

Friday, June 28, 2019

8:00 — 8:30 Breakfast & Registration**8:30 — 8:50 Opening Remarks***(Paul R. Michel, J., (ret.), George F. Pappas, Robert G. Sterne, Craig W. Weinlein)***8:50 — 10:15 [Panel 1] Section 101, Bilski & Alice and abstract ideas***(Azra Hadzimehmedovic, Randall R. Rader, J., (ret.), Russell Slifer, Robert G. Sterne*, Robert L. Stoll, Leah Poynter Waterland)*

This panel will explore the challenges of the Supreme Court's eligibility decisions as applied to computer-implemented inventions. Many observers believe that the rubric of "abstract ideas", which the Court has declined to define, creates massive uncertainty and unreliability, both for pending patent applications and issued patents that may be asserted in enforcement proceedings. The risk is that investments in R & D and product commercialization will be discouraged and diminished, thereby impeding "progress in science and useful arts", the mandate for patents in the US Constitution. Possible fixes for this problem will be examined, including impending legislation. Finally, the panel will compare the scope of eligibility here with the far wider scope available in Europe and Asia, especially China.

Materials:

- 1.1 The Sedona Conference, *WG10 Section 101 Motions on Patentable Subject Matter Chapter* (Sept. 2016 publ. comm. ver.)
- 1.2 Testimony of Charles Duan, R Street Institute, Hearing on: "The State of Patent Eligibility in America: Part I" before the United States Senate Committee on the Judiciary Subcommittee on Intellectual Property, June 4, 2019
- 1.3 Statement of P. Johnson, Coalition for 21st Century Patent Reform, Hearing on: "The State of Patent Eligibility in America: Part II" before the United States Senate Committee on the Judiciary Subcommittee on Intellectual Property, June 5, 2019
- 1.4 Testimony of M. Lemley, Stanford Law School, Hearing on: "The State of Patent Eligibility in America: Part I" before the United States Senate Committee on the Judiciary Subcommittee on Intellectual Property, June 4, 2019
- 1.5 Statement of Kate Ruane, American Civil Liberties Union, Hearing on: "The State of Patent Eligibility in America: Part II" before the United States Senate Committee on the Judiciary Subcommittee on Intellectual Property, June 5, 2019
- 1.6 Testimony of Hans Sauer, Ph.D., Deputy General Counsel and Vice President for Intellectual Property, Biotechnology Innovation Organization (BIO), Hearing on: "The State of Patent Eligibility in America: Part II" before the United States Senate Committee on the Judiciary Subcommittee on Intellectual Property, June 5, 2019

10:15 — 10:45 Morning Break

10:45 — 12:00 [Panel 2] Section 101, *Mayo* & *Myriad* and laws of nature

(*Eb Bright*, *Henry Hadad*, *Kristina Caggiano Kelly*, *Steven Lieberman*, *Colman Ragan*,
*Teresa Stanek Rea**)

Progress in health sciences is affected by the Supreme Court's cases on eligibility, particularly *Mayo* and *Myriad*. Investments in bio/pharma inventions and discoveries, which typically must be enormous, may not be made at all, and therefore prevention, detection and cures not developed as a result of the present uncertainty. Lower courts have failed to provide clarity to the high court's cases, making VC and other potential investors hesitant. Same for corporate executives. Consequently, the potential of major breakthroughs in genetic engineering, personalized medicine and computer-related health invention using artificial intelligence may be precluded. Possible solutions will be discussed as well as comparisons to the wider eligibility available in competitor nations.

Materials:

- 1.5 Statement of Kate Ruane, American Civil Liberties Union, Hearing on: "The State of Patent Eligibility in America: Part II" before the United States Senate Committee on the Judiciary Subcommittee on Intellectual Property, June 5, 2019
- 2.1 Testimony of Jeffrey K. Francer, Association for Accessible Medicines, Hearing on: "The State of Patent Eligibility in America: Part II" before the United States Senate Committee on the Judiciary Subcommittee on Intellectual Property, June 5, 2019
- 2.2 Testimony of Barbara A. Fiacco, American Intellectual Property Law Association, Hearing on: "The State of Patent Eligibility in America: Part II" before the United States Senate Committee on the Judiciary Subcommittee on Intellectual Property, June 5, 2019
- 1.6 Testimony of Hans Sauer, Ph.D., Deputy General Counsel and Vice President for Intellectual Property, Biotechnology Innovation Organization (BIO), Hearing on: "The State of Patent Eligibility in America: Part II" before the United States Senate Committee on the Judiciary Subcommittee on Intellectual Property, June 5, 2019

12:00 — 12:45 Lunch

12:45 — 1:00 Presentation of The Sedona Conference Lifetime Achievement Award for Contributions to Intellectual Property

(Presenter – *Paul R. Michel, J.* (ret.))

