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**SPECIAL REPORT*****U.S. Supreme Court Will Decide Key IP Cases in 2014****By George R. McGuire\**

IP continues to be a hot area of the law at the Supreme Court, with many IP cases recently argued or scheduled for argument in 2014. Below is a quick glimpse at several of these cases, including the potential impact of decisions in the cases.

***Alice Corp. Pty., Ltd. v. CLS Bank International***

- **Issue to be decided: Whether patent claims to computer-implemented inventions are directed to patent-eligible subject matter.**

A highly fractured decision from the Federal Circuit in 2013 affirmed that the claims at issue in *Alice* – which were directed to a computerized method, a computer readable storage medium containing program code, and a computer system to implement that code – were patent ineligible subject matter. The *en banc* panel of ten judges issued seven different opinions. Seven judges found that the method claims and computer readable medium claims were not patent eligible. Five judges found that the computer systems claims were not patent eligible. The panel did not agree on a standard to determine whether a computer implemented invention is a patent ineligible, abstract idea.

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\* Mr. McGuire is Chair of Bond's IP & Technology Group. He is a Registered Patent Attorney who concentrates his practice in all facets of intellectual property law.

Regardless of how the Supreme Court rules on these claims, the decision will have a significant impact on the software industry and could potentially affect the validity of thousands of existing software patents. Indeed, the potential impact is emphasized by the number of software-related groups that have submitted amicus briefs in this case. Oral argument in the case was held on March 31, 2014, and a ruling is expected in June.



**Limelight Networks, Inc. v. Akamai Techs., Inc.**

➤ **Issue to be decided: Does inducement require direct patent infringement by another?**

The Federal Circuit recently ruled *en banc* that a defendant could be liable for inducing patent infringement of a method claim even if no single entity had committed direct infringement under Section 271(a). Instead, multiple parties could collectively perform all the steps of the method. The Federal Circuit's decision effectively overruled *BMC Resources, Inc. v. Paymentech, L.P.* which held that inducement required that a single party commit all the acts constituting infringement.

Although the Federal Circuit's ruling prevents sophisticated infringers from avoiding liability by creatively dividing the steps of infringement, a single-party standard of direct infringement was a clearer standard for understanding inducement. A ruling by the Supreme Court that a defendant is liable for inducing patent infringement under a

multiple party theory could open the doors for infringement claims that were not viable under the *BMC Resources* ruling.

**Nautilus, Inc. v. Biosig Instruments, Inc.**

➤ **Issue to be decided: What is the standard for patent indefiniteness?**

The claims at issue in *Nautilus* use the claim term "spaced relationship" to describe the positioning of two electrodes with respect to one another. The Federal Circuit reversed the district court's decision that the claim was invalid for indefiniteness, holding that the term was not "insolubly ambiguous" when considered from the perspective of a person of skill in the art reading the specification.

Before the Supreme Court is the issue of whether the current standard for definiteness – whether any ambiguity in the claim's scope is not "insoluble" – is the proper standard when 35 U.S.C. § 112 requires that the claims "particularly point[] out and distinctly claim[] the subject matter" of the invention. *Nautilus* argues that a claim with more than one reasonable interpretation does not satisfy this statutory requirement. A ruling changing the current standard could impact the validity of numerous issued patents.

**Teva Pharmaceuticals USA, Inc. v. Sandoz, Inc.**

➤ **Issue to be decided: Should claim construction be reviewed *de novo* on appeal?**

On appeal, the Federal Circuit reviews claim constructions *de novo* without deference to a district court's ruling. In *Teva*, for example, the Federal Circuit performed a *de novo* construction of the meaning of claim term "molecular weight" and subsequently reversed the district court. Accordingly, the Supreme Court will decide if the *de novo* standard applies to claim construction, or whether the more deferential standard of review for clear error applies.

The Supreme Court's decision will have a substantial impact on appeals at the Federal Circuit. Currently, the Federal Circuit adopts new constructions in a significant percentage of all claim construction rulings it reviews. This has resulted in an atmosphere of uncertainty in the patent litigation field, and has substantially increased the expense associated with patent litigation. A holding that claim construction is entitled to deference will undoubtedly increase the likelihood of settlement following claim construction, for example, and could potentially lower patent litigation costs.

