

NYIPLA[®]

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Bulletin

In This Issue

Article:
New from USPTO
Practitioner Maintenance
Fee and Online Roster
Updates
by
Jay H. Anderson1, 3-4

President's Corner2

NYIPLA Calendar4

Article: Meeting of the
U.S. Bar –
Japan Patent Office
Liaison Council
by
John B. Pegram 5

Article: Does the
Lanham Act Legislate
Morality? by
Frank Terranella 6-7

Historian's Corner8

2007-2008
NYIPLA Committee
Reports9-16

New Members..... 17-20



NEW FROM USPTO:

Practitioner Maintenance Fee and Online Roster Updates

Jay H. Anderson

Introduction

The USPTO has adopted a rule to implement an annual practitioner maintenance fee.¹ This rule was included in a set of proposed rules published in 2003² and the Final Rule became effective on December 17, 2008.³

Practitioners also will soon be able to update their entries on the USPTO roster through the OED home page accessible at www.uspto.gov. The USPTO calls this “self-managing your information.” In order to facilitate sending out notices regarding the new maintenance fee, the USPTO has reminded all practitioners to review and update their contact information on the official roster of attorneys and agents.⁴ When the ability to update roster information is implemented later this Spring, a practitioner may review his/her maintenance fee status, change addresses for regular mail and e-mail, and pay the practitioner maintenance fee online.

Who has to pay the fee?

All registered patent agents and attorneys must pay an annual maintenance fee to the USPTO Director. There is a reduced fee for practitioners on “volun-

tary inactive” status. (These practitioners are prohibited from practicing before the USPTO in patent cases.⁵) Persons granted limited recognition to practice must also pay an annual maintenance fee. Practitioners on “administrative inactive” status (this includes USPTO employees and judges) do not have to pay a fee.⁶

Several commentators have noted that the USPTO, in maintaining a roster of practitioners and controlling admission to it, performs the functions of a bar association – thus, an annual fee for maintaining registration seems reasonable.⁷

How much is the fee? When is it due? Will I get a reminder?

The annual fee is \$118.00 for a practitioner on active status and \$25.00 for voluntary inactive status.⁸ A person granted limited recognition must also pay \$118.00.⁹ Fees are assessed on a fiscal-year basis. We are now in FY09, which began on 1 October 2008 and ends on 30 September 2009. A practitioner on active status as of 1 October 2008 would be responsible for a fee of \$118.00 for FY09. A newly registered practitioner, not yet registered as of 1

cont. on page 3

The views expressed in the Bulletin are the views of the authors except where Board of Directors approval is expressly indicated.

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March 2009

In my last message, I commented on the cornerstone values of the NYIPLA of professionalism, ethics and civility. I am proud that this Association, in promoting these values, has supported the creation of the newly formed Hon. William C. Conner Inn of Court -- the first intellectual property law focused American Inn of Court in New York and the seventh in the nation. The mission of the Conner Inn is to promote excellence in professionalism, ethics, civility and legal skills for judges, lawyers, academicians, and students of law and to advance the education of the members of the Inn, the members of the bench and bar, and the public in the field of intellectual property law.

I am also proud to report that the Association has started its own diversity scholarship program, and will be awarding at the Association's Annual Meeting in May at least one scholarship to offset tuition costs for a qualified student who is interested in intellectual property law and who is attending a local law school. With the help of Ed Bailey (Chair) of the **Diversity Scholarship Committee**, the Association has started raising funds for this program. If you haven't already done so, please speak with Ed about making a donation.

Our committees have been very active. The **ADR Committee** sponsored an educational lunch program on Getting the Most Out of Mediation, thanks to the efforts of Walt Hanley (Chair).

Thanks to the efforts of the **Amicus Committee**, including Charles Weiss (Chair) and Dave Ryan (Board liaison), the committee is preparing a draft brief for consideration by the Board in one case and is studying the possibility of filing briefs in two additional cases.

The **CLE Committee** was very busy planning and running the Fall One Day CLE Program, which was very well done and well attended thanks to the efforts of the CLE Committee, Dorothy Auth (Chair), and Tom Meloro (Board liaison), and is now working on a Spring Half Day CLE Trademark program.

Special thanks to John Pegram (**Liaison to the JPO**) who represented the Association at the U.S. Bar – JPO Liaison Council in January. His report in this Bulletin and related documents are available on the Association's website at www.nyipla.org.

Our **Meetings and Forums Committee** held a lunch meetings on Recent Developments at the ITC thanks to Rich Erwine (Chair) and Alexandra Urban (Board liaison).



Marilyn Brogan (Chair) and Ronald Clayton (Board liaison) of the **Membership Committee** were proud to report that our membership is up as of the end of the calendar year 2008 and as of March 2009, which is greatly appreciated.

The new **Outreach Committee**, thanks to Alicia Russo (Chair) and Tom Meloro (Board liaison), is already busy discussing new ways that the Association can interact with other organizations, including the Upper Manhattan Intellectual Property Zone.

Special thanks again to Stephen Quigley (**Publications Committee** Chair) and Dale Carlson (Board liaison) for putting together this Bulletin.

Please sign up for committees using the process set out on the Association's website at www.nyipla.org. Click on "Committees" and submit your choices on line.

The Association is considering engaging a service to make available on its website an archive of all of its records in scanned and searchable formats. If you have any records, including documents and things from the NY Patent Law Association, we would like to scan them for posterity. Please contact me directly.

Thank you for your continued support of the NYIPLA and its mission.

Sincerely,
 Anthony Giaccio

October 2008, would not have to pay a fee until FY10. If a practitioner switches from active to voluntary inactive status during FY09, s/he would be assessed \$118.00 in FY09, but only \$25.00 in FY10.¹⁰

With respect to reminders, the rule states: “Adequate notice shall be published and sent to practitioners in advance of the due date”¹¹ without setting forth a specific date (presumably not later than 30 September, the last day of each fiscal year). The USPTO plans to send a notice to each practitioner this Spring, setting a due date and providing instructions for paying the fee. Where multiple practitioners are at the same firm, the firm may make a single payment covering all its practitioners.¹²

What will the fees be used for?

The stated purpose for adopting the fee is “to maintain a roster of registered practitioners, including affording practitioners due process, protecting the public, preserving the integrity of the Office, and maintaining high professional standards.”¹³ In response to a comment on the 2003 proposed rules, the USPTO also states: “Annual practitioner maintenance fees collected under section 11.8(d) will be used to support maintenance of the roster of registered attorneys and agents, including the disciplinary system.”¹⁴ This, of course, raises the question as to how OED activities were previously funded.

