

Nineteen Hundred and Twenty-two

# NYIPLA

The New York Intellectual Property Law Association®

## 2011-2012

## GREEN

## BOOKLET

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**Terri M. Gillis**  
***NYIPLA President***  
***2011-2012***



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**Standing** (left to right): Alexandra Frisbie, Walter Hanley, Susan Progoﬀ, John Moehring, Annemarie Hassett, Kevin Ecker  
**Seated** (left to right): Dale Carlson, *Immediate Past President*; Dorothy Auth, *Secretary*; Thomas Meloro, *President-Elect*; Theresa Gillis, *President*; Charles Hoﬀmann, *First Vice President*; Anthony Lo Cicero, *Second Vice President*; Jeffrey Butler, *Treasurer*

# 2011-2012 BOARD OF DIRECTORS

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## 2011-2012 YEAR IN REVIEW

First, I want to thank the membership of the Association for entrusting me with the privilege and responsibility of serving this past year as President of the Association and for allowing me during the prior years to serve as a Board member, Treasurer, Secretary and each of the so-called “ladder” positions on the way to becoming president. I believe I am the only person in the Association’s 90-year history to have had the opportunity to serve in every role possible on the Board. It has been an honor to do so.

### Committee Activities

This Association has long been a powerful and valued voice in matters relating to intellectual property. It has helped shape legislation over the years, as well as contributing to the evolution of legal precedent through its always very active Amicus Briefs Committee.

Given that history, my stated purpose at the commencement of my year as president was to ensure that that policy-shaping function not be lost as more and more of the Association’s focus had shifted to the Annual Judges Dinner. While that dinner is a valuable and enjoyable function, there was concern that the Association was becoming recognized largely only for that event and was losing its stature as a powerful voice on all matters related to intellectual property.

Accordingly, my focus this year has been on increasing both Board and committee participation in activities beyond the Judges Dinner. In doing so, I was building on the efforts of my predecessors, who had improved the committee system through reorganization and through selection of committee chairs with commitment to meaningful committee activities.

By the May 2011 Annual Meeting, when I assumed the role of president, I was fortunate to have been able to identify able and willing committee chairs for all committees. With the aid of Board liaisons to the committees and committee chairs, CLE events were almost uniformly the product of the efforts of at least two committees – the committee responsible for administering the event (generally either the Meetings and Forums or CLE Committees) and one of the Association’s substantive committees responsible for developing the event content.

The Association has always sponsored events rich in content. This year was no exception. It is my perception that this collaborative, multi-committee approach not only ensures rich programs, but also affords an opportunity for networking and increased active participation by Association members via their committees. It has also meant that Board members have had an active role both at Board meetings and in connection with the activities of the committees for which they serve as Board liaisons. My hope is that, by fostering this active participation in committee functions, the benefits of Association membership have been enhanced.

### The Judges Dinner

This year’s Judges Dinner was a resounding success – attendance continued to increase relative to the fall-off that followed the economic downturn several years ago. Our keynote speaker, Judge Colleen McMahon, was a singular success. And it was a distinct privilege to honor Judge Alan D. Lourie with our public service award.

The dinner afforded me an opportunity to briefly address my concern that the Association remain proactive in its efforts to be inclusive and promote diversity. Judge McMahon was only the third woman to serve as keynote speaker, and I am only the third female president. I challenge the Association to be an effective advocate and to lead by example in getting the bar – private practitioners, in-house counsel, government attorneys and public interest lawyers alike – to reach a point where one is no longer able to count on one’s fingers the number from this or that group that has served in a leadership position.

### The 2012 Annual Meeting

The Annual Meeting took on a new format this year. In the past, the meeting has consisted of a brief business meeting attended by a few members followed by a dinner. This year the event was extended, commenc-

ing with a CLE luncheon that drew more than 70 attendees. The afternoon hours were spent in animated committee meetings. The business meeting that followed late in the afternoon was standing-room only.

Given my objective of increased committee involvement in the Association, I was particularly gratified by the success of this event. Thanks to Tony Lo Cicero, the committee chairs, the committee members and the membership who made this success possible.

### **Association Finances**

The Association has had a good year financially. The lean times following the downturn seem to be behind us for now – largely due to attention to cost-cutting which has resulted in slashing some of the Association's most significant expenses in the past couple of years.

The Association (with Robin Rolfe Resources' assistance) was able to reconcile the bills for this year's Judges Dinner before the close of the year. Historically, the payment for the Judges Dinner fell into the following year, resulting in something of an accounting disconnect between revenue and expenses for the Judges Dinner. Going forward, revenue and expenses for a specific Judges dinner will be in the same year. Because of this change, the expense of both the 2011 and 2012 Judges Dinner is recorded against 2011-12 revenues, giving the illusion of a deficit. In fact, a relatively large surplus was again achieved if only one Judges Dinner expense is charged against 2011-12 revenues. This solid financial position will be evident in 2012-13, when only one Judges Dinner is charged against revenues.

In addition, financing practices and procedures have been updated and improved. By year end, the Association had been brought into compliance with all governmental and regulatory requirements. We owe a special thanks to our Treasurer, Jeffrey Butler, for his attention to getting our books in order.

### **Patent Rules**

The Association has played a role this year in the efforts of the Eastern and Southern Districts of New York to develop local patent rules. While that effort has not yet resulted in adoption of rules, it has served as a forum for discussion of the pluses and minuses of various iterations of patent rules and has increased recognition that a rigid, one-size-fits-all set of rules is no more appropriate in a patent case than in any area of litigation. Patent litigators currently struggle with a proliferation of different local rules and the satellite litigation they spawn. Perhaps the Association can become a voice for creating a simple uniform set of national patent rules that would aid in reducing the cost and complexity of patent litigation in lieu of the current situation, where diverse and rigid rules often have the opposite effect.

### **Association Administration**

The Association's new website, launched near the beginning of my term, has become a valuable informational resource for Association members, moving the Association to a more efficient, electronic platform and to greener, more eco-friendly practices. The reduction in paper and simplification of event registration procedures has been a welcome change. Our Website and Records Committee continues to explore ways to increase the value of the website as an informational resource and historical archive for the Association's records.

I want to extend a special thanks to Robin Rolfe Resources, our executive director. Its able personnel have administered the Association smoothly and efficiently, making my job easier and enhancing the value of the Association to its membership – all at a cost that is affordable.

### **Closing**

In closing I again thank you for allowing me to serve. It is my hope that I – with the enthusiastic assistance of the Board and Committees – have left the Association in at least as good condition as when I began my term. I know I leave it in the very able hands of those on the ladder behind me.

With thanks,  
Terri Gillis



## Annual Meeting and Awards Dinner

On May 24, 2011, incoming Association President Terri Gillis welcomes members and guests at the Harvard Club. Terri expressed her appreciation for outgoing President Dale Carlson.



**Keynote Speaker: Honorable Raymond J. Dearie,**  
*Former Chief Judge of the U.S. District Court for the Eastern District of New York*



## 2012 Inventor of the Year

The NYIPLA is pleased to recognize the 2012 Inventor of the Year, Dr. Radoslav Adzic, Senior Chemist at Brookhaven National Laboratory, for his pioneering work developing nanocatalysts with reduced platinum loading, which have uses in the development of hydrogen fuel cells. Among other things, this technology has broad applications in hydrogen fuel cell powered vehicles. Increased use of hydrogen fuel cells would decrease pollution and global warming, as well as decrease US dependence on foreign oil. Jessica Copeland and Kevin Ecker presented the award.



## The 2012 Hon. William C. Conner Writing Competition Winners

### First Place Winner

Dan Karmel from The Columbia Law School for his paper entitled "Off the Wall: Abandonment and the First Sale Doctrine." The Honorable Barbara Jones presented the awards to the first and second place winners.



### Second Place Winner

Libby Moulton from The Columbia Law School for her paper entitled "Inducing Immune Infringement: The Interplay of § 287(c) and § 271(b)."



### NYIPLA Diversity Scholarship Award

The NYIPLA awards its 2012-2013 diversity scholarship program grant of \$10,000 to St. John's University School of Law. Edward Bailey presented the award. Accepting on behalf of St. John's was Dean Larry Cunningham.

The Association plans to award at least one scholarship annually to offset tuition costs for a student in a local law school with an interest in intellectual property law who is from a background traditionally underrepresented in the legal profession.









# 2011 – 2012 Committee Reports

## AMICUS BRIEFS COMMITTEE

**Scope of the Committee:** To coordinate the work of the Association relating to the preparation and submission of amicus briefs, and to make recommendations with respect thereto to the Board of Directors.

**Co-Chairs:** *John M. Hintz and David F. Ryan*  
**Board Liaison:** *Thomas J. Meloro*

**Members:** Ronald Daignault, Melvin Garner, Dennis Gregory, Marylee Jenkins, Jeffrey Lewis, Dan Li, Stanley Lieberstein, Charles Macedo, Matthew McFarlane, Charles Miller, Robert Rando, Steve Reisberg, Alan Sack, Rochelle Seide, Victor Siber, Joseph Sozzani, Ron Vogel, Charles Weiss, Jonathan Wise

During the past year, some seventeen proposals for amicus curiae briefing by the Association were considered by the Amicus Briefs Committee. Four amicus briefs were filed by the Association, two in the Supreme Court and two in the Court of Appeals for the Federal Circuit. The Supreme Court accepted the Association's arguments regarding Section 145 in *Kappos v. Hyatt*, but rejected our suggestions regarding the interpretation of Section 101 mandated by *Bilski* in *Mayo v. Prometheus*.

