

## CHAIR'S COMMENTS...



Jeffrey R. Kuester  
Thomas, Kayden, Horstemeyer & Risley, LLP  
Atlanta, GA

Are you busy? Silly question, right? Everyone seems to be very busy around the holidays, and the Intellectual Property Law Section has been no different. In addition to providing a variety of well-attended recent events, the Section has planned a Mid-Year Luncheon on January 10, 2003, at 11:45 a.m., at the Swissôtel, followed by a CLE Seminar from 1:30 p.m. to 5:00

p.m. Plans are underway to provide a panel discussion at the Luncheon, entitled "Pioneers in IP: A Female Perspective," and the CLE Seminar will include the always popular Recent Updates in Patent, Copyright and Trademark law. For registration information, please refer to your State Bar Midyear Meeting brochure, which is also online at [www.gabar.org](http://www.gabar.org).

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One of the most significant events of the year took place in Puerto Vallarta, Mexico on November 13<sup>th</sup> – 17<sup>th</sup> as the IP Section once again combined forces with the Entertainment Law Section. In addition to hearing outstanding CLE presentations, attendees were able to enjoy the resort and surroundings with friends and colleagues. We are thankful to our sponsors of the event, InteCap and Register.com. For those of you who are not familiar with their services, the following information is provided for your benefit.

**InteCap** is an international consulting firm dedicated to advising clients on economic, valuation and strategy issues related to intellectual property (IP) and complex commercial disputes. Drawing upon multiple disciplines, their core competency is to transform complex issues and information into concise, logical models and frameworks that their clients can use to make better business decisions.

**Register.com Corporate Services** is committed to helping large corporations manage and protect their brands and trademarks on the Internet. Corporate Services helps companies register and renew their domain names worldwide and provides a wide range of audit, monitoring and professional services to assist companies to create, maintain and protect their online presence. Every day, Corporate Services delivers solutions to lawyers, trademark attorneys, famous personalities, brand managers and industry associations. Clients include 61 of the top 100 world's most valuable brands as valued by Interbrand in 2002.

Finally, if the State Bar does not have your correct e-mail address, please go online and provide it at <http://www.gabar.org/addchange.asp>. The State Bar protects your address and only uses it for official announcements and other important information. It is very important that the State Bar have your e-mail address, and you will otherwise miss important Section announcements.

Thanks again for your interest in our Section!



## EDITOR'S NOTES

by N. Andrew Crain

Greetings and welcome to the Fall issue of the Intellectual Property Law Section Newsletter, *A NOVEL EXPRESSION OF CONFUSION*. You will probably notice at least one substantial difference in this issue from all other past issues of the IP Section's Newsletter—more pictures.

The IP Section recently purchased a digital camera just before the Summer issue went to press. Because of the timing, we were not able to include many pictures in the Summer issue, but you will quickly notice, as you thumb through this issue, that it is full of pictures from recent IP Section events. Look closely to see if your picture made it in the issue. Although our budget limits us to black and white printing only, go to the Section's web site at [www.georgiaip.org](http://www.georgiaip.org) to see the pictures in color, especially those sunset pictures on pages 4 and 5.

We were able to include brief reports on the Stick Licensing CLE held on September 12, 2002 (page 3), the Electronic Trademark Filings CLE held on October 10, 2002 (page 13), and the Antitrust and Patent Law CLE held on October 2, 2002 (page 14).

This issue contains two substantive intellectual property articles. The first is a piece on a recent copyright case dealing with the interplay of the defenses of independent creation and unreasonable delay. Thanks to John Herman and Ryan Walsh for writing this interesting case summary.

Nora Tocups authored the second article. Nora's article deals with the Patent and Trademark Office's 21st Century Strategic Plan. Nora offers a nice summary and comments as to the likely effects of some of the proposed changes.

Nora also submitted a news piece that hopefully will become a regular section in future newsletters. The article, entitled "Nora's Notes," is essentially a news update of the comings and goings of IP Section members. As people move on and up, we thought it would be interesting to report those changes to the Section so that you can keep up with a friend, learn about new opportunities, or just learn a little something about the personal sides of the IP Section's members. Thus, if you have some news (or other interesting information) that you would like to have included in a future issue, please email the information to Section Liaison, Lesley Smith, at [lesley@gabar.org](mailto:lesley@gabar.org), and Lesley will forward it on to Nora.

I would like to thank Cynthia Lee, who graciously agreed to assist in laying out and editing the Newsletter. Cynthia contributed to the Newsletter by writing two of the event recaps, including the Stick Licensing and the Trademarks CLE articles (pages 3 and 13 respectively).

## CALENDAR OF EVENTS

Mid-Year Meeting .....	January 10, 2003
10:30 a.m. to 11:45 a.m. - Executive Committee Meeting	
11:45 a.m. to 1:15 p.m. - Luncheon with Officer Nominations and Panel Discussion	
1:30 p.m. to 5:00 p.m. - IP CLE Seminar with Trademark, Copyright & Patent Updates	
<b>REGISTRATION CUT-OFF - JANUARY 3, 2003</b>	
Patent Roundtable .....	Winter 2003
Women in IP Spotlight .....	Spring 2003
Trademark Luncheon: Domain Name/Internet Issues .....	February 2003
Mardi Gras Section Social .....	March 2003
Executive Committee Meeting .....	March 5, 2003
Patent Roundtable .....	Spring 2003
Trademark Luncheon .....	April 2003
Patent Roundtable .....	Summer 2003

Thanks also to Bill Heinze, who submitted the short discussion on application publications. Finally, thanks to Mrs. Theresa James for her outstanding work in helping to put this Newsletter together. Theresa did a great job in creating the Puerto Vallarta picture pages.

If you have an article that you would like to have published in a future issue of the IP Section Newsletter, please contact me at [andrew.crain@tkhr.com](mailto:andrew.crain@tkhr.com). Submission deadlines for future issues are as follows:

Winter issue – January 15, 2003  
Spring issue – April 15, 2003

We will also consider reprinting timely and interesting articles recently published in other periodicals if permission is obtained from the previously publishing periodical. Please contact me for submission guidelines.

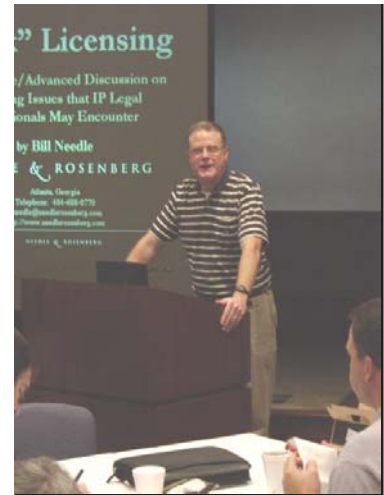
*Andrew is an associate with the intellectual property law firm of Thomas, Kayden, Horstemeyer & Risley, LLP. Andrew's practice is concentrated on patent and trademark preparation and prosecution and related litigation in a wide range of electrical and electromechanical arts, including computers, software, and telecommunications.*

## SECTION CLE ON “STICK” LICENSING

by Cynthia J. Lee



On September 12, 2002, the Intellectual Property Law Section sponsored a luncheon and seminar entitled “Stick Licensing,” led by William H. Needle of Needle & Rosenberg (pictured in top left photo). Mr. Needle has practiced exclusively in the areas of patent, trademark, copyright and trade secret law for 31 years. The seminar was coordinated by Frank Landgraff of GE Power Systems (pictured in top right photo), who serves as the Licensing Committee Chair of the Section.



The event was the first IP Section event held at the new Georgia State Bar headquarters on Marietta Street in downtown Atlanta. Approximately 65 members of the IP Section attended, receiving one hour of CLE credit.



