IN-HOUSE COUNSEL SUMMIT ON

MANAGING & SETTLING CORPORATE PATENT LITIGATION

CONTROLLING COSTS AND MANAGING EXECUTIVE EXPECTATIONS

March 20-21, 2007 • Warwick New York Hotel • New York City

DISTINGUISHED CO-CHAIRS:

Jeffrey N. Myers, Ph.D. Assistant General Counsel Intellectual Property Enforcement Pfizer Inc. (New York)

Buck de Wolf Senior Counsel-Litigation & Legal Policy General Electric Company (Fairfield, CT)

INDUSTRY INSIGHTS FROM:

- BellSouth Corporation
- Boehringer Ingelheim Pharmaceuticals, Inc.
- EchoStar Satellite L.L.C.
- Eli Lilly and Co.
- Fujitsu American, Inc.
- General Electric Company
- Kraft Foods Holdings, Inc.
- Medtronic, Inc.
- Nortel Networks
- Novo Nordisk
- Pfizer Inc.
- Thomas & Betts Corporation
- Verizon

MANAGE executives' expectations

CONTROL litigation costs

REDUCE the time and resources spent on discovery

DEVELOP an effective e-discovery plan

ACQUIRE winning settlement strategies

Plus Don't Miss!

Mastering the Technology of E-Discovery and Document Management

March 22, 2007

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FINALLY, A PATENT LITIGATION CONFERENCE FOR CORPORATE COUNSEL!

ACI's In-House Counsel Summit on Managing & Settling Corporate Patent Litigation is the only conference solely devoted to needs of in-house counsel. This conference will focus on the everyday challenges faced by in-house counsel such as communicating the risk and expense of patent litigation to management, controlling the costs of litigation, and settling litigation. Hear strategies and best practices for overcoming these challenges from experienced in-house counsel from a wide array of industries.

Gain control over patent litigation expenses

Patent litigation is costly for any company regardless of size or industry. Not only does it drain internal resources, but verdicts in the millions have become commonplace. Learn how to avoid litigation when possible, reduce internal costs when litigation has become inevitable, and continue with business plans while litigation is pending at this unique event.

Don't miss out on this one-of-a kind conference

Learn from your colleagues from across the country and benefit from the extensive written materials prepared by the speakers especially for this conference. Register now to ensure your place at what's sure to be a sold-out event. Call 1-888-224-2480, fax your registration form to 1-877-927-1563, or register online at www.americanconference.com/corporatepatentlit

AGENDA-AT-A-GLANCE

- Effectively Communicating to Management a Realistic Picture of the Litigation
- Maneuvering the Corporation Through Pre-Litigation Demands
- Strategies *Every* In-House Attorney *Can* Employ to Control Litigation Costs
- Getting Control Over the Most Costly and Time-Consuming Part of Litigation: Discovery Management
- Making the Burden of E-Discovery Manageable
- Developing Clear Business Objectives That Will Drive Litigation Strategy
- Ensuring Critical Information Gets Shared Between Legal and Business Teams During Ongoing Litigation
- Key Legal Tactics In-House Counsel Needs to Know For Developing a Winning Litigation Strategy
- Innovative Solutions for Avoiding Litigation
- Strategies for Achieving an Optimum Settlement
- Resolving Ethical Dilemmas in Patent Litigation

WHO YOU WILL MEET

- Patent Counsel (corporate and law firm)
- Litigation Counsel (corporate and law firm)

CONTINUING EDUCATION CREDITS

Accreditation will be sought in those jurisdictions requested by registrants which have continuing legal education requirements. To request credit, please check the appropriate box on the Registration Form.

This course has been approved in accordance with the requirements of the New York State Continuing Legal Education Board in the amount of 15.0 hours, 1.5 of which will apply to legal ethics. An additional 3.5 credit hours will apply to workshop participation.

ACI certifies that this activity has been approved for CLE credit by the State Bar of California in the amount of 12.5 hours, 1.25 of which will apply to legal ethics. An additional 3.0 credit hours will apply to workshop participation.