The Association's briefing of the joint infringement issues presented by *Akamai v. Limelight* and *McKesson v. Epic* remains pending before the Federal Circuit. In its *Wiley v. Kirtsaeng* decision, the Court of Appeals for the Second Circuit accepted the arguments on copyright exhaustion made by the Association last year, and the Supreme Court has now agreed to review the issue on *certiorari*.

## CONNER WRITING COMPETITION COMMITTEE

**Scope of the Committee:** To publicize and conduct a law school writing competition on an intellectual property law topic, and to make recommendations to the Board of Directors with respect thereto.

**Co-Chairs:** *Pejman Sharifi and Gary M. Butter*  
**Board Liaison:** *John T. Moehringer*

**Members:** Richard H. Brown, Lauren Emerson, Mark Francis, Jordan Garner, Irene Hudson, Wan Chieh (Jenny) Lee, Peter Saxon

The Committee solicited and reviewed entries for the William C. Conner Writing Competition. Throughout the fall, we updated the database of e-mail addresses and other contact information for the intellectual property contacts (professors or deans) at each of the eligible schools. We posted the announcement of the competition on the NYIPLA website in November. In December and January, an e-mail was sent to the contacts to encourage that the writing competition announcement be posted at the school to ensure the students were aware of the opportunity.

We received 40 submissions, which were divided into two groups. Each Committee member reviewed and ranked the submissions in one group. The best submissions were then reviewed by all Committee members. The top three submissions were chosen by consensus during a full Committee teleconference and sent to the NYIPLA Board for its consideration. Based on the recommendations of the Committee and a further discussion during the April NYIPLA Board meeting, the winner and runner-up were selected by the Board:

1. "Off the Wall: Abandonment and the First Sale Doctrine" by Dan Karmel (Columbia Law School)
2. "Inducing Immune Infringement: The Interplay of § 287(c) and § 271(b)" by Libby Moulton (Columbia Law School)

The Committee notified the winners and arranged for the presentations to be made at the Annual Dinner.



## CONTINUING LEGAL EDUCATION COMMITTEE

**Scope of the Committee:** To formulate and present continuing legal educational seminars of interest to the broad spectrum of the Association's membership, and to make recommendations with respect thereto to the Board of Directors.

**Co-Chairs:** *Mark Bloomberg and Richard Parke*  
**Board Liaison:** *Dorothy R. Auth*

**Members:** Andrew Berks, Jessica Copeland, David Bomzer, Wan Chieh (Jenny) Lee, Keith McWha, Colman Ragan, Robert Rando, Alicia Russo, William Thomashower

### The NYS CLE ACCREDITED PROVIDER STATUS

The New York State Continuing Legal Education Board initially certified the New York Intellectual Property Law Association ("NYIPLA") as an Accredited Provider of continuing legal education ("CLE") in the State of New York on September 1, 1999. All NYIPLA live CLE courses and programs given from August 1, 1997 up to August 27, 1999 were retroactively approved. As of January 11, 2000, the NYS CLE Board approved our application for non-traditional formats for videotapes. Videotaped CLE courses and programs given from August 1, 1997 were retroactively approved. We received approval of the non-traditional CLE format (DVD) on August 15, 2005.

We submitted our Application for Renewal of Accredited Provider Status to the New York State Continuing Legal Education Board on May 1, 2011. Approval as an Accredited Provider of CLE programs for the period of August 28, 2011 through August 27, 2014 was renewed on October 3, 2011 for the following formats:

- Live classroom, for group participation; and
- Prerecorded video, for self-study.

We continue to provide educational courses that satisfy NYS CLE credits in accordance with NYS Rules, Regulations and Guidelines.

In compliance with the requirements of the New York State CLE Rules and Guidelines, we also filed an annual report with the New York State CLE Board on January 16, 2012 covering the 2011 calendar year.

This year the Committee continued the CLE program series in conjunction with NYIPLA's Annual Dinner in Honor of the Federal Judiciary at the Waldorf=Astoria on March 23, 2012. Special invitations were sent to the Honored Guests attending the dinner. A distinguished panel, including two federal judges and a USPTO Deputy General Counsel for Intellectual Property Law and Solicitor, presented a well-received discussion. The program had a total registration of 121, including 22 federal judges.

During the program period (May 1, 2011 thru April 30, 2012), NYIPLA has sponsored 10 CLE programs and awarded 22.5 NYS CLE credits, including 2 ethics credits and 20.5 professional practice credits. In addition, there were approximately 544 attorneys who attended CLE programs during this program period.

We continue to price programs reasonably, so as to cover necessary costs. There were six financial aid requests granted in 2011-2012 in the form of six partial scholarships.

### EXCELLENT ADMINISTRATIVE SERVICES OFFERED BY ROBIN ROLFE RESOURCES, INC.

All of the CLE-related administrative functions continued to be centralized with Robin Rolfe Resources, Inc., 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. Robin Rolfe Resources also assisted in the preparation of the year-end report to the NYS CLE Board and the accredited provider renewal application and audit. Robin Rolfe Resources continues to use a broadcast e-mail system, which provides greater flexibility in communicating up-to-date CLE program information to our members.

Robin Rolfe Resources, Inc. has provided excellent administrative services in support of the CLE program.

## ON THE HORIZON

The following programs are anticipated for the upcoming year:

- Half-Day Trademark CLE Seminar on July 18, 2012.
- Monthly Meetings and Forums luncheon programs, each satisfying at least 1.0 NYS CLE credit.
- One-Day Patent CLE Seminar on November 1, 2012.
- “Day of the Dinner” Luncheon CLE Program on March 22, 2013.
- Annual Meeting CLE Luncheon on May 21, 2013.

## COMPLIANCE

NYIPLA 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.

## CONCLUSION

It has been our pleasure serving this year as Co-Chairs of the Committee on Continuing Legal Education. We hope that the NYIPLA continues an aggressive approach to continuing legal education programs, the goal being to meet and exceed the needs of the intellectual property bar.

In addition, it would not have been possible for the Committee to achieve such successful CLE programming without the excellent support of the individual members of the Committee. These members have devoted extensive time and effort in planning programs and arranging for speakers and content: Andrew Berks, David Bomzer, Jessica Copeland, Wan Chieh (Jenny) Lee, Keith McWha, Colman Ragan, Robert Rando, Alicia Russo, William Thomashower, and Board Liaison Dorothy Auth. We also would like to thank all the NYIPLA Committees co-sponsoring with the Meeting & Forums Committee chaired by Jay Anderson and Debra Resnick for organizing the monthly luncheon programs.

## NYIPLA CLE PROGRAMS

Since last year’s report, the following NYS CLE-accredited courses and programs have been sponsored by NYIPLA:

Title: *2011 Half-Day Hot Topics in Trademark CLE Seminar*

Date: June 14, 2011

Panelists: Hon. Frances S. Wolfson, Kurt Anderson, Sara Blotner, Siegrun D. Kane, Clark Lackert, Qiang Ma, Susan Proffoff, Sofia Rahman, Martin B. Schwimmer

Moderator: Jessica Copeland

Credits: 3.5 Professional Practice

Cost: \$195/NYIPLA Member

\$225/Non-NYIPLA Member

Video/DVD: Not Available

Number of Registrants: 51

Number of Participants Awarded Credit: 42

Scholarships Awarded: 2

Title: *An In-House Perspective on IP Practice: Coordinating with Business Units and Legal Teams to Maximize Opportunities and Overcome Challenges*

Date: September 21, 2011

Panelists: Mony R. Ghose, Stephanie Monaco, Laura Sheridan, Paula K. Wittmayer

Moderator: Sona De

Credits: 2.0 Law Practice Management

Cost: \$160/NYIPLA Member

\$190/Non-NYIPLA Member

Video/DVD: Not Available

Number of Registrants: 41

Number of Participants Awarded Credit: 37

Scholarships Awarded: 1



Title: *Recent Developments in U.S. Trademark and Unfair Competition Law*

Date: October 20, 2011

Speaker: Theodore Davis

Credits: 1.0 Professional Practice

Cost: \$145/NYIPLA Member

\$175/Non-NYIPLA Member

Video/DVD: Not Available

Number of Registrants: 40

Number of Participants Awarded Credit: 34

Scholarships Awarded: 0

Title: *2011 November One-Day Patent CLE Seminar*

Date: November 3, 2011

Panelists: Hon. Joanna Seybert, Dorothy Auth, Robert Fischer, James Gould, Robert Isackson, Rory Radding, Richard Raysman, Renee Sekino Wolfe, Scott Stimpson, Paul Ackerman, Jay Lessler, Philip Hirschhorn, James Rhodes, Reza Green, Michael Burstein

Moderators: David Bomzer, Robert Rando, Alicia Russo, Bill Thomashower

Credits: 2.0 Ethics and 5.0 Professional Practice

Cost: \$420/NYIPLA Member

\$470/Non-NYIPLA Member

Video/DVD: Available

Number of Registrants: 124

Number of Participants Awarded Credit: 115

Scholarships Awarded: 1

Title: *Perspective of the United States Court of Appeals for the Federal Circuit*

Date: December 15, 2011

Speaker: Hon. Randall R. Rader

Credits: 1.0 Professional Practice

Cost: \$145/NYIPLA Member

\$175/Non-NYIPLA Member

Video/DVD: Not Available

Number of Registrants: 74

Number of Participants Awarded Credit: 63

Scholarships Awarded: 1

Title: *Patent Pilot Program and Litigating Patent Cases in the Eastern District of New York*