Some commentators have noted that, in spite of these statements from the USPTO, there is really nothing to prevent future diversion of the funds raised by collecting practitioner maintenance fees, which may amount to between about two and three million dollars each year. Furthermore, assessing a fee for “maintaining high professional standards” could be seen by some as a device for getting those less interested in patent practice out of active status and into voluntary inactive status.¹⁵

There does not appear to be a clear relationship between the OED’s tasks (maintaining the roster, operating the disciplinary system in the OED, etc.) and the amount of the fees that would be collected. Query: is it pure coincidence that the new fee under rule number 37 C.F.R. § 11.8 is \$118?¹⁶ Then again, we may expect this fee, like all USPTO fees, to increase in coming years without regard to the actual cost of maintaining an electronic roster or running the OED.

What if I forget to pay?

A practitioner who fails to pay the annual maintenance fee is subject to administrative suspension.¹⁷ The OED Director will send a notice to the practitioner by mail at the postal address on the roster or by e-mail to the e-mail address(es) on the roster. The notice is also published. This notice will demand payment of the maintenance fee, plus a \$50.00 delinquency fee,¹⁸ within 60 days.¹⁹

If the practitioner does not comply within the time allowed, the OED Director will send (and publish) a Rule to Show Cause why the practitioner’s registration should not be suspended. The practitioner may file a response within 30 days, and the OED Director may file a reply within 10 days of receiving a copy of the response. If the USPTO Director determines that there are no genuine issues of material fact regarding the Office’s compliance with the notice requirements or failure of the practitioner to pay the required fees, the USPTO Director shall enter an order suspending the practitioner.²⁰

One can imagine a practitioner failing to pay the maintenance fee, failing to reply to the subsequent notice, and then being suspended, all because s/he did not maintain a current address on the roster. The practitioner can avoid this by checking on his/her “annual maintenance fee status,” which will be displayed with the contact information below the practitioner’s registration number. The practitioner will be able to see whether a fee is due, what balance is due, and the due date.

A suspended practitioner may be reinstated by making an application to the OED Director, paying all maintenance fees and delinquency fees due, and paying a \$100.00 reinstatement fee.²¹ However, if the practitioner remains suspended more than two years, s/he must also retake and pass the registration examination to be reinstated.²² Reinstatement is not retroactive.

Voluntary inactive status

Voluntary inactive status may be suitable for practitioners who have retired or are unable to continue their practice, but still desire to maintain a recognized professional association with the USPTO.²³ As long as the practitioner remains in voluntarily inactive status for an entire fiscal year, the maintenance fee is only \$25.00 for that year.

A practitioner who has failed to pay a required active-status fee, or who is administratively suspended, may not enter voluntary inactive status.²⁴

Updating contact information online

The USPTO is requesting all practitioners to check the agent/attorney roster to ensure that their business mailing address is accurate. If not, you will need to fill out a printable “Change of Address” form and mail it to the OED.

Sometime after 1 March 2009, the OED will send a password and a user ID, in two separate mailings, to each practitioner. A practitioner will then be able to sign in at the OED’s “On-Line Change of Address” page,²⁵ change the address and phone number on the roster, and add e-mail addresses (up to three). The OED will not change a listed e-mail address, and will not make a practitioner’s e-mail address public.²⁶

cont. from page 3

A firm may make a single payment of the maintenance fee for all its practitioners. The firm (or company) name must be the same for all practitioners. The USPTO warns that the name must match precisely for all practitioners' listings (down to commas and ampersands) or else they will not be recognized as members of the same firm.²⁷

What you need to do

1. Check the roster. If your address is not accurate, fill in, print out and mail a paper Change of Address form to the OED.
2. Watch your mail. You should receive a user ID and a password for updating your roster entry. You should also receive information about paying the annual maintenance fee.
3. Build an accurate roster entry. Sign in with the user ID and password on the "Registered Practitioner Sign In" page. Make sure your address is exactly the same as everyone else at your firm. List multiple e-mail addresses; make one of those addresses your personal home e-mail (so that at least one e-mail address will still be good even after changing firms). Get the "Annual Practitioner Maintenance Fee Summary" to see the amount due and the due date.
4. Pay the annual practitioner maintenance fee online. Don't wait until the last minute or the last day to do so.



Jay Anderson is Chair of the Committee on License to Practice

Requirements and is counsel at Wiggin and Dana. He can be contacted at janderson@wiggin.com. Discussions with Committee members Michael Chakansky, Ted Weisz, Wanli Wu, and Brian Coggio, as well as Board Liaison Allan Fanucci, are gratefully acknowledged.

NOTES

- ¹ 73 Fed. Reg., 67,757 (2008) (codified at 37 C.F.R. § 11.8(d)).
- ² 68 Fed. Reg., 69,441 (2003).
- ³ 73 Fed. Reg., 67,750 (2008).
- ⁴ <http://www.uspto.gov/main/homepagenews/2008dec11.htm>
- ⁵ 73 Fed. Reg., 67,758 (2008) (codified at 37 C.F.R. § 11.11(d)(5)).
- ⁶ 73 Fed. Reg., 67,751 (2008).
- ⁷ See <http://promotetheprogress.com/blog/the-practitioner-maintenance-fee-a-necessary-development-that-carries-significant-concerns>; <http://www.intelligenceblog.com/2008/11/annual-practitioner-fee-at-uspto.html>
- ⁸ 37 C.F.R. § 1.21(a)(7).
- ⁹ 37 C.F.R. § 1.21(a)(8).
- ¹⁰ 73 Fed. Reg., 67,751 (2008).
- ¹¹ 37 C.F.R. § 11.8(d).
- ¹² <http://www.uspto.gov/main/homepagenews/2008dec11.htm>
- ¹³ 73 Fed. Reg., 67,750 (2008).
- ¹⁴ 73 Fed. Reg., 67,753 (2008).
- ¹⁵ See <http://www.patentlyo.com/patent/2008/11/patent-practice.html>; <http://promotetheprogress.com/blog/the-practitioner-maintenance-fee-and-the-promise-that-should-not-have-been-made/780/>
- ¹⁶ See <http://www.patentlyo.com/patent/2008/11/patent-practice.html> (and comments).
- ¹⁷ 73 Fed. Reg., 67,751 (2008).
- ¹⁸ 37 C.F.R. § 1.21(a)(9)(i).
- ¹⁹ 37 C.F.R. § 11.11(b)(1).
- ²⁰ 37 C.F.R. § 11.11(b)(2).
- ²¹ 37 C.F.R. § 1.21(a)(9)(ii).
- ²² 37 C.F.R. § 11.11(f).
- ²³ 73 Fed. Reg., 67,751 (2008).
- ²⁴ 37 C.F.R. § 11.11(d).
- ²⁵ <http://www.uspto.gov/web/offices/dcom/olia/oed/aboutaddress.htm>
No passwords or IDs had been issued at this writing, so these online features could not be tested.
- ²⁶ <http://www.uspto.gov/main/homepagenews/2008dec11.htm>; 37 C.F.R. § 11.11(a)
- ²⁷ <http://www.uspto.gov/main/homepagenews/2008dec11.htm>

