

23RD ANNUAL
**ADVANCED PATENT LAW
INSTITUTE**



November 1–2, 2018
Four Seasons Hotel ■ Austin, Texas

 **Live Webcast November 1–2**

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THURSDAY MORNING, NOV. 1, 2018

Presiding Officer:

Sheila Kadura, Dell, Round Rock, TX

7:30 a.m. Registration Opens

Includes continental breakfast.

8:20 a.m. Welcoming Remarks

8:30 a.m. .75 hr

Recent Developments in Claims Construction

The driver of patent application preparation/prosecution, district court trials, Federal Circuit appeals, and AIA post-grant review proceedings, remains—claim construction. Review 2017-2018 claim construction cases and issues at the Federal Circuit and trial court levels. And examine the PTAB's procedural and substantive claim construction "rules, practices and etc.," including the PTAB proposal to drop BRI and adopt *Phillips* construction under all circumstances, and possible rule and practice changes to mandate PTAB consideration of claim constructions from other proceedings.

Kenneth R. Adamo, Kirkland & Ellis LLP, Chicago, IL

9:15 a.m. .75 hr

Changes to Venue Rules and the Rise of Multi-District Litigation

The U.S. Supreme Court's ruling in *TC Heartland* has changed the landscape for patent venue. Explore what constitutes a company's "regular and established place of business" and the possible impact of this recent case.

Darlene Ghavimi, Conley Rose, PC, Austin, TX
Sherri Wilson, Dykema Cox Smith, Austin, TX

10:00 a.m. Break

10:15 a.m. .75 hr

Section 101 Update

A review of the trends, recent cases, and developments in the courts and at the USPTO regarding section 101 as *Alice* turns five. Gain practical advice for avoiding and overcoming assertions of invalidity under section 101, as well as for making and winning assertions of invalidity under 101.

Steve Borgman, Vinson & Elkins LLP, Houston, TX
Janice Le Ta, Vinson & Elkins LLP, Austin, TX

11:00 a.m. .75 hr

Getting Into the Examiner's Head: Interviews, Insight, and Analytics as Tools to Aim and Focus Your Prosecution

Discuss approaches to gain insight into examiners, supervisors, and art units beyond the face of the office action, to more efficiently and effectively prosecute applications. Hear thoughts on the analysis of search strategies used by the examiner, the effective use of analytics about the examiner and art unit, and how to leverage interviews and particularly the FAIPP interview program towards these ends.

Christa Brown-Sanford, Baker Botts, Dallas, TX
Stephen Key, patentKEY, Alexandria, VA
Michael W. Piper, Conley Rose, PC, Plano, TX

11:45 a.m. .75 hr ethics

No Candy for You: Tricky Ethics Issues for IP Lawyers

The ethics rules of the USPTO present challenging dilemmas for even the most experienced patent and trademark practitioners. Find out where the ethical dangers lurk and how you can avoid becoming a cautionary tale.

Michael E. McCabe Jr., McCabe Law LLC,
Potomac, MD

12:30 p.m. Pick Up Lunch

Included in registration.

THURSDAY AFTERNOON

Presiding Officer:

William D. Wiese, DuBois, Bryant & Campbell, L.L.P., Austin, TX

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BAKER BOTTS

LUNCHEON PRESENTATION

12:50 p.m. .50 hr

Blockchain and Smart Contracts

A discussion of how blockchains work, how blockchains can form a platform for the operation of smart contracts and distributed applications (dApps), and potential legal issues raised by such platforms.

James A. Cox, Jones Day, Dallas, TX

1:20 p.m. Break

1:35 p.m. 1.00 hr

Advanced IPR Tactics/Impact of Oil States

Panelists discuss institution and trial post-SAS *Institute*, discretionary denials under 314(a), 325(d), significant developments regarding privies and real parties-in-interest, and a host of additional developments at the PTAB and Federal Circuit that suggest a rebalancing toward patent owners.