#### **American Broadcasting Cos., Inc. v. Aereo, Inc.**

- **Issue to be decided: When does an internet transmission count as a "public performance"?**

Aereo uses thousands of dime-sized antennas, one for each customer, to capture and stream local broadcast television over the internet without a license or paying fees to the copyright holders. Broadcasters allege that this constitutes a "public performance," while Aereo argues that each transmission is a private performance because the audience for that transmission is only the user assigned to the individual antenna. On appeal of a decision not to issue a preliminary injunction, the Second Circuit agreed with Aereo and concluded that the transmission was not a public performance.

Aereo is yet another battle in the war between new media and old media, and the Supreme Court's decision will have a significant impact on that war. Broadcasters have threatened that if Aereo's model is upheld, they will stop broadcasting over airwaves and switch entirely to a subscription model.

#### **POM Wonderful LLC v. The Coca-Cola Company**

- **Issue to be decided: Who has standing to challenge a food label as false under the Lanham Act.**

POM alleges that Coca-Cola sells a pomegranate blueberry juice blend that is only 0.5% pomegranate and blueberry juice, and that this product will

mislead consumers in violation of the Lanham Act and California's false advertising and unfair competition laws. Section 43(a) of the Lanham Act, for example, authorizes actions for use of a false or misleading description or representation "in connection with any goods." However, the Ninth Circuit barred POM's claims, holding that the Food and Drug Administration has exclusive authority to file claims for violations of the Food, Drug and Cosmetics Act (FDCA), which regulates the labels on juices and many other items.



Although the Court may be leaning this way, a ruling by the Supreme Court that a private party can bring a Lanham Act claim challenging a product label regulated under the FDCA could open the door for similar challenges. Indeed, Chief Justice John Roberts commented during oral argument that he didn't know why it was impossible to have a label that fully complied with FDA regulations, and yet also was misleading under the Lanham Act.

#### **KEY IP CASES BEFORE THE SUPREME COURT**

##### **Patent**

*Alice Corp. Pty., Ltd. v. CLS Bank International*  
*Limelight Networks, Inc. v. Akamai Techs., Inc.*  
*Nautilus, Inc., v. Biosig Instruments, Inc.*  
*Teva Pharmaceuticals USA, Inc. v. Sandoz, Inc.*

##### **Copyright**

*American Broadcasting Cos., Inc. v. Aereo, Inc.*

##### **Lanham Act**

*POM Wonderful LLC v. The Coca-Cola Company*

**PATENT LITIGATION*****Strategies to Battle NPEs:  
Lessons from the Front Lines****By Jeremy P. Occek\**

Patent lawsuits brought by non-practicing entities (“NPEs”), sometimes referred to as “patent trolls,” can be expensive for companies defending such lawsuits. Indeed, according to a 2013 survey by the American Intellectual Property Law

Association (AIPLA), the average cost to defend a patent case is nearly \$3 million when the amount at risk is between \$1-\$25 million, and nearly \$6 million when the amount at risk is over \$25 million.

NPEs have a number of advantages in patent litigation. First, there is little risk of a counterclaim (other than a declaratory judgment counterclaim) because usually the only business of a NPE is licensing its patents. Second, NPEs are typically represented by contingent fee lawyers and thus don’t feel the same “pain” of legal costs. Third, NPEs usually don’t have many documents or witnesses, and therefore, companies sued by NPEs face disproportionate discovery burdens.

How can a company fight back against a NPE? Here are five strategies from the front lines:

**1. Get Out of Dodge – Escape Unfavorable Venues**

Not all patent venues are equal. Indeed, according to a 2013 study by PricewaterhouseCoopers LLP: “Certain jurisdictions (particularly Virginia Eastern, Delaware, and Texas Eastern) continue to be more favorable venues for patent holders, with shorter

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time-to-trial, higher success rates, and greater median damages awards.”<sup>†</sup> One example of this inequality is noted by PwC as follows: “Of particular interest is that the two districts with the most identified NPE decisions, Illinois Northern and Texas Eastern, continue to present a dichotomy in relative NPE success rates. Texas Eastern ranks third highest (46.7%), whereas Illinois Northern ranks sixteenth (12.5%) in terms of overall NPE success rates.” *Id.*