NYIPLA Calendar

SAVE THESE DATES - More Details to Follow

CLE Day of Dinner • March 27, 2009 • Waldorf=Astoria, Starlight Roof • 301 Park Avenue, NYC

87th Annual Dinner in Honor of the Federal Judiciary • Friday, March 27, 2009 • Waldorf-Astoria

25th Annual Joint Patent Practice Seminar • April 30, 2009 • Hilton New York

CLE Program • Friday, May 15, 2009 • The Harvard Club, NYC

Title: Patent/Trade Secret Complementariness: An Unsuspected Synergy

Speaker: Professor Karl F. Jorda, Franklin Pierce Law Center

NYIPLA Annual Meeting and Award Dinner • Wednesday, May 20, 2009

University Club, 1 West 54th Street at Fifth Avenue, NYC

4:00 PM Business Meeting • 5:00 PM Cocktail Reception • 6:30 PM Dinner and Awards

CLE Program • Friday, June 26, 2009 • The Harvard Club, NYC

Title: *The Issue of Future Damages/Ongoing Royalties Post eBay*

Speakers: Hon. Ron Clark, U. S. District Court, Eastern District of Texas, Brian Napper, FTI Consulting, Richard Erwin, Quinn Emanuel Urquhart Oliver & Hedges, LLP

CLE Program • Wednesday, September 16, 2009 • The Harvard Club, NYC

Title: New Board of Appeals Rules and Appellate Practice before the Board of Appeals and Patent Interferences

Speaker: Honorable Michael R. Fleming, Chief Administrative Judge, Board of Patent Appeals and Interferences, U. S. Patent and Trademark Office

Meeting of the U.S. Bar – Japan Patent Office Liaison Council

by John B. Pegram

The U.S. Bar – JPO Liaison Council met in Tokyo for an all-day meeting on January 16, 2009. The Liaison Council is a user group comprising delegates from U.S. IP organizations which meets annually with high-ranking officials of the Japan Patent Office. The U.S. Bar delegation is chaired by Jeffrey Navon. NYIPLA was represented at this meeting by John B. Pegram.

Most of the morning was devoted to reports by U.S. Bar members on topics that had been specifically requested by the JPO, but also included a discussion with Matsuo Nonaka, Deputy Director of the JPO Policy and Research Section, concerning measures to reduce backlogs in Japan and the U.S. (The U.S. delegates' presentations are identified in the meeting agenda which will be posted on the JPO Liaison Council Reports section on NYIPLA's website, along with copies of some of the JPO presentations.)

Satoshi Hattori, Director of the JPO Quality Management Office, described the activities of his Office since it was established in 2007 and made a presentation on Measures to Monitor the Quality of Examination. In response to questions from the U.S. delegates, Mr. Hattori said his Office welcomes both general comments as well as comments about individual cases, noting, however, that such comments may not affect case results.

A highlight of the meeting was the presentation by Hiroshi Kawamata, a Deputy Director of the International Affairs Division, on Programs to Improve the Quality of PCT Search. Mr. Kawamata explained that the JPO is seeking to improve the quality of searching for both PCT and domestic cases. The JPO does not believe the current PCT searching works well, at least in part because it does not include "secret prior art," meaning unpublished applications in the 18 months before the priority date of the application being searched.

Mr. Kawamata described a draft proposal for improvement of the PCT system, called "NEO (Next-generation, Economy-Oriented)-PCT," which the JPO had disclosed to their Trilateral partners (EPO & USPTO) and to WIPO only a short while before the January 16, 2009 meeting with our Liaison Council. Although the draft remains confidential, with permission of the JPO, a summary of the proposal is provided below.

In principle, the NEO-PCT proposal is intended to provide (1) full searching of "secret prior art," (2) enhancement of the effectiveness of the International Search Report (ISR), etc. for use in the National Stage, and (3) building confidence in search results from other offices. The JPO envisions a three step evolution of the PCT:

First, the JPO suggests that offices be encouraged to introduce arrangements for the early national entry of PCT applications to accelerate patent issuance within the current PCT framework. Further, the proposal would enable parallel or close-in-time processing of the international and national phases, which would reduce workloads of both applicants and offices significantly as compared

with a sequential process with a long time gap. This procedure also includes searching after the 18-month publication of "secret prior art," to enhance the value of the search report. This step could be accomplished by amendment of the PCT regulations.

Second, the JPO suggests that the parallel or close-in-time processing evolves into a combined procedure under the NEO-PCT, where an action by the OFA (Office of First Action) or the OSA (Office of Second Action) may have legal effect in any member states of the NEO-PCT. Further, applicants could choose OFA or OSA from qualified authorities. The NO (National Office) can decide in advance to what extent will the legal effect of FA and SA be recognized, depending on the authorities and requirements (novelty, inventive step, etc.) As the credibility of the authorities builds among the member states, the level of acceptance by NO and the degree of work-sharing will also rise. This step would require amendment of the PCT.

Third, all PCT members would join the NEO-PCT. Reliance on the examination results and the effect of work-sharing would be maximized. The JPO recognizes that this may not occur before further substantive patent law harmonization.

Later in the afternoon, there was a related presentation on the Development of Global Worksharing by Hiroki Uejima, an Assistant Director of the JPO Examination Policy Planning Office. He explained a proposal called JP-First, implemented in April 2008. The JPO prioritizes examination of applications that are first filed in the JPO and then filed in one or more offices under the Paris Convention if an examination request is filed within two years of JPO filing. In over 80% of such cases, the JPO's first office action is available before the first actions in the EPO, Korea or the United States. In most cases, the JPO search includes "secret prior art."

Mr. Uejima also reported on the Patent Prosecution Highway programs. While he reported that U.S. and Japanese users now exceed 100 organizations each, as of October 31, 2008, there had been only 711 PPH requests from Japan to the United States, and 420 requests from the United States to Japan.

The meeting concluded with JPO responses to inquiries submitted before the meeting by U.S. delegates. The subjects are identified in the Agenda which will be posted on the NYIPLA IP Practice in Japan website.

John Pegram is a past president of the NYIPLA and is currently the Association's representative for the U.S. Bar – JPO Liaison Council. He is a partner at Fish & Richardson and can be contacted at pegram@fr.com.



Does the Lanham Act Legislate Morality?

by Frank Terranella

Section 2(a) of the Lanham Act is an absolute bar to registration where a trademark consists of or comprises “immoral” or “scandalous” matter. 15 U.S.C. § 1052(a). To be considered “scandalous,” a mark must be “shocking to the sense of truth, decency or propriety; disgraceful; offensive; disreputable; . . . giving offense to the conscience or moral feelings; . . . [or] calling out for condemnation,” in the context of the marketplace as applied to the goods or services described in the application. *In re Mavety Media Group Ltd.*, 33 F.3d 1367, 1371, 31 USPQ2d 1923, 1925 (Fed. Cir. 1994).