Moderator:
David W. O'Brien, Haynes and Boone, LLP, Austin, TX

Panelists:
Peter J. Ayers, Law Office of Peter J. Ayers, PLLC,
Austin, TX
Brian W. Oaks, Baker Botts, Austin, TX
Hon. Teresa Stanek Rea, Crowell & Moring, LLP,
Washington, DC

2:35 p.m. .50 hr

Crafting Patents to Survive IPR Attack

Tips for drafting durable patent applications and navigating carefully through examination to bolster patents and forestall their early demise.

Heather L. Flanagan PhD, Fish & Richardson P.C.,
Austin, TX

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This course has been approved for Minimum Continuing Legal Education credit by the State Bar of Texas Committee on MCLE in the amount of 15.00 hours, of which 3.00 credit hours will apply to legal ethics/professional responsibility credit. The University of Texas School of Law is a State Bar of California approved MCLE provider (#1944), and an Oklahoma Bar Association MCLE presumptively-approved provider (#179).

3:05 p.m. .75 hr

Standard Essential Patents and FRAND

A discussion on how these issues are handled in the U.S., with some comparison to Germany, the U.K., and China.

Melissa Hotze, Weil, Gotshal & Manges LLP, Houston, TX
Garland T. Stephens, Weil, Gotshal & Manges LLP, Houston, TX

3:50 p.m. Break

4:00 p.m. .75 hr

Damages, Apportionment, and Lost Profits

Evolving damages case law requires practitioners to consider recent decisions in formulating their damages claim or defense. Hear a discussion of recent case law and its impact on damage theories and the legal strategies. Explore strategies for apportionment, lost profits determinations, and non-infringing alternatives.

Stephanie DeBrow, Norton Rose Fulbright, Austin, TX
W. Todd Schoettelkotte, IPFC Corp., Houston, TX

4:45 p.m. 1.00 hr | .50 hr ethics

Judicial Panel

Hear distinguished judges from the District Court discuss their experiences hearing and trying patent cases.

Moderator:
Alan D Albright, Bracewell LLP, Austin, TX
Panelists:
Hon. Kimberly C. Priest Johnson, U.S. District Court, Eastern District of Texas, Plano, TX
Hon. Robert W. Schroeder III, U.S. District Court, Eastern District of Texas, Texarkana, TX (Invited)

5:45 p.m. Adjourn

NETWORKING RECEPTION

5:45 p.m. – 6:45 p.m.

Join us for drinks and hors d'oeuvres with program faculty and attendees.

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FRIDAY MORNING, NOV. 2, 2018

Presiding Officer:
Shirley Webster, Ocean Tomo, LLC, Houston, TX

7:30 a.m. Conference Room Opens
Includes continental breakfast.

BREAKFAST PRESENTATION

8:00 a.m. .75 hr | .25 hr ethics

Women in IP Friday Breakfast Presentation: The Impact of Corporate Structure Change on Intellectual Property

Hear what experts want you to know about the IP of M&A.

Moderator:
Elise Selinger, Patterson + Sheridan LLP, Dallas, TX
Panelists:
Margaret J. Sampson, Baker Botts, Austin, TX
Erin Ator Thomson, Shattuck Labs, Inc., Austin, TX
Kim M. Vo, Advanced Micro Devices, Inc., Austin, TX

8:45 a.m. Break

9:00 a.m. 1.00 hr

The Global Patent Landscape

Examine in the new "reality" of global patent enforcement and monetization, as well as practical guidance on how to navigate these new realities and possible strategies to adapt to the new landscape.

Moderator:
Robert Greene Sterne, Sterne, Kessler, Goldstein & Fox P.L.L.C., Washington, DC
Panelists:
Paul Evans, Predictive Technology Group, Salt Lake City, UT
Damon C. Matteo, Fulcrum Strategy, Palo Alto, CA
Hon. Paul R. Michel, Chief Judge, Retired, United States Court of Appeals for the Federal Circuit, Washington, DC
Wayne P. Sobon, PAX Labs, Inc., San Francisco, CA

10:00 a.m. .50 hr

Are We Exhausted Yet? Post-Sale Restrictions After Lexmark

An exploration of recent U.S. Supreme Court decisions upending long-established Federal Circuit precedent regarding exhaustion of U.S. patent rights for products sold domestically and internationally.

