



State Bar of Georgia

# Intellectual Property Law Section

GRIFF GRIFFIN, CHAIR

SEPTEMBER 2006

ALISON DANACEAU AND HUNTER YANCEY, EDITORS



## Note From the Chair

by Griff Griffin  
Sutherland, Asbill & Brennan

I would like to welcome all new members and also thank the current members who are continuing their involvement with our section. I am excited about the new year and look forward to building upon the success of last year. Under the leadership of last year's chair, Doug Isenberg, and the excellent work of the Executive Committee, we were once again named Section of the Year by the State Bar.

We have a number of great events already scheduled for this year. In particular, I would like to mention the IP Section Open House on Sept. 28. This is an excellent opportunity for anyone interested in becoming involved in the Section to learn about many activities of the Section and to

sign up for participation on one of our committees. I hope that everyone will attend.

We also have the upcoming 12th Annual IP Institute from Nov. 2 to 6 in Cancun, Mexico. As usual, the IP Institute will provide a year's worth of CLE credit while offering attendees a unique networking opportunity. Registration forms can be downloaded at [www.iclega.org/programs/6399.html](http://www.iclega.org/programs/6399.html).

In closing, I would like to thank all members of the Executive Committee for assuming their respective responsibilities and would also like to thank everyone else who has contributed to our Section.

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# HR 5418 to Establish District Court Pilot Program

by Todd McClelland  
Alston & Bird

Imagine a low-cost patent reform program that would increase the expertise of our district court judges to hear patent cases, would permit judges who have no interest in hearing patent cases to defer them to other judges, would reduce the number of patent cases overturned on appeal, would add highly qualified resources to district courts, and, if the program does not work, can be easily discarded. Rep. Darrell Issa (R-California) has introduced legislation that aims to meet these objectives.

HR 5418 (the Bill) was introduced on May 18, 2006, as bipartisan legislation sponsored by Rep. Darrell Issa (R-California) and co-sponsored by Rep. Adam Schiff (D-California). The Bill would establish a 10-year pilot program in five or more United States district courts selected by the director of the Administrative Office of the United States Courts.

These courts are to be selected from the 15 district courts in which the largest number of patent cases were filed in the most recent calendar year. Based on an informal analysis of cases filed to date, the Northern District of Georgia appears to be such a court, and, thus, is a likely candidate for the proposed pilot program.

The pilot program establishes a system where cases can be channeled to judges with patent law and patent litigation expertise. First, the Bill permits judges of a selected court to decide whether they want to participate in the program and hear patent cases. When a selected district court receives a patent case and the case is randomly assigned to one of its

judges, the Bill allows a judge who has decided not to participate to decline the case. The case would then be randomly assigned to a judge who has opted to receive patent cases. Thus, cases would make their way to judges interested in hearing patent cases.

In addition to putting patent cases in the hands of specialized judges, the Bill annually appropriates five million dollars to be used for (i) educational and professional development of district court judges in matters relating to patents, and (ii) compensation of law clerks with expertise in technical matters arising in patent cases.

Thus, judges who have opted to receive patent cases will receive training and support that is necessary to enhance their technical and legal expertise.

Attorneys with the IP Law Section are actively monitoring the status of this legislation and promoting the Northern District to be a district court chosen for the pilot program. We believe that the Atlanta legal community and the Atlanta technology and business communities would all benefit by having the Northern District designated among the five chosen district courts.

There are a number of compelling reasons why Atlanta would be a good location for this pilot program and we are attempting to persuade our elected representatives to assist us with this effort.

If you have any questions regarding the pilot program, please feel free to contact a member of the IP Law Section Executive Committee.

**Join us at the 2006 IP Institute!**

**November 2-6  
Cancun, Mexico**

**Fiesta Americana Grand Coral Beach Resort**

**[www.iclega.org](http://www.iclega.org)**

**[www.selaw.org](http://www.selaw.org)**

# Intellectual Property Event Calendar



STATE BAR OF GEORGIA | SEPTEMBER 2006

## INTELLECTUAL PROPERTY LAW SECTION & OTHER IP EVENTS

### SEPT. 28 — IP LAW SECTION OPEN HOUSE

6:30 p.m. - 8:30 p.m.

King & Spalding LLP

1180 Peachtree Street, 16th floor

Please join the IP Law Section for cocktails, hors d'oeuvres and an informal presentation regarding the Section's various committees and how you can get more involved.

Co-sponsored by King & Spalding

### SEPT. 29 — PATENT, COPYRIGHT AND TRADEMARK BOOTCAMP

A primer program for new attorneys and attorneys new to the practice of intellectual property law.

9 a.m. - 4 p.m.