The Trademark Trial and Appeal Board noted in *In re Thomas Laboratories, Inc.*, 189 USPQ 50, 52 (TTAB 1975): “[I]t is imperative that fullest consideration be given to the moral values and conduct which contemporary society has deemed to be appropriate and acceptable.” For this reason, the statutory language “scandalous” has been considered to encompass matter that is “vulgar,” a term that has been defined as “lacking in taste, indelicate, morally crude.” *In re Runsdorf*, 171 USPQ 443, 444 (TTAB 1971).

Scandalous is determined from the standpoint of “not necessarily a majority, but a substantial composite of the general public, . . . and in the context of contemporary attitudes.” *In re Wilcher Corp.*, 40 USPQ2d 1929, 1930 (TTAB 1996). However, the mere fact that a profane word may be uttered more freely in contemporary American society than was done in the past does not render such words any less profane. *In re Tinseltown, Inc.*, 212 USPQ 863 (TTAB 1981) (BULLSHIT found scandalous for handbags and other personal accessories).

The registration prohibition of Section 2(a) on the basis of scandal or immorality has proven very difficult for the Trademark Office to enforce despite the best efforts of its reviewing court to guide it. An example of the difficulty is the case of *In re Cathy Lynn Carlson* (TTAB, August 28, 2007, Serial No. 78/682,282) where the trademark was YOU CUM LIKE A GIRL for use in connection with clothing. In refusing registration, the Examining Attorney wrote “the term CUM is clearly shocking to the sense of decency and is offensive in the context of the clothing marketplace as applied to the goods described in the application.” The TTAB agreed that the word CUM was “vulgar” based primarily on its definition in *The American Heritage Dictionary* (i.e., “Vulgar Slang variant of come”). The Board, citing *In re Boulevard Entertainment Inc.*, 334 F.3d 1336, 67 USPQ2d 1475, 1477 (Fed. Cir. 2003), held that showing that a mark is vulgar is sufficient to establish that it

is scandalous or immoral. And that was it for the applicant. The Board affirmed the refusal under Section 2(a) notwithstanding the fact that, as the applicant pointed out, the Trademark Office had registered CUM TOGETHER for adult videos three years earlier (Reg. No. 2,844,606).

And then something strange happened. Just three weeks later, the same TTAB panel that deemed YOU CUM LIKE A GIRL unregistrable, found that the trademark CUMBRELLA for condoms was not immoral or scandalous and reversed the Examining Attorney’s refusal to register. *In re William R. Gray* (TTAB September 17, 2007, Serial No. 78/622,783). Interestingly, the Trademark Office Managing Attorney for the denial of both of these marks was Michael W. Baird. It must have been disconcerting for him to submit essentially the same evidence and arguments that CUM was a vulgar term and have the same TTAB panel reach seemingly opposite conclusions.

The rationale appears to be that the CUMBRELLA applicant constructed a more convincing argument by putting into evidence general circulation publications where the word “cum” was used. This apparently gave the TTAB pause as to whether or not the word was inherently vulgar. Thus, it followed the advice of the Federal Circuit that close cases should be allowed to proceed to publication after which offended members of the public can file oppositions and a full record can be made in an adversarial proceeding. See *In re Mavety Media Group Ltd.*, 33 F.3d at 1374, 31 USPQ2d at 1928.

The *Mavety* case, now 15 years old, remains the leading precedent regarding Section 2(a). In its opinion, the Federal Circuit stated that “even if the members of this panel personally find the mark BLACK TAIL disgustingly scandalous, the legal conclusion that a trademark comprises scandalous matter must derive from the perspective of the substantial composite [of the general public].” The court noted that since the general public is made up of both conservatives and liberals, there is “inherent difficulty in fashioning a single objective measure like a substantial composite of the general public from the myriad of subjective viewpoints.” Despite its citation of criticism of the substantial composite standard as “nonsensical”, the court felt bound by precedent to apply it. The TTAB’s holding was reversed and the case was remanded to the Board for further inquiry and findings concerning the substantial composite of the general public, the context of the relevant marketplace, and contemporary attitudes.

The *Mavety* opinion quoted *In re McGinley*, 660 F.2d 481, 486, 211 USPQ 668, 674 (CCPA 1981), which stated that Section 2(a) is not “an attempt to legislate morality, but, rather, a judgment by the Congress that such marks not occupy the time, services, and use of funds of the federal government.” In light of this purpose of Section 2(a), *Mavety* suggested that it would make more sense for the Trademark Office to pass questionable marks to publication and let concerned citizens oppose registration if they were so inclined.

The problem with the court’s suggestion, however, is that Congress mandated that the Trademark Office must refuse registration of “immoral” and “scandalous” marks – it cannot simply turn its back on the plain language of the statute. Instead, in light of the inconsistency and difficulty of determining what is “immoral” or “scandalous”, it might make more sense to simply amend Section 2(a) by removing these words and perhaps replacing them with the word “obscene,” which has a large body of law defining it.

As the Federal Circuit in *Mavety* noted, it should not be the Trademark Office’s function to legislate morality. As long as people with questionable taste in trademarks pay the Trademark Office fees, they should not be denied registration simply because their marks may be offensive to some people. Indeed, there are many marks that are neither sexual in nature nor do they incorporate a four-letter word which may still be offensive to some substantial group of Americans. For example, there are hundreds of trademarks

that commercialize Jesus Christ, including JESUS CHEESEBURGER (Reg. No. 3,201,757) and JESUS SHAVES (Reg. No. 3,088,946). Are these immoral or scandalous? They probably are to some people. But the Trademark Office on its own should not have to make a judgment on that. It should approve for registration any mark that may legally be used.

The real problem with Section 2(a) is that it mandates what is an inherently subjective standard. Given the current state of the law, a trademark attorney cannot render an intelligent or reliable opinion to a client regarding the registrability of a mark that may be in questionable taste. A federal right such as a trademark registration should not be determined according to such a subjective and unpredictable standard as Section 2(a) mandates. It is up to Congress to amend Section 2(a) and get the Trademark Office out of the business of determining what is “scandalous” or “immoral.”

Frank Terranella is senior associate at Abelman, Frayne & Schwab. He can be contacted at fterranella@lawabel.com.



In Memoriam

Lorimer P. Brooks, a lifetime member and past president of the NYIPLA (1975-76), died on January 23, 2009 following a slip on the ice near his home in Nantucket. Mr. Brooks practiced law in New York for over 60 years. He was a partner in the firms Ward, Mackelhein, Brooks & Fitzpatrick; Brooks, Haidt, Haffner & Delahunty; and Norris, McLaughlin & Marcus. Contributions in his memory can be made to the

Nantucket Conservation Foundation (www.nantucketconservation.com) or
Nantucket Cottage Hospital (www.nantuckethospital.org).

"As Time Goes By - Play it Again Sam" by Dale Carlson

Did you ever wonder what it might be like if a patent lawyer were to live forever? A colleague of ours named Charles Yardley Chittick recently gave it a run, and in the process established a record of 107.67, not counting leap-year extensions. Born in Newark, New Jersey on October 22, 1900, he became a registered patent attorney on February 1, 1934.