Date: January 26, 2012

Speaker: Hon. John Gleeson

Moderator: Brian Rothery

Credits: 1.0 Professional Practice

Cost: \$145/NYIPLA Member

\$175/Non-NYIPLA Member

Video/DVD: Not Available

Number of Registrants: 91

Number of Participants Awarded Credit: 85

Scholarships Awarded: 1

Title: *Associates CLE Panel and Networking Reception: "Why Should I Take The Patent Bar Exam?"*

Date: February 1, 2012

Panelists: Jessica Davis, Brian Rothery, Peter Thurlow

Moderator: Carolyn Blessing

Credits: 1.5 Professional Practice

Cost: \$15/Student NYIPLA Member

\$50/NYIPLA Member

\$80/Non-NYIPLA Member

Video/DVD: Not Available

Number of Registrants: 36

Number of Participants Awarded Credit: 31

Scholarships Awarded: 0

Title: *On the Cutting Edge of Social Media and Behavioral Advertising*

Date: February 16, 2012

Panelists: Henry Goldstein, Lesley Rosenthal

Moderator: Jonathan Moskin

Credits: 1.5 Professional Practice

Cost: \$160/NYIPLA Member

\$190/Non-NYIPLA Member

Video/DVD: Not Available

Number of Registrants: 33

Number of Participants Awarded Credit: 29

Scholarships Awarded: 0

Title: *"Day of the Dinner" Luncheon CLE Program:*

*The Practical Impact of the America Invents Act on Patent Litigation*

Date: March 23, 2012

Panelists: Hon. P. Kevin Castel, Hon. Mark Falk, Raymond Chen

Moderators: Terri Gillis, Anthony Lo Cicero

Credits: 2.0 Professional Practice

Cost: \$195/NYIPLA Member

\$225/Non-NYIPLA Member

Video/DVD: Not Available

Number of Registrants: 121

Number of Participants Awarded Credit: 89

Scholarships Awarded: 0

Title: *Hot News – Hot New Doctrine or Yesterday's News?*

Date: April 12, 2012

Panelists: Andrew L. Deutsch, Benjamin E. Marks, Glenn F. Ostrager

Moderator: Jeanne C. Fromer

Credits: 2.0 Professional Practice

Cost: \$160/NYIPLA Member

\$190/Non-NYIPLA Member

Video/DVD: Not Available

Number of Registrants: 22

Number of Participants Awarded Credit: 19

Scholarships Awarded: 0



## COPYRIGHTS COMMITTEE

**Scope of the Committee:** To consider all aspects of United States, foreign and multi-national copyright law and practice, and to make recommendations with respect thereto to the Board of Directors.

**Co-Chairs:** *Thomas Kjellberg and Joel Kami Schmidt*  
**Board Liaison:** *Charles Hoffmann*

**Members:** David Einhorn, James Gibson, David Jones, Jason Kasner, Carole Klinger, George Macdonald, Glenn Ostrager, Maya Tarr

The committee met by telephone conference to discuss emerging issues and topics for possible CLE programs. The committee developed a CLE luncheon program which was co-hosted with the Meetings and Forums Committee on April 12, 2012 at the Union League Club. The program was titled "Hot News - Hot New Doctrine or Yesterday's News?" The panelists included Andrew L. Deutsch of DLA Piper, Benjamin E. Marks of Weil, Gotshal & Manges LLP, and Glenn F. Ostrager of Ostrager Chong Flaherty & Broitman P.C. Professor Jeanne C. Fromer of New York University School of Law moderated the discussion. Tom Kjellberg and Joel Schmidt of Cowan, Liebowitz and Latman, P.C., who co-chair the Copyrights Committee, introduced the panelists. The panelists engaged in a lively discussion about *Barclays Capital Inc. v. Theflyonthewall.com*, 650 F.3d 876 (2d Cir. 2011), and the "hot news" doctrine in general. The program was especially interesting because the panelists were directly involved in the *Barclays Capital* case. Mr. Marks was part of the team that represented the plaintiffs, Mr. Ostrager represented Theflyonthewall.com, and Mr. Deutsch was the author of an amicus brief on behalf of various news companies. The committee plans to continue to monitor developments in copyright law, to seek opportunities to publish informational pieces, and to work with other committees to develop additional CLE programs.

## CORPORATE PRACTICE COMMITTEE

**Scope of the Committee:** To consider intellectual property issues having an impact on in-house intellectual property counsel, and to make recommendations with respect thereto to the Board of Directors.

**Co-Chairs:** *Alice Brennan and George Macdonald*  
**Board Liaison:** *Alexandra Frisbie*

**Members:** Eric Agovino, Michelle Burke, Tulloss Delk, Kevin Ecker, Matthew Golden, Joy Goudie, Jason Grauch, Gerard McGowan, Mark Schildkraut, Jaime Siegel, Marian Underweiser, David Vickrey

During the Fall, we organized a committee telephone conference call to discuss the America Invents Act ("AIA"). Committee co-chairs led an active roundtable discussion during which the members discussed several AIA topics relevant to corporate patent counsel including budgeting, avenues for commenting on PTO rulemaking, and litigation issues including joinder. For the Spring, we are planning an external speaker telephone conference call to obtain an update on the application of the new joinder rules.

## INTERNET AND PRIVACY LAW COMMITTEE

**Scope of the Committee:** To consider all aspects of Internet and privacy law in the United States, and to make recommendations with respect thereto to the Board of Directors.

**Chair:** Jonathan Moskin  
**Board Liaison:** Susan Progoff

**Members:** Yonaton Aronoff, Heather Chase, James Gibson, Carole Klinger, Kevin Moss, Laura Protzmann, Joel Karni Schmidt

On December 23, 2011, the NYIPLA Internet and Privacy Law Committee submitted to the Federal Trade Commission ("FTC"), with prior approval of the NYIPLA Board, extensive comments concerning proposed amendments to the Children's Online Privacy Protection Rule ("COPPA Rule"). The Committee's comments were directed in particular to the parental consent provisions of the regulations (16 C.F.R. § 312.5). The FTC has proposed modifying existing rules for verifying parental consent to "allow[] operators to collect from the parent a form of government-issued identification, such as a driver's license, or a segment of the parent's social security number, provided the operator verifies the parent's identity by checking this identification against databases of such information, and provided that the parent's identification is deleted by the operator from its records promptly after such verification is complete." The NYIPLA expressed its concern that the proposed new COPPA rules risk sacrificing parental privacy by encouraging the collection of substantial additional information in the name of safeguarding children. Although the FTC proposes that operators be required to delete social security numbers or other parental data immediately, the mere act of collecting such data raises security issues, and not all Internet operators can be expected to comply completely with such a rule.

On February 16, 2012, the NYIPLA Internet and Privacy Law Committee and the Committee on Meetings and Forums also hosted a Continuing Legal Education (CLE) luncheon at the Union League Club. The program was entitled "On the Cutting Edge of Social Media and Behavioral Advertising." The panel of speakers included Henry Goldstein, Privacy and Innovation Services Counsel for CBS Interactive, and Lesley Rosenthal, General Counsel of Lincoln Center for the Performing Arts. Jonathan Moskin of Foley & Lardner LLP was the moderator. Mr. Goldstein discussed how emerging privacy standards and the FTC's "Do Not Track" proposal may affect online publishers and the overall system and culture of online advertising. In particular, Mr. Goldstein provided technical background regarding methods of personal data collection as well as legal background concerning the FTC's prior efforts to regulate such advertising – in particular by establishing a "Do-Not-Track" mechanism for consumers to opt out of personal data collection on-line, and industry efforts to anticipate and comply with expected FTC regulations. The talk was particularly timely, as the FTC, on March 26, 2012, did subsequently release its final report, entitled "Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers." Ms. Rosenthal discussed legal issues that arise when businesses use social media to interact with the public – with a particular focus on unique issues facing non-profits and the importance of coordinating on-line marketing efforts with company staff.

## INVENTOR OF THE YEAR (IOTY) AWARD COMMITTEE

**Scope of the Committee:** To publicize, gather nominations, and review nominations for Inventor of the Year awards, and to make recommendations with respect thereto to the Board of Directors.

**Co-Chairs:** *Jessica Copeland and Anna Erenburg*  
**Board Liaison:** *Kevin Ecker*

**Members:** David Leichtman, Joseph Pieroni, Alek Szecsy, Eric Yecies

The 2012 Inventor of the Year Committee reviewed submissions for the 2012 Inventor of the Year Award and presented our top 3 choices to the Board for discussion and approval. We received 10 submissions, including 3 from last year. The Board agreed with the Committee's finding and decided to recognize Dr. Radoslav Adzic, a Senior Chemist at Brookhaven National Laboratory, for his extensive work in the field of nanocatalysts with reduced platinum loading for applications in hydrogen fuel cells.

One variation from the past was an adjustment to the deadlines for the call for nominations and the submissions. The deadlines were moved up to October 15 and December 15, respectively. This adjustment proved beneficial as the Committee received an increased number of submissions.

We would like to recognize the entire Committee for their excellent work researching, reviewing and ranking the submissions this year – Eric H. Yecies, David Leichtman, Joseph Pieroni and Alex Szecsy. We also want to thank our board liaison, Kevin Ecker, for his help navigating the process for the 2012 award.

## MEETINGS AND FORUMS COMMITTEE

**Scope of the Committee:** To prepare and conduct a series of monthly educational meetings of the Association other than meetings of the Officers, Committees and Board of Directors, the Annual Meeting of the Association and the Annual Dinner in Honor of the Federal Judiciary, and to make recommendations with respect thereto to the Board of Directors.

