

# GERMESHHAUSEN CENTER NEWSLETTER

Franklin Pierce Law Center's Intellectual Property Newsletter

SPRING 1999

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## IN RE ZURKO RECEIVES CERTIORARI

BY PATRICE ANDREA KING

Should the Court of Appeals for the Federal Circuit (CAFC) review the Patent and Trademark Office (PTO) fact findings under the more deferential "substantial evidence" standard set forth in Administrative Procedure Act (APA) instead of the presently applied less deferential "clearly erroneous" standard?

A definitive answer to the foregoing question is highly anticipated by the patent bar. In *In re Zurko*, the CAFC, in an unanimous en banc decision, said no to a similar question brought before it. 142 F.3d 1447 (Fed. Cir. 1998). However, proponents of the CAFC's decision must temporarily stay any victory celebrations.

"In what has been characterized as an 'aggressive PTO campaign' to have decisions of its Board of Patent Appeals and Interferences (the board) reviewed according to standards set forth in the APA", see Thomas G. Field, Jr., *Supreme Court Interest in the Federal Circuit (National Law Journal)*, February 8, 1999, at column 2 (citing *Zurko* at 1449), the PTO petitioned the U.S. Supreme Court for writ of certiorari filed August 31, 1998 and subsequently granted on November 2, 1998, asking the high Court to review the CAFC's decision and decide the appropriate standard of review for PTO fact findings. Basically at issue is whether the CAFC may lawfully second-guess the PTO's decisions on whether to grant patents.

Why the push by the PTO? Simply put, the CAFC is alone in applying a standard of review (the less deferential "clearly er-

roneous" standard of review) which is not authorized under the APA to an agency's factual findings (here the PTO).

Nevertheless, the CAFC feels quite justified in being the "odd man out" and steadfastly maintains that there is no basis to deviate from the "traditional" clearly erroneous standard. More specifically, the court believes "that section 559 of the APA permits and stare decisis warrants" its continued application of the clearly erroneous standard of review.

In *Zurko*, the court first reviewed the legislative history of the APA and found that while Congress drafted the APA to apply to agencies generally, it did not intend the APA to alter the review of substantive PTO decisions. 142 F.3d at 1452.

Section 559 of the APA provides that the judicial review provisions of the APA were not meant to "limit or repeal additional requirements ... recognized by law". The court construed this as preserving whatever common law standards of judicial review existed prior to 1947, the year the APA was enacted.

Turning to the question of what standard of judicial review of PTO board fact findings did the common law recognize prior to 1947, the court studied the patent statutes and case law directly on point. The court found that the patent statute did not explicitly address the proper standard of review to be used when reviewing the board's decisions. Nevertheless, the common law recognized several standards prior to 1947, which included the clearly erroneous standard and its "close cousins".

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## FROM THE EDITOR

### The Patent/Trade Secret Interface

**A**s in past issues, this column continues airing debatable, provocative and unsettled issues in IP law and practice. After clearing up in the last issue that a patent is not a monopoly, as is commonly believed, but property, let me dispel equally deep-seated misconceptions about the relationship between patents and trade secrets and level a lance in defense of trade secrets, the stepchild, the orphan in the IP family or the black sheep in the IP barnyard. Trade secrets are maligned as flying in the face of the patent system, the essence of which is disclosure of inventions to the public. Keeping inventions secret is, therefore, supposed to be reprehensible. One noted IP professor went even so far as to say "Trade secrets are the cesspool of the patent system."