Mr. Needle focused the discussion on “stick” licensing, as opposed to “carrot” licensing, or incentive licensing, where non-infringing licensees are given access to patented technology, thereby opening new markets and introducing product



lines. “Stick” licensing occurs, Mr. Needle explained, when a potential licensee is already taking advantage of the patented technology, *i.e.*, allegedly infringing a patent. Attendees received valuable tips on how to operate as both the potential licensor and the potential licensee in this situation.



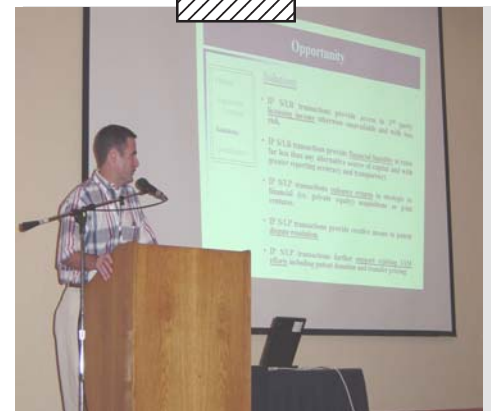
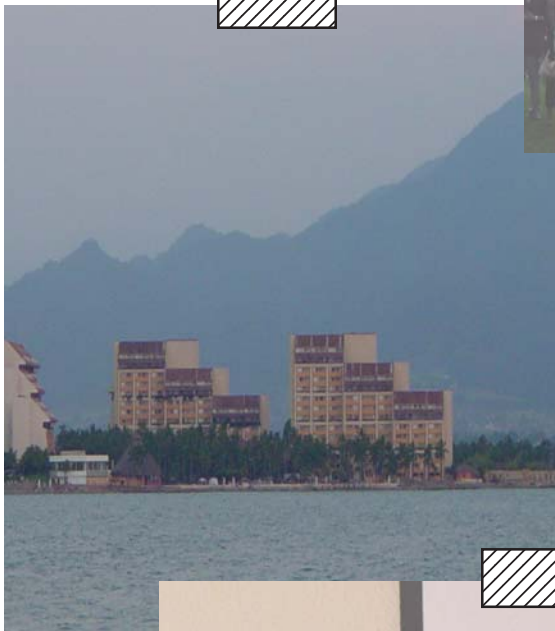
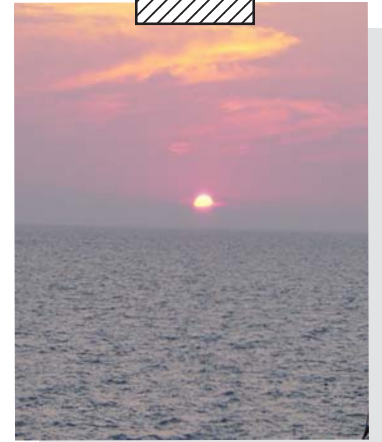
The event included a PowerPoint presentation, with accompanying copies of the slides given to the attendees in a notebook. Please contact Mr. Needle at [bneedle@needlerosenberg.com](mailto:bneedle@needlerosenberg.com) if you would like a copy of the PowerPoint presentation.

After the presentation, attendees were given an opportunity to ask questions and discuss the issues presented. Overall, it was an informative session and a nice opportunity for members of the Section to get together.



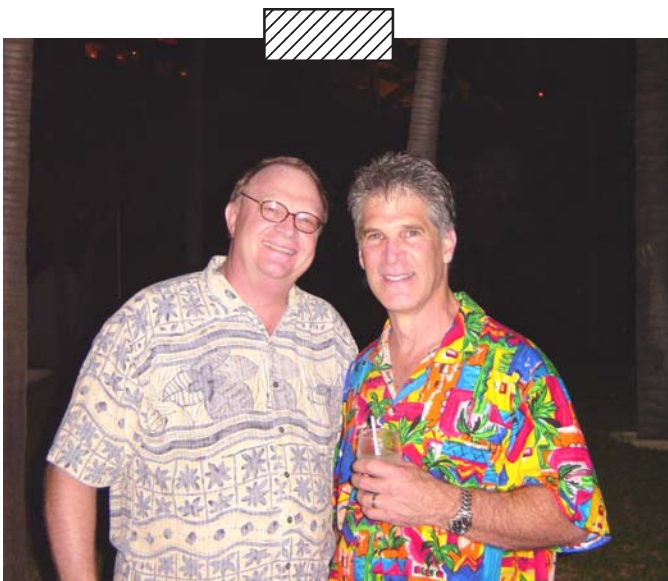
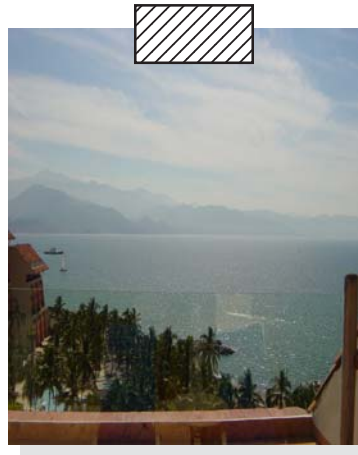
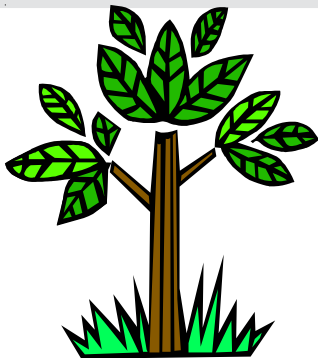
# PUERTO

## November



# VALLARTA

11-14, 2002



**WHEN IS YOUR COPYRIGHTED WORK  
REALLY NOT YOUR COPYRIGHTED WORK?**

***The Interplay Between the Defense of Independent Creation and  
Unreasonable Delay in Calhoun v. C.A. Music, Inc., et al.***

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Judge Stanley Birch of the Eleventh Circuit Court of Appeals stated that the case of Calhoun v. C.A. Music, Inc., 298 F.3d 1228 (11th Cir. 2002), presented the “perfect storm” in which a plaintiff – after two decades of silence – brought claims of copyright infringement against 32 defendants. Even though the facts of the C.A. Music case were unique, the Eleventh Circuit’s decision analyzes the test for independent creation even in a case where the works at issue were strikingly similar.

**Factual Background**

On July 19, 1999, Ronald G. Calhoun filed a complaint in the United States District Court for the Southern District of Georgia against a number of music publishing houses and record labels alleging, among other things, copyright infringement. The essence of Mr. Calhoun’s claims centered on the popular Christian hymn “Emmanuel,” composed by Bob McGee. According to Mr. Calhoun, “Emmanuel” constitutes unlawful copying of Mr. Calhoun’s hymn “Before His Eyes.” C.A. Music, Inc. was the copyright owner and licensor of “Emmanuel.”

Although copyright infringement suits involving allegedly similar musical works are not uncommon, Mr. Calhoun’s case was unusual for a number of reasons. First, the delay between the first alleged infringement and the filing of a lawsuit was lengthy. Mr. Calhoun alleged to have authored “Before His Eyes” in 1969. On the other hand, “Emmanuel” was created by the Reverend Bob McGee in 1976, approximately twenty-three years before Mr. Calhoun first filed suit.

Second, the factual record in the case demonstrated that Rev. McGee did not have access to the song “Before His Eyes” prior to 1976. Mr. Calhoun wrote “Before His Eyes” while living in Georgia, and the song received minimal public exposure, even in the southeastern United States (Mr. Calhoun received \$11 in royalties). Rev. McGee wrote “Emmanuel” in 1976 during a church service at the King’s Temple Church in Seattle, Washington. Several independent witnesses corroborated Rev. McGee’s recollection of events, confirming McGee’s creation of the song during the service without the use of sheet music, hymnals, records, tapes, versions or lead music of any other songs. Mr. Calhoun failed to provide any evidence that “Before His Eyes” was ever played or broadcast in the Pacific Northwest between 1969 and 1976.

