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The Current Patent Landscape in the U.S. and Abroad

Robert Greene Sterne

PATENT OFFICE LITIGATION

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Testimonials

AIA reviews, increasingly since becoming effective in 2012, have destabilized patent validity, stalling infringement suits for years, depressing patent values by as much as 61%; with investment incentives so diminished, R&D and costly commercialization activity is sinking; Supreme Court decisions on eligibility in the same period have upended settled case law and reduced eligibility, creating vast uncertainty that business hates and invalidating hundreds of important patents and clouding the validity and value of hundreds of thousands more; meanwhile China and Europe have enlarged eligibility standards and become more hospitable to infringement suits with faster, cheaper trials and routine injunctions that the Supreme Court has so severely limited here. This practical treatise maps this suddenly shifting landscape as no other and is a "must" for legal practitioners.

Circuit Judge Paul R. Michel (Ret.), solo litigation consultant

During my 15 years as a United States District Judge, there was no field that experienced more rapid changes in law and procedure than patent law. What was settled law in any given year could be the basis for reversible error in the next. And now that I am an arbitrator and mediator in many IP cases and licensing disputes, the need to stay current as caselaw changes, and procedural trends emerge, is as important as ever. Whether preparing for mediation, arbitration or litigation, judges and neutrals rely on counsel to provide timely insights on caselaw, statutory changes, and procedural rules. Patent cases are often litigated simultaneously in the PTAB and District Court — and internationally as well. These parallel proceedings present unprecedented challenges for counsel, judges and neutrals: ***Patent Office Litigation*** *is a "must-read" to stay abreast of this area of practice as it changes and develops, both in the US and abroad.*

Honorable Faith S. Hochberg, United States District Judge (ret.)

By establishing PTAB proceedings, AIA has changed the US patent landscape dramatically, as this unique book demonstrates. In contrast to the European situation, the US patent system — apparently unintentionally — is losing sight of the fundamental "quid pro quo" principle that drives innovation. What makes the situation even less motivating is the recent practice of limiting statutory subject matter under § 101. Introducing an experimental use exemption as it has been established in Europe might assist in adjusting a better balance.

Hans-Rainer Jaenichen | Dipl.-Biol., Patentanwalt | European Patent Attorney

For many biotech companies, AIA proceedings are fast becoming a story of failed expectations, disappointments, and alarming developments. Patents that were examined and granted, perhaps reexamined or reissued — and sometimes even confirmed valid in district court litigation — can be subjected anew to administrative re-adjudication under no presumption of validity, no presumption that the original grant of the patent was administratively correct, using relaxed standards of proof and claim constructions that are favorable to invalidation, with no meaningful opportunity to amend claims, and no meaningful estoppel for the challenger. All this happens after large investments were made in the patented technology. Patent challenges may be brought for any reason, including stock manipulation, or to undo the results of district court litigation. This comprehensive treatise is a valuable resource to help patent-dependent businesses prepare for and navigate these fast-paced, high-pressure proceedings. It should be required reading for litigators, patent prosecutors, and in-house counsel alike.

Hans Sauer, Deputy General Counsel, Biotechnology Innovation Organization (BIO)

It's often necessary to view something at a distance for the big picture, and its true impact to emerge. So, when we view AIA, USPTO PTAB proceedings, or each of the litany of court decisions (CAFC & SCOTUS) in isolation, none of them rise to insurmountable barriers to realizing value from innovation. Taken as a whole, however, it reads like a classic tale of forces in opposition, with innovation and IP mis-cast as foes in a battle that can only end with both as casualties. Stepping back even further, looking at the drama unfolding from abroad, you can see it with painful clarity. Record investments in innovation, record patenting and even increasingly preferable IPR jurisdictions overseas threaten to eclipse US leadership. In startling contrast to the US, China, for example, has embraced strong IP as a foundation and incentive for a vibrant innovation eco-system. As they move aggressively to realize the vision of powerfully integrated IP and innovation domestically, how long before we can expect that to be China's next big "export"? And, when it arrives on US shores — and it will — they will find that the US has inexplicably chosen to diminish one of its key, persistent competitive advantages: patent protection.

Damon C. Matteo, CEO, Fulcrum Strategy

Big picture, the US Patent system is eroding and must be brought back into balance; otherwise, the original and still paramount objective of our patent system will be lost and our economy will suffer for it. Fortunately, for anyone entrusted with protecting valuable US IP portfolios, the ***Patent Office Litigation, 2nd Edition****, is a welcomed and useful reference. The post-AIA world is not easily navigated, and it's even harder to explain to stakeholders (inventors, investors, innovators, and decision-makers at the Board and C-level of organizations alike); but successful navigation and communication of these challenges are a must. This reference can set you on the right path.*

Julie Mar-Spinola, Chief Intellectual Property Officer, and VP, Legal Operations, Finjan Holdings, Inc.

Title search: The Current Patent Landscape in the U.S. and Abroad

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2017 Advanced Patent Law (USPTO) eConference

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