Nothing could be further from the truth. Patents are but the tips of icebergs in a sea of trade secrets. Over 90% of all new technology is covered by trade secrets and over 80% of all license and technology transfer agreements cover proprietary know-how, i.e. trade secrets, or constitute hybrid agreements relating to patents and trade secrets. As a practical matter, licenses under patents without access to associated know-how are often not enough to use patented technology. Bob Sherwood calls trade secrets the "workhorse of technology transfer." The quiet role they play in IP protection is thus deceiving. Trade secrets are the first-line defense: they come before patents, go with patents and follow patents. Patents and trade secrets are not mutually exclusive but actually highly complementary and mutually reinforcing; in fact, they dovetail. In this context, it should be kept in mind that our Supreme Court has recognized trade secrets as perfectly viable alternatives to patents (*Kewanee Oil v. Bicron* (1974) "the extension of trade secret protection to clearly patentable inventions does not conflict with the patent policy of disclosure") and further strengthened the bases for trade secret reliance in subsequent decisions (*Aronson v. Quick Point Pencil* (1979) and *Bonito Boats v. Thunder Craft Boats* (1989)). Interestingly, in his concurring opinion in the *Kewanee Oil* decision, Justice Marshall was "persuaded" that "Congress, in enacting the patent laws, intended merely to offer inventors a limited monopoly (*sic*) in exchange for disclosure of their inventions (rather than) to exert pressure on inventors to enter into this exchange by withdrawing any alternative possibility of legal protection for their inventions." Thus, it is clear that patents and trade secrets can not only coexist, but are in harmony rather than in conflict with each other.

In the past and even today if trade secret maintenance was contemplated at all, e.g. for manufacturing process technology, which can be secreted unlike gadgets or machinery, which upon sale can be reverse-engineered, the question always was phrased in the alternative. E.g. titles of articles discussing the matter read "Trade Secret vs. Patent Protection", "To patent or not to patent?" "Trade Secret or Patent?" etc. I submit that it is not necessary and, in fact, shortsighted to choose one over the other. To me the question is not so much whether to patent or to padlock but rather what to patent and what to keep a trade secret and whether it is best to patent as well as to padlock, i.e. integrate patents and trade secrets for optimal protection of innovation.

Let me explain. It is true that patents and trade secrets are polar extremes on the issue of disclosure. Information that is disclosed in a patent is no longer a trade secret. As pointed out above, however, patents and trade secrets are indeed complementary; especially under the following circumstances: First, in the critical R&D stage and before any applications are filed and also before patents issue, trade secret law particularly "dovetails" with patent law (*see Bonito Boats*). Secondly, provided that an invention has been enabled and the best mode described, as is requisite in a patent application, all associated know-how not disclosed can and should be retained as a trade secret. That the "written description" and "best mode" requirements apply only to the *claimed* invention should be kept in mind in this context. Third, all R&D data, including data pertaining to better modes, developed after filing, whether or not inventive, can and should also be maintained as trade secrets.

Fourth, and especially with respect to complex technologies consisting of many patentable inventions and volumes of associated know-how, complementary patenting and secreting is tantamount to having the best of both worlds. In this regard GE's industrial diamond manufacturing process technology, which is partially patented and partially under trade secret protection, comes to mind as an excellent illustration of the synergistic integration of patents and trade secrets to secure exclusivity.

Was GE's policy to rely on trade secrets in this manner, or, for that matter, Coca-Cola's decision to keep their formula secret rather than patent it, which could have been done, damnable? I think not.

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## GERMESHUSEN CENTER NEWSLETTER

Published by the  
Kenneth J. Germeshausen Center  
for the Law of  
Innovation and Entrepreneurship

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Created in 1985 through the generosity of Kenneth J. and Pauline Germeshausen, the Germeshausen Center is the umbrella organization for Franklin Pierce Law Center's specialization and policy studies in the legal protection, management and transfer of intellectual property, especially as they relate to the commercialization of technology.

The Germeshausen Center Newsletter is published semi-annually for alumni/ae, students and friends of Franklin Pierce Law Center. Our readers are encouraged to send news, photos, comments or letters to:

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Finally, the court concluded that the principle of stare decisis prevents it from setting aside long-standing practices absent compelling reasons to do so. Since the CAFC's creation, the court has consistently applied the clearly erroneous standard when reviewing factual findings of the Board in its patentability decisions (Mary E. Zurko, et al. appealed from the Board's decision rejecting the referenced application as obvious under 35 U.S.C. § 103).

In sum, the court stated "...the Commissioner has made no suggestion that our current standard of review is unworkable, intolerable, prejudicial, burdensome, or even that it adversely affects the administration of the patent system. The standard has not become a doctrinal anachronism, nor have the premises underlying it changed to make it irrelevant or unjustifiable — it is very much alive and in use throughout the legal system." 142 F.3d at 1458.