When faced with the prospect of litigating against a NPE in a statistically unfavorable venue, one strategy to consider is filing a motion to transfer. Under 28 U.S.C. § 1404(a), if the facts are warranted, “a district court may transfer any civil action to any other district or division where it might have been brought.” Although transfer motions were once viewed as long shots, Federal Circuit decisions in recent years have turned the tide in favor of defendants seeking to transfer, especially out of the Eastern District of Texas. *See, e.g., In re TS Tech USA Corp.*, 551 F.3d 1315 (Fed. Cir. 2008) (granting petition for mandamus transferring case out of the Eastern District of Texas); *In re Genentech, Inc.*, 566 F.3d 1338 (Fed. Cir. 2009) (same).

**2. Strategic Use of Reexamination and IPR**

*Ex parte* reexaminations and *inter partes* reviews (IPRs) – which are official proceedings conducted at the U.S. Patent Office – can be effective tools to challenge patents asserted by NPEs. In both

<sup>†</sup> [http://www.pwc.com/en\\_US/us/forensic-services/publications/assets/2013-patent-litigation-study.pdf](http://www.pwc.com/en_US/us/forensic-services/publications/assets/2013-patent-litigation-study.pdf)

proceedings, a company can challenge a NPE's patent based upon prior art that renders the patent invalid as either anticipated (not novel) or obvious. In an *ex parte* reexamination, the third party is a "requester" and has no direct input in the reexamination following the submission of the initial reexamination request. In an IPR, the requester remains a party to the proceeding and has an opportunity to file opposition briefs and present evidence during the process.



There are several potential benefits that can be achieved by using either of these proceedings. First, the district court may stay the case brought by the NPE pending the outcome of the reexamination or IPR, which can dramatically cut down on litigation costs. Second, historical statistics for *ex parte* reexaminations (IPRs are a newer mechanism) are very favorable for patent challengers – 11% of patent claims have been knocked out and 67% of patent claims have been amended during reexaminations. Thus, a positive outcome for patent challengers has been achieved in roughly 76% of reexaminations. Even when patent claims are not knocked out or amended, the patent holder often makes critical admissions and/or arguments during reexamination proceedings, which can often provide key non-infringement distinctions.

A good example of how a reexamination proceeding can be effective is the case of *BIAX Corp. v. Analog Devices, Inc.* (E.D. Tex.). In that case, an *ex parte* reexamination had been filed against one of the patents at issue. The patent survived reexamination

with no claims amended. However, during the reexamination proceeding, the patentee made critical admissions and arguments on the record to get around the prior art. Those admissions and arguments were then successfully used against the patent holder during a subsequent arbitration of the patent: the arbitrator found no infringement and awarded attorneys' fees in favor of Analog Devices.

### 3. Early Claim Construction / Summary Judgment

Claim construction – the process by which the claims of a patent are interpreted by the court – is usually a fundamental aspect of every patent case. Most courts rule on claim construction issues near or at the end of discovery. But, there is nothing that precludes courts from ruling on these issues earlier, especially when there is a key claim limitation that may result in a finding of non-infringement. To that end, one strategy that can be quite effective is to move for early claim construction combined with a summary judgment motion for non-infringement. The advantage of this approach is obvious: if you win, you can significantly reduce litigation costs.

Two case examples highlight the benefit of pursuing early claim construction and summary judgment. In *Parallel Networks, LLC v. Abercrombie & Fitch et al.* (E.D. Tex. 2011), the district court conducted an early claim construction and summary judgment hearing on three claim terms that the defendants had argued were dispositive to the case. After the hearing, the district court adopted the defendants' construction on one of the three terms and granted summary judgment of non-infringement as to 99 of the 112 defendants in the case. In issuing its ruling, the court applauded the defendants for their approach in seeking early claim construction: "The Court commends the parties in this case for working together to identify issues common to nearly all Defendants and moving the case to resolution of these important issues in a timely and economic manner. By doing so, this case was resolved in a manner of months—as opposed to years—for the vast majority of Defendants."