Third, Emmanuel has been one of the most popular hymns in major Christian denominations throughout the past two decades. “Emmanuel” appears in many hymnals of the major Christian denominations, including hymnals of the Baptist, Methodist, and Nazarene religions. For much of the 1980s and 1990s, “Emmanuel” has been ranked in the top twenty requested songs rated by Christian Copyright Licensing, Inc. (“CCLI”), a copyright clearinghouse company that monitors and reports licensing transactions for Christian songs.

Further, following the creation of “Before His Eyes,” Mr. Calhoun held a number of jobs relating to Christian churches. Most importantly, from 1989 to 1998, Mr. Calhoun was a part-time organist at a United Methodist Church. During that time, Mr. Calhoun played for choir rehearsals three times a week while using hymnals that included “Emmanuel.” Despite the use of these hymnals and the popularity of “Emmanuel,” Mr. Calhoun denied discovering “Emmanuel” until 1997, less than three years before filing suit.

**The Lawsuit**

Following almost two years of discovery, the defendants moved for summary judgment on a number of grounds, including the absence of reasonable access, the lack of substantial similarity, independent creation, violation of the statute of limitations, and laches. The district court granted the defendants’ motion, holding that the evidence was insufficient to prove either access or substantial similarity.

The Eleventh Circuit affirmed the district court’s order, albeit on slightly different grounds. The majority opinion held that the district court erred in finding that the songs were not substantially similar — the appellate court found that the songs are actually “strikingly similar” — but that there was no genuine issue of material fact regarding McGee’s independent creation of the song “Emmanuel.” The opinion also included a discerning concurrence by Judge Birch regarding the intriguing confluence of unreasonable delay and independent creation.

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# A NOVEL EXPRESSION OF CONFUSION

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## **Possible Defenses**

As noted by the majority opinion, proving a copyright infringement claim essentially requires evidence of (1) a valid copyright and (2) copying of original elements of the copyrighted work.<sup>1</sup> In the absence of direct proof of copying, a presumption of copying can be created through proof (i) that the original elements of a work are substantially similar and (ii) that the defendant had access to the allegedly infringed work.<sup>2</sup> A plaintiff can overcome the absence of access, however, if it can show that the two works at issue are “strikingly similar.”<sup>3</sup> Nonetheless, proof of independent creation of the allegedly infringed work can overcome a presumption of copying, regardless of the degree of similarity.<sup>4</sup>

The factual circumstances at issue in the C.A. Music case provided defense counsel with numerous avenues to defend against Mr. Calhoun’s copyright infringement claim at the summary judgment stage.

Among other arguments, the defendants argued that Rev. McGee did not have access to “Before His Eyes” prior to creating “Emmanuel” in 1976. The fact that the two songs were written almost 2500 miles apart in a time before cable television and the Internet, combined with the fact that “Before His Eyes” received extremely little exposure to the public, lent support to the defendants’ argument regarding access. By demonstrating the absence of access, the defendants hoped to undermine Mr. Calhoun’s efforts to show substantial similarity.

The circumstances of the case also allowed the defendants to raise the issue of independent creation. The record contained significant evidence that Rev. McGee created “Emmanuel” during a service at the King’s Temple Church. Members of the congregation corroborated under oath Rev. McGee’s claims that he created the song without using any sheet music, hymnals, tapes, or other possible forms of support. Mr. Calhoun failed to produce any evidence to contradict this sworn testimony. Evidence of independent creation could also defeat Mr. Calhoun’s claims regardless of the songs’ possible similarities.

The defendants also argued that Mr. Calhoun’s unreasonable delay should result in summary judgment on the grounds of laches or in violation of the Copyright Act’s three-year statute of limitations. The statute of limitations argument is complicated because there is a split among the circuits regarding the manner in which the statute of limitations defense should be applied. The Seventh Circuit subscribes to the continuing tort rule, which permits a plaintiff to bring suit within three years of the last act of infringement and reach back to any related previous acts of infringement.<sup>5</sup> The modified continuing tort theory, used by the Second, Fourth, and Ninth Circuits, allows a claim if there has been some act of infringement within the past three years, but bars the recovery of monetary damages for acts occurring more than three years prior to the filing of the suit.<sup>6</sup> The Fifth Circuit applies the discovery rule, which bars

copyright infringement cases if the plaintiff knew or should have known of the claim more than three years prior to bringing suit. At the time of the Calhoun case, the Eleventh Circuit had not yet opined on the issue.

The circumstances strongly suggested that Mr. Calhoun knew or should have known of the existence of “Emmanuel” more than three years prior to the initiation of the lawsuit. The popularity of the song went unchallenged, as did the fact that Mr. Calhoun had used a hymnal containing “Emmanuel” during his eleven years of service as a church organist. In addition, Mr. Calhoun never attempted to register a work before seeking a copyright registration in 1990 for “Before His Eyes” — only one year after he began serving as a church organist at the United Methodist Church.

Finally, the defendants also invoked the equitable doctrine of laches because of the prejudice that resulted from the extraordinary delay between the creation of the song “Emmanuel” and the filing of the lawsuit. The invocation of laches as a defense in a copyright infringement suit was an issue of first impression in the Eleventh Circuit.

Using analogous trademark infringement cases and cases from other circuits, defendants argued that Mr. Calhoun should have learned of his alleged claim as early as 1976 — when Bob McGee wrote his song “Emmanuel” — and certainly by 1984 when the song “Emmanuel” was licensed quite literally to churches around the world. Thus, the length of Appellant’s delay could be as long as 23 years, likely 15 years, and 11 years at a minimum. Defendants also pointed to the district court’s finding that, had Appellant exercised an “iota of diligence,” he would have discovered his alleged claim earlier.

## **Eleventh Circuit Opinion**

As a starting point, the Eleventh Circuit stated that “even a casual comparison of the two compositions compels the conclusion that the two compositions are practically identical.”<sup>7</sup> Thus, the Court found the songs to be “strikingly similar.”

The Court, however, examined the defendants’ claim of independent creation, stating that defendants could fully negate any claim of infringement if they could show that Rev. McGee independently created “Emmanuel.” Once defendants’ introduced evidence of independent creation, Mr. Calhoun was forced to prove that Rev. McGee had in fact copied “Before His Eyes.”<sup>8</sup>

As noted above, defendants introduced evidence from both Rev. McGee and members of Rev. McGee’s congregation stating that Rev. McGee independently created “Emmanuel” during a church service in 1976. Mr. Calhoun did not offer any evidence to contradict this testimony. This evidence, properly considered in connection with Mr. Calhoun’s failure to prove that Rev. McGee

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had access to “Before His Eyes” prior to 1976, convinced the Eleventh Circuit that the district court did not err in granting summary judgment for defendants.

Although the majority opinion did not address the parties’ contentions regarding unreasonable delay or laches, Judge Birch filed a separate concurrence to address this issue. Judge Birch stated that he believed unreasonable delay provided another basis for the district court’s holding in his noteworthy concurrence. As Judge Birch stated, “Whether unreasonable delay may bar a claim of copyright infringement where there is considerable delay in filing suit and a bona fide claim of independent creation exists is globally one of first impression . . .” Judge Birch was quick to stress, however, that he was not applying a laches analysis, as defendants had done in their summary judgment motion and again on appeal. Rather, Judge Birch treated this case as a declaratory judgment action where a composer of a musical work claims his work is identical to a subsequent composer’s musical work and where a legitimate claim of independent creation is asserted.

Judge Birch concluded that the first author must not unreasonably delay in his assertion of copyright where he seeks a judicial determination of the originality of the subsequent author’s creation. Citing analogous cases involving putative co-authorship, Judge Birch analyzed (1) the period of delay; (2) whether the delay was excusable; and (3) potential prejudice to the defendants.