"C. Yardley", as he was called, was befriended in the winter of his years by one of our own Association's members, Joe Catanzaro. In addition to a shared interest in all things patent, they were fellow MIT alums, albeit having graduation years that spanned a generational gap.

From time-to-time, Joe visited C. Yardley at his home in New Hampshire, including on the occasion of the centenarian's hundredth birthday. Joe recalled that visit in the July 20, 2008 issue of the Concord Monitor thusly: "He was hanging balloons....He always wore his red MIT jacket. Joe said, 'Maybe you should check your jacket and get more comfortable.' And he said, 'You take care of your business and I'll take care of mine.' He was a very determined individual who called them like he saw them."

Apparently he called it like he saw it when he had a run-in with a classmate living across the hall while at Phillips Academy. The classmate was Humphrey Bogart. Their distaste for each other is memorialized in Darwin Porter's book entitled *The Secret Life of Humphrey Bogart: The Early Years (1899-1931)*. One passage notes that "The only boy on the floor who Hump disliked intensely was a nerd who wore thick wire-rimmed glasses, Charles Yardley Chittick....Whenever they would meet in the hallway, neither spoke to each other."



Charles Yardley Chittick....Whenever they would meet in the hallway, neither spoke to each other."

When words came to fisticuffs,

Dale Carlson, a partner at Wiggin & Dana, serves as the NYIPLA Historian, and as First Vice President.

Bogie threw the first punch. Later, he was expelled from the prep school, or was "fired" as C. Yardley liked to say, for bad grades. Meanwhile, C. Yardley graduated from Phillips in 1918, went on to MIT to study mechanical engineering and run track, and then went through law school in Washington, D.C.

The June 8, 2008 issue of the Eagle-Tribune notes that C. Yardley was offered a job by Thomas Edison. As a prelude to that offer, Edison "sat him down in his office with a punishing 150-question test. Applicants had to answer questions like: 'What language is generally spoken in Brazil?' 'What did Lewis and Clark do?' 'What is black ink made of?' and 'What three letters occur most frequently in the English language?'"

Although he turned down Edison's job offer, C. Yardley maintained an avid interest in technology. After becoming a patent attorney, he spent his career assisting about a hundred inventors, including himself, obtain patents on their inventions. Patents identifying him as the inventor include U.S. Patents 2,236,894 entitled "Means For Determining Miniature Railroad Track Layout" (issued April 1, 1941); 2,450,716 entitled "Kitchen Utensil" (issued October 5, 1948); and 2,642,372 entitled "Flexible Corrugated Sheet Material and Method of Fabricating Same" (issued June 16, 1953).

By all accounts, C. Yardley lived a full and happy life. He loved to tell stories, had a great sense of humor, and enjoyed the celebrity associated with being our country's longest living patent lawyer. Among other things, he was awarded an honorary degree in 2005 by Franklin Pierce Law Center, which is nationally recognized for its strong patent program.

Coincidentally, Franklin Pierce Law Center will honor Karl Jorda, Past President of our Association, at a May 1, 2009 gala reception upon Karl's retirement as The David Rines Professor of Intellectual Property at that school. The reception will also mark the launching of a campaign to establish The Karl F. Jorda Professorship in Patent Law at the school. If C. Yardley's life is any measure, the reception will also mark the launching of a happy and productive next phase in Karl's life.

NYIPLA 2007-2008 Committee Reports

ALTERNATIVE DISPUTE RESOLUTION

Walter Hanley, Chair

The ADR Committee's agenda focused on three items:

1) The Committee continued its consideration of the legislative proposal authored by Chuck Miller and placed before the ADR Committee, the Committee on Patent Law and Practice and the Committee on Legislative Oversight and Amicus Briefs last year. The proposal was also described by Mr. Miller in an article in the January/February 2007 issue of the NYIPLA Bulletin. Briefly, the proposed legislation would implement compulsory arbitration, at the election of the plaintiff patent applicant/owner, in suits against the USPTO in the U.S. District Court for the District of Columbia seeking review pursuant to 35 U.S.C. §§ 145 and 306 of Board of Appeals decisions finally rejecting claims in patent applications and reexamination proceedings, and seeking review pursuant to 35 U.S.C. § 154(b)(4) of decisions by the Director denying patent term adjustments. The proposal was discussed at a meeting of the Committee in February of this year. It was decided that a joint meeting was needed among all three interested committees to discuss and hopefully resolve any issues concerning the proposal. The chairs of the three committees have discussed having the joint meeting, but have not yet set a definite date. The ultimate goal would be a decision by the committees as to whether the proposal should be presented to the NYIPLA Board for consideration.

2) The Committee has discussed having a panel discussion on the topic of mediation of patent cases at a monthly luncheon. The Committee envisions a three person panel composed of a U.S. district judge or magistrate judge who is active in mediating patent cases (such as Magistrate Judge Thyng of the District of Delaware), James Amend, the Chief Circuit Mediator of the Federal Circuit, and a private practitioner experienced in mediation, perhaps from CPR or AAA.

3) The Committee monitored the case of *Hall Street Associates v. Mattel, Inc.* which was argued to the U.S. Supreme Court in November 2007. *Hall Street* raised an important issue of general interest to

the Association membership -- whether a district court can enforce a provision in an arbitration agreement that expands the scope of review of the arbitrator's award beyond the limited scope set forth in the Federal Arbitration Act ("FAA"). (The FAA provides that a district court can vacate an arbitrator's award only on extraordinary grounds such as, for example, corruption, fraud, evident partiality of the arbitrator and arbitrator misconduct.) The parties to the arbitration agreement before the Court provided that the award could be vacated if it was not supported by substantial evidence or was based on an error of law. On March 25, 2008, the Court issued its decision, holding held that the FAA sets forth the exclusive grounds on which a district court can vacate an arbitrator's award. Had the Court reached the opposite conclusion, it would have had far-reaching implications for the use of arbitration, and would have merited a report to the Association membership through an article in the Bulletin. However, given the outcome of the case, the Committee does not see a need for an article.

I would like to thank the members of the Committee, and especially Chuck Miller, for their contributions this year, and I hope the present members will remain on the Committee to advance the initiatives begun this year.

ANTITRUST, INEQUITABLE CONDUCT AND MISUSE COMMITTEE

Douglas R. Nemeck, Chair

The Committee held its initial organizational meeting on February 5, 2008, with the majority of Committee members in attendance.

Beginning at the organizational meeting and continuing throughout the 2007-2008 term, the Committee discussed a number of possible topics for publications, including (1) continued focus by the FTC on ANDA settlements and reverse payments, (2) the PTO materiality rules, and (3) antitrust considerations of "Medimmunized" licenses. The FTC action in the *Rambus* case regarding standard setting bodies was also an area of particular interest to Committee members. Interest in this topic was reinvigorated by the Federal Circuit's *Qualcomm v. Broadcom* decision. Most

cont. on page 10

cont. from page 9

noteworthy, however, was the Supreme Court's *Quanta* decision. In that regard, special thanks are owed to David Ryan for his excellent Bulletin article on the *Quanta* decision that was published in the May 2008 edition of *Computer and Internet Lawyer*.

