

A yellow sunburst graphic containing the text "50th Anniversary".

50th
Anniversary

A horizontal strip of various national flags.

Conference on

Intellectual Property Law

November 12-13, 2012

INSTITUTE FOR LAW AND TECHNOLOGY

THE CENTER FOR AMERICAN AND INTERNATIONAL LAW

5201 Democracy Drive • Plano, Texas 75024 • USA

- **Enforcing Trademarks Without Going Viral**
- **America Invents Act Strategies**
- **The Marshall Docket Reviewed**
- **Technology, Licensing, and IP Rights**

Plus: 50th Anniversary Dinner

Topic: “The Implications of a Regional U.S. Patent and Trademark Office for Texas Patent Attorneys”

17.5 hours of MCLE credit, including up to **2.75** hours of Ethics



Program at a Glance

Conference Co-Chairs

Lawrence J. Bassuk, Texas Instruments Inc. • David O. Taylor, SMU Dedman School of Law

MONDAY, NOVEMBER 12, 2012

7:45 AM Networking Breakfast

PATENT LITIGATION

9:00 AM Appellate Advocacy at the Federal Circuit

10:00 AM The Marshall Docket

10:30 AM Break

10:45 AM Patent Litigation in China

11:30 AM Joinder, Consolidated Trials, Venue Transfer, and Multi-District Litigation

Noon Pick Up Boxed Lunches

12:15 PM The Physics of Fights

1:15 PM Break

TRADEMARK AND COPYRIGHT

1:30 PM The Year in Copyright Law

2:30 PM Copyright in the Movie Industry

3:15 PM Break

3:30 PM How to Enforce a Trademark Without Going Viral

4:00 PM A: The Year in Trademark Law

B: Everything You Ever Wanted to Know About Partner Expectations (But Were Afraid to Ask)

5:00 PM Adjourn

EVENING EVENTS

5:00 PM Cocktail Party

6:00 PM 50th Anniversary Conference Dinner

TUESDAY, NOVEMBER 13, 2012

7:45 AM Breakfast Sessions

A: Guided Ethics Roundtables

B: America Invents Act Strategies

PATENT PROSECUTION

9:00 AM The Year in Patent Law

10:00 AM Break

10:15 AM Predictability as a Basis for Obviousness

11:00 Trial Practice Before the Patent Trial and Appeal Board

Noon PM Pick Up Boxed Lunches

12:15 PM Inequitable Conduct: Changed after Therasense? Under AIA? What Should I Be Doing?

1:15 PM Break

TECHNOLOGY, LICENSING, & IP RIGHTS

1:30 PM The Tail Wagging the Dog: Litigation's Unnatural Effects on Patent Prosecution

2:00 PM Patents, Standards, & Antitrust Law in Europe

2:45 PM Patent Monetization: A New Focus of Stakeholders

3:15 PM Break

3:30 PM When All That Twitters is Not Told: Ethical Considerations in Lawyers' Use of Social Media

4:00 PM Enterprise Approaches to Vetting and Licensing Open Source Software

5:00 PM Adjourn

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ATTORNEYS AND COUNSELORS

Program Details

MONDAY, NOVEMBER 12, 2012

7:45 - 8:45 a.m.

NETWORKING BREAKFAST hosted by Dallas/Fort Worth Women in IP

Valencia Martin-Wallace, Assistant Deputy Commissioner for Patent Operations,
U.S. Patent and Trademark Office (Alexandria, Virginia)

8:45 - 9:00 a.m.

Break

PATENT LITIGATION

MODULE CHAIR: **Theodore Stevenson III** • *McKool Smith, PC* (Dallas, Texas)

9:00 - 10:00 AM

APPELLATE ADVOCACY AT THE FEDERAL CIRCUIT

(1.0 hour)

Fourteen thousand words and fifteen minutes don't go as far as they used to. What can appellate advocates do to craft the most effective appeal possible, given the limitations placed by the Court? What is the role of oral argument in the decision-making process, and how can it best be used? What will be the hot issues for the Federal Circuit over the next few years?