While considering the three year statute of limitations period for copyright infringement, Judge Birch found that Mr. Calhoun’s delay — which ranged from either 23 years (from the date “Emmanuel” was written) to 13 years (from the time it was licensed to the world) — was unreasonable. With respect to the second variable, Judge Birch looked to examples of permissible delay often cited in the context of equitable tolling, including the need to exhaust administrative remedies, the need for additional time to determine whether the infringement justifies the cost of litigation, and the need for additional time to evaluate the extent of the infringement. Judge Birch found that Mr. Calhoun’s sole claim that he was unaware that “Emmanuel” existed was insufficient to excuse the lengthy delay.

Finally, Judge Birch found that C.A. Music, Rev. McGee’s assignee, had relied on the validity of the copyright in “Emmanuel” and invested a substantial amount of time and money in the licensing of this work. As a result, defendants could demonstrate prejudice by showing that they would not have done so had they been aware of Mr. Calhoun’s claims of ownership. Thus, in Judge Birch’s eyes, the district court’s decision to grant summary judgment could have been affirmed solely on the basis of unreasonable delay.

Although there can be little doubt that the C.A. Music case involved fairly unique factual circumstances, this case nonetheless provides a good example of the many possible defenses available to a

defendant in a copyright infringement action involving a musical work. Defendants should not hesitate to reach deep into this quiver of defenses — even to the defense of unreasonable delay — if they feel the particular circumstances may warrant them.

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<sup>1</sup> Feist Publications, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 361 (1990).

<sup>2</sup> Original Appalachian Artworks, Inc. v. Toy Loft, 684 F.2d 821, 829 (11th Cir. 1982).

<sup>3</sup> Ferguson v. Nat’l Broad. Co., 584 F.2d 111, 113 (5th Cir. 1978).

<sup>4</sup> Original Appalachian Artworks, 684 F.2d at 829.

<sup>5</sup> Taylor v. Meirick, 712 F.2d 1112 (7th Cir. 1983).

<sup>6</sup> See Stone v. Williams, 970 F.2d 1043 (2d Cir. 1992);

Hotaling v. Church of Jesus Christ Latter-Day Saints, 118 F.3d 199 (4th Cir. 1997); Roley v. New World Pictures, 19 F.3d 479 (9th Cir. 1994).

<sup>7</sup> Calhoun v. Lillenas Publishing, 298 F.3d 1228, 1232 (11th Cir. 2002).

<sup>8</sup> The Eleventh Circuit also pointed out that independent creation is not an affirmative defense, but rather “attempts to prove the opposite of Mr. Calhoun’s primary claim, i.e., copying by McGee.” See Calhoun, 298 F.3d at 1230 n.3.

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## *Did you know...*

*by William F. Heinze*

Under 35 U.S.C. Section 122(b)(2)(B)(iii)(viewable at <http://uscouse.house.gov/DOWNLOAD/35C11.doc>, an applicant who has made a non-publication request, but subsequently files a corresponding foreign application in a country (such as Canada) that requires 18 month publication, must notify the U.S. Patent and trademark Office (“PTO”) within 45 days of the foreign filing. The failure to provide such notice results in the abandonment of the application. However, such applications are subject to revival under MPEP Section 711.03(c)(III)(c)(viewable at <http://www.uspto.gov/web/offices/pac/mpep/documents/700.htm#sect711.03>), if the delay in submitting the notice was unintentional and a petition is filed with the \$1280 fee set forth in 37 CFR 1.17(m).

This section of the MPEP also notes that “since the Office cannot ascertain whether an application is abandoned [under these circumstances, it] may continue to process and examine the application. . . .” In fact, since foreign patent filings are not usually reviewed as part of the U.S. examination process, the PTO may never find out when an application goes abandoned under these circumstances. Nonetheless, relying on the Patent Office’s inability to identify the abandonment is quite risky since it could provide a clever defense counsel with fertile grounds to argue that any resulting patent should be declared invalid or unenforceable.

So, what’s a patent attorney to do? Always check the U.S. filing receipt for non-publication requests before filing a corresponding foreign application. Otherwise, be prepared to cough-up \$1280 and an embarrassing explanation for your client.

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# **A NOVEL EXPRESSION OF CONFUSION**

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## **LIFTING THE SIEGE OF THE USPTO: THE 21ST STRATEGIC PLAN**

*Including Comments on the Particular Proposed Changes  
to U.S. Patent Prosecution*

*by Nora Tocups*

The Executive Overview of the 21st Century Strategic Plan begins with the statement: “Today, the United States Patent and Trademark Office (USPTO) is under siege.” The Executive Overview describes the besiegers as including: the 7 million patent applications pending in the world’s examination pipeline, annual workload growth rate of 20 – 30 percent, increasingly complex technology, and demands from customers.

Congress is not listed as one of the USPTO’s besiegers – Congress does not have to lay siege to the USPTO to cause it problems. Congress allocates the fees the USPTO collects. Over the last 10 years, Congress has failed to return all of the collected fees to the USPTO. This practice has led some to call the non-allocated monies “diverted monies”. The Inventor’s Digest ID Online has gone so far as to call Congress’s action “pick pocketing” and “theft”. See “*Raw Deal or a Square Deal?*” by Joanne Hayes-Rines in the September/October 2002 INVENTOR’S DIGEST ID ONLINE magazine found at [www.inventorsdigest.com/magazine/freearicles/radeal.html](http://www.inventorsdigest.com/magazine/freearicles/radeal.html) (“Raw Deal”).

Among the reasons for the failure to return all of the collected fees to the USPTO is said to be Congress’s perception that the USPTO is mismanaged. *Id.* “[O]ne reason Congress has given for diversion is their lack of confidence in our ability to articulate a long-range business plan to address quality and pendency issues. That is what we attempted to accomplish in the 21st century strategic plan.” Comments of Director Rogan in the TRANSCRIPT OF A JULY 11TH, 2002 ON-LINE DISCUSSION, which is available at the USPTO website. Additional details of Congress’s perception of the USPTO may be found in the article entitled *Senate Committee Chides USPTO on Automation Spending*, authored by POPA News, and appearing in the Patent Cafe Magazine available at [www.patentcafe.com](http://www.patentcafe.com).

To end the siege and to change perceptions of mismanagement, on July 2, 2002 the USPTO presented a five-year “21st Century Strategic Plan” (“Strategic Plan”). Copies of the 350-page Strategic Plan may be obtained from [www.uspto.gov/web/offices/com/strat2001/index.html](http://www.uspto.gov/web/offices/com/strat2001/index.html).

### **THE AIM AND THEMES OF THE 21ST CENTURY STRATEGIC PLAN**

The aim of the Strategic Plan is to transform the USPTO into “a quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system.” The Plan has three strategic themes: agility; capability; and productivity.

- Agility: Address the 21st Century Economy by Becoming a More Agile Organization.
- Capability: Enhance Quality through Workforce and Process Improvement
- Productivity: Accelerate Processing Times Through Focused Examination

**AGILITY:** The USPTO is to become a more agile organization in a number of ways including automation. A trademark electronic file management system is to be developed so as to achieve e-Government operation on October 1, 2003. An operational patent system is to be developed to process patent applications electronically by October 1, 2004 including electronic image capture of all incoming and outgoing paper documents.

The USPTO will gain agility by greater reliance on the private sector or other intellectual property (IP) offices. Specifically, the agility is to be gained from “[c]ompetitively sourc[ing] classification and search functions and concentrat[ing] USPTO expertise as much as possible on its core government functions.” *Strategic Plan*, p. 6. The private sector or other IP offices will be used:

- to classify patent documents;
- to support national application and Patent Cooperation Treaty (PCT) search activities;
- to transition to a new global patent classification system; and
- to classify trademark goods/services and search design codes.

In addition, the USPTO is to become more agile by streamlining IP systems and strengthening IP rights around the world. Harmonization of IP laws will be promoted in the framework of the World Intellectual Property Organization (WIPO). Efforts will be made towards global convergence of patent standards. PCT treaty reform efforts will be accelerated. A universal electronic trademark application will be proposed by leveraging the US experience with electronic filing of trademark applications.