Arguing on behalf of the PTO, Professor Thomas G. Field, Jr., Franklin Pierce's professor of intellectual property law has joined with two other intellectual property law professors, Assistant Professor of Law, Craig Allen Nard of Marquette University Law School and Assistant Professor of Law, John Duffy of Cardozo School of Law, Yeshiva University, all of whom teach or write in both administrative and patent law, have filed in the Court an amicus brief in support of the PTO. The following excerpt is taken from the Summary of Argument:

"Congress enacted the APA in 1946 as a comprehensive statute to regulate the field of federal administrative law. In holding that the PTO Board of Patent Appeals and Interferences ("PTO board" or "the board") is not subject to the standards of judicial review set forth in the APA, the decision below isolates patent law from the rest of administrative law and undermines the APA's goal of achieving consistency and uniformity in federal administrative law.

The Federal Circuit interpreted Section 559 of the APA to authorize a form of judicial review whereby (1) the court does not review PTO board decisions on the basis of the agency's own reasoning, and (2) the court reviews the PTO's factual findings under a clearly erroneous standard. Both of these aspects of review deviate from the review authorized by the APA, and neither can be justified by Section 559. Even under the Federal Circuit's view that Section 559 permits the continuation of pre-APA common-law requirements that are more demanding than the APA, Section 559 cannot justify reviewing board decisions without regard to the agency's reasoning because that would reduce the ordinary requirement that agencies must be able to defend both their results and their reasoning. Section

559 also does not authorize a clearly erroneous standard for review of PTO factual findings because such a standard did not exist prior to enactment of the APA.

Moreover, the Federal Circuit erred in interpreting Section 559 to authorize the use of pre-APA administrative common law purportedly found in murky lower court decisions. One of Congress's main goals in enacting the APA was to clarify federal administrative law. Allowing ambiguous lower court precedents to supercede the APA frustrates that goal. Section 559 also does not insulate pre-APA common law from review by this Court. To the extent that any pre-APA lower court applied a form of judicial review such as that suggested in the decision below, that judge-made law is now obsolete.

Finally, although the Federal Circuit relied on stare decisis, that doctrine should have little application to this case."

Professor Field further buttresses his position in a separately authored article entitled *Supreme Court Interest in the Federal Circuit* (*National Law Journal*) February 8, 1999, at column 2. Therein, he cites to the highly influential case, *Graham v. John Deere Co.*, 383 U.S. 1. "The 1966 *Graham* trilogy remains pre-eminent on patentability standards." *Id.* Therein, "Justice Tom Clark said that 'the primary responsibility for sifting out patentability material lies in the Patent Office.'" *Id.* (citing 383 U.S. at 18).

Given this statement, this author feels that the Supreme Court's decision

on the proper standard of review should lean favorably toward the PTO. In any event, for the Supreme Court the issue ultimately boils down to a choice between black or white; the Court will have to choose between two competing standards of review. See Lawrence B. Ebert, *Issues in Etiquette: Zurko, Pfaff, and Scientific Doormen*, January, 1999, <http://www.lawworks-iptoday.com/current/ebert.htm>. Oral arguments have been scheduled for March 24, 1999. We await the Court's decision.

*In Zurko, the court first reviewed the legislative history of the APA and found that while Congress drafted the APA to apply to agencies generally, it did not intend the APA to alter the review of substantive PTO decisions.*



Patrice Andrea King is a LLM candidate from the NY/NJ area who is planning to pursue intellectual property law upon graduation.

# A Light in the Tunnel: The Use of Survey Evidence in Dilution Actions

BY ANDREW KLUNGNESS

**F**rank Schechter's seminal article, *The Rational Basis of Trademark Protection*, provided the conceptual roots for what is now known as trademark dilution. Shortly following the publication of this article, many scholars, judges, and practitioners have attacked this doctrine based on its nebulous nature. The passage of the federal dilution statute, 15 U.S.C. 1125(c), brought this criticism to a crescendo.