Moderator:

Theodore Stevenson III, *McKool Smith, PC* (Dallas, Texas)

Panelists:

The Honorable Randall R. Rader, Chief Judge, U.S. Court of Appeals for the Federal Circuit (Washington, D.C.)

Edward Reines, Partner, *Weil, Gotshal & Manges LLP* (Redwood Shores, California)

John M. Whealan, Associate Dean for Intellectual Property Law Studies, *The George Washington University Law School* (Washington, D.C.)

10:00 - 10:30 AM

THE MARSHALL DOCKET

(0.5 hour)

It has been approximately one year since Judge Gilstrap took over the Marshall docket, the busiest patent docket in the country. Judge Gilstrap will discuss his experiences so far, how he is handling his dockets, practices and procedures he has put in place, and what the future holds.

Moderator:

Samuel Baxter, Principal, *McKool Smith, PC* (Marshall, Texas)

Panelist:

The Honorable Rodney Gilstrap, District Judge, U.S. District Court, Eastern District of Texas (Marshall, Texas)

10:30 - 10:45 AM

Break

10:45 - 11:30 AM

PATENT LITIGATION IN CHINA

(0.75 hour)

China's population has grown to over 1.3 billion. China now represents the second largest market for goods and services in the world. And more patent applications are being filed in China than in any other country in the world. In light of these trends, experts agree that China is becoming an important forum for patent infringement litigation. So, what is the future of patent litigation in China? What do foreign companies thinking about asserting patent rights in China need to know? How should foreign companies defend themselves against infringement claims in China? A leading patent infringement litigator in China will share substantive and practical insights into patent litigation practice in China.

Xu Jing, *King and Wood Mallesons* (Beijing, China)

Zunxuan (Digger) Chen, *Locke Lord LLP* (Dallas, Texas)

Chief Judge Yu Yu, *Shandong High People's Court* (Shandong Province, China)

11:30 AM - Noon

JOINDER, CONSOLIDATED TRIALS, VENUE TRANSFER, AND MULTI-DISTRICT LITIGATION

(0.5 hour)

The creation of 35 U.S.C. § 299 by the America Invents Act has changed the way multi-defendant patent cases are filed and tried. How are courts handling multi-defendant patent

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cases under the new law, what issues can be commonly tried, how has the new law affected 1404(a) transfer motions, and what is the future role of multi-district litigation procedures?

Chad Everingham, *Akin Gump Strauss Hauer & Feld LLP* (Longview, Texas)
(Former U.S. Magistrate Judge for the Eastern District of Texas, Marshall Division)

Noon - 12:15 PM

Pick Up Boxed Lunch

12:15 - 1:15 PM

THE PHYSICS OF FIGHTS

(1.0 hour)

One of the country's foremost mediators of high profile and intractable cases will challenge lawyers to serve their clients and the community better by focusing our considerable talents on recognizing and accommodating the forces inherent in an adversarial system that impede the negotiation of resolutions.

Antonio Piazza, *Mediated Negotiations* (San Francisco, California)

1:15 - 1:30 PM

Break

TRADEMARK & COPYRIGHT ISSUES

MODULE CHAIR: **Rob King** • *Silicon Laboratories* (Austin, Texas)

1:30 - 2:30 PM

THE YEAR IN COPYRIGHT LAW

(1.0 hour including
0.25 hour of ethics,
1:30-1:45)

A review of 2011-12 cases and controversies involving copyright law, including issues related to fair use, digital media, remedies, and ethical considerations facing copyright practitioners.

Kevin J. Meek, *Baker Botts LLP* (Austin, Texas)

2:30 - 3:15 PM

COPYRIGHT IN THE MOVIE INDUSTRY

(0.75 hour)

All movies start with an original script or script from a book. Who owns those rights? Who can sell or license them? Are movie concepts protectable? How do production companies treat unsolicited scripts and why? What is in the public domain? What is fair use? What about using music in film? Or still photos and video clips in documentary films? How do you protect the film itself, prequels, sequels, spin-offs and merchandise? What is the interplay among copyright, First Amendment rights, the right to privacy, and rights of publicity?