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Benjamin Greenzweig
Director of Business
Development, U.S.
(212) 352-3220 ext. 238 or
B.Greenzweig@AmericanConference.com

Tuesday, March 20, 2007

Registration & Continental Breakfast 7:45

8:15 Co-Chairs' Opening Remarks

Jeffrey N. Myers, Ph.D. Assistant General Counsel Intellectual Property Enforcement Pfizer Inc. (New York)



Buck de Wolf Senior Counsel-Litigation & Legal Policy General Electric Company (Fairfield, CT)

Effectively Communicating to Management a Realistic Picture of the Litigation



Barbara R. Rudolph, Ph.D. Finnegan, Henderson, Farabow, Garrett & Dunner, LLP (Washington, DC)



Timothy X. Witkowski Director & Senior Counsel, Intellectual Property Boehringer Ingelheim Pharmaceuticals, Inc. (Ridgefield, CT)

- Developing management-friendly sound bytes on key technical aspects of the litigation in short time frames
 - avoiding unnecessary details and being concise
 - using familiar management tools to demystify the legal process
 - combating the instinct of management to disengage from understanding the merits of the lawsuit
 - public relations considerations
- Managing expectations when the unexpected disappoints management but the ultimate outcome is objectively favorable
- Using management's reliance on in-house counsel's judgment to make recommendations, explain the basis for opinions, and keep disclaimers to a minimum
- Comparing patent litigation to more familiar calculated business risks to demonstrate that the risk may be justifiable
- Maintaining executive support/interest over the oftenchanging course of extended litigation
- Getting senior management to really see the risks of the litigation
 - making sure executives hear more than "we could win" or "we have a good case"
 - getting management to understand the risk in financial terms
 - repeating the risks and status of litigation to management without being redundant
 - offering potential settlement options for management consideration
- Explaining costs and getting buy-in from senior management
- Making management understand why litigation strategies may need to change

9:45 Maneuvering the Corporation Through **Pre-Litigation Demands**



Michael Bishop Chief Intellectual Property Counsel BellSouth Corporation Vice-President & General Counsel BellSouth Intellectual Property Corporation (Atlanta, GA)



Cynthia E. Kernick Partner, Reed Smith LLP (Pittsburgh, PA)



Aditya Krishnan Patent Counsel Fujitsu American, Inc. (Sunnyvale, CA)

Moderator:



William P. Atkins Partner Pillsbury Winthrop Shaw Pittman LLP (McLean, VA)

- Responding to cease and desist letters and inquiries in an effective and efficient matter
- Determining whether to treat traditional non-practicing entities in the same manner as patent trolls
 - the impact of eBay on dealing with NPEs versus trolls
 - developing a strategy for dealing with trolls
- Avoiding a finding of unenforceability, invalidity or exceptional cases
- Checking the horizon for potential patents that may give rise to claims of infringement
- Conducting a proper investigation if sued the day the patent is issued
- Obtaining opinion letters from outside counsel
 - when is it okay to obtain an opinion from counsel that will handle the litigation?
 - coordination between opinion counsel and litigation counsel
 - the effect of opinion letters on the waiver of attorney/client privilege
 - how are courts interpreting *Echostar*?

11:00 Morning Refreshment Break

Quentin "Rick" R. Corrie

11:15 Strategies Every In-House Attorney Can Employ to Control Litigation Costs



Daniel P. Albers Partner, Barnes & Thornburg LLP (Chicago, IL)



Vice-President and Associate General Counsel EchoStar Satellite L.L.C. (Englewood, CO)



Partner Birch, Stewart, Kolasch & Birch, LLP (Falls Church, VA)