Early discussions regarding a possible luncheon program to follow the Supreme Court's decision in *Quanta* were tabled because it was anticipated that the decision would follow too closely on the heels of the luncheon talk by Thomas Hungar to justify another *Quanta*-oriented presentation. The possibility of a luncheon presentation on a Committee-related subject will be more actively pursued in the 2008-2009 term, perhaps dealing with the impact of patent pooling on research and development efforts.

There has been significant activity at the "interface" of patent and antitrust law in recent years, and it appears such activity will continue into the next Committee term. Issues discussed and explored by the Committee have included:

- *Quanta v. LGE* and its impact on licensing and litigation.
- ANDA settlements and reverse payments, particularly in view of the Cephalon case. This is an area of particular importance to the Committee, given the significant number of members whose practice involves the pharma space.
- *Rambus, Qualcomm v. Broadcom*, and the general issue of standard setting organizations, which was also a major topic of discussion as explained in last year's Committee report.
- Efforts to reform/limit/abolish inequitable conduct were discussed early in the term, particularly in the context of the new PTO materiality rules and now stalled patent reform legislation.
- Possible antitrust and misuse implications of efforts to protect agreements against *MedImmune* type challenges.

The Committee looks forward to further exploring all these issues in the coming term, with the goal of organizing a CLE luncheon and/or preparing articles for publication in the Bulletin.

CONSONANCE AND HARMONIZATION IN THE PROFESSION (formerly YOUNG LAWYERS) *Sonja Keenan, Chair*

The Committee continued to reach out to new lawyers, women and minorities with its annual reception on February 27, 2008 at the Opia Restaurant and Lounge in midtown. The reception was well intended and enjoyed by everyone.

CONTINUING LEGAL EDUCATION *Dorothy R. Auth, Chair*

The NYIPLA is certified by the New York State Continuing Legal Education Board as an Accredited Provider of continuing legal education in the State of New York for live presentations and, for experienced attorneys only, videotapes (for individual viewing) and digital video discs (for individual viewing). Our Application for Renewal of Accredited Provider Status was submitted to the New York State Continuing Legal Education Board on January 30, 2008. Approval as an Accredited Provider of CLE programs for the period of August 28, 2008 through August 27, 2011 is pending. The Association has moved aggressively to continue compliance with substantially expanded CLE procedures which include new requirements as to the format and content of the Certificate of Participation, the substantiation of the registration procedure and the monitoring of program attendance.

The Committee continued the CLE program in conjunction with the Association's Annual Dinner in Honor of the Federal Judiciary at the Waldorf=Astoria on March 28, 2008. A distinguished panel, including three federal judges, presented a well-received discussion. The program had a total registration of 187, including 20 federal judges.

During the 2007-2008 year, the NYIPLA sponsored seven CLE programs, including one co-sponsored program, totaling 24.5 credit hours of legal education. Approximately 1,057 attorneys attended CLE programs during this program period. Our videotape library currently contains 15 credit hours of NYS CLE programs which are made available to NYIPLA members, mem-

bers of the bar, law firms, and corporations. The NYIPLA awarded approximately 3,793 NYS CLE credits, including approximately 490 ethics credits and approximately 3,303 professional practice credits. Programs are priced as close as possible to the costs. There were 11 financial aid requests in 2007-08.

All of the CLE-related administrative functions continue to be centralized with Star Consulting, with systems and procedures in place to provide continuous, coordinated support. This includes scheduling; communications with the hosting committee's program chairs, speakers and attendees; preparation and mailing of meeting notices; registration processing; preparation of Certificates of Participation, Course Evaluations and Certificates of Attendance under the direction of the CLE Committee Chair; logistical planning and coordination; and providing video/DVD program availability. Star continues to update and improve CLE administrative operations with the addition of credit card processing of registrations, downloadable registration forms for the CLE programs and continues to provide on-site supervision of the programs. Star also assisted in the preparation of the year-end report to the NYS CLE Board and the accredited provider renewal application and audit. Star Consulting has also provided a critical service to the Association in budgeting programs so that we can continue to provide high quality legal education programs at a low cost to participants.

Star continues to use a broadcast e-mail system, which provides greater flexibility in communicating up-to-date CLE program information to our members. Star has worked with the CLE Committee to explore and expand the venues and options for CLE programs including the Harvard Club, Penn Club and Princeton/Columbia Club, and maintains relationships with and coordinates our programs with current venues.

It would not have been possible for the Committee to achieve such successful programs without the support of the individual members of the Committee who have devoted extensive time and effort in planning programs and arranging for speakers and content: Karen Axt, Amy Benjamin, David Bomzer, Jennifer Chung, Anna Erenburg, Richard Erwine, Angie Hankins, Benjamin Hsing, Wan Chieh (Jenny) Lee, Sonja Keenan, Benu Mehra, Tod Melgar, Susan Proffoff, Mary Richardson, Irena Royzman, Keith Zullo and Board Liaison Thomas J. Meloro.

The following NYS CLE accredited courses and programs were sponsored by the NYIPLA:

Title: *CLE Spring Half-Day Program/ Hot Topics in Trademark Law*
Live Date: June 18, 2007
Instructors: Michelle Mancino Marsh, Steve W. Feingold, Dennis S. Prah, Meyer A. Gross, Siegrun Kane, Robert S. Weisbein, Walter McCullough, Kathleen McCarthy
Credits: 3.0 NYS Professional Practice CLE Credit and 5 NYS Ethics CLE Credit
Cost: \$160/NYIPLA Member, \$195/non-NYIPLA Member
Video/DVD: Not Available
Number of Registrants: 95
Number of Participants Awarded Credit: 72

Title: *NYIPLA CLE Fall One-Day Program*
Live Date: November 16, 2007
Instructors: Five panels. Fifteen speakers.
Credits: 6.0 NYS Professional Practice CLE Credits and 1.5 NYS Ethics CLE Credits
Cost: \$315/NYIPLA Member, \$375/non-NYIPLA Member
Video/DVD: Available
Number of Registrants: 127
Number of Participants Awarded Credit: 108

Title: *Theft of Trade Secrets and the Federal Computer Fraud and Abuse Act*
Live Date: December 12, 2007
Instructor: Peter J. Toren, Esq.
Credits: 1.0 NYS Professional Practice CLE Credit
Cost: \$85/NYIPLA Member, \$110/non-NYIPLA Member
Video/DVD: Not Available
Number of Registrants: 38
Number of Participants Awarded Credit: 27