**Co-Chairs:** *Jay H. Anderson and Debra Resnick*  
**Board Liaison:** *Ira Jay Levy*

**Members:** Marta Gross, Steven Lendaris, Matthew McFarlane, Keith McWha, Charles Macedo, Douglas Nemec, James Rhodes, Richard Mills-Robertson

The NYIPLA Committee on Meetings and Forums, working with other committees, hosted six CLE luncheon gatherings with programs on these topics:

**September 21, 2011** "An In-House Perspective on IP Practice: Coordinating with Business Units and Legal Teams to Maximize Opportunities and Overcome Challenges"  
Co-sponsored by the Women in IP Law Committee

**October 20, 2011** "Recent Developments in U.S. Trademark and Unfair Competition Law"  
Co-sponsored by the Trademark Law and Practice Committee

**December 15, 2011** Remarks by Chief Judge Randall Rader of the CAFC

**January 26, 2012** "Patent Pilot Program and Litigating Patent Cases in the Eastern District of New York"  
Co-sponsored by the Patent Law and Practice Committee

**February 16, 2012** "On the Cutting Edge of Social Media and Behavioral Advertising"  
Co-sponsored by the Internet and Privacy Law Committee

**April 12, 2012** "Hot News – Hot New Doctrine or Yesterday's News?"  
Co-sponsored by the Copyrights Committee

Our thanks, again, to all those who graciously contributed their time and expertise as panelists and moderators, and to all those who came to participate.



## MEMBERSHIP COMMITTEE

**Scope of the Committee:** To promote membership in the Association, to process applications for membership in accordance with Article III of the Bylaws and the Rules on Admissions of the Association, and to make recommendations with respect thereto to the Board of Directors.

**Co-Chairs:** *Paul A. Bondor and Marilyn M. Brogan*  
**Board Liaison:** *Bruce Haas*

This year we saw a decrease of approximately 5% of total paid and active members. We believe this trend is caused at least in part by the decrease in the number of IP specialty firms; it appears that general firms with IP departments are not as active in the NYIPLA and are not as supportive of membership in the NYIPLA as are IP specialty firms.

However, on a positive note, this year we saw a significant increase in student members; this year we had 74 student members compared to last year's total of only 34.

We note that the NYIPLA Women in IP Law Committee is holding a women's winetasting/networking event on June 28, 2012. This should be an excellent opportunity to recruit new members. We plan to work with the Women in IP Law Committee to do so at that event.

The Committee continues to try to locate lapsed members and to renew those memberships where possible. The new Association website helps minimize membership lapses; members now can update their own contact information, so it is easier for the Association to stay in touch with members as they change location/firm affiliation.

### **2011-2012 Membership Year**

- Total paid and active membership: 1321 (decrease of 77 since last year)
- Total new members this dues period: 90
- Total new student members this dues period: 74 (significant increase over last year's total of 34)

For current members in the Association's membership database, those totals break down as follows:

- Paid active members (admitted to practice 3+ years): 984 (decrease of 94)
- Paid active members (admitted to practice < 3 years): 147
- Paid associate members (outside NJ, NY, VT, CT): 53
- Paid retired members: 27
- Paid student members: 98
- Life members: 12

## PATENT LAW AND PRACTICE COMMITTEE

**Scope of the Committee:** To consider all aspects of patent laws and practice which affect the rights of United States entities in technology, and to make recommendations with respect thereto to the Board of Directors.

**Co-Chairs:** *Brian Rothery and Peter G. Thurlow*  
**Board Liaison:** *Jeffrey M. Butler*

**Members:** Muna Abu-Shaar, Anne Barschall, Andrew H. Berks, Carolyn Blessing, Margaret Brivanlou, J. David Dainow, Allan Fanucci, Joseph Farco, Mark Francis, Elysa Goldberg, Samson Helfgott, Steven Hoffberg, Sean Jackson, Michael Kahn, David Kaplan, Philippe Laguerre, Steve Lendaris, Jay Lessler, Leila Marcovici, Edward Meilman, Karl Milde Jr., Charles Miller, Veronica Mullally, Douglas Nemec, Jonathan Passner, Robert Rando, Laurence Rogers, Charles N.J. Ruggiero, Peter Saxon, Laura Sheridan, Grace Yang, Matthew Zisk

The information below provides a summary of activities that the NYIPLA Patent Law and Practice Committee ("Committee") and Co-Chairs Peter G. Thurlow and Brian Rothery worked on during 2011-2012.

The Committee followed the debate in the House and Senate of the patent reform bill, and eventual passage of the Leahy-Smith America Invents Act ("AIA") in September 2011. In addition, the Committee followed the rules proposed by the U.S. Patent and Trademark Office ("USPTO") to implement the provisions of the AIA. One of the more contentious provisions of the AIA was Congress' granting the USPTO fee setting authority to set its user fees to cover the aggregate costs of examining patent applications and maintaining them. Peter Thurlow testified on behalf of the NYIPLA at USPTO fee setting hearings in February 2012. A revised fee schedule is expected to be published in July 2012. The Committee also published articles on the AIA in the NYIPLA Bulletin. Furthermore, Mr. Thurlow and Mr. Rothery were panelists at a CLE meeting hosted by the Young Lawyers Committee in February 2012 discussing the benefits of taking the USPTO patent bar exam and matters related to the AIA.

The Committee was also active in working with other NYIPLA Committees, namely the Meetings & Forums Committee. In particular, Mr. Rothery organized and hosted the January CLE meeting at which Judge Gleeson from the Eastern District of New York spoke about the Patent Pilot Program.

Mr. Thurlow and Mr. Rothery also met with Terry Rea, Undersecretary for Commerce on the USPTO's proposed Pro Bono program, to assist independent inventors and small businesses in obtaining IP protection for their ideas. After our initial meeting with Ms. Rea, we met and had teleconferences with representatives from other state bar IP associations, pro-bono.net, in-house attorneys, the New York City Bar Association and, most recently, representatives from the New York Volunteer Lawyers for the Arts. The Pro Bono program is a nationwide effort that we hope to roll out in New York by the end of 2012, and across the country in 2013.

Mr. Thurlow and Mr. Rothery also investigated and spearheaded NYIPLA efforts to participate in the formation of the SIPO Liaison Council. The SIPO Council by-laws were adopted, the Council was formed with a slate of officers, and the first meeting between SIPO delegates and the SIPO Council occurred in Beijing, China on April 23, 2012, marking the first such meeting between SIPO delegates and a non-governmental entity.

## PATENT LITIGATION COMMITTEE

**Scope of the Committee:** To consider legislation and rules affecting practice and procedural matters in intellectual property litigation outside the Patent and Trademark Office, and other matters relating to practice in such litigation, and to make recommendations with respect thereto to the Board of Directors.

**Co-Chairs:** Victor Cole and Scott Stimpson  
**Board Liaison:** Anthony Lo Cicero

**Members:** James Barabas, David Boag, Richard Brown, Marla Butler, Donald Cameron, Randy Eisensmith, William Feiler, Mark Francis, Aaron Frankel, James Gould, Pablo Hendler, Irene Hudson, Robert Isackson, Michael Kahn, Benjamin Keller, Julia Kim, Richard Mandaro, Richard Mills-Robertson, Jack Minnear, Clement Naples, Douglas Nemec, Kristin Neuman, Krishna Padmanabhan, Alexander Piller, Robert Rando, James Rhodes, Ognian Shentov, Milton Springut, Ksenia Takhistova

The NYIPLA Patent Litigation Committee had an active and productive year. It kicked off its first organizational meeting in July 2011, followed by numerous, in-person meetings, with strong attendance of its 28 members. The Committee also hosted its first-ever Research Fellow, who analyzed the effect of adoption of local patent rules in other districts.

The Committee was active in providing comments on SDNY/EDNY Local Patent Rules, and in proposing guidelines and best practices in several areas, including eDiscovery, spoliation, and multi-jurisdictional cases. Committee members contributed to various CLE programs, including such topics as Patent Reform, damages post injunction, ownership issues, copyrights, and spoliation. Various articles were also prepared and published, including on topics such as willfulness post-*Seagate*, damages models for non-practicing entities, eDiscovery, the Patent Pilot Program, and Patent Reform. The Committee also addressed various current developments in patent litigation, including, of course, the America Invents Act and the Pilot Patent Project.

## PUBLICATIONS COMMITTEE

**Scope of the Committee:** To prepare, edit, publish and disseminate such publications as may be requested by the Board of Directors, and to make recommendations to the Board of Directors.

**Co-Chairs:** Robert Greenfeld and Wanli Wu  
**Board Liaison:** Walter Hanley

**Members:** Tamara Coley, William Dippert, John Gulbin, Dominique Hussey, Jason Kasner, Mary Richardson, Peter Saxon

The Committee publishes the NYIPLA Bulletin on a bi-monthly basis. The Green Booklet, published as the June/July edition of the Bulletin, is the annual record of the NYIPLA, replacing the former Greenbook.

The Bulletin is a journal of articles of interest to the intellectual property community written by Association members and guests. New this year were a Supreme Court Review in the August/September edition and a Supreme Court Preview in the October/November edition. Articles in the Bulletin during this year covered a wide range of topics including willful infringement after *Seagate* (including an online chart of cases), more “real world” decisions regarding patent damages, claim construction in light of the *Retractable Technologies, Inc. v. Becton, Dickinson & Co.* decision, sanctions rulings in the related cases of *Micron v. Rambus* and *Hynix v. Rambus*, a review of pertinent provisions of the America Invents Act (“AIA”), accrual of damages in copyright cases, and the *Kappos v. Hyatt* Supreme Court decision. Some of these articles came from members of other committees of the Association, such as the Patent Litigation and Copyrights Committees.