Another example is *PSN v. Ivoclar Vivadent, Inc.*, (N.D. Ill. 2008). In this case, the NPE plaintiff was seeking tens of millions of dollars in alleged damages. Ivoclar moved for summary judgment of non-infringement on three particular issues early in the case, even though the court had not yet held a claim construction hearing. After combined briefing on the summary judgment motion and claim construction issues, the district court ruled in Ivoclar's favor and found no infringement. This significant decision was affirmed by the U.S. Court of Appeals for the Federal Circuit.

#### 4. Unearth Prior Art and Patent Defenses

One of the typical defenses to a patent infringement lawsuit involves the assertion of invalidating prior art (typically, issued patents and publications). Prior art can be used quite effectively to defeat a NPE's patent, either by invalidating the patent claims entirely or narrowing the scope of the claims. However, often overlooked are other defenses such as 1) incorrect inventorship and 2) lack of standing to sue. Incorrect inventorship can be asserted as a basis to invalidate a patent, and a dismissal of a patent lawsuit can occur when the plaintiff's interest in the patent is found to be insufficient to establish standing. If proven, these "non-typical" defenses (which are not investigated by the Patent Office) avoid arguing that the "Patent Office got it wrong" by failing to consider prior art, which is sometimes difficult for a jury to grasp, no matter how good the prior art.

A good example of using a non-typical defense to defeat a patent lawsuit is the case of *Oasis Research LLC v. EMC Corp.*, No. 4:12-CV-526 (E.D. Tex. 2013). In that case, defendants EMC and Carbonite defeated a NPE claim by proving that other inventors were improperly excluded from the patents at issue. In particular, the patents only listed one person as an inventor, an engineer named Christopher Crawford. EMC, however, uncovered evidence that Crawford worked with others when he allegedly conceived the ideas in the patents. Crawford's former co-workers claimed they significantly contributed to the patents and should have been

listed as co-inventors. After trial, the jury returned a complete defense verdict invalidating the patents for failure to name the correct inventors. The *Oasis Research* case was featured on an episode of National Public Radio's "This American Life" and can be found at the link below:

<http://www.thisamericanlife.org/radio-archives/episode/496/when-patents-attack-part-two>

#### 5. Reign in the Cost of Defense

NPEs know that to defend a patent infringement lawsuit can cost hundreds of thousands, if not millions, of dollars. They know that companies will feel the financial sting of defending these cases. Because almost all patent cases settle before trial, any NPE knows (or assumes) it is only a matter of time before defendants will settle.

Whether your company is looking to resolve an NPE case cheaply and efficiently, or whether you want to fight back and take the case to trial, the best way to level the playing field against a NPE is to lower the cost of defense from the outset. Not only does lowering the cost of defense take away the substantial leverage held by a NPE, it allows a company to better weigh the pros and cons of settling the case or fighting forward to trial, and to focus on the merits of the case.

To reign in the cost of defense, you may want to consider alternative fee arrangements such as fixed fees, capped fees, and performance-based hold-backs with your law firm. Also, with respect to any billing arrangement, it is important to set a case budget, implement a strategic plan, and monitor litigation costs closely.

By reigning in the cost of defense, your company will cut down on the substantial leverage held by NPEs. Whether your company's goal in a NPE patent suit is to obtain a fair settlement or to go to trial, lowering the cost of defense will help your company defend itself against a NPE.

**DESIGN PATENTS*****The Federal Circuit Extends Prosecution History Estoppel to Design Patents****By Fred J.M. Price\**

In *Pacific Coast Marine Windshields Ltd. v. Malibu Boats, LLC*, No. 2013-1199 (Fed. Cir. Jan. 8, 2014), the Federal Circuit addressed an issue of first impression and held that “the principles of prosecution history estoppel apply to design patents as well as utility patents.”

**Utility vs. Design Patents**

As a brief background regarding utility and design patents, a utility patent can protect a novel process, system, particular structure or composition of an article, and the way an article is used and/or works. Examples of utility patents include a method of manufacturing a catalytic converter (U.S. Pat. No. 5,909,916), a computer system for manipulating aggregated data (U.S. Pat. No. 8,595,610), a simulated rowing machine (U.S. Pat. No. 7,731,637), a golf ball (U.S. Pat. No. 8,399,564), and a multi-solution bone cement and a method of making the same (U.S. Pat. No. 8,575,274).