Title: *Observations on the U.S. Government's Position in Quanta v. LG*
Live Date: February 15, 2008

cont. from page 11

Instructor: Thomas G. Hungar, Esq.
Credits: 1.0 NYS Professional Practice
CLE Credit
Cost: \$95/NYIPLA Member,
\$120/non-NYIPLA Member
Video/DVD: Not Available
Number of Registrants: 69
Number of Participants Awarded Credit: 48

Title: *Trying a Patent Case in View of
Recent Supreme Court Cases*

Live Date: March 28, 2008
Instructors: Hon. Richard Linn, Hon. Joseph A.
Greenaway, Jr., Hon. Patti B. Saris,
John Flock, Esq., Jesse J. Jenner, Esq.
Credits: 2.0 NYS Professional
Practice CLE Credit
Cost: \$130/NYIPLA Member;
\$155/non-NYIPLA Member
Video/DVD: Not Available
Number of Registrants: 187
Number of Participants Awarded Credit: 111

Title: *The Twenty-Fourth Annual
Joint Patent Practice Program*
Live Date: April 30, 2008
Instructors: Five panels. Over 30 speakers.
Credits: 7.0 NYS Professional Practice CLE
Credits and 1.0 NYS Ethics CLE Credit
Cost: \$375/\$400 Late Registration Fee
Video/DVD: Available
Number of Registrants: 461
Number of Participants Awarded Credit: approx. 292

Title: *Engaging Outside Counsel on IP Matters—
In-House Attorneys' Perspective*
Live Date: May 16, 2008
Instructors: Jeff Zachmann, Esq., Scott Rittman, Esq.,
George Romanik, Esq.,
Kathy Card Beckles, Esq.
Credits: 1.5 NYS Professional Practice CLE Credits
Cost: \$130/NYIPLA Member,
\$155/non-NYIPLA Member
Video/DVD: Not Available
Number of Registrants: 86
Number of Participants Awarded Credit: Pending

Congratulations!

The Association
congratulates
Karl Jorda,

Past President of the NYIPLA (1986-87), on the launching of a campaign
to establish The Karl F. Jorda Professorship in Patent Law at Franklin Pierce
Law School in New Hampshire. Those interested in contributing to
the fund can contact Anthony Giaccio for
additional information.

COPYRIGHT COMMITTEE

David A. Einhorn, Chair

The Committee will consider what actions to take, if any, with respect to the U.S. Supreme Court's March 2, 2009 decision to review a Second Circuit opinion that a district court lacked jurisdiction to approve a copyright action settlement because some of the works involved were not registered by the U.S. Copyright Office.

In addition, the Copyright Committee is exploring the following issues this year:

- The copyrightability of directorial works and stage directions. (The Society of Stage Directors and Choreographers has long advocated for copyright protection for directorial works. The Dramatists Guild has advocated against such protection on the ground that a director's copyright would diminish the significance of the playwright's copyright in the underlying work).
- Issues regarding the possibility of format protection for reality shows, i.e., what is protectable expression versus unpatentable ideas?
- The copyrightability of fragrances. (The Dutch High Court recently found the odor of perfumes to be copyrightable.)
- Recent developments regarding the infringement of architectural copyrights.
- Recent cases concerning secondary liability on the Internet (including the *Perfect 10* Ninth Circuit cases).
- Other on-line issues such as deep linking and framing as possible violations of the copyright owners' rights.

LEGISLATIVE OVERSIGHT AND AMICUS COMMITTEE

Charles Weiss, Chair

An amicus brief was filed in the Federal Circuit case *Tafas v. Dudas* which concerned the PTO's adoption of rules that substantially restricted continuation practice and the number of claims that could be presented for examination. The brief supported the challengers, and argued for affirmance of the district court's judgment that the PTO did not have authority to adopt the proposed rules. The brief was prepared by committee member Chuck Miller, with assistance from committee member Bridgette Ahn and editorial comments from the chair.

The committee considered several requests for amicus appearance by interested parties in Federal Circuit cases, generally in connection with petitions for rehearing en banc. Because the time in which to file amicus briefs in support of these petitions is short, the committee considered that amicus participation would be warranted only in cases of general importance in which a consensus of the committee and the Board in support of a position would be likely. Additionally, a substantial number of committee members recused themselves from consideration of several requests, thereby limiting the resources available for preparation of a brief. As a result, the committee did not file amicus briefs in any of the matters in which participation was solicited by a party.

The committee considered filing an amicus brief in the Federal Circuit in the *In re Bilski* case, which concerned the scope of patentable subject matter under 35 U.S.C. § 101. However, a large number of committee members recused themselves, as did several Board members, and no consensus was reached.

A topic for discussion in the current year is Chuck Miller's proposal that the Association support adoption of legislation and court rules to provide for arbitration in civil actions seeking review of final administrative rulings by the PTO. The invocation of arbitration would be at the election of the plaintiff (the party aggrieved by the PTO determination and seeking review), and would extend to review of final PTO action of 1) rejections in patent applications and *ex parte* re-exams, 2) patent term adjustments, and 3) disciplinary matters. Following joinder of issue and plaintiff's demand to arbitrate, the district court would refer the case to arbitration by one or more arbitrators selected from a panel of court-certified patent practitioners. The PTO would not be permitted to oppose the plaintiff's demand to arbitrate. Fees and expenses for the arbitration would be taxed to the plaintiff consistent with current fee-shifting provision of 35 U.S.C. § 145. The arbitral award would include a reasoned decision, and be subject to confirmation, vacatur, or correction by the district court on any of the grounds specified in the Federal Arbitration Act. To the extent the award was confirmed, it would be entered as a judgment of the district court. To the extent the award was adverse to the plaintiff, the judgment would be reviewable on appeal to the Federal Circuit. The arbitral proceedings would

cont. on page 14

cont. from page 13

be part of the court record to ensure transparency of the process, but decisions would bind only the plaintiff and the PTO, and would be nonprecedential unless an appeal was taken and the Federal Circuit decided the appeal in a precedential opinion. Some consideration was given to this proposal last year, but the intent in the current year is to consider the proposal more closely in conjunction with the ADR Committee and the Patent Practice Committee.

INTERNET LAW

Paul Reilly, Chair

The Committee held several meetings in person and by telephone. Various issues relating to IP law and the internet were discussed which led to the preparation of two articles for publication in the November/December 2008 Bulletin: Anti-Phishing Consumer Protection Act of 2008; and “Divining” Commercial Use of Trademarks on the Internet.

MEETINGS AND FORUMS COMMITTEE

Richard W. Erwine, Chair

The Meetings and Forums Committee in conjunction with the Committee on Continuing Legal Education is working to set up interesting and informative CLE lunch programs that cover a wide range of intellectual property topics. The Committee held an organizational meeting at the Penn Club on January 11, 2008 to meet and plan CLE programs for 2008 and beyond.