In addition, the April/May edition of the Bulletin included a reprint of Judge Colleen McMahon's speech delivered at the Judges Dinner, and the February/March edition included a reprint of Admiral Hyman Rickover's 1979 Judges Dinner speech.

Each edition of the Bulletin featured the President's Corner, the Historian's Corner, reports of the Association's CLE presentations, minutes of the Board of Directors meetings, calendar of the Association's upcoming events, and Moving Up & Moving On – for publicizing news of members' transitions.

Copies of the Bulletin were mailed to all Association members and posted on the [nyipla.com](http://nyipla.com) website in color.

## **SIPO Liaison Council Committee Report**

**Co-Liaisons: Brian Rothery and Peter Thurlow**

***Board Liaison: Jeffrey M. Butler***

The SIPO Council was founded and created in the beginning of 2012. As Co-Chairs of the Patent Law and Practice Committee, Peter Thurlow and Brian Rothery were approached by Liaison Jeffrey Butler in November 2011 to investigate a letter the NYIPLA had received regarding the formation of a Council to interact with the (Chinese) State Intellectual Property Office (SIPO) in the same manner as the EPO and JPO liaison councils do with the European Patent Office and Japanese Patent Office.

We investigated the formation of this council by calling Fred Koenig who was serving as the Organizing Chair and inquiring about the make-up of the council, its objectives, how it was planning to achieve those objectives and the organizing structure, including a review of its by-laws. We also interviewed the current EPO and JPO Liaisons to understand the operation of those organizations. The main purpose for the formation of the SIPO Council is to open a dialogue with SIPO in order to discuss patent prosecution practice before SIPO. On November 15th, we participated in the NYIPLA Board meeting and made a presentation on the creation of this new SIPO Council where we recommended that the NYIPLA participate in the SIPO Council.

The NYIPLA Patent Law and Practice Committee Co-Chairs thereafter participated in multiple teleconferences regarding the formation of the SIPO Council, including presentations of by-laws, voting on by-laws, nomination of delegates from the various U.S. Intellectual Property Associations, nominations for the nominating committee, presentation of and voting for officers, and other initial organizing activities. Because of our activities associated with organizing the SIPO Council, we were selected by the NYIPLA to serve as the NYIPLA delegates on the SIPO Council.

After formation of the Council, adoption of by-laws and election of officers, the SIPO Council actively sought to obtain a meeting with SIPO delegates. SIPO has never met with a non-governmental entity so many efforts were made in order to convince SIPO to meet with the SIPO Council. The SIPO Council worked on an agenda for the meeting with SIPO. In March, SIPO indicated that it might meet with the Council in April. The first meeting with SIPO was solidified to take place on April 23, 2012. On April 23, a SIPO delegation met with members from the SIPO Council in Beijing, China. An introductory note on the NYIPLA was read into the record of the first meeting between SIPO and the SIPO Council. The meeting was considered a huge success and preliminary reports indicate that SIPO delegates may visit the United States to participate in next year's meeting.

## TRADEMARK LAW AND PRACTICE COMMITTEE

**Scope of the Committee:** To consider all aspects of trademark law and practice, and to make recommendations with respect thereto to the Board of Directors.

**Co-Chairs:** *Steven Gustavson and Kathleen McCarthy*  
**Board Liaison:** *Susan Progoff*

**Members:** Tara Bhupathi, James Bikoff, Pina Campagna, Ursula Day, David Einhorn, Lisa Ferrari, James Gibson, David Haimi, David Jones, Martha Nimmer, John Olsen, Garo Partoyan, Roland Plottel, Brian Sapir, Joel Karni Schmidt

The Trademark Law and Practice Committee had 16 active members this year. The committee has corresponded extensively and had several conference calls.

The Committee is participating in the development of the Half-Day Trademark CLE program which will be held on July 18, 2012. The Committee has developed a list of current topics of interest to the trademark bar and a list of potential speakers for the program.

The Committee also worked with other committees to organize a trademark-related luncheon program, featuring Ted Davis. The Committee plans to submit a proposal to put on another trademark-related luncheon CLE program later in the year, once the speakers and topics are set for the upcoming Half-Day program.

## WEBSITE AND RECORDS COMMITTEE

**Scope of the Committee:** To oversee the design, updating, and maintenance of the Association's website, including membership information, and to manage the gathering, care, archiving, and availability of the Association's publications, photographs, and other historical documents and records, and to make recommendations with respect thereto to the Board of Directors.

**Co-Chairs:** *William Dippert and John Gulbin*  
**Board Liaison:** *Dale L. Carlson*

**Members:** Ronald Brown, Allan Fanucci, Stephen Quigley, Gabriel Goldman, Prudence Cho, Logan Yu

Our Committee held an organizational luncheon meeting at which we planned to study the NYIPLA website, to compare it with the websites of other major IP organizations, and to make recommendations to the Board. However, after study, no recommendations were deemed necessary.

In addition, we began the process of reviewing the Association's historical documents to determine which documents need to be preserved. The Committee will also seek to identify matters of interest and relevance to the current membership.

## WOMEN IN IP LAW COMMITTEE

**Scope of the Committee:** To facilitate and empower women in their practice of intellectual property law, and to make recommendations with respect thereto to the Board of Directors.

**Co-Chairs:** *Sona De and Jeanna Wacker*  
**Board Liaison:** *Leora Ben-Ami*

**Members:** Tara Bhupathi, Jennifer BianRosa, Natasha Daughtrey, Tamara Coley, Marta Gross, Angie Hankins, Delphine Knight Brown, Abigail Langsam, Stephanie Lollo, Krista Rycroft, Pamela Schoenberg, Nicole Spence, Ruth Mary Thomas

The NYIPLA Women in IP Law Committee has spent this year working with the women on the Committee and on the NYIPLA board to plan membership meetings, CLE events and networking events. The Committee worked with the Meetings and Forums Committee to plan the September 21, 2011 NYIPLA CLE "An In-House Perspective on IP Practice: Coordinating with Business Units and Legal Teams to Maximize Opportunities and Overcome Challenges." Committee Co-Chair Sona De moderated a panel with the following speakers: Laura Sheridan, Patent Counsel at Google Inc., Mony R. Ghose, IP Counsel at Becton, Dickinson and Company, Stephanie Monaco, Assistant General Counsel, Primary Care Unit Patent Lead at Pfizer Inc. and Paula K. Wittmayer, Senior Associate Director & Senior Counsel, IP at Boehringer Ingelheim USA Corporation.

The Committee also held membership meetings in January and April where many constructive ideas were shared, both relating to mentorship and the growth and development of our Committee. The Committee plans to continue to meet quarterly for informal mentoring and sharing of useful practice points/success stories.

At the April meeting the Committee discussed plans for the upcoming NYIPLA Women and Wine Tasting Networking Event & CLE. Goodwin Procter LLP has agreed to host this exciting event on June 28th. The event will include a short panel discussion from successful women IP attorneys who will discuss challenges they have faced in their careers and what it takes to succeed as outside counsel. The panel discussion will be followed by a wine tasting event that allows participants to meet and network. The event will include wine vendors knowledgeable about the vintages to talk about the wines.

Overall, the Women in IP Law Committee has had a productive year. Many insightful ideas have been shared and continue to be brought forward in order to further develop this Committee and enable it to best serve its members and the NYIPLA community. Co-Chairs Sona De and Jeanna Wacker look forward to continuing to work with the Committee to facilitate its growth, making it an even greater resource in the coming year.

## U.S. BAR/EPO LIAISON COUNCIL

**Liaisons:** *Samson Helfgott and Thomas E. Spath*

The U.S. Bar/EPO Liaison Council held its 27th annual meeting in Washington, D.C. on October 19, 2011. The meeting was hosted by the Intellectual Property Owners Organization at its offices. The location of the U.S. Bar/EPO Liaison Council meetings alternates between Munich and the United States; our meetings in recent years have been held in Washington, often in proximity to the AIPLA meeting.

Although the president of the European Patent Office, Benoit Battistelli, had indicated his intention of continuing the president's tradition of attending the annual Council meeting, other business prevented him from traveling to Washington. The three EPO attendees represented the office of legal counsel and two heads of examining divisions.

The U.S. contingent consisted of 17 delegates from various national and regional bar associations in the United States, as well as in-house corporate intellectual property counsel. (As a result of a



special initiative begun in 2011, the membership of the U.S. Bar/EPO Liaison Council has added new representatives from a number of IP bar associations from around the country who will be encouraged to participate in our annual meeting with the EPO representatives.)

The NYIPLA representative at this Council meeting was Thomas Spath from Abelman, Frayne & Schwab. Samson Helfgott, who has attended all of the 26 prior annual meetings of the Council, was precluded from attending as a result of the timing of the meeting, and we look forward to his continuing representation and the expertise that he brings on behalf of our Association.

### **EPO Developments**

Among the wealth of information reported by the EPO, it was noted that 2010 saw an increase in filings of 11% from the prior year with 235,000 European application filings, that being the greatest number in the Office's 34 years of operation. U.S. filers represented the largest number from a single country at 26%, with the next closest being Japan at 18%; China and Korea were far behind, each with about 5%. Almost 40% of the EPO filings originate from the 38 member states of the European Patent Organization. It was also noted that filings through July 2011 showed an increase of approximately 8% over that same period in the prior year, so that the upward trend continues.