Practical concerns justify much of this criticism. The lack of well-developed, concrete standards governing a trademark owner's rights under the dilution statute presents difficulties for plaintiff's attorneys, who may not be able to fully assess the scope of their client's rights when presenting a dilution claim. A defendant's attorney may face similar problems in proving that her client's activities do not dilute the plaintiff's marks.

Faced with the additional burden of justly balancing competing principles, courts have also had difficulty in applying the dilution statute in the absence of objective standards for assessing dilution claims. Out of blind concern for the rights of trademark owners, many courts have found dilution based solely on a defendant's use of a mark that resembled the plaintiff's mark. Other courts approach dilution cases with great caution, because the dilution doctrine presents a genuine threat to two fundamental values underlying our legal system, the protection of free competition and the right to free speech. A balancing test that accurately determines whether a defendant's conduct dilutes a plaintiff's mark has yet to be developed, adding to the difficulties inherent in reconciling these competing principles.

In the absence of reliable means to evaluate dilution claims, litigators involved in dilution actions have employed a form of evidence frequently utilized in trademark infringement cases. Consumer surveys are used routinely in trademark infringement suits because this cause of action hinges on the consumer's perception of the similarity of the two marks involved in the case. Dilution, like trademark infringement, also involves the public's perceptions of various marks, as the harm in a dilution action occurs when the distinctive power of the mark is "diluted." This harm occurs within the minds of consumers, and as such, will be evidenced by the public's perception of the mark as indicated by the results of the surveys.

The use of survey evidence in dilution actions provides an objective basis on which to measure both the effect of the junior use on the senior mark as well as other factors that may be relevant in a dilution action. Survey evidence provides courts with a concrete basis from which to decide cases that often involve a balancing of competing interests. Dilution surveys also clarify

the somewhat obscure concepts associated with this doctrine by quantifying the effects that the use of a potentially diluting mark has on the plaintiff's mark.

For example, in *Ringling Bros.-Barnum & Bailey Combined Shows, Inc. v. Utah Division of Travel Development*, 955 F. Supp. 605 (E.D. Va. 1997), survey evidence demonstrated that the defendant's use of the phrase "The Greatest Snow on Earth" did not dilute the plaintiff's mark "The Greatest Show on Earth." The results of the survey demonstrated that the respondents associated "The Greatest Snow on Earth" with Utah's efforts to promote ski tourism. The respondents also continued to associate "The Greatest Show on Earth" solely with Ringling Brothers' entertainment services. These results demonstrated that no dilution was occurring because the plaintiff's mark had

not lost any of its identifying power as a result of the defendant's use of a similar mark. Consumer surveys have also been used in dilution actions for reasons other than proving dilution *per se*. In order for a mark to qualify for protection under the dilution statute, a mark must be "famous." In one case, *Star Markets, Ltd. v. Texaco*, 950 F.Supp. 1030 (D. Hawaii 1996), surveys were used to measure the fame of a mark in various geographic regions within the United States. The court held that the mark did not qualify for protection under section 1125(c) because

the surveys demonstrated that the mark had achieved the requisite degree of fame only in Hawaii. The federal dilution statute, the court explained, was intended to protect only those marks that had achieved fame throughout the country.

Other dilution cases in which survey evidence provided useful evidence include, *Hershey Foods Corp. v. Mars, Inc.*, 1998 U.S. Dist. LEXIS 4267 (M.D. Pa. 1998); *Golden Bear Int'l, Inc. v. Bear U.S.A.*, 969 F.Supp. 742 (N.D. Ga. 1996); *Kendall-Jackson Winery v. E. & J. Gallo Winery*, 150 F.3d 1042 (9th Cir. 1998). *Hershey* and *Kendall-Jackson* featured surveys designed to measure secondary meaning, fame, and ultimately dilution of the plaintiff's trade dress. *Golden Bear*, on the other hand, was a tarnishment case in which a survey was used to measure possible negative associations that the public was making with the "Golden Bear" mark as a result of the defendant's use of a similar mark.