**CAPABILITY:** The USPTO is to change to a more capable organization by enhancement of quality through workforce and process improvements. Among the improvements is to be the restructuring of the USPTO by redirecting its resources to core examination activities. Search functions are to be carried out by the private sector or by other IP offices. The USPTO will certify and monitor the quality of the newly created searching authorities to ensure that patent searches provided by the private sector or other IP offices are complete and of high quality.

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**PRODUCTIVITY:** The USPTO is to become a more productive organization by accelerating processing times through focused examination.

This strategic plan, when fully implemented, would ensure a steady 18-month average pendency time in Patents – by far the fastest in the world – and a 12-month pendency time in Trademarks. This will be accomplished through a radical redesign of the entire patent search and examination system based upon four examination tracks, greater reliance on commercial service providers, and variable, incentive-driven fees. Likewise, Trademarks will restructure the way it does business to be compatible with an e-Government environment.

*Strategic Plan*, p. 8.

The Strategic Plan sets fees so there are strong monetary incentives to limit a patent application to 50 pages and 20 claims. The fees also reflect a new two-part search and examination process for patent applications. The fee for filing a patent application is to be reduced, but a separate examination fee will be established.

The USPTO hopes to achieve greater examiner productivity by reducing an examiner's prior art search burden. Searches are to be carried out by searching authorities or by other IP offices. An accelerated patent examination option will be made available to applicants with priority processing so that pendency of a priority patent application is to be no longer than 12 months.

## **SELECTED SPECIFICS OF THE 21ST CENTURY STRATEGIC PLAN**

Two of the most radical changes proposed by the Strategic Plan are the patent fee increases and the Four-Tracks examination process.

### **Fee Increases**

One of the ways the USPTO proposes to become a more productive organization and provide lower pendency rates is to institute variable, incentive-driven fees. Some of the fee changes are proposed as follows:

- Fees for additional independent [more than 3] and total [more than 20] claims at progressive rates;
- A fee surcharge for additional pages of specification;
- A fee surcharge for excessive generational claims for priority under 35 USC 120, 121 and 365(c);
- A fee surcharge for presenting patentably indistinct claims in multiple applications;
- Increase of the fees for extensions of time;
- Increase of the fees due at issue and at all maintenance fee periods;

- Increase of the fees for an appeal to the Board of Patent Appeals and Interferences;
- Institution of a "4 track" application system and set fee discounts for applicants submitting various types of documentation and for independent inventors with moderate incomes;
- Establishment of a system for expediting certain applications; and
- Setting a surcharge for non-electronic document submission.

*See Strategic Plan*, Actions, Productivity, Shared Responsibility 1, Proposal to Restructure Patent Fees and Practices for Fiscal Years 2003 and 2004, p. 1 (FR-1).

### **The Four-Tracks Examination Process**

The USPTO proposes to move to a Four-Tracks examination process "to eliminate duplication of effort, leverage greater participation from the applicant community and public, improve the quality of our patents, and decrease processing time." *Strategic Plan*, Actions, Productivity, Pendency 2, Four-Tracks Patent Examination Process, p. 1 (P-01). In three of the four tracks, the search is conducted by an entity other than the USPTO, but the USPTO bases its examination on the submitted search. In the fourth track, the USPTO conducts the search and examination. Track 4, however, is limited to independent inventors of limited means. The description below of each track is abbreviated; additional details may be obtained from the Strategic Plan.

Track 1 –

#### **Applicant Submits a Certified Search Report**

Track 1 is referred as the basic track. Prior to requesting examination, the applicant supplies an International-Style Search Report (ISSR) from a certified search authority (CSS). The ISSR must identify on a claim-by-claim basis the most relevant X and Y references and explain the relevant section of references. Examination by the USPTO is based primarily on the art submitted by the applicant.

Track 2 –

#### **International Search Authority (ISA) Provides Search**

An applicant who files a PCT application may take advantage of Track 2 during the national phase of the application in the United States. Track 2 avoids duplication of effort by accepting the ISSR of the ISA under the PCT as the basis for examination of the application during the U.S. national phase.

Track 3 –

#### **Other IP Office Provides Positive Examination Results**

An applicant may choose to file an application in an IP office of a country (or the European Patent Office (EPO)) having a bilateral agreement with the United States (e.g., Japan, EPO, Germany, United Kingdom, Canada, or Australia). The applicant requests

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expedited examination by the other IP office, and may request delayed examination in the USPTO “such that the application will be searched and examination completed by the other IP office, prior to the examination by the USPTO.” *Id.* at 6. The prior art and allowed claims from the foreign counterpart application must be submitted in English to the USPTO. The conforming claims in the U.S. application would be examined by the USPTO only to the extent there would be a different patentability outcome due to a difference between U.S. and foreign law. Further, only narrowing amendments would be permitted.

Track 4 –  
USPTO Provides Search

Track 4 is limited to applicants who qualify as “microentities” as individuals of limited means. Applications in Track 4 would be processed in a manner similar to the current practice of search and examination by the USPTO.

### COMMENTS ON THE STRATEGIC PLAN

The Strategic Plan has been called “hot stuff”. *Hot News*. It has also been called “creative, bold, and comprehensive.” Letter dated July 17, 2002 from John R. Williamson, President of the Intellectual Property Owners organization to Director Rogan, (“Letter from IPO”) available for review at [www.ipo.org/2002/IPissues/Rogan](http://www.ipo.org/2002/IPissues/Rogan).

### Unhappiness about Patent Fee Increases

Not surprisingly, there has been general unhappiness about the proposed patent fee increases. The Inventors’ Digest Online (IDO) projects a 50% plus increase in patent fees to small entities filing basic applications. The IDO urges readers to take action regarding the increase.

“I urge you to contact your Congressman immediately and let him or her know that a 50% plus percent increase in patent fees is not in the nation’s interest.”

*Hot News*. The IDO further reports that the Internet has been flooded with analyses of how the new fees will dramatically increase patent costs. According to IDO, the Association of Patent Law Firms hosted a dial-in conference on July 25 to discuss the Strategic Plan. Bruce Bernstein of Greenblum Bernstein P.L.C. is quoted by IDO as saying that the Strategic Plan

“is designed, by the PTO’s own admission, to fundamentally modify the behavior of applicants. In time it will no doubt become known as a budget buster for many corporate patent departments. A patent application with 40 claims, with 10 independent, will cost \$13,282, almost eight times the present government fee of \$1,678 [for a large entity].”

A concern and fear that has been expressed about the fee increases is that their result is an “even bigger pool of money for Congress to divert.” This concern is expressed by Raoul Drapeau, an inventor

and a member of the Inventors’ Network of the Capital Area. Mr. Drapeau’s comments on the Strategic Plan may be read on-line at IDO under the subtitle *Legislative Alert*. Mr. Drapeau finds a “logical disconnect” between the Strategic Plan’s proposals to reduce expenses (by outsourcing certain functions, cutting the number of examiners, etc.) and to increase fees.

“Because of this logical disconnect, it seems to me that this Plan might just be an easy way to contribute to the current administration’s political objective of funding expensive new initiatives such as Homeland Security while simultaneously reducing taxes.”

*Id.*

Similar sentiments regarding the fee increases were expressed by the Intellectual Property Owners Association (IPO).

“The Administration is favoring a deplorable tax on innovation that will harm the PTO and our members at a time when the Administration should be concerned about renewed economic growth that innovation can help foster.”

Letter from IPO.

One of the reasons the IPO opposes the fee increases is that they are “not linked to the cost of operating the PTO or to the improvements proposed in the strategic plan. Moreover, the levels of fees such as excess claim fees are not in proportion to the cost of extra work required to examine the application.” *Id.* Details regarding the IPO’s opinion of the Strategic Plan may be obtained from the IPO Statement on U.S. Patent and Trademark Office’s ‘21st Century Strategic Plan’ and Fee Legislation”, available at the IPO website.