It was noted that the percentage of granted patents has continued at a generally consistent rate, having been 43% for 2010 and 42% in the prior year. Of the balance, 42% of the applications filed were abandoned after receipt of the search report and 35% were either rejected or withdrawn during the examination phase. Granted patents totaled 58,100, an increase of about 11%, which indicates that the Office is keeping up with the increase in the rate of new application filings.

The EPO also expressed general satisfaction with its pendency times, European searches being completed on average within 7.5 months of filing, which compares favorably with pendencies of the first office action of the IP5 partner offices. Where the EPO is the office of first filing (OFF), the pendency is well below 6 months, averaging 4.8 months, thereby allowing applicants a significant amount of time to determine appropriate international filing strategies within the priority year and well before the publication of their applications at 18 months. The average time from filing to grant was 43.5 months in 2010. The accelerated examination program referred to as PACE was requested by only about 5% of applicants – a surprisingly low rate to most U.S. practitioners since there are no special petitions or fees payable when PACE is requested; the only requirement imposed upon the applicant is that responses be filed within a somewhat shortened reply period.

The European Patent Organization has comprised 38 member states and two extension states for some time. These 40 countries cover an overall market of some 600 million people. The EPO is continuing its interest in exporting the European model as a coherent and carefully defined legal framework to enable users to benefit from patent rights abroad that will enjoy a high presumption of validity at a low cost and validation through a straightforward procedure. It is the goal of the EPO to contribute in this way to the extension of the global integration of the patent system. As was reported last year, the EPO concluded a validation agreement with Morocco which still requires the necessary implementation legislation to be passed by the Moroccan government. In May 2011, the EPO signed a memorandum of understanding with the Tunisian IP office, the objective being to conclude a similar validation agreement with that country by the end of 2012. It was reported to the Council that no further growth is contemplated.

In order to advance its goal of maintaining the standing of the EPO as one of the leading patent authorities in the world, additional efforts are being directed to increasing efficiency while maintaining or even improving patent quality in a financially sustainable manner. An independent study commissioned by the EU and published in March 2011 reported that the companies polled assigned the European patent system the highest overall rating; also of interest was the finding that users considered compliance with legal requirements far more important than other criteria, including timeliness.

When President Battistelli took office in July 2010, he commissioned two external audits: one related to finance and the other to the IT systems of the EPO, the former topic having been an expressed concern of his predecessor. It was reported that the EPO is currently in sound financial health, with mid- and long-term concern regarding paying the pensions of its aging staff.

Based upon the results of the audit, the current fee structure will be maintained for the foreseeable future, with a 5% increase. (This is good news for applicants since the EPO's former president had predicted the need for substantial front-end loading of the application fee structure in order to meet projected requirements.)

On the IT front, it was candidly admitted that the EPO is going to face challenges, again due to its aging systems. Five so-called "Road Maps" were described. These are: (1) Human Resources, (2) Quality, (3)

Cooperation, (4) Buildings, and (5) IT. Specific examples provided are the construction of a new office in The Hague, with the termination of leases on four buildings in Munich and The Hague. It was also noted that the EPO has adopted the same policy as the USPTO with respect to encouraging its examiners to work from home 3 or 4 days a week in order to permit an increase in the number of examiners while avoiding the necessity of providing additional office space. On the IT side, efficiency improvements in the key areas of search tools and information management, and in the patent granting process are under study.

## **Translations**

Translation costs are one of the principal concerns of the EPO, as well as its users, due to the requirement imposed by many national IP laws for filing a translation of the complete application in order to secure validation in that country. These translation requirements are of utmost relevance since there are 28 languages used in the 38 member countries, and political as well as economic interests must be considered. Member nations have expressed strong interest in preserving their respective cultural and linguistic heritages.

Another concern that the EPO is addressing is that expressed by its members and the larger patent community regarding the unavailability of translations until the end of the grant process. There is clearly a great interest by the public in early translations to permit review of the application as it is published. The EPO itself has long been concerned about the inclusion of Asian documents in its searching.

In order to address the concerns and interests, the EPO and Google entered into a long-term agreement in 2011 to collaborate on machine translation of patents into all 28 European languages, as well as into Chinese, Japanese, Korean and Russian. The availability of the translations will be phased, with expected completion of the entire project by the end of 2014. So-called “on the fly” real-time translations will be available in the three official languages of the EPO and from and into the other 32 languages through both the EPO and Google websites. Most importantly, the service will be free to all users.

## **EPO Practice and Procedures**

The EPO wishes applicants and their representatives to take note of the new practice of issuing a second written opinion prior to officially issuing a negative IPER under Rule 66.4 PCT, where the EPO has acted as the ISA and the applicant has filed amendments or arguments relevant to the international preliminary examination. This is to avoid the issuance of a negative IPER and advance the prosecution.

Modification of PCT practices also appears to have improved the overall application processing. For example, examiners are allowed to invite applicants to clarify their application before search and to require applicants to indicate the basis of any amendments. A further change favoring applicants is the reinstatement of the pre-2002 practice of affording the examiners greater latitude in making reasoned useful suggestions on their own initiative for modifying the text of the application communicated under Rule 71(3) EPC.

Concerns expressed by applicants with the time limit for filing divisional applications have been ameliorated with the adoption of a cover sheet on which the examiner enters the time limit set for filing such voluntary divisional applications under Rule 36(1)(a) EPC. Another concern of applicants that has been addressed in Rule 70(a) EPC is extending the time from one to six months for filing the required response to a negative written opinion, IPER or supplementary international search report.

Based upon an analysis of the procedure mandating a response to a negative search opinion, there has been a major increase in amendments filed prior to the beginning of examination which has resulted in greater procedural economy and celerity.

One specific aspect of EPO practice that was addressed by a number of the U.S. Council members was the stringently applied requirements under Rule 123(2) and 123(3) that claim amendments find verbatim support in the specification. It was suggested the EPO examiners provide a clear statement of why claim amendments were accepted during the examination stage in order to alleviate what is perceived by applicants to be an abuse of Rule 123(2) by opposers. On this point, a decision by the Enlarged Board of Appeal in Case G2/10 was discussed which modified the permissibility of disclaimers that carve out subject matter disclosed in the application. The Board indicated that such disclaimers were permissible if “the remaining subject matter can be considered to have been originally disclosed in the application as filed.” This decision is in apparent conflict with the broad statement in the earlier decision in Case G1/03. The current policy set forth in the practice Guidelines will have to be revised and new internal instructions provided to the examiners. In view of the new Board ruling, each case will have to be taken on its own merits.

The EPO has decided that it is important to allow time for analysis of the results of the recent “Raising the Bar” initiative in order to assess its effects, and there is to be a moratorium on significant changes to the Implementing Regulations, at least for the time being. Once the impact of the recent rule and practice changes has been assessed, adjustments, if any, will be considered.

In order to enhance the transparency of the legislative process within the European Patent Organization in the future, a web-based system will be implemented to gather feedback from interested parties regarding proposed substantive amendments to the Implementing Regulations as well as changes in the fee structure, and modifications to examination practice. These consultations will not extend to minor amendments of an editorial nature or regular updates, such as biennial fee increases. The present goal is to collate and summarize such comments and make them publicly available on the website in order to allow users from around the world to provide the EPO with input on substantive issues early in the legislative process. In the interest of improving the quality of issued patents, the EPO has set up a web-based tool for the filing of third-party observations under Article 115 EPC.

### **The Unitary EU Patent**

As was reported last year, the stalemate in the adoption of regulations for the so-called Unitary European patent that would be enforceable in all member states without individual national validations and translations was overcome by a group of 25 of the European Patent Organization members, leaving only Spain and Italy in opposition. The proposed maintenance fees for the Unitary patent will be equivalent to current fees for about 6 or 7 countries. Representatives of the U.S. delegation indicated that this cost factor would be a major issue for U.S. corporations, particularly where the corporate patent owner may need to reduce the maintenance fee expenses as the patent matures and can stop paying in selected countries under the current system.

The decision to proceed with the “unitary effect” of a European patent application is made by the applicant after the decision to grant is issued by the EPO; all other procedures for search and examination remaining unchanged.

As adopted by the European Commission, there will be no revision to the EPC and all proceedings will be as usual in the EPO. The EPO will be responsible for record keeping and collecting the annual maintenance fees, which will be shared equally with all member states.

If the application were prosecuted in French or German, it would have to be translated into English; if prosecuted in English, the patent would not have to be translated.

In view of the rejection of the proposed European Union Patent Court having jurisdiction over all member states for disputes involving a Community patent, it is anticipated that a diplomatic conference will be convened among the twenty-five supporting members to create a separate treaty that is not under the purview of the Commission.

### **International Cooperation**

In October 2010, the EPO and the USPTO entered into an agreement to create a joint classification system referred to as the Cooperative Patent Classification (CPC) for patents and patent literature. The EPO reports that the CPC implementation group has been making steady progress with the CPC expected to come into effect in January 2013. The JPO is currently studying the possibility of merging its FI classification system with the CPC, which is based upon the European classification and incorporates the best practices of the USPTO.

Another initiative reached resulted in an agreement between the EPO and the USPTO that is concerned with work-sharing goals. It was noted that the priority given by the EPO as the OFF results in searches being reported within the first half of the priority year; however, where the EPO is an office of second filing (OSF), it finds that the other IP5 offices generally have no search results available. In a pilot project, the USPTO will prioritize approximately 100 USPTO first filings in which second filings with the EPO are identified, thereby enabling the EPO to obtain the results of the USPTO’s searches. This form of prioritization is seen by the EPO as ensuring that the requisite timeliness for a work-sharing program will be mutually beneficial.