1:00 — 2:00 [Panel 3] Standard Essential Patents and Antitrust

([Makan Delrahim](#), [Andrei Iancu](#), [Paul R. Michel, Jr. \(ret\)*](#), [Noah Joshua Phillips](#),
[Rebecca Kelly Slaughter](#))

For a number of years, enforcement of standard essential patents by injunctive relief, and breach of a patentee's commitment to license standard essential patents on fair, reasonable, and nondiscriminatory terms, were found to raise potential antitrust issues. The U.S. Department of Justice, Antitrust Division, wants to rebalance the relationship between competition law and intellectual property rights through its application of the "New Madison" approach. Andrei Iancu, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and Makan Delrahim, Assistant Attorney General for the Antitrust Division of the U.S. Department of Justice, will engage in a dialogue about the New Madison approach and the issues to be addressed at the intersection of intellectual property rights and competition laws.

Materials:

- 3.1 The Sedona Conference, *WG9 Framework for Analysis of Standard-Essential Patent (SEP) and Fair, Reasonable, and Non-Discriminatory (FRAND) Licensing and Royalty Issues* (Stage One) (Feb. 2018 publ. comm. ver.)
- 3.2 M. Delrahim, *The "New Madison" Approach to Antitrust and Intellectual Property Law* (Mar. 2018)
- 3.3 N. Phillips, *IP and Antitrust Laws: Promoting Innovation in a High-Tech Economy* (Mar. 2019)
- 3.4 R. Slaughter Closing Remarks, FTC Hearings No. 4 - Innovation and Intellectual Property (Oct. 2018)

2:00 — 3:00 [Panel 4] Standard Essential Patents and Antitrust (Part 2)

([Monte Cooper](#), [David Kappos*](#), [Henry Su](#), [Koren Wong-Ervin](#))

Patent practitioners may be less aware of the economic forces at work in the operation of the patent system than of the technical or legal aspects. Policy makers also may fail to understand such dynamics. Yet, they are crucial to efficient operation of the patent system as well as proper adherence to the rule of law. This panel will explore such economics at the interface of patent and competition law, including the proper role of the Federal Trade Commission and competition and antitrust law as limiting patent rights and their enforcement, especially in the context of standard essential patents and related FRAND obligations.

Materials:

- 4.1 J. Padilla, D. Ginsburg, & K. Wong-Ervin, *Antitrust Analysis Involving Intellectual Property and Standards: Implications from Economics* (2019)
- 4.2 H. Su, *A Nonobvious Way to Think About the Interplay Between Patents and Antitrust* (Mar. 2019 working paper)

3:00 — 3:30 Afternoon Break



The Sedona Conference Patent Conference Promoting Invention,
Entrepreneurship, Economic Growth, and Job Creation (Part 2)

Covington Law Offices, Washington D.C.

June 28, 2019

AGENDA

3:30 — 5:00 **[Panel 5] Injunctions**

(Gary Hoffman, David Kappos, George Pappas, Randall R. Rader, J. (ret.), Philipp Rastemborski,
Robert Taylor*)

We will conduct a Sedona style dialogue on the issues surrounding the availability of preliminary and permanent injunctive relief for patent infringement in the United States, in contrast to the availability of injunctive relief for patent infringement in Germany and China. Among other subtopics, we will discuss the difficulty of proving that the infringing feature of an accused instrumentality is a driver of lost sales to establish the causation element of irreparable injury for injunctive relief in the United States.

Materials:

- 5.1 USIJ - U.S. Startup Formation Trends--2004 to 2017 (June 2019)
- 5.2 P. Clement, Amicus Brief for the U.S., *eBay v. MercExchange* (2005)
- 5.3 *eBay v. MercExchange* (U.S. 2006)

5:00 — 5:15 **Closing Remarks**

(Craig W. Weinlein)

5:15 — 7:30 **Reception**