Adrienne E. Dominguez, Thompson & Knight LLP, Dallas, TX

10:30 a.m. Break

10:45 a.m. .75 hr

Extraterritoriality: When Acts Overseas Create Liability under U.S. Patent Law

Despite language in 35 U.S.C. 271 limiting infringement liability for acts "within the United States", depending upon the type of infringement and/or type of claim, liability can arise based mainly or completely on acts outside of the United States. Examine the meaning of "within the United States" and when liability arises for acts outside of the U.S.

Danielle Joy "DJ" Healey, Fish & Richardson P.C., Houston, TX

11:30 a.m. 1.00 hr

Federal Circuit and SCOTUS Update

A whirlwind summary of the most important developments in Supreme Court and Federal Circuit case law over the last year.

Mark A. Lemley, Stanford Law School and Durie Tangri LLP, Stanford and San Francisco, CA

12:30 p.m. Pick Up Lunch
Included in registration.

FRIDAY AFTERNOON

Presiding Officer:
Michael P. Adams, Dykema Cox Smith, Austin, TX

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DICKINSON WRIGHT PLLC

LUNCHEON PRESENTATION

12:50 p.m. .75 hr

Decreasing the USPTO's Incentive to Grant Invalid Patents

Many believe the USPTO is issuing too many invalid patents that are unnecessarily reducing consumer welfare, stunting productive research, and discouraging innovation. To date, patent policy reforms to increase patent quality at the USPTO have been overly reliant on anecdotes and hunches. Review new empirical studies of the administrative process for granting patents which propose three changes to the patent system that would reduce the issuance of patents of questionable validity.

Melissa Wasserman, The University of Texas School of Law, Austin, TX

1:35 p.m. Break

1:50 p.m.

.50 hr

Divided Infringement

Examine recent interpretations of the *Akamai* test and the impact on divided infringement cases.

Brian C. Nash, Pillsbury Winthrop Shaw Pittman LLP, Austin, TX

2:20 p.m.

.75 hr ethics

Defending Against Willful Infringement in a Post-Halo World

With the changes resulting from the Supreme Court's *Halo* opinion, there is additional importance placed on accused infringers in building a record that supports reasonableness of their decision to continue their accused operations. This often includes advice of competent counsel used to bolster the claim that they were not acting with subjective bad faith. Those using advice of counsel in defense of willfulness must be mindful of the scope of potential privilege waiver, and proactively take steps aimed at avoiding privilege waiver from extending to communications with trial counsel.

Ross Spencer Garsson, Dickinson Wright PLLC, Austin, TX

3:05 p.m.

.75 hr ethics

Practicing IP Law Ethically in the Cloud: From the Mundane to the Ethics of AI

Learn how to practice competently and ethically, including maintaining client confidentiality, avoiding conflicts of interest, and safely using social media. In addition, examine the questions that lawyers should ask before using computer-augmented legal services, such as automated contract review, legal research, and patent application drafting services.

David Hrick, Mercer University School of Law and Taylor English Duma LLP, Macon and Atlanta, GA

3:50 p.m.

Adjourn

E-CONFERENCE AVAILABLE

Can't attend the Institute in person this year? While nothing can replace the experience and networking opportunities of the live event, you can still catch up on all the latest patent law developments with the video eConference, available 4-6 weeks following the conference. Pre-order yours today!

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AUSTIN

November 1–2, 2018

CONFERENCE LOCATION



Four Seasons Hotel
 98 San Jacinto Boulevard
 Austin, TX
 512.685.8100
 (reservations)

Special Room Rates:

City View King: \$285; Lake View King: \$310
 Good through September 29, 2018
 Reference "UT Patent Law 2018"
 (subject to availability)

Parking:

\$12 daily self-parking; 16 daily valet
 \$45 overnight self or valet
 (subject to change)

KEY DATES

October 24, 2018

Last day for early registration
 Add \$50 for registrations
 received after this time

October 26, 2018

Last day for full refund cancellation

October 29, 2018

Last day for partial refund cancellation
 \$50 processing fee applied

November 1, 2018, 8:20 a.m.

Institute begins

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