Another intellectual property organization opposing the increased fees is the American Intellectual Property Law Association (AIPLA). “AIPLA strongly opposes the PTO’s proposed fee bill.” Statement of Michael K. Kirk, Executive Director, American Intellectual Property Law Association, Before the Subcommittee on Courts, the Internet, and Intellectual Property, Committee on the Judiciary, U.S. House of Representatives on “The U.S. Patent and Trademark Office: Fee Schedule Adjustment and Agency Reform”, July 18, 2002 (“AIPLA Statement”) (emphasis in original) and available at [www.aipla.org/html/Legislative/107/testimony/statement.pdf](http://www.aipla.org/html/Legislative/107/testimony/statement.pdf).

AIPLA opposes the fee increases of the issue of diversion of funds from the USPTO. If funds are needed for government programs or services, AIPLA says that a tax on all citizens who receive the benefits of such programs or services should be imposed. “It should not be hidden away as a stealth tax increase only on America’s inventive community.” AIPLA Statement.

AIPLA and the other organization and commentators do not oppose fee increases *per se*. AIPLA says it can support certain types of fees that are tailored to foster best practices. For example, AIPLA proposes that moderately increased fees be imposed with the 7th independent claim and the 41st total claim. By imposing

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increased fees after filing of a 7th independent claim or a 41st total claim, the USPTO then would avoid penalizing the more than 95% of applicants who currently fall below these thresholds. As another example, the AIPLA proposes that increased fees for excess pages in patent specifications should not begin at the 51st page (if drawings are included). The AIPLA proposal is to increase fees after the filing of a 76th page of a specification.

### **Four Tracks Examination**

In three of the four tracks, the patentability search is conducted by an entity other than the USPTO. Yet, the USPTO's examination of the subject matter is based on the search conducted by this other entity. Commentators have pointed out that the European Patent Office (EPO) is giving up on just such a bifurcated search and examination process.

Deputy Director Dudas was not persuaded by the fact that the EPO, which had been operating under such a separation of function, has now decided to return to a combined operation. He ascribed the European's change of heart to their culture, where governments are expected to perform functions that we ought instead to commercialize.

Mr. Draper at IDO.

The IPO states it has insufficient information to either support or oppose the proposal for separating the functions of search and examination. But the EPO's abandonment of its longstanding separation of search and examination has given IPO "some pause" in supporting the proposal "without a better grasp of where the 'best practice' lies on the issue of separated search and examination." IPO Statement

Some commentators believe the outsourcing of searching will result in higher costs to applicants and may raise other issues.

The cost to applicants likely would be greater than for searches performed by the PTO or its own contractors, and applicants might be accused of manipulating the system.

Letter from IPO.

Per the Strategic Plan, in a Track 1 examination, the applicant submits a certified search report from a certified search authority (CSS). The USPTO examines the application by using the certified search report.

A particular concern regarding Track 1 examination has been voiced by a patent searcher. Perhaps contemplating his or her own workload after implementation of the Strategic Plan, the searcher states:

There simply aren't enough qualified public patent searchers to perform the searching for 3,400 patent Examiners. Additionally, many USPTO Examiners have developed technical expertise which *cannot* be matched by public sector searchers.

Comment of a patent searcher, Comments on 21st Century Strategic Plan, available at [home.earthlink.net/~datestardi/comments.pdf](http://home.earthlink.net/~datestardi/comments.pdf).

The IPO opposes permitting or requiring patent applicants to purchase the official searches that are to be used by the PTO directly from private contractors. Instead, the IPO suggests that the USPTO use its large scale operations as leverage to contract with private search companies for reasonably priced searches. IPO Statement.

The AIPLA agrees with the IPO in opposing applicant submission of certified search reports. "We are concerned that the presumption of validity of U.S. patents could be adversely affected if the PTO simply hands off the responsibility for obtaining the search to applicants and CSSs". AIPLA Statement.

The AIPLA also points out that the USPTO makes a critical change in calculating patent pendency under the bifurcated search and examination processes of the Strategic Plan were implemented. As noted above, one of the reasons for the Strategic Plan is to reduce patent pendency. But the AIPLA points out that the Strategic Plan may not reduce patent pendency, just calculate such pendency in a different manner so it appears that pendency has been reduced to the promised 18 months.

Currently, patent pendency is measured from filing of a patent application. Per the Strategic Plan, patent pendency is measured from the time an applicant requests examination, not from filing. This is a change in the traditional method of measuring patent pendency. The Strategic Plan does not take into account the up to 9 months between filing and examination that may elapse. If the USPTO achieves 18 month pendency from examination to issue as promised under the Strategic Plan, then patent pendency measured in the traditional manner may in fact be 27 months. AIPLA Statement.

In contrast to the opposition to Track 1 of the Four Tracks examination process, Track 2 has been welcomed. Track 2 allows an applicant to take advantage of a search report (ISSR) generated as part of a PCT application as the basis for the USPTO's examination of the application. The IPO sees "huge potential benefits in relying on searches performed by international and foreign patent offices (Tracks 2 and 3) from a cost standpoint. In addition, shared searching activity with other patent offices may enable a greater degree of specialization of searchers in particular technologies, leading to higher quality searching." IPO Statement.

Track 3 gives credit to search and examination carried out by an IP office of a country in a bilateral agreement with the United States. The applicant may submit the search results and examined claims from the other IP office to the USPTO. The conforming claims in the U.S. application are examined by the USPTO only to the extent that there would be a different patentability outcome due to a difference between U.S. and the law of the other country of the other IP office.

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Track 3 has not been met with support. The IPO is concerned that Track 3 would give foreign competitors of U.S. companies a distinct advantage. "Track 3 permits the applicant to delay examination of the counterpart U.S. application until examination is completed by the other IP office". So, "a long pendency period in the other IP office would result in a long delay, or deferral, of examination of that application in the PTO. The applicant in track 3 would usually be a non-U.S. applicant and therefore have an advantage over U.S. competitors. IPO Statement

AIPLA not ready to give "near full faith and credit" to an examination conducted by another patent office. "Not only do the laws, practices and procedures of other patent offices differ from those of the PTO, but even the translation of the claims can distort the exact scope of what was allowed." AIPLA Statement.

## CONCLUSION

Implementation of the Strategic Plan would completely change the manner in which we prosecute patent applications. But at least some change in our manner of practice is probably necessary in order to facilitate a strong and healthy U.S. patent system. Personally, I hope the Strategic Plan is only a beginning point for discussions. Many of the comments described above have merit and should be taken into consideration. Further information about the Strategic Plan may be obtained at the USPTO website – [www.uspto.gov](http://www.uspto.gov). In particular, an article entitled *Frequently Asked Questions – Compiled from Examiner E-mails to Under Secretary Rogan* is available at the site.

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## LUNCHEON CLE: ELECTRONIC TRADEMARK FILINGS

by Cynthia J. Lee



On October 10, 2002, the Intellectual Property Law Section held a luncheon and 1-hour CLE entitled "Electronic Trademark Filings: A New Reality." The seminar was held in Atlanta at the law firm of Troutman

Sanders, LLP. The CLE featured an impressive panel of speakers with a vast array of experience. The panelists included Schuylla Goodson, Trademark Counsel for The Coca-Cola Company; Dinisa Hardley of Thomas, Kennedy, Sampson & Patterson; Michael Hobbs of Troutman Sanders, LLP; and Ginabeth Hutchinson of Alston & Bird. Each of the panelists practices exclusively in the area of trademarks and each has had personal experience with electronic trademark submissions. In addition to an informative PowerPoint presentation by Ms. Goodson, the speakers all shared personal experiences that they have had with electronic filing of trademark submissions, which was immensely helpful.