- Creating a budget that makes sense in light of potential recovery or exposure
 - recognizing the impossibility of budgeting for every contingency – and creating the most realistic budget possible
 - being party to the internal battle over allocating costs to production units
- Assessing and reassessing the cost-benefit ratio of the litigation with reference to pre-established business goals
 - accounting for changes in the product's importance to the business over time
- Steps to waste less of outside counsel's time and streamline the litigation process
 - appointing an in-house point person for discovery matters
 - realigning work responsibilities or making new hires to streamline litigation support
 - having documents and witnesses in order before litigation starts
- Entering into alternative fee arrangements with outside counsel
 - understanding what options are available and how the agreements should be structured





1:45 Getting Control Over the Most Costly and Time-Consuming Part of Litigation: Discovery Management



Kenneth R. Adamo Partner Jones Day (Cleveland, OH)

Marc A. Began Senior Patent Counsel Novo Nordisk (Princeton, NJ)

Debbie K. Wright Chief Counsel, Global Patents Kraft Foods Holdings, Inc. (Northfield, IL)

- Obtaining cooperation of employees in complying with discovery requests
 - managing work schedules
 - adjusting attitudes
 - convincing employees that discovery obligations are real and not meant to inconvenience them
- Reducing costs through comprehensive document production at the outset
- Evaluating costs in terms of diverting employees from their usual functions
 - getting good discovery without draining corporate resources
- Working with outside counsel to meet discovery demands
 - allowing outside counsel access to employees
 - understanding and coordinating how much time outside counsel will need with employees
 - getting internal witnesses to understand what the case is about and their role
- Dealing with requests for documents that don't exist or are held by third parties
 - avoiding sanctions by communicating document production limitations to outside counsel

Afternoon Refreshment Break 💻 3:15 Making the Burden of E-Discovery Manageable



3:00

Elizabeth "Betty" Ann Morgan Member of the Firm Epstein Becker & Green, P.C. (Atlanta, GA)

Director of Electronic Discovery & Senior Counsel Verizon Legal Department (Arlington, VA)



Christopher J. Renk Partner, Banner & Witcoff, Ltd. (Chicago, IL)

- Learning the company's computer software and hardware inside and out to create an effective plan for accessing and preserving information
- Fine tuning existing plans for maintenance and retention of documents to comply with the new rules
- Training and monitoring strategies to strengthen employee compliance with e-discovery rules
- Planning ahead and budgeting for e-discovery
 - explaining to management that not budgeting for e-discovery can cost them the case
- Cost-effective approaches for locating responsive and relevant data

4:30 Conference Adjourns to Day 2

Wednesday, March 21, 2007

8:15 Co-Chairs' Opening Remarks

8:30 **Developing Clear Business Objectives** That Will Drive Litigation Strategy



Glen P. Belvis Shareholder, Brinks Hofer Gilson & Lione (Chicago, IL)



Kevin H. Rhodes Assistant Chief Intellectual Property Counsel-Litigation 3M Innovative Properties Company (St. Paul, MN)

- Determining at the outset what the corporation's business objectives are
 - communicating objectives and changes to objectives - to outside counsel
 - ensuring that the person who communicates objectives to outside counsel will give a complete, unbiased picture
- Assessing the corporation's tolerance for risk
- Identifying specific and achievable litigation outcomes
 - developing acceptable alternative outcomes to "winning"
- Adjusting strategy in light of changes in the case or the law

9:30 **Ensuring Critical Information Gets Shared Between** Legal and Business Teams During Ongoing Litigation



Jeffrey M. Gold Partner, Morgan, Lewis & Bockius LLP (New York)

Dawn Palmer

Senior IP Counsel, AOL LLC (Dulles, VA)

MaCharri R. Vorndran-Jones

Patent Counsel, Eli Lilly and Co. (Indianapolis, IN)

- Determining the effect of the litigation on the product's launch schedule
- Designing around to enable use of the product
- Working with marketing to avoid words and terms that are the subject of litigation
- Informing outside counsel about changes to the product
- Managing communication regarding litigation by working with public relations and customer-facing teams

Morning Refreshment Break 💻 10:15

10:30 Key Legal Tactics In-House Counsel Needs to Know For Developing a Winning Litigation Strategy



Basil "Bill" J. Lewris Partner, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP (Washington, DC)



