

25th Annual Advanced Patent Law Institute

November 5-6, 2020 • Live Webcast

Thursday Morning, Nov. 5, 2020

Presiding Officer:

Hilda C. Galvan, Jones Day - Dallas, TX

8:20 am	Welcoming Remarks
8:30 am 0.75 hr	<p>Recent Developments in Claim Construction</p> <p>The baseline of patent application preparation/prosecution, district court trials, Federal Circuit appeals, and AIA post-grant review proceedings, is claim construction. Review the important 2019-2020 claim construction cases and issues at the Federal Circuit and trial court levels, as well as at the PTAB. Examine the PTAB's procedural and substantive claim construction "rules, practices, and etc." And discuss adherence to the APA by the PTAB under various circumstances, plus rule and practice changes to mandate PTAB consideration of claim constructions from other proceedings.</p> <p>Kenneth R. Adamo, Law Office of KRadamo - Chicago, IL</p>
9:15 am	5-Minute Break
9:20 am 0.75 hr	<p>Antitrust 2020: Changing Politics, Technology and Problems Have Caused Upheaval! A Real-Time Presentation of Disruption in Antitrust and Competition Law</p> <p>Since the beginning of this year, there have been profound changes in the antitrust and competition landscape. New lawsuits are being filed and existing cases pressed hard despite the COVID-19 pandemic. Technology companies need to be aware of the storm now breaking over licensing for 5G in lawsuits pending in federal courts in Texas and Delaware. The 180 degree change at the Department of Justice that has the Antitrust Division actively litigating with non-practicing patent entities against companies that produce technology, software, semiconductors and telecom products. COVID-19 drove a dramatic to the ground rules and procedures for collaboration for companies that can provide essential technology, products and services. This real-time presentation illustrates what is happening right now and how it could impact you.</p> <p>Danielle Joy "DJ" Healey, Fish & Richardson P.C. - Houston, TX</p>
10:05 am	5-Minute Break
10:10 am 0.75 hr	<p>Section 101 Update: Alice at Six</p> <p>Hear an update on this year's patentable subject matter cases and other developments. What have we learned over the last six years and what can we expect moving forward? Plus, hear some suggested do's and don'ts for prosecution and litigation.</p> <p>Steve Borgman, Kilpatrick Townsend & Stockton LLP - Houston, TX Janice Le Ta, Perkins Coie LLP - Austin, TX Michael W. Piper, Conley Rose, PC - Plano, TX Gina N. Shishima, Norton Rose Fulbright - Austin, TX</p>
10:55 am	5-Minute Break

11:00 am 0.75 hr	<p>Section 101 in Two Realms: Practical Tips for Addressing Ongoing Challenges in Getting Patents in the Life Sciences and in Software</p> <p>A year after the newest USPTO guidelines on patent eligibility, our panelists discuss prosecution suggestions in the software/business and the bio/pharma technical areas, in particular, our best pragmatic advice on managing your 101 challenges at USPTO and including a focus on patent applications concerning COVID-19 diagnostic tests, serology tests, vaccines, and therapeutics as examples for the pharma challenges and opportunities we are facing.</p> <p>Steve Borgman, Kilpatrick Townsend & Stockton LLP - Houston, TX Michael W. Piper, Conley Rose, PC - Plano, TX Gina N. Shishima, Norton Rose Fulbright - Austin, TX</p>
11:45 am	5-Minute Break
11:50 am 0.75 hr	<p>Increasing Innovation and Transforming Industries through Open Source</p> <p>Innovation is being democratized where users of products and services—both firms and individual consumers—are increasingly able to innovate for themselves. They’re building open source into the fabric of their R&D and development models, bringing speed to innovation that collaborating in open source enables. Users that innovate can develop exactly what they want, rather than relying on manufacturers to act as their agents. What is the place of patents and how are they affected by such innovation?</p> <p>Karen F. Copenhaver, The Linux Foundation - Boston, MA Umesh M. Desai, AT&T Labs - Austin, TX</p>
12:35 pm	Break for Lunch—Presentation Resumes at 1:00 p.m.

Thursday Afternoon, Nov. 5, 2020

Presiding Officer:

Richard L. Wynne Jr., Thompson & Knight LLP - Dallas, TX

LUNCHEON PRESENTATION

1:00 pm 1.00 hr 0.25 hr ethics	<p>The COVID-19 Effect on the Practice of Patent Law</p> <p>Explore the practical and procedural effects of the COVID-19 pandemic on the practice of patent law from the perspective of litigation, patent prosecution, working from home, and in-house management.</p> <p>Moderator: Ozz Siddiq, Lennox International - Richardson, TX Panelists: Shannon W. Bates, Harper Bates & Champion LLP - Dallas, TX Tara L. Clothier, Essilor of America, Inc. - Dallas, TX José C. Villarreal, Perkins Coie LLP - Austin, TX</p>
2:00 pm	5-Minute Break