After giving some background into the origins, reasons for, and advantages of an electronic trademark filing system, the seminar then focused on which forms can currently be filed electronically. The seminar included information related to fees and methods of payment, as well as how the electronic applications are "signed." One important aspect of the discussion emphasized the fact that the Express Mail/same day filing rule was eliminated on June 24, 2002, and the filing date of a trademark application is the date the

PTO "receives" the application. Therefore, attendees were reminded, filing electronically obtains a much earlier filing date. Also discussed was a PTO-proposed fee increase for paper filings, aimed at encouraging use of the electronic filing system. Ms. Hardley, a former Trademark Examiner with the PTO, gave attendees insight from the perspective of the PTO. The attendees took home copies of the PowerPoint slides for future reference.

After the presentation, attendees were given an opportunity to ask questions and discuss the issues presented. Each of the panelists participated by giving pointers and anecdotes about their own practices with respect to electronic filing, as well as problems still being encountered. The seminar was helpful to those just entering the e-filing arena, as well as to the "veteran" e-filers.



Panelists: Ginabeth Hutchinson, Schuylla Goodson, Dinisa Hardley, and Michael Hobbs

**THE INTERSECTION OF  
ANTITRUST & PATENT  
LITIGATION - CLE**



Panelists: John L. North, Joseph R. Bankoff, and Christopher J. Sprigman

On October 2, 2002, the Intellectual Property Law Section's Patent Committee held a Patent Roundtable luncheon at the law offices of King & Spalding. Over 60 attendees attended the event, entitled "The Intersection of Antitrust & Patent Litigation."

Bruce W. Baber, of King & Spalding, served as the host of the roundtable. In addition, the round table included a three-speaker panel, each of whom spoke about various antitrust and patent litigation issues. The panel included Joseph R. Bankoff of King & Spalding's Atlanta office; Christopher J. Sprigman from King & Spalding's Washington office; and John L. North of Sutherland, Asbill & Brennan.

Mr. Sprigman spoke about several hot antitrust and patent law topics. Specifically, he spoke about refusals to deal, patent pools, standard setting, and patent settlements. Mr. Springman compared and contrasted Antitrust and Patent Law, discussing the respective goals of each and the areas of overlap.

Mr. North spoke about the overlap of patent and antitrust issues and how each area can be of benefit in the context of litigation. Mr. North gave several practical patent litigation tips in the context of antitrust issues that can and often do arise.



Mr. Bankoff spoke about the clash of Patent Law and Antitrust Law. Mr. Bankoff discussed how the use or acquisition of patents rights can run afoul of Antitrust laws. Mr. Bankoff also highlighted the recent Federal Circuit case, *Independent Service Organizations v. Xerox*, 203 F. 3d 1322 (Fed. Cir. 2002), in regard to how the court handled the intersection of Patent Law and Antitrust Law. Finally, Mr. Bankoff gave some practical tips for dealing with the problems that arise with patents and antitrust issues. Overall, it was an extremely informative event.

*Special thanks goes to the Patent Committee of the Section, especially Chairman Wab Kadaba, for scheduling and planning this round table luncheon. Please look to the calendar in the back of this newsletter for future Patent Roundtable events.*



**NORA'S NOTES**

*By Nora Tocups*

*Hello Everybody! I have left Kilpatrick Stockton LLP and launched a solo IP practice. To stay in touch, I have started an e-mail newsletter called Nora's Notes containing topical information on the Atlanta IP community. Please let me know if you would like to be included in the distribution list. Also, I welcome news tips! Jeff Kuester, this year's chair of the IP law section, asked me to write a special Nora's Notes for this newsletter. Given the medium of this newsletter, the typical subject matter of a Nora's Notes would be old news by the time this newsletter reached you. Instead, I dug around for some especially interesting information about our fellow practitioners. Please send me info on other notables among our colleagues. I will not write anything for publication without their permission.*

Larry Nodine of Needle & Rosenberg, P.C. – I often run into Larry Nodine at the popular *Java Monkey* coffee shop in downtown Decatur. During one such run-in, Larry told me about his recent diversion from IP law practice. Larry says:

"For the last month I have been working as a "Special Assistant District Attorney" for DeKalb County. This is pro bono work for which I volunteered. I have been working as an assistant to Sheila Connors, a Senior Assistant District Attorney, to prepare several felony cases for jury trials in October. If this works out for everyone, I will take on additional cases.

"Although I sought out this experience to deepen my trial experience, I quickly confronted the sober reality of these serious cases, which involve charges like cocaine distribution, vehicular homicide and aggravated assault. This is no place to play diletante.

"It has been great for me. The ADA's have been open to and patient with my participation. They work very hard and bring a high level of expertise to the courtroom. The caseload is unbelievable. You think patent examiners have a heavy load!

"I did not expect the human interest. Quite frankly, the criminal cases I'm working on have a lot more human stuff in them that we IP lawyers are used to. But not to worry. I am keeping my day job."

Patrea Pabst of Holland & Knight, LLP – When I asked Patrea if I could include information on her "beef business", she said: "I'd be delighted! Check out my web sites: [www.pied-lean.com](http://www.pied-lean.com) and [www.beavercreekpiedmontese.com](http://www.beavercreekpiedmontese.com) ... I just got the meat USDA certified lab analysis and this stuff is amazing...." The web sites reveal the beef is from Piedmontese cattle developed through natural selection hundreds of years ago in

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Italy. “It is naturally low in fat, and naturally tender. Piedmontese steaks contain less than 1/20th as much fat as USDA choice beef and significantly less fat than bison, pork or skinless chicken, with a proportionate increase in protein in place of the fat.”

Patrea founded her farm, Beaver Creek Farm, with her husband, Bob Kalkreuter, in 1997, in northeast Georgia. Patrea’s web sites report: “Being in the south, we are particularly in need of cattle that are very heat tolerant. With their dark pigment (skin, hooves, tongues, eye rims), and short light colored hair, and thin skin, the Pies are out there grazing all day while less heat tolerant cattle are lying in the shade. The Pies have an easy going temperament. We keep our cattle tame with a little extra feeding, and halter break all bull calves to make them easier to work with. Using the best of the Italian genetics, we’re crossing with our best natural calving animals ... to select for fullbloods that are well developed and calve naturally.”

Beaver Creek Farm, is only one of two suppliers of fullblood Piedmontese beef. Pied-Lean is available for purchase by fine restaurants and grocers.

**James Trigg and John Renaud** of **Kilpatrick Stockton, LLP** – By day, James and John are exemplary IP lawyers. But at night, they turn into something else! That “else” includes playing in a band. The band is *The Jupiter Watts*. James plays guitar and sings, and John plays bass. James describes the band “as a ‘rock band”, and John adds that the band plays “distorted guitar-driven rock with a flare for pop songs....” *The Jupiter Watts* will be releasing a CD in November, available in “finer” local record stores. Check out local venues such as *The Earl* in East Atlanta and *The Star Community Bar* in Little 5 Points to see *The Jupiter Watts* perform.

**John Renaud** also is involved with a band known as *Cadillac Jones*, which is “an instrumental jazz funk band in the 70s tradition”. *Cadillac Jones* has played with Blood, Sweat & Tears, Charlie Hunter, The Jacob Fred Jazz Odyssey, and Gran Torino. Also, *Cadillac Jones* has been featured on local radio stations Z-93 and Georgia Tech’s WREK. *Cadillac Jones* plays local clubs every couple of weeks including Smith’s Olde Bar, 10 High, and Jake’s Roadhouse. In 2001, *Cadillac Jones* released its first full length recording entitled, *Digmatic*, which featured 9 original compositions, and one cover of Duke Ellington’s “Caravan.” For more info, and future dates, check out [www.cadillacjones.com](http://www.cadillacjones.com).

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A couple of interesting bits from the telecom world:

**Marcus Delgado** has been promoted to Chief Patent Counsel (CPC) at **BellSouth Intellectual Property Management Corporation**. Way to go Marcus!