G. Andrew Barger Senior Patent, Trademark & Internet Counsel Thomas & Betts Corporation (Memphis, TN)

- Using re-examination to invalidate an adversary's patent and put the plaintiff on the defensive
 - making a motion to stay the case pending a decision from the patent office
 - ex-parte re-examination versus inter-parte re-examination
 - readjusting litigation strategy if the patent is found to be valid
- Determining which forum will best serve your case
- Establishing a theory of the case that the court and the jury will understand

- Helping outside counsel win the potentially dispositive Markman hearing
- Employing proceedings before the ITC to stop infringers in a cost-effective manner

12:00 Networking Luncheon



1:15 **Innovative Solutions for Avoiding Litigation**

Michael Jaro

Vice President and Chief Patent Counsel Medtronic, Inc. (Minneapolis, MN)

- Creating enough risk for competitors to steer them away from litigation
- Making the company a less interesting target for patent trolls having a good licensing system that will attract inventors
- Protecting products by buying potentially adverse patents
- Retaining the services of a patent broker to survey the patent landscape

2:00 Strategies for Achieving an Optimum Settlement



Ernest Higginbotham

Vice President, Litigation, Nortel Networks (Richardson, TX)

Brian H. Way

Senior Patent Counsel, Apple Computer, Inc. (Cupertino, CA)



Barry S. White Partner

Frommer Lawrence & Haug LLP (New York)

- Determining what the case is worth
- Assembling the negotiation team
- Choosing the right time to begin settlement talks
- Determining which forum to use for settlement talks
- Evaluating your settlement options long before being pressured into a settlement conference
- Assessing the consequences of settling too often or too quickly
- Drafting a settlement agreement that accurately reflects the terms of the settlement
 - resolving agreement language and term disagreements

3:00 Afternoon Refreshment Break



Resolving Ethical Dilemmas in Patent Litigation 3:15



Thomas H. Watkins

Partner, Brown McCarroll, L.L.P. (Austin, TX)



Timothy P. Ryan

Member

Eckert Seamans Cherin & Mellott, LLC (Pittsburgh, PA)

- What to disclose and what to hold back from outside counsel when seeking an opinion letter
- Determining when and what documents to preserve
- Inadvertent disclosure of documents
 - what should be done when inadvertently provided with privileged information?
 - what should be done with the information gained prior to knowing it was privileged?
- Obtaining information beneficial to the company's business interests during discovery - how should in-house counsel react
- Communications with the BOD
 - what should be told to the BOD and what should be withheld?
 - getting approval for legal actions while still maintaining the attorney/client privilege

4:30 **Conference Concludes**

Mastering the Technology of E-Discovery and Document Management

THURSDAY, MARCH 22, 2007 9:00 A.M. – 12:00 P.M. (REGISTRATION BEGINS AT 8:30 A.M.)



Elizabeth "Betty" Ann Morgan

Member of the Firm

Epstein Becker & Green, P.C. (Atlanta, GA)



Christopher J. Renk Partner Banner & Witcoff, Ltd. (Chicago, IL)

In order to comply with the new e-discovery rules in the most efficient and effective manner, a strong understanding of a company's IT infrastructure is a necessity. This workshop will address the nuts and bolts aspects of a company's IT infrastructure and how it relates to document management and retention policies.

- Recognizing the role of the IT department and what IT employees can and cannot do
- Understanding the mechanics of a company's IT infrastructure
 - how systems are structured
 - hardware, software and operating systems
 - file set-ups
 - online storage capacities
 - remote users
- Appreciating the importance of computer forensics
 - metadata and why behind-the-scenes information attached to each electronic document is so important
 - using and preserving it efficiently
 - the difference between backups and retention
- Avoiding common mistakes that can lead to data spoliation
 - slack or temporary files
 - improper copying
- Understanding the key differences between "active" data and "archived" data
- Strategies for working effectively with IT

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WORKSHOP:

Mastering the Technology of E-Discovery and **Document Management**

March 22, 2007

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