In light of the advantages offered by survey evidence, practitioners must be cognizant of potential problems with survey evidence. Survey questions must be tailored to produce results that are relevant to a dilution action. For example, questions that gauge whether a mark is famous within a limited geographic region will not produce results that will qualify a mark for protection under the federal act. A survey designed to

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# The "Fairness in Music Licensing" Act

BY ANTHONY J. TAMBOURINO

President Clinton signed the Copyright Term Extension Act into law on October 27, 1998. The Act is composed of two parts that significantly affect the rights of copyright holders. Title I of the act basically grants a twenty year extension for copyright holders on their works and brings the United States into line with the European Community's grant of "Life Plus 70". Title II, commonly called the "Fairness in Music Licensing" Act, modifies 17 USC §202 to allow commercial establishments that meet certain requirements to transmit radio or television broadcasts without paying royalty fees.

Immediately after Title II passed, the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI) issued a joint statement condemning the legislation. In a letter to members, ASCAP president Marilyn Bergman challenged Title II on three fronts. First, she claims that Title II reduces the creative incentive of future generations of songwriters by reducing their revenues in the songs they write. Second, she claims Title II puts the United States in violation of the Berne Convention and TRIPs Agreement, (Trade Related Intellectual Property Rights) and finally, she claims it violates the U.S. Constitution's principle of private property protection.

The National Restaurant Association (NRA) lobbied heavily for Title II allegedly with the interests of the "mom and pop" establishment in mind. It argued that the sole proprietor needed to be protected from the "big bad" licensing company's oppressive royalty rates. ASCAP and other licensing companies contend that even the "mom and pop" establishment is hardly affected by the licensing fees. ASCAP argues that, even before Title II passed, licensing costs were less than one percent of the average restaurant's gross sales. The \$4,700 average in royalties earned by a songwriter pales in comparison to the \$44,000 per year earned by the average restaurant owner. Perhaps what Congress and the NRA have failed to understand in passing this legislation is that just because Mariah Carey, Garth Brooks and Madonna perform the songs, that does not mean they have written them. Superstar performers will not be affected by Title II. The true damage of Title II comes to the individual songwriter who makes his or her living almost exclusively from the songwriting, not the performing.

Legally, Title II may force us to redefine the type of protection afforded to intellectual property. When the House and Senate considered the Copyright Term Extension Act, debate

swirled around the government taking of private property. Representative Scarborough (R-FL) argued that "common sense dictates that [taking by the government] refers to any act that diminishes or deprives any legally protected right to use, possess, exclude others, or dispose of one's property, real or intellectual." While this is a fine general definition for real property, its use for intellectual property questions compulsory licensing and fair use schemes already in place. Already, copyright holders cannot simply "exclude" others from their intellectual property when it comes to compulsory licenses and fair use. Title II takes a portion of a compulsory license and appears to transform it into fair use by removing the royalty fees. The licensing companies' strongest argument appears to be that the fair use effects on the market come at too high of a cost to songwriters. Additionally, the eminent domain argument may have some merit if it can be shown that the "taking" by the government in this case goes from private hands (songwriters) to private hands (restaurant owners), something that is expressly forbidden under eminent domain.

The overall tension in the Copyright Act is the dissemination of information for the public benefit and the need to protect and motivate authors to create works in the first place. The Fairness in Music Licensing Act looks more like a coup by the NRA to save restaurant owners a few bucks at the expense of the already low royalty income of songwriters all in the guise of benefiting the public.

*The National Restaurant Association (NRA) lobbied heavily for Title II allegedly with the interests of the "mom and pop" establishment in mind. It argued that the sole proprietor needed to be protected from the "big bad" licensing company's oppressive royalty rates."*



*Anthony J. Tambourino is a 2L JD candidate focusing on copyright, licensing and trademark law.*

# MIP Highlight: Emmanuel Mewe Pirah

BY ANDREW D. GATHY

**I** take this first,” or was it, “Mogbeyiteren,” actually it was both. The name that Emmanuel Mewe Pirah was given at birth by his father was Mogbeyiteren, an Itsekiri name from Nigeria that translates into English as “I take this child first.” The Nigerian people name their children based on events that happen around them at the time of their child’s birth. In Emmanuel’s case, it was an expression of his father’s initial skepticism regarding the union with his new young wife. She was homesick. She had moved far away from her home village and needed reassurance.