An agreement has also been reached for a Common Documentation Policy to create, maintain and enhance a common documentation data set for a given patent or patent family that will be consulted by IP5 offices when drawing up searches.

Under Rule 141, EPO applicants are obliged to submit the results from OFF searches as soon as they became available; the U.S., Japan and certain other countries were excluded from this requirement.



Another significant program announced was the launching of the Common Citation Document at the Tri-lateral conference in November 2011. This virtual document will combine all citation data relating to a family of patent applications being examined by the tri-lateral offices into a single data base that will be accessible by both patent offices and the general public. This is another step in the efforts to increase efficiency and reduce burdens on applicants by moving from the applicant-driven submission of search results (e.g., the US IDS) to an inter-office electronic exchange. Agreements have been reached between the EPO, USPTO, UK IPO and the JPO. The prior art cited under the common citation program will be posted in the EPO espacenet website.

A collaboration between the EPO, USPTO, and KIPO tested the feasibility of having examiners work together in one PCT application with the objective to establish a single, common, high-quality international search report and written opinion. No results of this project were available for reporting.

A comment was also made on behalf of the EPO that the “historical signing” of the America Invents Act (AIA) is seen as putting wind into the sails of harmonization from the U.S. perspective; this was taken as a favorable comment on the United States decision to move from a first-to-invent to a first-to-file system – a point of distinction that had long been argued by Europeans and nationals of other countries as an obstacle to further harmonization initiatives. This one change in our statutes may give the U.S. a stronger voice in future harmonization discussions.

### **US Bar Presentations**

In accordance with generally established custom, U.S. representatives discussed recent decisional law deemed to be of special significance to those concerned with U.S. patent practice before the PTO, as well as litigation. A number of Supreme Court cases and decisions by the Federal Circuit Court of Appeals were outlined and their holdings discussed. Comments were also provided regarding the recent legislative history and congressional actions taken to secure passage of the AIA by those U.S. Council representatives that were closely involved with the effort on behalf of U.S. business and IP organizations. As is often the case with a substantial and detailed piece of legislation, it was predicted that a number of legislative corrections would be required in the coming year.

## **YOUNG LAWYERS COMMITTEE**

**Scope of the Committee:** To address the concerns and needs of minorities, women, and newly-admitted lawyers, and to report with respect thereto to the Board of Directors.

**Co-Chairs:** *Michael Bullerman and Lauren Nowierski*  
**Board Liaison:** *Annemarie Hassett*

**Members:** Jonathan Auerbach, Martha Nimmer, Jonathan Passner,  
Pamela Schoenberg, Nicole Spence, Ruth Mary Thomas, Eric Yecies

On February 1, 2012, former NYIPLA Young Lawyers Committee Co-Chair Carolyn Blessing moderated a panel discussion at the Princeton Club entitled “Why Should I Take the Patent Bar Exam?” The panel featured Brian Rothery, a partner at Stroock & Stroock & Lavan LLP, Peter Thurlow, a partner at Jones Day, and Jessica Davis, an associate at Goodwin Procter LLP. The discussion was directed towards why lawyers and law students should take the patent bar exam, including how recent changes in the patent law (the America Invents Act) affect the benefits of admission. The discussion also addressed why a young lawyer may want to take the exam sooner rather than later, as well as tips for preparing for the exam. An hour of networking followed the discussion. The event was well attended by law students from the area law schools and junior to mid-level associates at firms in Manhattan. The Committee would like to thank the Board for supporting this event.

The Committee plans to submit a proposal to host a networking reception later in June targeting summer associates and other interns.

**Annual Report of the Treasurer 2011-2012**  
**The New York Intellectual Property Law Association, Inc.**  
**For the year ended April 30**  
**Statements of Financial Position – Cash Basis**

<b>ASSETS</b>	<b>2012</b>	<b>2011</b>
<b>CURRENT ASSETS</b>		
Cash – Checking Accounts	958,672	1,201,196
Money Market Accounts	9,602	9,461
Certificate of Deposit – 3 month	85,577	85,448
Certificate of Deposit – 6 month	35,842	35,752
Certificate of Deposit – 6 month	89,103	88,880
Certificate of Deposit – 1 year	36,827	36,685
<b>TOTAL ASSETS</b>	<b>1,215,300</b>	<b>1,457,422</b>
 <b>LIABILITIES</b>		
Deferred Revenue	4,060	
Accrued Expenses	16,890	
Unrestricted Net Assets	1,194,350	1,457,422
 <b>TOTAL NET ASSETS</b>	<b>1,215,300</b>	<b>1,457,422</b>

**Annual Report of the Treasurer 2011-2012**  
**The New York Intellectual Property Law Association, Inc.**  
**For the year ended April 30**  
**Statements of Activities & Changes in Net Assets – Cash Basis**

<b>Changes in Unrestricted Net Assets</b>	<b>2012</b>	<b>2011</b>
<b>REVENUES</b>		
Annual Dues Income	301,304	350,870
CLE Program Income	113,373	112,745
Judges Dinner Income	1,175,170	1,010,400
Annual Meeting & Other Events Income	37,735	59,275
Interest Income/ Other Income	1,125	1,343
<b>Total Unrestricted Revenues</b>	<b>1,628,745</b>	<b>1,534,633</b>
<b>EXPENSES</b>		
CLE Program Expense	54,122	56,516
Judges Dinner Expense	723,094	659,679
Annual Meeting Expense	30,897	23,217
Board of Directors Meeting Expense	12,099	4,351
Membership Support Expense	4,895	27,159
Young Lawyers Expense	8,619	2,775
Past President Dinner Expense	5,958	4,903
Committee Meeting Expense	6,875	7,283
Printing Expense	52,149	57,317
Website Expense	27,638	18,283
IAJ Expense	15,000	
Accounting Expense	29,035	14,000
Insurance Expense	8,689	11,462
Scholarships, Awards & Donations	24,500	10,596
Consulting Expense	270,643	339,644
Administrative Expense	24,466	15,568
<b>Total Expenses</b>	<b>1,298,679</b>	<b>1,252,754</b>
<b>Increase (Decrease) in Unrestricted Net Assets</b>	<b>330,066</b>	<b>281,879</b>
<b>Unrestricted Net Assets at Beginning of Period (restatement *)</b>	<b>864,284</b>	<b>1,175,543</b>
<b>Unrestricted Net Assets at End of Period</b>	<b>1,194,350</b>	<b>1,457,422</b>

\* Adjustment was made in the amount of \$594,628 to properly record expenses for the 2011 Judges Dinner in the correct year. Subject to final audit.



# *90<sup>th</sup> Annual Dinner in Honor of the Federal Judiciary*

The New York Intellectual Property Association held its 90th Annual Dinner in Honor of the Federal Judiciary on March 23, 2012 at the Waldorf=Astoria.

President Terri Gillis welcomed the honored guests, members of the NYIPLA, and their guests. Joseph Bartning, Amy Buckley and Malena Dayen opened the evening's events with a magnificent rendition of the National Anthem.

The Association's Tenth Annual Outstanding Public Service Award was presented to the Honorable Alan D. Lourie of the United States Court of Appeals for the Federal Circuit.

The Keynote Speaker was the Honorable Colleen McMahon of the United States District Court for the Southern District of New York.







**Standing (left to right):** Hon. Rebecca B. Smith, Anthony F. Lo Cicero, Hon. Christopher Droney, Hon. Gregory M. Sleet, Dorothy R. Auth, Hon. Gary L. Lancaster, Hon. William M. Skretny, Jeffrey M. Butler  
**Seated (left to right):** Hon. Loretta A. Preska, Hon. Alan D. Lourie, Terri M. Gillis, Hon. Colleen McMahon, Thomas J. Meloro, Charles R. Hoffmann, Hon. Charles E. Bullock





















THE  
WALDORF-ASTORIA  
NEW YORK

MARCH 23, 2012

REGISTRATION &  
RECEPTION  
10:30 A.M. – 11:30 A.M.

LUNCH  
11:30 A.M. – 12:20 P.M.

PRESENTATION  
12:20 P.M. – 2:15 P.M.