Lawrence A. Waks, *Jackson Walker LLP* (Austin, Texas)

3:15 - 3:30 PM

Break

3:30 - 4:00 PM

HOW TO ENFORCE A TRADEMARK WITHOUT GOING VIRAL

(0.5 hour)

Online backlash is the influenza of today's business world – easy to catch, virulent, and hard to stop. Your client is eager to enforce its marks, but you don't want them lambasted on every blog and Twitter feed. How do you zealously protect your client's marks without creating a PR nightmare? We will discuss particularly egregious examples of enforcements gone viral and how to avoid spreading the online backlash flu.

Justin S. Cohen, *Thompson & Knight LLP* (Dallas, Texas)

4:00 - 5:00 PM

CONCURRENT SESSIONS

(1.0 hour)

A: THE YEAR IN TRADEMARK LAW

A review of 2011-12 cases and controversies involving trademark law, including *Christian Louboutin* and the doctrine of aesthetic functionality.

Molly Richard, *Richard Law Group* (Dallas, Texas)

B: EVERYTHING YOU EVER WANTED TO KNOW ABOUT PARTNER EXPECTATIONS (BUT WERE AFRAID TO ASK)

If you've ever wondered what your supervising attorney wants from you... or what makes an associate stand out from the pack... or how to make yourself indispensable... then you are not alone. Every associate wants to know, but no one wants to ask for fear of seeming like a weak link. A panel of partners will speak candidly about what supervising attorneys expect from young associates – no mind-reading required.

Stacey G. White, *Alston & Bird LLP* (Dallas, Texas)

Max Ciccarelli, *Thompson & Knight LLP* (Dallas, Texas)

Elizabeth A. Evert, *Hitchcock Evert LLP* (Dallas, Texas)

Wei Wei Jeang, *Andrews Kurth* (Dallas, Texas)

5:00 PM – Reception

Terrace of The Center for American and International Law

6:00 PM – 50th Anniversary Dinner

Hall of Flags

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**“The Implications of a Regional
U.S. Patent and Trademark
Office in Dallas for
Texas Patent Attorneys”**

*Azam Khan, Deputy Chief of Staff,
United States Patent and Trademark Office
(Alexandria, VA)*



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PATENT PROSECUTION

MODULE CHAIR: **Ira Matsil** • *Slater & Matsil, LLP* (Dallas, Texas)

TUESDAY, NOVEMBER 13, 2012

7:45 - 8:45 AM

CONCURRENT BREAKFAST SESSIONS (breakfast available at 7:30 A.M.)

A: GUIDED ETHICS ROUNDTABLES (1.0 hr. ethics)

(1.0 hour ethics) – Join one of our guided roundtable discussions addressing modern-day ethical issues confronting intellectual property attorneys.

Moderator:

Paul V. Storm, *Gardere Wynne Sewell LLP* (Dallas, TX)

Facilitators:

Stewart Mesher, *Conley Rose, P.C.* (Austin, Texas)

William McSpadden, *Baker & McKenzie LLP* (Dallas, Texas)

Duncan Williams, *Clear Channel Communications* (San Antonio, Texas)

B: AMERICA INVENTS ACT STRATEGIES

(1.0 hour) – This presentation will focus on identifying best strategies for your clients when contemplating the new law in the America Invents Act, such as deciding whether to file applications governed by the old law or the new law, identifying when an inventor should publish and when an inventor should file an application, and how the recommended timing of filing an application may differ from past practices.

Bradley Williams, *Baker Botts LLP* (Dallas, Texas)

8:45 - 9:00 AM

Break

9:00 - 10:00 AM

THE YEAR IN PATENT LAW

(1.0 hour)

A review of 2010-2011 patent law decisions by the U.S. Supreme Court and the Federal Circuit.

