



Left to Right: Susan McGahan, Harvey Kurzweil

On April 21, 2006, the NYIPLA hosted its monthly luncheon at the Princeton Club. The speaker was Harvey Kurzweil, a partner at Dewey Ballantine and counsel for MedImmune, the petitioner in the *MedImmune v. Genentech* case, which was recently granted certiorari by the Supreme Court. Mr. Kurzweil discussed what must be done by a patent licensee before it can seek to have a licensed patent declared invalid and enforceable and whether a declaratory judgment action can be brought by such a licensee, who continues to comply with the terms of the license

Mr. Kurzweil discussed the facts of the case, case law that supports his client's position, and shared his conclusions as to how the Supreme Court would likely rule. In sum, his prediction is that the Supreme Court would hold that public policy from *Lear, Inc. v. Adkins*, and its progeny support the licensee's right to bring a declaratory judgment action without necessitating a breach of the license agreement and that the Court of Appeals for the Federal Circuit departed from prior precedent and policy in its prior rulings in the *MedImmune v. Genentech* and other cases.