A design patent can protect a novel ornamental design of an article of manufacture. A design patent protects the way something looks, rather than the way it is structured or used. Examples of design patents include an engagement ring (U.S. Design Pat. No. D531,927), spork (U.S. Design Pat. No. D388,664), and a portable display device (or “iPad®” design) (U.S. Design Pat. No. D670,286).

\* Mr. Price is a Member in Bond’s IP & Technology Group and concentrates his practice on IP law, including patents, trademarks, copyrights and trade secrets.

**Infringement of a Utility Patent and Prosecution History Estoppel**

A utility patent can be infringed either literally or under the doctrine of equivalents, i.e., every element and/or limitation, or a substantial equivalent, of an asserted patent claim must be present in an accused device. A utility patent is literally infringed where, for example, an accused device includes each and every express limitation of an asserted patent claim. If the accused device does not literally meet each and every express limitation of an asserted patent claim, the accused device can still infringe the asserted patent claim, if the claim elements not literally present in the accused device are met under the doctrine of equivalents.



To infringe a claim under the doctrine of equivalents, (1) the differences between the accused device and the claim elements not literally present in the accused device must be insubstantial, or (2) the accused device, or a portion thereof, must perform same function, in the same way, to obtain the same result as the claim elements not literally present in the accused device.

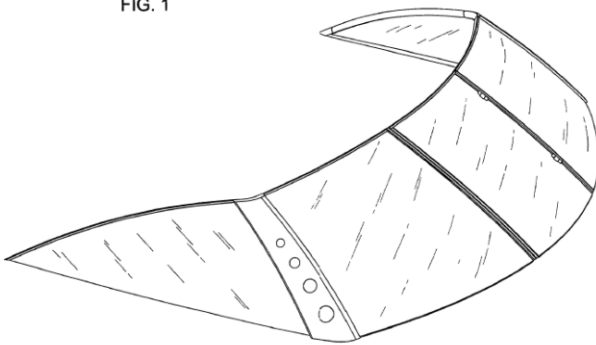
The doctrine of prosecution history estoppel is “well established” for utility patents, and limits the scope of what the patentee can claim as an equivalent under the doctrine of equivalents. In brief, if claimed subject matter is given up during prosecution for reasons related to patentability, e.g., submitting a narrowing claim amendment in order to overcome a rejection in view of cited prior art

reference(s), the patentee is prevented from “recaptur[ing] in an infringement action the very subject matter surrendered as a condition of receiving the patent.”

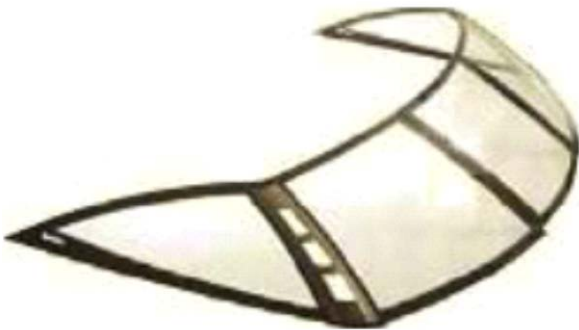
### Background of the Case – District Court

In 2011, Pacific Coast Marine Windshields Ltd. (“Pacific Coast”) filed a patent infringement complaint against Malibu Boats, LLC (“Malibu Boats”), alleging that Malibu Boats’ boat windshield infringed Pacific Coast’s U.S. Design Pat. No. D555,070 (“the ‘070 patent”). The ‘070 patent is directed to an ornamental design of a marine windshield with four circular vent holes on a corner post and a hatch corresponding to Fig. 1 of the patent below:

FIG. 1



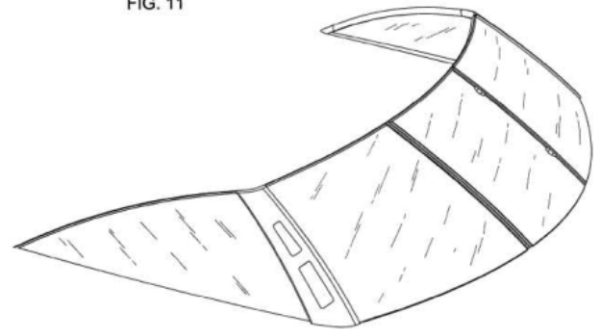
The alleged infringing boat windshield had three trapezoidal holes on a corner post, as shown below:



During prosecution, the patentee cancelled figures directed to other embodiments of the marine windshield (including a two hole embodiment, which was shown in Fig. 11) in response to a restriction

requirement issued by the U.S. Patent and Trademark Office (“USPTO”):

FIG. 11



In view of the patentee’s cancellation of these figures directed to the two hole embodiment, the district court granted Malibu Boats motion for partial summary judgment of non-infringement on the grounds of prosecution history estoppel. *Pac. Coast Marine Windshields v. Malibu Boats, LLC*, 2012 U.S. Dist. LEXIS 182218 (M.D. Fla., Dec. 27, 2012) (holding that “[w]hile the accused design has one fewer vent hole than that [four hole] embodiment, the accused design is still clearly within ‘the territory between the original claim and the amended claim.’ . . . Plaintiff is therefore estopped from claiming that the Defendants’ accused design infringes the ‘070 Patent.”).

### Federal Circuit Decision

On appeal, the Federal Circuit addressed two main issues: (1) whether the principles of prosecution history estoppel apply to design patents, and, if so, (2) whether those principles bar the Pacific Coast’s infringement claim.

The Federal Circuit explained that “[f]or design patents, the concepts of literal infringement and equivalents infringement are intertwined.” The test for design patent infringement “does not require literal identity . . . but rather sufficient similarity,” and the “principles of equivalency are applicable.” Accordingly, since there is an equivalency component to the design patent infringement calculus, the Federal Circuit held that the principles



of prosecution history estoppel apply to design patents to promote certain public policy considerations (i.e., “definitional and public-notice functions of the statutory claiming requirement”).

In considering whether the principles of prosecution history estoppel bar Pacific Coast’s infringement claim in this case, the Federal Circuit considered the following three questions: “(1) whether there was a surrender [of claim scope during prosecution]; (2) whether it was for reasons of patentability; and (3) whether the accused design is within the scope of the surrender.”

With respect to the first question, the Federal Circuit held that there was a surrender of claim scope during prosecution. This holding was based on the observation that “while we look primarily to the wording of the claims in utility patents for the purpose of prosecution history estoppel, we must look at the requisite drawings in design patents to determine whether a surrender has occurred.” Since the patentee of the ‘070 patent cancelled individual figures covering alternative embodiments of the marine windshield and removed language referring to the same, “the applicant narrowed the scope of his original application, and surrendered subject matter.”

With respect to the second question, the Federal Circuit held that “claim scope was surrendered in order to secure a patent” in response to a restriction requirement issued by the USPTO. Per the restriction requirement, the applicant of the application that became the ‘070 patent was required to select an embodiment of the marine windshield shown in the figures for further prosecution, and cancel the other alternative embodiments. This surrender resulting from an election made in view of a restriction requirement “invokes prosecution history estoppel” at least “in the design patent context.” The Federal Circuit “express[ed] no opinion” as to whether the same rule should apply in the utility patent context.

With respect to the third question, the Federal Circuit held that the accused design is not within the scope of the surrender, and that the principles of prosecution history estoppel “do not bar Pacific Coast’s infringement claim.” Malibu Boats argued, and the district court agreed, that by cancelling the embodiments directed to two holes and obtaining patents on the four hole embodiment and a no hole embodiment (based on a divisional application), the range between four and zero holes was “abandoned.” The Federal Circuit disagreed – “this range concept does not work in the context of design patents where ranges are not claimed, but rather individual designs. Claiming different designs does not necessarily suggest that the territory between those designs is also claimed.” Bottom line, the two-hole embodiment was surrendered; a three hole embodiment was neither originally submitted nor cancelled during prosecution.

