

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)

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- 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.

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TUESDAY, MARCH 20, 2007

7:45 **Registration & Continental Breakfast** 

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)

8:30 **Effectively Communicating to Management
a Realistic Picture of the Litigation**



Barbara R. Rudolph, Ph.D.

Partner
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 often-changing 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** 

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



Daniel P. Albers

Partner, Barnes & Thornburg LLP (Chicago, IL)



Jeffrey H. Blum

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



Quentin "Rick" R. Corrie

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

12:30 **Networking Luncheon** 

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

3:00 **Afternoon Refreshment Break** ☞

3:15 **Making the Burden of E-Discovery Manageable**



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

Patrick Oot
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

10:15 **Morning Refreshment Break** ☞

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



Basil "Bill" J. Lewis
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

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.)

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

3:15 Resolving Ethical Dilemmas in Patent Litigation



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



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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Mastering the
Technology of
E-Discovery and
Document Management

March 22, 2007

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