State Bar of Georgia Conference Center

104 Marietta St., Atlanta

\$35 (includes take home materials and lunch)

Speakers: Mitchell A. Katz, Needle and Rosenberg PC; Michael J. Baldauff Jr., Hope Baldauff Hartman, LLC; Arthur A. Gardner, Gardner Groff Santos & Greenwald, PC; Christine James, Kilpatrick Stockton LLP; Larry Nodine, Needle & Rosenberg PC; and Creighton Frommer, Hill Kertcher & Wharton, LLP

### OCT. 3 — TRADEMARK CLE LUNCHEON: A DISCUSSION OF CURRENT HAPPENINGS AT THE TRADEMARK OFFICE

Speaker: Commissioner Lynne G. Beresford, U.S. Patent and Trademark Office

11:45 a.m. - 1:30 p.m.

State Bar of Georgia Conference Center

104 Marietta St., Atlanta

One Hour CLE Credit

### NOV. 2-6 — IP INSTITUTE

Fiesta Americana Grand Coral Beach Resort

Cancun, Mexico

Institute registration: [www.iclega.org](http://www.iclega.org)

Travel registration: [www.selaw.org](http://www.selaw.org)

## OTHER IP EVENTS OF INTEREST

### SEPT. 12 — TECHNOLOGY LAW SECTION QUARTERLY CLE LUNCHEON

11:30 a.m. - 1 p.m.

Powell Goldstein LLP

One Atlantic Center, 14th floor

1201 W. Peachtree Street, Atlanta

# Litigation Committee Report

by Tina McKeon  
Fish & Richardson PC

On June 6, the Litigation Committee held a particularly provocative roundtable discussion shortly after the Supreme Court ruling in *eBay v. MercExchange*, 126 S.Ct. 1837 (2006). Jeffrey C. Morgan (Troutman Sanders, LLP), Andrew Crain (Thomas Kayden Horstemeyer & Risley LLP), and Dan Kent (Fish & Richardson PC) were the panelists.

The panelists addressed and even prophesized about how the ruling may affect the availability of injunctive relief granted in patent cases. They discussed the majority opinion, which held that the traditional four part test for permanent injunctive relief (i.e., irreparable injury, inadequacy of remedies at law, balance of hardships, and public interest) should be applied in patent cases. They also focused on the concurring opinions, which emphasized the importance of the long legal history of nearly automatic injunctive relief in patent cases once infringement is established. The panel also discussed whether the Supreme Court ruling would actually affect the rate at which district courts grant injunctions. A

particularly interesting discussion ensued regarding whether a Non-Practicing Entity (NPE) like MercExchange could ever meet its burden of showing no adequate remedy at law when it has licensed its patent and has no intention of practicing the invention. Furthermore, the panelists discussed whether the unpredictability of injunctive relief in the wake of the *eBay* case would reduce royalties demanded by NPEs. A special thanks goes to Jeff for coordinating the discussion and to Andrew and Dan for their participation on this very interesting panel. To those of you who missed the event, you can download the podcast from the IP Section website.

The Litigation Committee next plans to have a litigation boot camp regarding the local patent rules adopted by the Northern District of Georgia. This presentation will be targeted to new associates and those with only a few years of patent litigation experience in this district. The tentative plan is to have this event on Oct. 25. Details will follow shortly.

## Trademark Committee Report

by Brad Groff, Gardner Groff Santos & Greenwald

The Trademark Committee will be getting together by conference call shortly after the IP Section Open House on Sept. 28 to plan our activities for the 2006-07 Bar year. We are actively looking for new committee members, speakers and topics for our programs. Please contact Brad Groff (bgroff@gardnergroff.com) if you would like to get involved.

## IP Section Publicity Policy

(a) A “Qualifying Non-IP Section Event” shall mean an event that the chair of the Intellectual Property Law Section deems, in his or her sole discretion, to be of broad interest to members of the Intellectual Property Law Section and whose primary purpose is related to the topic of intellectual property law that is either (1) sponsored by a non-profit or governmental entity, or (2) eligible for Georgia CLE credit.

(b) The IP Section shall distribute on a monthly basis to all section members an e-mail containing information about all upcoming IP Section events and all upcoming Qualifying Non-IP Section Events (the “Monthly Event Listing”).

(c) To be considered for inclusion in the Monthly Event Listing, an organizer of a Qualifying Non-IP Section Event must submit in writing (including via e-mail) to the chair or co-chairs of the communications committee of the IP Section the following information:

(1) title of event,

(2) up to a 50-word description of the event,

(3) date(s) of the event,

(4) location of the event,

(5) if applicable, number of hours of Georgia CLE credit for which the event qualifies,

(6) a website address and/or phone number for further information about the event,

(7) month(s) in which the event should be included in the Monthly Event Listing, and

(8) billing information for the entity organizing the event.

(d) If approved for inclusion in the Monthly Event Listing, the IP Section will bill the organizing entity \$25 per month for each month in which the notice is to be included, provided, however, that the chair of the Intellectual Property Law Section may waive this fee at his or her sole discretion.