

23rd Annual Advanced Patent Law Institute
November 1-2, 2018 • Four Seasons Hotel • Austin, TX
November 1-2, 2018 • Live Webcast

Thursday Morning, Nov. 1, 2018

Presiding Officer:

Sheila Kadura, Dell - Round Rock, TX

7:30 am In Austin Only	Registration Opens Includes continental breakfast.
8:20 am	Welcoming Remarks
8:30 am 0.75 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 <i>Phillips</i> 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 am 0.75 hr	Changes to Venue Rules and the Rise of Multi-District Litigation The U.S. Supreme Court’s ruling in <i>TC Heartland</i> 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 am	Break
10:15 am 0.75 hr	Section 101 Update A review of the trends, recent cases, and developments in the courts and at the USPTO regarding section 101 as <i>Alice</i> 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 am 0.75 hr	<p>Getting Into the Examiner's Head: Interviews, Insight, and Analytics as Tools to Aim and Focus Your Prosecution</p> <p>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.</p> <p>Christa Brown-Sanford, Baker Botts - Dallas, TX Stephen Key, patentKEY - Alexandria, VA Michael W. Piper, Conley Rose, PC - Plano, TX</p>
11:45 am 0.75 hr ethics	<p>No Candy for You: Tricky Ethics Issues for IP Lawyers</p> <p>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.</p> <p>Michael E. McCabe Jr., McCabe Law LLC - Potomac, MD</p>
12:30 pm In Austin Only	<p>Pick Up Lunch (in Austin)</p> <p>Included in registration.</p>

Thursday Afternoon, Nov. 1, 2018

Presiding Officer:

Robert L. King, Silicon Labs - Austin, TX

LUNCHEON PRESENTATION

	<p>Thank You to Our Sponsor</p> <p>Baker Botts L.L.P.</p>
12:50 pm 0.50 hr	<p>Blockchain and Smart Contracts</p> <p>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.</p> <p>James A. Cox, Jones Day - Dallas, TX</p>
1:20 pm	<p>Break</p>

1:35 pm 1.00 hr	<p>Advanced IPR Tactics/Impact of Oil States</p> <p>Panelists discuss institution and trial post-SAS <i>Institute</i>, 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.</p> <p>Moderator: David W. O'Brien, Haynes and Boone, LLP - Austin, TX</p> <p>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</p>
2:35 pm 0.50 hr	<p>Crafting Patents to Survive IPR Attack</p> <p>Tips for drafting durable patent applications and navigating carefully through examination to bolster patents and forestall their early demise.</p> <p>Heather L. Flanagan PhD, Fish & Richardson P.C. - Austin, TX</p>
3:05 pm 0.75 hr	<p>Standard Essential Patents and FRAND</p> <p>A discussion on how these issues are handled in the U.S., with some comparison to Germany, the U.K., and China.</p> <p>Melissa Hotze, Weil, Gotshal & Manges LLP - Houston, TX Garland T. Stephens, Weil, Gotshal & Manges LLP - Houston, TX</p>
3:50 pm	Break
4:00 pm 0.75 hr	<p>Damages, Apportionment, and Lost Profits</p> <p>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.</p> <p>Stephanie DeBrow, Norton Rose Fulbright - Austin, TX Stephen Dell, IPFC Corp. - Houston, TX</p>
4:45 pm 1.00 hr 0.50 hr ethics	<p>Judicial Panel</p> <p>Hear distinguished judges from the District Court discuss their experiences hearing and trying patent cases.</p> <p>Hon. Alan D Albright, U.S. District Court, Western District of Texas - Waco, TX Hon. Kimberly C. Priest Johnson, U.S. District Court, Eastern District of Texas - Plano, TX</p>
5:45 pm	Adjourn
In Austin Only	<p>Networking Reception (in Austin from 5:45 p.m. - 6:45 p.m.)</p> <p>Join us for drinks and hors d'oeuvres with program faculty and attendees.</p> <p>Thank You to Our Sponsor Vinson & Elkins LLP</p>

Friday Morning, Nov. 2, 2018

Presiding Officer:

Shirley Webster, Ocean Tomo, LLC - Houston, TX

7:30 am In Austin Only	Conference Room Opens Includes continental breakfast.
BREAKFAST PRESENTATION	
8:00 am 0.75 hr 0.25 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 am	Break
9:00 am 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, Juul Labs - San Francisco, CA
10:00 am 0.50 hr	Are We Exhausted Yet? Post-Sale Restrictions After <i>Lexmark</i> An exploration of recent 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 am	Break
10:45 am 0.75 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 am 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 pm In Austin Only	Pick Up Lunch (in Austin) Included in registration.

Friday Afternoon, Nov. 2, 2018

Presiding Officer:

Michael P. Adams, Dykema Cox Smith - Austin, TX

LUNCHEON PRESENTATION

	Thank You to Our Sponsor Dickinson Wright PLLC
12:50 pm 0.75 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 pm	Break
1:50 pm 0.50 hr	Divided Infringement Examine recent interpretations of the <i>Akamai</i> test and the impact on divided infringement cases. Brian C. Nash, Pillsbury Winthrop Shaw Pittman LLP - Austin, TX
2:20 pm 0.75 hr ethics	Defending Against Willful Infringement in a Post-<i>Halo</i> World With the changes resulting from the Supreme Court's <i>Halo</i> 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 pm
0.75 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 Hricik, Mercer University School of Law and Taylor English Duma LLP - Macon and Atlanta, GA

3:50 pm

Adjourn