His mother’s reassurance has now been passed to Emmanuel as he has journeyed far from his country to FPLC to obtain a Masters of Intellectual Property. Emmanuel was educated and has practiced law as a Barrister and Solicitor in Nigeria. In order to become a Barrister and Solicitor of the Supreme Court of Nigeria, an individual must fulfill several requirements.

Emmanuel first studied law based on the English Common law system for five years. He earned an LL.B. Next, he attended The Nigerian Law School for one year. This one-year of school centered on the practice of the law at the only law school in Nigeria. After completion of law school, Emmanuel was called to the bar. This is a formal ceremony that initiates the lawyer into the Nigerian Bar. The lawyer then, like all other graduates, must proceed to serve the nation for one year under the National Youth Service Corps established since 1973. This involves leaving one’s hometown and home state to go to practice in another region of the country. The lawyer lives with a host family and learns the customs of the region. This practice was established to help the Nigerians understand the diversity within their country. Once the service is finished, the lawyer is available to work in the labor market where he/she can be employed in different capacities in both the public and private sector of the Nigerian economy.

In Nigeria, private law practice is the most active area of the law and Emmanuel searched for employment in private practice. The more traditional law practice in Nigeria is centered around a single individual. The practice is relatively small and the focus is general, unlike some law firms in the U.S. devoted to specialized practice. If the owner of the practice is interested in corporate law then that is what will be practiced almost exclusively. Emmanuel was fortunate to get a position in one of Nigeria’s vibrant law firms, Mogbeyi Sagay & Company, a firm with an international reputation. Mogbeyi Sagay & Company’s practice was very active in corporate law, which led to Emmanuel’s interest in the area corporate law. His legal practice

emphasized trademark law and the protection it provided many of the foreign corporate clients.

In Nigeria, intellectual property law is still in its developmental stages. However, trademark law is relatively mature in this West African nation. Some of the commercial industry is owned by foreign corporations. Those corporations seek the protection of their goodwill through trademarks. Nigeria has a dynamic and growing economy that is a fertile environment for the use of trademarks. Corporations actively protect their marks in an effort to stimulate economic growth.

As a Barrister in Nigeria, Emmanuel has served many clients including foreign corporations on intellectual property matters. Prior to leaving Nigeria, Emmanuel registered a partnership law practice under the name Mewe, Oseragbaje & Company. Emmanuel intends on using the knowledge and experience gained from obtaining his MIP at FPLC to enlarge the area of practice at his firm back home in Nigeria. The law firm partnership structure is gaining currency as a form of business organization throughout the Nigerian legal community. Until recently, the Nigerian legal practice was primarily sole proprietors. Emmanuel envisions

his partnership as having a specialization in intellectual property. He wants to advise Nigerian industry of the advantages of protecting their intellectual property rights. He also plans to encourage Nigerian compliance with international intellectual property treaties. Bolstered by his MIP, Emmanuel will provide his clients with reassurance in the area of intellectual property law.

The FPLC community wishes Emmanuel the best of success in his future endeavors at his law firm in Nigeria.



*Emmanuel Mewe Pirah is a MIP student from Nigeria.*

*Andrew D. Gathy, is a 2L JD/MIP joint degree student planing to practice intellectual property law.*

## FPLC PROFILE: Bill Keefauver

### Member of the Franklin Pierce Board of Directors, Chair of the Advisory Committee on Intellectual Property

BY MICHELLE R. SAQUET

**B**ill Keefauver saw more before he reached the age of 22 than most in an entire lifetime. A third year Penn State engineering student in 1943, he enlisted in the Army Air Corps as an aviation cadet in the meteorology program. After training at the University of Chicago in meteorology, the Army made him a Communications Officer (2<sup>nd</sup> Lt.). He spent over three years in the military, including a year and a half in Greenland where he picked up cryptography while in charge of over 40 people. After the military, he chose to finish his degree at Penn State, and graduated in 1948 with a BS in electrical engineering.