Gale R. "Pete" Peterson, *Cox Smith & Matthews Incorporated* (San Antonio, Texas)

10:00 - 10:15 AM

Break

10:15 - 11:00 AM

PREDICTABILITY AS A BASIS FOR OBVIOUSNESS

(0.75 hour)

The concept of "predictability" plays a larger role in nonobviousness determinations after *KSR v. Teleflex*. This presentation will detail this larger role in both court and the USPTO decisions and explore whether a substantive change in the nonobviousness standard has accompanied this increased use of the concept of predictability.

Christopher A. Cotropia, *University of Richmond School of Law* (Richmond, Virginia)

11:00 - Noon

TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

(1.0 hour)

This panel will provide first impressions of *inter partes* review, which becomes available on September 16, 2012. Topics include procedural considerations, such as surprises, pitfalls, and how to use procedure to make it easier for the Board to find in favor of your client, as well as strategic considerations, such as factors to consider when deciding whether to use *inter partes* review and the impact of *inter partes* review on parallel litigation.

Moderator:

David M. O'Dell, *Haynes and Boone LLP* (Richardson, Texas)

Panelists:

The Honorable Michael Tierney, *Lead Judge, Trial Division, Patent Trial and Appeal Board, U.S. Patent and Trademark Office* (Alexandria, Virginia)

Thomas King, *Haynes and Boone LLP* (Irvine, California)

Kevin Kudlac, *Weil, Gotshal & Manges LLP* (Houston, Texas)

Noon - 12:15 PM

Pick Up Boxed Lunches

12:15 - 1:15 PM

INEQUITABLE CONDUCT: CHANGED UNDER AIA? THERASENSE? WHAT SHOULD I BE DOING?

(1.0 hour ethics)

In this presentation we'll first look at the effect of the Federal Circuit's decision in *Therasense* on the duty of candor and its enforcement. Those who predicted *Therasense* would end claims of inequitable conduct may be dismayed, but so may those who predicted *Therasense* would be ignored. Also, will *Therasense* be the last word on point, or will the Supreme Court get involved? We'll next look at the meaning of the duty of candor in view of the provisions in the America Invents Act striking "intent to deceive" from the governing statutes. Last, we'll look at what really happens to the duty of candor in and after a supplemental examination. Amidst all of this commotion, what should your duty of candor look like?

Thomas L. Irving, *Finnegan, Henderson, Farabow, Garrett & Dunner, LLP* (Washington, D.C.)

TECHNOLOGY, LICENSING, & IP RIGHTS

MODULE CHAIR: **Marc Hubbard** • *Hubbard Law PLLC* (Richardson, Texas)

1:30 - 2:00 PM

(0.5 hour)

THE TAIL WAGGING THE DOG: LITIGATION'S UNNATURAL EFFECTS ON PATENT PROSECUTION

Litigators are increasingly dictating the “dos and don'ts” of patent prosecution. However, those dictates often run counter to a client's interests in building portfolios by obtaining patents quickly at a reasonable cost. Should the litigation tail wag the prosecution dog? And what can you do to balance those interests and restore natural order?

Colin Cahoon, *Carstens & Cahoon, LLP* (Dallas, Texas)

2:00 - 2:45 PM

(0.75 hour)

PATENTS, STANDARDS, AND ANTITRUST LAW IN EUROPE

Standards organizations require commitments from member companies to license patents that are essential to implement a standard developed by that organization. Such license commitments often require fair, reasonable, and non-discriminatory (FRAND) terms. Is a request for injunctive relief or exclusion order compatible with a FRAND commitment? What is the relationship of patents, standards, and antitrust law in Europe?

Mark W. Nelson, *Cleary Gottlieb Steen & Hamilton LLP* (Washington, D.C.)

2:45 - 3:15 PM

(0.5 hour)

PATENT MONETIZATION: A NEW FOCUS OF STAKEHOLDERS

Public company shareholders, venture capitalists, private equity investors, and even university trustees are loudly demanding that the entities they own or oversee start deriving value from the patent portfolios they have been building. This presentation will discuss the large variety of options available to them to meet their fiduciary duties.