2:05 pm 0.50 hr	PTAB Policy Shifts The Federal Circuit, the U.S. Supreme Court, and the Iancu administration continue to push the evolution of the PTAB. This presentation covers fast-moving highlights of where we are and where we may be going. Change is certain. Teresa Stanek Rea, Crowell & Moring, LLP - Washington, DC
2:35 pm	5-Minute Break
2:40 pm 1.00 hr	PTAB Practice Strategies Discuss new developments impacting practice before the Board, including evolving standards on the PTAB's exercise of discretion, timing of parallel litigation, pressure on litigants, and more. Moderator: David W. O'Brien, Haynes and Boone, LLP - Austin, TX Panelists: Scott A. McKeown, Ropes & Gray LLP - Washington, DC Emily R. Whelan, Wilmer Hale - Boston, MA
3:40 pm	5-Minute Break
3:45 pm 0.75 hr 0.50 hr ethics	Privilege Issues and Discoverability of Agreements With the explosive growth of litigation funding, parties (and funders) face challenging issues related to the discoverability of funding agreements and engagement agreements. This presentation explores the relevance of such agreements and whether they are protected by attorney-client privilege, work product, common interest, or otherwise. Kevin Kudlac, Connor Kudlac Lee, PLLC - Austin, TX
4:30 pm	5-Minute Break
4:35 pm 1.00 hr 0.50 hr ethics	Judicial Panel Hear distinguished judges from the District Courts discuss their experiences hearing and trying patent cases. Moderator: Hilda C. Galvan, Jones Day - Dallas, TX Panelists: Hon. Alan D Albright, U.S. District Court, Western District of Texas - Waco, TX Hon. Sean D. Jordan, U.S. District Court, Eastern District of Texas - Plano, TX Hon. Maryellen Noreika, U.S. District Court, District of Delaware - Wilmington, DE
5:35 pm	Adjourn

Friday Morning, Nov. 6, 2020

Presiding Officer:

Betty Ellsworth Ungerman, Lennox International Inc. - Richardson, TX

8:00 am 1.00 hr 0.50 hr ethics	Women in IP Breakfast Panel: Challenges and Current Issues Facing In-House Counsel Moderator: Ann LaFeir, USAA - San Antonio, TX Panelists: Brianna Hinojosa-Smith, Yum! Brands, Inc. - Plano, TX Irene Kosturakis, BMC Software, Inc. - Houston, TX Keith E. Witek, Google, Inc. - Mountain View, CA
9:00 am	5-Minute Break
9:05 am 1.00 hr	Year in Review: Federal Circuit and SCOTUS Update A whirlwind summary of the most important developments in Supreme Court and Federal Circuit case law over the last year. Mark A. Lemley, Stanford Law School and Durie Tangri LLP - Stanford and San Francisco, CA
10:05 am	5-Minute Break
10:10 am 0.50 hr	The Appointments Clause, Severability, and Forfeiture in <i>Arthrex</i> The Federal Circuit's decision in <i>Arthrex, Inc. v. Smith & Nephew, Inc.</i> , 941 F.3d 1320 (2019), purported to save the power of the USPTO's administrative patent judges to conduct inter partes review by abrogating for-cause removal protection for those judges. This presentation examines the Appointments Clause concerns that motivated that abrogation, whether severing the for-cause removal protection was a proper response, and whether the Appointments Clause challenge should have been considered forfeit as not raised before the USPTO. John M. Golden, The University of Texas School of Law - Austin, TX
10:40 am	5-Minute Break
10:45 am 0.75 hr	Worldwide Patent Litigation Trends A look at litigation trends and practices in multiple international jurisdictions. Moderator: Kat Li, McKool Smith - Austin, TX Panelists: Klaus Haft, HOYNG ROKH MONEGIER Europe LLP - Düsseldorf, Germany He Jing, GEN Law - Beijing, China
11:30 am	5-Minute Break
11:35 am 0.75 hr	International Prosecution Hear tips on how to prepare for a global filing and examine issues and considerations in different jurisdictions, with a special emphasis on European patents and China. Jimmy Chen, IBM China Co. Ltd - Beijing, China Tim Graham, IBM UK Ltd - Winchester, United Kingdom
12:20 pm	Break for Lunch—Presentation Resumes at 12:45 p.m.

Friday Afternoon, Nov. 6, 2020

Presiding Officer:

William D. Wiese, DuBois, Bryant & Campbell, L.L.P. - Austin, TX

LUNCHEON PRESENTATION

12:45 pm 0.75 hr	Nuts and Bolts of Remote Litigation A discussion of various aspects of litigating patent disputes remotely, including best practices for handling remote hearings, depositions, and even trials. Bert A. Greene, Duane Morris LLP - Austin, TX Matthew S. Yungwirth, Duane Morris LLP - Atlanta, GA
1:30 pm	5-Minute Break
1:35 pm 0.75 hr	Damages: FRAND, Foreign Activity, and Other Recent Developments A discussion of recent developments in patent damages, including recent decisions affecting FRAND licensing and damages, pursuing damages for foreign activity in U.S. courts, and the impact of COVID-19 on the calculation and presentation of damages claims. Moderator: Shirley Webster, Ocean Tomo, LLC - Houston, TX Panelists: Anne M. Cappella, Weil, Gotshal & Manges LLP - Silicon Valley, CA Garland T. Stephens, Weil, Gotshal & Manges LLP - Houston, TX
2:20 pm	5-Minute Break
2:25 pm 0.75 hr	AI Claims Examine new rules on AI claims, including evolving guidance from the USPTO, and how those rules will be applied. Robert Bahr, U.S. Patent and Trademark Office - Alexandria, VA Matt Osterhaus, Fletcher Yoder, P.C. - Houston, TX
3:10 pm	5-Minute Break
3:15 pm 0.75 hr ethics	The Ins and Outs of Conflicts of Interest This session covers conflicts of interest when lawyers migrate from one law firm, or legal department, to another and recent cases addressing disqualification motions. David Hricik, Mercer University School of Law and Taylor English Duma LLP - Macon and Atlanta, GA
4:00 pm	Adjourn