Mr. Keefauver was born and raised in Gettysburg, PA, where his ambition was to pursue a career in music. Playing in many jazz and classical groups he found, he was also talented in math, and decided to pursue a career in engineering. Before graduation from Penn State, Bill met with a Bell Labs recruiter who talked to him about opportunities in patent law. While working in Bell Labs patent department, Keefauver attended NYU School of Law.

After law school he began an extremely successful career at Bell Labs. Keefauver was Division Patent Attorney in 1955, Associate General Patent Attorney in 1971 and General Patent Attorney in 1973. The following year, he was appointed General Legal and Patent Counsel. In 1980, Mr. Keefauver was elected Vice President and General Counsel of Bell Labs.

Bill Keefauver was the lead Bell Labs lawyer for the government antitrust suit from 1974-1984. During this period his work also included approximately 40 "copycat" private suits; these convinced him that "litigation at this level is a highly inefficient way to settle what were primarily national policy disputes." He recalls this time as very intellectually stimulating since he was forced to increase and refresh his knowledge in many other areas of law. He reflects that although the law suits were complex, the

"restructuring of the Bell System was orders of magnitude more complex."

Bill Keefauver has earned high esteem in the field of intellectual property and has served on countless prestigious committees. An active member of the ABA, Mr. Keefauver has served as Chairman of its Section of Patents, Trademarks and Copyrights. He also served as President of the International Intellectual Property Association, the U.S. Group of AIPPI and continues to serve as Chairman of the AIPPI Policy and Administrative Committee. When asked which committee he considers his favorite, his 1990 appointment to the Advisory Commission on Patent Law Reform by the US Secretary of Commerce is placed at the top. During his time in this position Keefauver chaired a subcommittee, "Reducing the Cost and Complexity of Patent Litigation", a very important subject to him. Many of his recommendations have been enacted into law.

Satisfying his long time interest in international matters he was invited to join the US delegation to the conferences on the revision of the Paris Convention in the 1970s. Here, Bill was introduced to the treaty making process and leading members of the international patent community.

Bill Keefauver enjoys travel and has spoken frequently on a variety of intellectual property matters around the world. Currently, he works as a consultant out of his home, and serves as an expert in patent litigation. FPLC benefits greatly from his influence and advice on its board, as he is a prominent representative of the IP community.



*Michelle R. Saquet is a 1L JD candidate with a background in biochemistry. She plans to pursue a career in patent law.*

*(Continued from page 4)*

detect dilution must not mistakenly measure infringement. In other words, dilution surveys must evidence a lessening of the distinctive quality of a given famous mark. Responses that indicate that subjects associate a mark with multiple sources of goods or make unfavorable associations with a given mark evidence dilution. A survey that indicates that subjects are confused about the source of goods or services would evidence trademark infringement.

Even in light of some of the pitfalls that may befall a dilution survey, they remain as a means by which courts may make better reasoned decisions in dilution cases. Decisions rooted in objective evidence correctly applied to the requirements of the federal dilution statute will bring some order to the quagmire that is dilution law at this point in time. Protection against likelihood of dilution will, as it should, be recognized as a legitimate extension

of trademark rights justified in the face of the enormous amount of resources expended in creating and maintaining a famous mark.



*Andrew Klungness is a 3L, and will join Manatt, Phelps & Phillips, LLP in Los Angeles after graduation.*



# FPLC's Innovation and Creativity Clinic Receives Recognition by the Federal Government

BY MATT McCLOSKEY

This fall FPLC's Innovation and Creativity Clinics were distinguished by the U.S. Department of Housing and Urban Development (HUD), as two of the twenty most innovative and successful law school clinics in the nation. The report by HUD's Office of University Partnership consisted of a profile on each of the twenty most successful and innovative law school clinical programs in the nation. The goal of the HUD report was to publish these profiles so that other law schools throughout the nation might emulate the "particularly successful or innovative" clinical programs, in other words — to spread the

formula for success. The Innovation and Creativity Clinics shared honors with clinics from schools including Stanford, Columbia, Harvard, Yale, UCLA, and Michigan.

Perhaps the better known of the two, the Innovation Clinic helps New Hampshire inventors get their inventions patented. Students — either under the supervision of faculty members Bill Murphy and Chris Blank, or local attorneys, working pro bono — take on tasks including patent searches and patent applications.