The Committee arranged four CLE Lunch Programs for this year. Speakers included Peter Toren of Kasowitz Benson Torres and Friedman, LLP who gave a talk on Trade Secrets and the Federal Computer Fraud and Abuse Act and Thomas Hungar, Deputy Solicitor General, United States Department of Justice, spoke on the U.S. Government’s position in the pending *Quanta v. LG* Supreme Court case. The Committee also arranged for a panel of in-house counsel, including Mark Schilckraut and Scott Rittman of Becton, Dickinson and Company, Jeff Zachmann of IBM, George Romanik of Pratt & Whitney, and Kathy Card Beckles of JP Morgan Chase & Co. This group provided their perspectives on engaging outside counsel in IP matters, and other related topics.

The Committee is finalizing plans for three programs later this year, including a panel of European Patent Office representatives (June 2008), a talk by Fordham professor Susan Scafidi on pending legislation under the Copyright Act to protect fashion designs (September 2008), and a panel of Eastern District of Texas judges and local counsel (tentatively set for October 2008) on best practices in that district.

MEMBERSHIP COMMITTEE

Marilyn Matthes Brogan, Chair

The Committee focused on various ways to increase and encourage membership.

Given the success of the Women’s Wine Tasting/Networking Event in 2007, the possibility of holding another

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IN HONOR OF THE
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event designed to target non-members was discussed. However, in view of the full schedule the Association had through May 2008, and the lead time required in order to run such an event, the Committee decided to look at conducting an event in fall 2008. The committee is working on locating an appropriate venue and is entertaining proposals from wine experts.

As in the past, the Committee continues to seek new members from non-members who attend the monthly luncheons and membership applications are made available at the luncheons for this purpose. Representatives from the Membership Committee also attended the annual reception held by the Young Lawyers' Committee and encouraged the non-members at the event to join the Association.

Attached are specifics for the membership for the year 2007- 2008. The numbers for the year ending May 2008 reflect an increase in total membership; however, the number of active paid members and new members, both regular and student, for this year are slightly down over last year.

Total Membership: 2468

Total Paid Membership: 1440

New Members during this dues period:

(May 2007- May 5, 2008) 168

Total New Student Members this dues period: 16

Total Lost Souls out of the 2468: 600

(Lost Souls are members who have left their firms and have no forwarding address. Every few months we try to find them on Martindale, with some small measure of success).

The breakdown of this year's paid members who are current with the 2007-08 dues is as follows:

*Paid Active Members

(admitted to practice 5+ years) = 920

*Paid Active Members

(admitted to practice less than 5 years) = 360

*Paid Active Members

(outside NJ, NY, VT, CT) and
includes Foreign = 73

Note: 12 Foreign Members in Database of
which 9 are current with dues

*Paid Retired Members = 27

*Paid Student Members = 43

*Life Members (not required to pay dues) = 17

PUBLICATIONS

Stephen J. Quigley, Chair

The Publications Committee continued its dual role of publishing the NYIPLA Bulletin and the Greenbook.

The Bulletin is a journal of articles of interest to the intellectual property community written by Association members, as well as reports on Association activities and CLE programs, columns, and a calendar of Association sponsored events. During the 2007-08 term, four issues of the Bulletin were published featuring articles analyzing an array of pertinent topics including intellectual property license issues in bankruptcy; the new PTO rules on continuing applications and claim examination practice; recent changes to the Trademark Trial and Appeal Board rules; and trademark parody.

The Greenbook serves as both the directory of all Association members and a yearbook for the Association's activities. The 2007 – 2008 Greenbook also included the Association by-laws and rules of admission, Treasurer's report, lists of the current and past officers of the Association, current directors and committee members, committee reports, summaries of amicus briefs filed by the Association and a review of the Federal Circuit activities

In addition to writing for the Bulletin, committee members assist in editing articles and proofreading for all the publications.

cont. on page 16

ARTICLES

**The Association welcomes articles
of interest to the IP bar.**

Please direct all submissions

by e-mail to:

Stephen J. Quigley,

Bulletin Editor, at

squigley@ostrolenk.com

NEW COMMITTEES

CORPORATE PRACTICE COMMITTEE

***Susan E. McGahan, Co-Chair and
Alexandra B. Urban, Co-Chair and Board Liaison***

The goals of the newly formed Corporate Practice Committee include focusing on IP-related issues that affect in-house counsel, highlighting these issues in articles for publication in the NYIPLA Bulletin as well as in CLE programming in conjunction with the Committees on Meetings & Forums and CLE, and making recommendations to the NYIPLA Board of Directors with respect to these issues. This Committee will also work with other NYIPLA committees that focus on topics of interest to in-house counsel, such as licensing, protection of privilege, international IP litigation, electronic discovery, IP insurance/liability, and patent reform.

This Committee will also work with the Amicus Committee, where appropriate, to consider issues that have an impact on in-house counsel, and with the Membership Committee, to increase corporate counsel membership in the Association.

If you have an interest in serving on this committee, please contact either of the co-chairs listed above. Membership is not limited to in-house counsel, but will require active participation.

INTERNATIONAL IP LAW COMMITTEE

***Samson Helfgott, Chair
Charles R. Hoffman, Board Liaison***

(The International IP Law Committee was inadvertently omitted from the Committee listings in the previous Bulletin.)

Scope of the Committee: It shall be the duty of this Committee to coordinate with the Committee on Patent Law and Practice in cooperation with others regarding proposals to harmonize the substance, practice and interpretation of national laws and the international convention for the protection of intellectual property.

Mission: To disseminate information about international intellectual property practice topics including but not limited to patent prosecution highway results, improving use of the PCT, the prospect for a common court of appeals system in Europe, extremely accelerated examination pilot program in Japan, software patents around the world, and Korea as an International Searching Authority under the PCT in one or more CLE format programs or articles for publication in the Bulletin.

There are a number of extremely interesting activities that are taking place in the international scene. Some of the topics the Committee will explore include:

1. Patent Prosecution Highway results - The program keeps growing, although users are limited. However, the results are very impressive.
2. Improving use of the PCT - A number of proposals for improving the work sharing capability of the PCT and perhaps incorporating PPH into PCT. These include the recent Japanese proposal on the NEO PCT System, a recent Memorandum from Francis Gurry, the Secretary General of WIPO, setting out a PCT roadmap, and upcoming meetings in Copenhagen, Geneva and Tokyo on how to make better use of PCT.
3. The prospect for a common court of appeals system in Europe.
4. An extremely accelerated examination pilot program introduced in Japan.
5. Software patents around the world - the recent submission by the EPO President to the Enlarged Board of Appeals, the relationship between the European, Japanese and U.S. position in light of *Bilski*.
6. Korea as an International Search Authority under the PCT - The success of the Korean Patent Office in providing timely and quality searches, recent improvements in their services as an ISA for U.S. applicants.

The Committee seeks all who are interested in these and other international topics. Please send an e-mail indicating your interest to Committee Chair Samson Helfgott at samson.helfgott@kattenlaw.com. ■

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cont. on page 20



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