2.0 NYS/NJS  
CLE PROFESSIONAL  
CREDITS FOR BOTH  
NEWLY ADMITTED  
AND EXPERIENCED  
ATTORNEYS



THE  
NEW YORK  
INTELLECTUAL PROPERTY  
LAW ASSOCIATION

*In conjunction with*  
THE NYIPLA 90TH ANNUAL DINNER IN HONOR OF THE FEDERAL JUDICIARY

DAY OF DINNER  
CLE LUNCHEON

*The Practical Impact of the  
America Invents Act  
on Patent Litigation*



PANELISTS

HONORABLE P. KEVIN CASTEL  
DISTRICT JUDGE FOR THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

HONORABLE MARK FALK  
MAGISTRATE JUDGE FOR THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW JERSEY

RAYMOND CHEN  
DEPUTY GENERAL COUNSEL FOR INTELLECTUAL PROPERTY LAW AND  
SOLICITOR FOR THE USPTO

TERRI GILLIS  
PARTNER AT MAYER BROWN

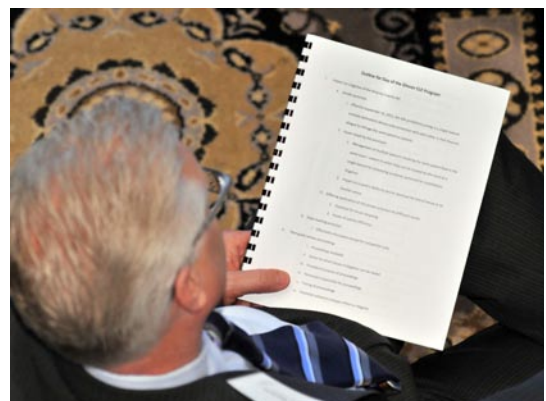
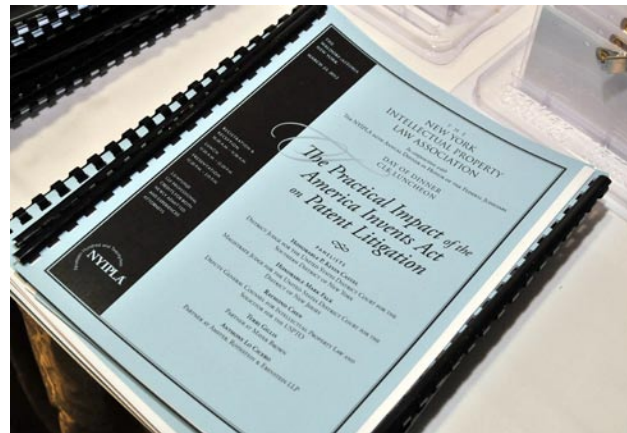
ANTHONY LO CICERO  
PARTNER AT AMSTER, ROTHSTEIN & EBENSTEIN LLP



## "Day of the Dinner" Luncheon CLE Program: The Practical Impact of the America Invents Act on Patent Litigation

March 23, 2012

**Panelists:** Hon. P. Kevin Castel, Hon. Mark Falk, Raymond Chen  
**Moderators:** Terri Gillis, Anthony Lo Cicero











Wednesday  
June 14, 2011

**The Princeton Club**  
15 West 43rd Street, NY, NY

# 2011 Half-Day Hot Topics in Trademark Law CLE Seminar

*Hosted by the Continuing Legal Education Committee  
Co-sponsored by the Trademark Law and Practice Committee*

## **TTAB Policy and Procedure** **Keynote Speaker**

**The Honorable Frances S. Wolfson**

*Administrative Trademark Judge for the Trademark Trial and Appeal Board  
United States Patent and Trademark Office*

### **Trademark Enforcement in China: U.S. and Chinese Perspectives**

*Clark Lackert, Dickstein Shapiro LLP*

*Qiang Ma, LL.M. George Washington University Law School*

### **Notice and Takedown for Trademarks**

*Martin B. Schwimmer, Leason Ellis LLP*

### **Parody**

*Siegrun D. Kane, Locke Lord LLP*

### **Counterfeiting**

*Susan Progoft, Ropes & Gray*

### **Navigating the Social Media Maze**

*Sara Blotner & Sofia Rahman, Citigroup*

### **Rosetta Stone vs. Google**

*Kurt Anderson, Giordano, Halleran & Ciesla, P.C.*





## Fall One-Day Patent CLE Seminar

\*ALL PRESENTATIONS 25 MINUTES (.5 CLE CREDIT)  
EARN 7.0 NYS/NJS CLE CREDITS, INCLUDING 2.0 ETHICS  
FOR BOTH NEWLY ADMITTED & EXPERIENCED ATTORNEYS

Thursday,  
November 3, 2011

The Princeton Club  
15 West 43rd Street, New York City

### ETHICAL CONSIDERATIONS IN PROSECUTION AND LITIGATION PANEL

Moderator: **Bill Thomashower**, *Schwartz & Thomashower LLP*

- Inequitable Conduct **Philip Hirschhorn**, *Buchanan Ingersoll & Rooney PC*
- Spoliation **Scott Stimpson**, *Sills Cummis & Gross P.C.*
- Vexatious Litigation **Paul Ackerman**, *Dorsey & Whitney LLP*
- Injunctions and Sanctions **Richard Raysman**, *Holland & Knight LLP*

### THE SUPREME COURT'S INCREASED INTEREST IN PATENT LAW PANEL

Moderator: **David Bomzer**, *Day Pitney LLP*

- Induced Infringement **Dorothy Auth**, *Cadwalader, Wickersham & Taft LLP*
- Patent Eligibility and the Standard for Invalidity **Robert Fischer**, *Fitzpatrick, Cella, Harper & Scinto*
- Assignment of Patent Rights **James Rhodes, Jr.**, *Sivin & Tobin Associates*
- The Changing Role of the Supreme Court in Reviewing Federal Circuit Decisions  
**Professor Michael Burstein**, *Cardozo Law School*

**KEYNOTE SPEAKER Honorable Joanna Seybert**, U.S.D.J.,  
United States District Court for the Eastern District of New York

### LITIGATION TRENDS AND ISSUES PANEL

Moderator: **Robert Rando**, *The Rando Law Firm P.C.*

- Strategic Use of Reexamination **Rory Radding**, *Edwards Angell Palmer & Dodge LLP*
- Compulsory Licensing After Finding of Infringement **Robert Isackson**, *Orrick, Herrington & Sutcliffe LLP*
- Current Challenges of Electronic Discovery and Outsourcing **Renee Sekino Wolfe**, *Milbank, Tweed, Hadley & McCloy LLP*

### CHANGES IN THE BAR TO CHALLENGING PATENTS PANEL

Moderator: **Alicia Russo**, *Fitzpatrick, Cella, Harper & Scinto*

- America Invents Act **James Gould**, *Locke Lord Bissell & Liddell LLP*
- Challenging the Validity of Patents **Jay Lessler**, *Blank Rome LLP*
- Patentable Subject Matter: Myriad and Patentability of DNA Molecules **Reza Green**, *Novo Nordisk*

*Hosted by the Continuing Legal Education Committee*



## 2011 November One-Day Patent CLE Seminar

November 3, 2011

**Panelists:** Hon. Joanna Seybert, Dorothy Auth, Robert Fischer, James Gould, Robert Isackson, Rory Radding, Richard Raysman, Renee Sekino Wolfe, Scott Stimpson, Paul Ackerman, Jay Lessler, Philip Hirschhorn, James Rhodes, Reza Green, Michael Burstein

**Moderators:** David Bomzer, Robert Rando, Alicia Russo, Bill Thomashower









## IP Law from Every Angle

**July 13, 2011**

*Panelists:* R. Tulloss Delk, Matthew J. Golden, Martin

I. Nagel, Joseph A. Sherinsky

*Moderator:* Daniel Reagan

*Hosted by the Young Lawyers Committee*



## An In-House Perspective on IP Practice: Coordinating with Business Units and Legal Teams to Maximize Opportunities and Overcome Challenges

**September 21, 2011**

*Panelists:* Mony R. Ghose, Stephanie Monaco,

Laura Sheridan, Paula K. Wittmayer

*Moderator:* Sona De

*Hosted by the Meetings & Forums Committee and  
co-sponsored by the Women in IP Law Committee*



## Recent Developments in U.S. Trademark and Unfair Competition Law

**October 20, 2011**

*Speaker:* Theodore Davis

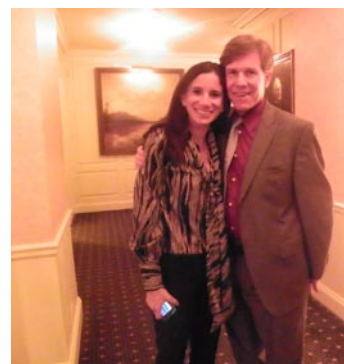
*Hosted by the Meetings & Forums Committee and co-  
sponsored by the Trademark Law and Practice Committee*



## Perspective of the United States Court of Appeals for the Federal Circuit

**December 15, 2011**

*Speaker:* Hon. Randall R. Rader





## Patent Pilot Program and Litigating Patent Cases in the Eastern District of New York

**January 26, 2012**

*Speaker:* Hon. John Gleeson

*Moderator:* Brian Rothery

*Hosted by the Meetings & Forums Committee and co-sponsored by the Patent Law and Practice Committee*



## "Why Should I Take the Patent Bar Exam?"

**February 1, 2012**

*Panelists:* Jessica Davis, Brian Rothery, Peter Thurlow

*Moderator:* Carolyn Blessing

*Hosted by the Young Lawyers Committee*



## On the Cutting Edge of Social Media and Behavioral Advertising

**February 16, 2012**

*Panelists:* Henry Goldstein, Lesley Rosenthal

*Moderator:* Jonathan Moskin

*Hosted by the Meetings & Forums Committee and co-sponsored by the Internet & Privacy Law Committee*



## Hot News — Hot New Doctrine or Yesterday's News?

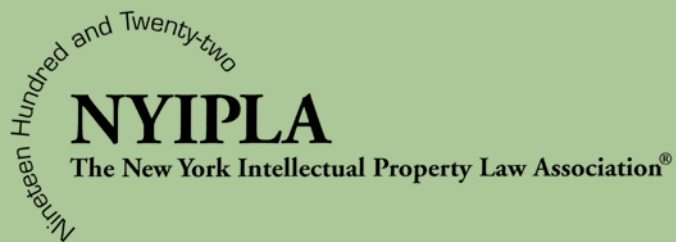
**April 12, 2012**

*Panelists:* Andrew L. Deutsch, Benjamin E. Marks, Glenn F. Ostrager

*Moderator:* Jeanne C. Fromer

*Hosted by the Meetings & Forums Committee and co-sponsored by the Copyrights Committee*





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