mike McKeon (J.D. ’96) will serve as Fish & Richardson’s IPAB representative, Arly Amado (J.D. ’99) will serve as Kramer & Amado’s representative, while Thane Bauz (L.L.M. ’92) will represent Perkins Coie, and Lewis Lee (J.D. ’91) will represent Lee & Hayes. The current list of IP Benefactors (in alphabetical order) now includes:

[ALUMNI & FRIENDS]

The Honorable S. Jay Plager of the U.S. Court of Appeals of the Federal Circuit is scheduled to give this year’s Fall Katz Lecture at GW Law. The event will take place on Wednesday, October 20, the evening before the start of the American Intellectual Property Law Association (AIPLA) Annual Meeting in Washington, D.C. The Sidney Katz lecture, held twice a year, is generously endowed by A. Sidney Katz (J.D. ’66). For information on future Katz lectures or other GW IP-related events, visit our website at www.law.gwu.edu/ipevents.

November Reception Will Honor Chief Judge Rader

The GW Law IP Program will honor the appointment of Judge Randall R. Rader (J.D. ’78) as the sixth Chief Judge of the U.S. Court of Appeals for the Federal Circuit with a reception on Wednesday, November 17 at 6:00 p.m. in the Faculty Conference Center, Burns 505. Judge Rader is one of the most renowned members of the GW Law IP family. He is both an alumnus and a professor, teaching two IP-related courses each year. The reception is simply a small token of our appreciation. All are welcome to attend.

AIPLA Reception

On October 21, the GW IP Program will host a reception in conjunction with the AIPLA annual meeting in D.C. Please join us from 5:30-7:30 p.m. at Stone’s Throw Restaurant in the Wardman Park Marriott Hotel.

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FINNEGAN AND BURKAN WRITING COMPETITION AWARD WINNERS

The Marcus B. Finnegan Prize Competition, sponsored by the law firm of Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., is the premier IP writing competition at GW Law. This year’s Finnegan Prize winners (followed by the titles of their winning papers) are listed below.

• 1st Prize: Sreekar Gadde (J.D. ’10) and Jennifer Nock (J.D. ’10), “Raising the Bar for Nonobviousness: An Empirical Study of Federal Circuit Case Law after KSR”

• 3rd Prize (tied): Noah Lerman (J.D. expected ’11), “The Chemistry of Symmetry: The Implications of Abbott Labs v. Sandoz Inc. in Resolving a Rare Federal Circuit Split”


The Nathan Burkan Memorial Competition awards the best copyright law papers. This year’s Nathan Burkan Prize winners, followed by the titles of their winning papers, are:


• 2nd Prize: Jason Barrer (J.D. expected ’11), “Fighting Internet Piracy without Copyright Law: How to beat the Pirates at Their Own Game”

In order to be eligible for either prize, the submitted papers have to be of publishable quality and make a significant contribution to the theory and practice of intellectual property law. This year’s winning papers were selected from a group of 21 papers submitted by GW Law students. Graduating winners received their awards at the student award reception hosted by Dean Frederick M. Lawrence on May 15.

GRADUATES RECEIVE AWARDS FOR OUTSTANDING ACHIEVEMENTS IN IP

The outstanding IP achievements of Law School graduates were celebrated in an awards ceremony on May 15. As evidence that GW Law is among the finest law schools in the world to study intellectual property law, the Law School bestows more awards in the area of IP than in any other. The 2010 graduating class award winners are listed below.

AMERICAN BAR ASSOCIATION/ BUREAU OF NATIONAL AFFAIRS AWARD

Given to the members of the graduating J.D. class who demonstrate excellence in the study of intellectual property law, the award honors the top six intellectual property law students. The award is made possible by the American Bar Association (ABA), in conjunction with publisher the Bureau of National Affairs (BNA). Recipients were selected by virtue of the number of IP courses taken and the excellence of their grades in those courses. The winners each received a certificate from Dean Frederick M. Lawrence, a certificate from the ABA/BNA, and a BNA treatise written by the ABA Section of IP Law. The 2010 winners are:

David Hopkins
James McClellan
Benjamin Roberts
Kevin Rodkey
Benjamin Searle
Paul Wickman

CHRIS BARTOK MEMORIAL AWARD IN PATENT LAW

Given to the member of the graduating J.D. class who exhibits excellence in the area of patent law, the award is presented in memory of Chris Bartok, who tragically passed away while
Federal Circuit Bar Journal Welcomes New Leadership

The Federal Circuit Bar Journal (FCBJ) welcomes its new editorial board and junior staff members for the 2010-2011 season. The transition marks the first anniversary of the FCBJ being entirely run and staffed by GW Law students. Under the guidance of faculty mentors, the FCBJ has grown in membership and has enhanced the quality of its scholarship. The selection of articles in Volume 19 reflected the depth of talent and subject matter within the Federal Circuit Bar Association itself.

In the coming year, Editor-in-Chief Jon Knight desires to increase the presence of the journal both on campus and in the Federal Circuit community. The FCBJ plans to host several panel discussions in the coming months on pressing issues before the Federal Circuit. Events will be open to law school alumni and IP practitioners.

The FCBJ is committed to furthering the scholarship of the Federal Circuit Bar Association and the GW Law community. Submissions of articles and of topic ideas for student notes are encouraged. If you are interested in either submitting an article for publication or in mentoring and guiding students in choosing relevant and timely note topics, you can contact the FCBJ via email at fcbj@law.gwu.edu. All articles should be submitted in MS Word and accompanied by a CV or resume. Those interested in joining the Federal Circuit Bar Association or in subscribing to The Federal Circuit Bar Journal can visit www.fedcirbar.org.

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a student at GW Law. It was Chris’s great desire to study patent law. Now, it is the wish of his family that his memory live on in the accomplishments of a student highly skilled in this area of the law. The student selected receives a monetary award and a dean’s certificate. The 2010 recipient was Christopher Marando.

Peter D. Rosenberg Prize in Patent & Intellectual Property Law

This award is presented to the member of the graduating J.D. class who demonstrated excellence in patent and intellectual property law by receiving the highest grades and the most accomplishments in the area of intellectual property, earning more As in IP courses than any other graduate. The student selected receives a monetary award and a dean’s certificate. This year’s recipient, Patrick Laflerty, also was nominated by the Law School for the Jan Jancin Award as the best intellectual property student in the nation.

Conference Celebrates Breyer’s Pioneering Work

In 1970, Stephen G. Breyer, now an Associate Justice on the Supreme Court of the United States, published the pioneering article, “The Uneasy Case for Copyright.” To commemorate the fortieth anniversary of this groundbreaking work, the GW Law IP Program will hold a symposium on Thursday, November 4. Justice Breyer will give the keynote address, and distinguished legal academics and economists from the United States and abroad will consider the legacy of the article and the current state of inquiry into the proper place of copyright and intellectual property law. For more information, visit www.law.gwu.edu/ipevents.
in Intellectual Property. Judge Edward Damich of the U.S. Court of Federal Claims taught Technical Protection of Authors’ Rights. Professor Margo Bagley of University of Virginia lectured on International Patent Law, while Professor Michael Madison of University of Pittsburgh taught Theoretical Foundations of IP. In addition, Professor Silke von Lewinski, a full-time professor at the MIPLC, offered a course on IP and Indigenous Heritage. Finally, three GW Law professors, John Whealan, Orin Kerr, and Greg Dolin, taught courses on the Federal Circuit; Computer Crime; and TRIPS, Patents, and Public Health, respectively.

In addition to offering an outstanding curriculum, GW Law made sure that students enjoyed the social life of Munich. Because the World Cup 2010 coincided with the summer program, the law school hosted happy hours for both the quarter-final and semi-final World Cup games in which the German national team participated. Students were able to experience watching the World Cup in a country where soccer is the most popular national pastime.

As a result, the summer program was a success both academically and socially. GW Law already has begun to receive inquiries about next year’s program. We look forward to continuing our collaboration with MIPLC next year and to the continued growth of our successful summer program.