### Practical Implications

Similar to the application of the principles of prosecution history estoppel in a patent infringement case involving a utility patent, the *Pacific Coast* case provides the framework to an alleged infringer for crafting a defense to a design patent infringement claim if certain actions were taken by the patentee during prosecution of its design patent.

On the other hand, design patentees need to keep in mind that their actions during prosecution can have adverse consequences with respect to any future infringement action. This can include any arguments made to distinguish cited prior art references, and cancellation of any figures for purposes of securing the patent.

Further, divisional design patent applications should be considered for any cancelled figures or design embodiments to avoid prosecution history estoppel based on such cancelled figures or design embodiments.

**PATENT PROSECUTION*****The After Final Consideration Pilot Program 2.0****By Dr. Blaine T. Bettinger\**

One of the biggest issues faced by the Patent and Trademark Office (PTO) is the backlog of Requests for Continued Examination (RCE). Although the PTO has recently had considerable success in reducing the RCE backlog, there was still a backlog of more than 80,000

applications reported in February 2014, along with new RCE filings of nearly 75,000. The PTO also reported that the average pendency from a RCE to the next office action is currently seven months.

After a Final Office Action, an examiner will usually only consider claim amendments that comply with suggestions made by the examiner, or arguments rebutting minor rejections. To reopen prosecution the applicant must file a RCE, which includes a submission (such as an office action response), and pay a filing fee. RCE fees recently increased and now range from \$300 to \$1,700 based on the entity size and the number of previous RCEs.

The After Final Consideration Pilot Program 2.0 (AFCP 2.0) was established by the PTO in May 2013 to address the RCE backlog by promoting compact prosecution and increasing collaboration between applicants and patent examiners. The program allows applicants to petition for review of an amendment following a Final Office Action, at no cost to the applicant.

To participate in AFCP 2.0, an applicant must file a petition requesting admittance into the program and

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a response after final rejection which includes an amendment to at least one independent claim. For the greatest likelihood of success, the amendment should place the application in condition for allowance by cancelling rejected claims, by writing objected-to claims in independent form, or by making amendments that will only require a limited amount of additional searching by the examiner.

If the petition is granted, the examiner is given up to three hours for consideration of the amendment, which includes time for an interview. If the applicant satisfies the criteria for AFCP 2.0 and the petition is granted, there are several possible outcomes:

- The amendment may place the application in condition for allowance, in which case a notice of allowance will be issued;
- The amendment may not be sufficient to overcome the prior art, and the examiner will contact the applicant to schedule an interview to discuss the amendment; or
- Additional searching may be required, and the examiner will process the amendment pursuant to existing after final practice, such as the mailing of an advisory action.

Even if the amendment is not sufficient or requires additional searching, the applicant can still gain useful information from the examiner during the interview or from the advisory action. Often, the examiner will provide suggestions for a RCE, or, at a minimum, will provide some insight into the basis and reasoning for the current rejection.

AFCP 2.0 can be a valuable tool for applicants to avoid the time and expense associated with a RCE. Further, even if the amendment is not successful, the applicant gains insight into the examiner's reasoning for the rejection, thereby facilitating the next response. AFCP 2.0 has been extended to run through September 30, 2014, and further extensions of the program are likely.

**NEWS & HIGHLIGHTS*****New Member Elected in  
Bond's IP & Technology Group***

Bond's IP & Technology Group is pleased to announce the election of Fred Price as a new Member to the Firm. Fred is an Intellectual Property and Technology attorney who concentrates his practice on intellectual property law, including patents, trademarks, copyrights and trade secrets. He is a registered patent attorney and has extensive experience preparing and prosecuting patent and trademark applications at the United States Patent and Trademark Office (USPTO) and registering copyrights with the United States Copyright Office. Fred works closely with inventors to prepare patent applications and responses to Office Actions in the fields of nanotechnology, medical devices, fuel cells, alternative and renewable energy, mechanical devices, particle and gas filters, chemistry, entropic activity detection and monitoring systems and computer software systems, among others. He has also worked closely with inventors in reexamination proceedings at the USPTO. Additionally, Fred has experience drafting license agreements, and representing clients in intellectual property infringement actions in federal court.

***Bond's IP & Technology Group***  
***GIVING IDEAS A COMPETITIVE EDGE<sup>SM</sup>***

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