**Cingular** is looking for a couple of patent agents (or patent attorneys who are open to salary adjustments in exchange for no billable hour requirements) to begin first Quarter 2003. The ideal candidates will have between 2 and 6 years of experience in preparing and prosecuting patent applications, preferably in the electrical or computer arts. Prior PTO experience is helpful,

but not required. Licensing experience is a definite plus. Candidates will directly report to the IP Strategic Management group at **Cingular**, i.e., the business side of the house. If interested, please send a resume and salary requirements to **Gloria Archuleta** at [Gloria.archuleta@cingular.com](mailto:Gloria.archuleta@cingular.com).

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Now, an update on the Seattle lives of two former Jones & Askew folks – **Daiva Tautvydas** and **Roger Wiley**. Also, did you know there is an Atlanta Lawyers’ Orchestra with a standing participation invitation to all musicians? **Sandra Cuttler**, who plays clarinet with the ALO, brought this organization to my attention. Thanks Sandra!

**Daiva** and **Roger** – left Jones & Askew for the **Christensen O’Connor** firm where Daiva now is a partner and concentrating in IP transactional and dispute resolution work. Roger left **Christensen O’Connor** in 1999 to form **Michaelik & Wylie**. Recently, Roger joined the Chicago-based firm of **Leydig Voit** to open its Seattle office. Roger and Daiva have a 3 year old daughter Asta who, according to Roger, “rules the household”. Daiva’s e-mail is [daiva@cojk.com](mailto:daiva@cojk.com); Roger’s e-mail is [rwylie@leydig.com](mailto:rwylie@leydig.com).

**The Atlanta Lawyers’ Orchestra** – was founded in 1999 and now includes 20+ musicians. The ALO welcomes all musicians to participate – you don’t have to be a lawyer or associated with the legal profession. Weekly rehearsals are held on Monday evenings from 7 – 9 pm at The William Breman Jewish Nursing Home. The ALO has given concerts all over Atlanta and welcomes the opportunity to perform. The conductor and music director is **Patrick Denney**. If you are interested in participating or in having the ALO perform, please contact the ALO president – **Kim Johnson** at [kjh\\_atl@hotmail.com](mailto:kjh_atl@hotmail.com) or (404) 581-8398. Further information about the ALO is found at their interesting website [www.zilleon.de/alo/](http://www.zilleon.de/alo/).

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The IP group of **Sutherland Asbell** continues to grow. They gained two new members recently. **Charlena Thorpe** (formerly of Finnegan) and **Bill Silverio** (formerly of Alston & Bird) joined **Pete Pappas**, **Dan Warren**, **Bill Warren**, et al. at **Sutherland**. I understand the Fulton County Daily Report scooped me on this news, but I bet that not all of you read the FCDR.

**Georgia Pacific** has gained a new trademark lawyer. **Christine Cason** (formerly of **Kilpatrick Stockton**) has joined GP’s consumer products division.

As Bugs Bunny (or is it Porky Pig?) said: “That’s all folks!!!!!!”

Thanks everybody for your input. If your input does not appear in a subsequent issue of Nora’s Notes, it’s probably because I have not received permission (as yet) from the person who is the subject of the input. Keep reading and keep sending me good stuff!

Submission for future editions of Nora’s Notes should be directed to Lesley Smith, Section Liason, at [lesley@gabar.org](mailto:lesley@gabar.org), who will forward them to Nora.

# INTELLECTUAL PROPERTY LAW SECTION NEWSLETTER



Standing  
(from left to right):  
Wab Kadaba,  
Todd McClelland,  
Griff Griffin,  
Jeff Kuester,  
Doug Isenberg,  
Mike Hobbs,  
Frank Landgraft,  
and Andrew Crain

Sitting:  
Schuylla Goodson,  
Julie Sinor,  
Judith Dray

(Not Pictured:  
Scott Frank)

THE  
STATE BAR  
OF  
GEORGIA

INTELLECTUAL  
PROPERTY LAW  
SECTION

## EXECUTIVE COMMITTEE

**JEFFREY R. KUESTER** (JEFF.KUESTER@TKHR.COM)  
THOMAS, KAYDEN,  
HORSTEMEYER & RISLEY LLP ..... CHAIR  
100 GALLERIA PARKWAY, SUITE 1750  
ATLANTA, GA 30339  
TEL: 770/933-9500  
FAX: 770/951-0933

**SCOTT M. FRANK** (SCOTT.FRANK@BELLSOUTH.COM)  
BELLSOUTH INTELLECTUAL PROPERTY  
MANAGEMENT CORP. .... CHAIR-ELECT  
1155 PEACHTREE ST., SUITE 500  
ATLANTA, GA 30309  
TEL: 404/249-3345  
FAX: 404/249-2822

**MICHAEL D. HOBBS, JR.**  
(MICHAEL.HOBBS@TROUTMANSANDERS.COM)  
TROUTMAN SANDERS LLP ..... VICE-CHAIR  
600 PEACHTREE STREET, SUITE 5200  
ATLANTA, GA 30308-2216  
TEL: 404/885-3330  
FAX: 404/962-6588

**DOUGLAS M. ISENBERG** (DISENBERG@GIGALAW.COM)  
GIGALAW.COM ..... SECRETARY  
5310 SOUTH TRIMBLE ROAD  
ATLANTA, GA 30342  
TEL: 404/256-0610

**GRIFF GRIFFIN** (GRIFFIN@SABLAW.COM)  
SUTHERLAND ASBILL & BRENNAN LLP ..... TREASURER  
999 PEACHTREE STREET, SUITE 2300  
ATLANTA, GA 30309-3996  
TEL: 404/856-8233  
FAX: 404/853-8806

**N. ANDREW CRAIN** (ANDREW.CRAIN@TKHR.COM)  
THOMAS, KAYDEN, NEWSLETTER  
HORSTEMEYER & RISLEY LLP ..... COMMITTEE CHAIR  
100 GALLERIA PARKWAY, SUITE 1750  
ATLANTA, GA 30339  
TEL: 770/933-9500  
FAX: 770/951-0933

**JULIE SINOR** (JSINOR@KSLAW.COM)  
KING & SPALDING ..... WEBSITE COMMITTEE CHAIR  
191 PEACHTREE STREET, N.E.  
ATLANTA, GA 30303-1769  
TEL: 404/572-4991  
FAX: 404/572-5128

**TODD S. MCCLELLAND** (TMCLELLAND@ALSTON.COM)  
ALSTON & BIRD ..... SOCIAL COMMITTEE CHAIR  
ONE ATLANTIC CENTER  
1201 WEST PEACHTREE STREET  
ATLANTA, GA 30309-3424  
TEL: 404/881-4789  
FAX: 404/881-7777

**SCHUYLLA GOODSON** (SGOODSON@NA.KO.COM)  
THE COCA-COLA COMPANY TRADEMARK  
..... COMMITTEE CHAIR  
TRADEMARK COUNSEL  
P.O. DRAWER 1734  
ATLANTA, GA 30301  
DIRECT: 404/676-0582

**WAB KADABA** (WKADABA@KILPATRICKSTOCKTON.COM)  
KILPATRICK STOCKTON LLP PATENT  
..... COMMITTEE CHAIR  
1100 PEACHTREE STREET, SUITE 2800  
ATLANTA, GA 30309-4530  
TEL: 404/815-6500  
FAX: 404/815-6555

**JUDITH DRAY** (JUDITH.DRAY@TURNER.COM)  
TURNER BROADCASTING COPYRIGHT  
..... COMMITTEE CHAIR  
TURNER ENTERTAINMENT GROUP, INC.  
1050 TECHWOOD DR., NW., 3RD FLOOR  
ATLANTA, GA 30318  
TEL: 404/575-6079  
FAX: 404/885-2136

**FRANK A. LANDGRAFF** (FRANK.LANDGRAFF@PS.GE.COM)  
GE POWER SYSTEMS ..... LICENSING COMMITTEE CHAIR  
4200 WILDWOOD PARKWAY  
ATLANTA, GA 30339  
TEL: 678/844-5494