John C. Lindgren, *MOSAID Technologies Inc.* (Dallas, Texas)

3:15 - 3:30 PM

Break

3:30 - 4:00 PM

(0.5 hour ethics)

WHEN ALL THAT TWITTERS IS NOT TOLD: ETHICAL CONSIDERATIONS IN LAWYERS' USE OF SOCIAL MEDIA

Social media are irrevocably altering the legal landscape, impacting traditional notions of jurisdiction, procedure, causes of action, discovery, and evidence. Using the American experience by way of illustration, this presentation will examine the ethical quandaries and considerations presented by lawyers' use of social networking. From an attorney's duty to provide reasonably competent representation to communicating with witnesses, maintaining client confidences, discovery and presentation of evidence, and jury selection and monitoring, the intersection of existing rules of professional conduct and emerging technologies is fertile ground for discussion. This presentation will analyze ethics opinions and decisions from bar associations and courts across the United States, as well as weigh in on the debate whether social media technologies mandate implementing new ethical rules.

John G. Browning, *Lewis Brisbois Bisgaard & Smith, LLP* (Dallas, Texas)

4:00 - 5:00 PM

(1.0 hour)

ENTERPRISE APPROACHES TO VETTING AND LICENSING OPEN SOURCE SOFTWARE

Open source software (OSS) has crept into every aspect of the software, computing, and services business. It has created benefits and opportunities while also posing challenges, including the need to track and control the use of OSS. This presentation will highlight problems a company faces with identification, management, and control of OSS, with its many different license agreements and versions. The presenters will compare and contrast the approach taken by two large companies with respect to OSS and discuss online systems that have been implemented to track and control OSS. They will identify and discuss minimum control processes all software and computer companies using OSS should consider.

Panelists:

Allen Lineberry, *Siemens Product Lifecycle Management Software, Inc.* (Plano, Texas)

Steven L. Page, *HP Enterprise Services* (Plano, Texas)

5:00 PM

Adjourn

Celebrating 50 Years

The Center for American and International Law presented its first conference on IP Law in 1963. In the early years, D. Carl Richards chaired the Institute on Patent Law (as the conference was called then). Later on, V. Bryan Medlock chaired or co-chaired the conferences for many years. Members of today's Institute for Law and Technology are grateful to these leaders and to the many others who co-chaired conferences, organized sessions, or made presentations.



◀ **Chair Robert W. Mayer of Dallas introduces a speaker at the 6th Conference.**



▶ **United States Commissioner of Patents W. E. Schuyler, Jr., addresses the 9th Conference.**



▲ **United States Commissioner of Patents Robert Gottschalk (right) visits with Conference Chair Carl Richards before addressing the 11th Conference.**



▲ **United States Commissioner of Patents C. Marshall Dann (left) confers with Carl Richards before speaking at the 13th Conference.**

of IP Law Conferences

▼ Charles S. Cotropia (left) was Co-Chair of the 34th Conference, at which Scott Burt (right) was a speaker.



▲ V. Bryan Medlock served as Chair or Co-Chair of the Institute on Patent Law for many years.



▲ At the 49th Conference, Judge Barbara Lynn explains to conference Co-Chair Phillip Philbin the pilot program Congress created to give district court judges greater expertise in patent cases.



▲ Hilda Galvan served as Co-Chair of the 49th Conference.

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GENERAL INFORMATION

CANCELLATION POLICY – A cancellation fee of \$50 will be charged upon receipt of written notice by October 29, 2012 (Email cburkel@cailaw.org). After this date, no refunds, but substitution of attendees for this program will be permitted. Registrants not entitled to a refund will receive the course material.

HOTEL – The cost of accommodations is not included in the tuition. We have arranged for a special rate of \$139 a night (available through Oct. 29): http://bit.ly/IPLaw_2012_hotel

MCLE CREDIT – This course has been approved by the State Bar of Texas for 17.5 hours of credit, including 2.75 hours of ethics; Course ID Number: 901252983. Sign-in sheets and/or certificates of attendance will be available for ALL states.

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Conference materials (non attendees only)

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