The Creativity Clinic, focusing on the "soft" side of IP, helps local artists obtain copyrights and trademarks for their works. Students help these artists by completing copyright registration forms and performing trademark searches.

Both the Innovation and Creativity Clinics were designed and have been run since their inception in 1996, by faculty member Elizabeth Christian, a 1995 graduate of the University of Georgia Law School. The HUD report noted that the clinics have "a fundamentally different structure than traditional clinics . . . these clinics allow students to work directly with inventors on the patent application process". Christian attributes the bulk of the clinics' success to this fundamentally different structure. "These clinics are meant to be an inventor or artists 'one stop shopping' resource, where all of their IP concerns can be addressed directly."

Another key reason for the success of the two clinics' is their participation in local, regional and national business alliances.



*Steve Zemanick, a 2L, Elizabeth Christian, Esq., Director and Designer of FPLC's Innovation and Creativity Clinic, and Alyssa Jewett, the third grader whose "Safe-T-Mug" received top honors in the New Hampshire Young Inventors Contest.*

The Innovation Clinic collaborates with the New Hampshire Inventors Assistance Program, the Service Corps of Retired Executives, and the National Collegiate Inventors and Innovators Association. The Creativity Clinic is in an alliance with the New Hampshire State Department on the Arts. Membership in these alliances greatly increases the number of client referrals to the clinics.

The recognition of FPLC's Innovation and Creativity Clinics solidifies the school's IP reputation. In addition, the school's community law profile is highlighted because the main concern of the HUD report

was to disseminate information about clinical programs that successfully help the community. The clinics were selected because of the exemplary manner in which they foster the development and revitalization of the community. Interim Dean Duggan, upon learning of the HUD report, stated, "Our school is an excellent educational resource for the community and the state. We are pleased the clinic has received recognition for its efforts in lawyering for the public interest, a philosophy the Law Center embraces."

*Matt McCloskey is a 1L JD candidate. He has an undergraduate degree in agricultural engineering and plans to practice patent law.*



# THE NEW ELECTRONIC COURTROOM – IP IMPLICATIONS

BY SUJATA CHAUDHRI

**L**aw is a dynamic profession. It is therefore imperative that it keeps pace with, and assimilates technological developments. The Devine, Millimet & Branch Courtroom at Franklin Pierce Law Center is just one instance of such assimilation. Named after Joseph A. Millimet, a founding partner of the law firm of Devine, Millimet & Branch and noted trial lawyer and civic leader in the state of New Hampshire, this state-of-the-art electronic courtroom is equipped with a sophisticated combination of hardware and software.

Modeled after a courtroom in the new federal courthouse in Concord, the courtroom is expected to provide students at FPLC a more realistic setting for conducting trials. The skill of a trial lawyer lies in persuading fact finders, often a jury, to select from testimony and evidence usually contained in thousands of sheets of paper, those facts that favor their client. More often than not, a trial lawyer spends several hours arranging and organizing this mass of testimony so as to make an effective presentation before the triers of fact.

The new courtroom incorporates trial presentation software, designed to make trial presentations more effective and efficient. With regard to intellectual property, particularly patent litigation, the technical nature of the issue juxtaposed with the manner of presentation, often makes it difficult for the jurors to fully comprehend the complex information presented. The software installed in the courtroom now makes it possible to display complex subject matter on a television screen, which can be viewed by all members of the jury. The benefit of this will be evocation of greater interest for the jurors. Further, the software facilitates imaging, the process of storing a photocopy of a document on a CD-ROM. Imaging gives instantaneous access to document, while ensuring better organization and mobility for the trial lawyer. Because imaging makes it possible to have effective presentations, jury interest is more likely

to be maintained.

Digital video and audio equipment also enhances the new courtroom and allows instant access to any portion of a file. The lawyer can thus avoid the time consuming process of sifting through testimony, when questioning a witness. Corresponding text can be synchronized, making it helpful in searching for key testimony. The courtroom also incorporates technology that makes it possible for reproduction of an image back to a hard copy, when needed without deterioration in quality.

Another feature is the Coded Document Database, which is used to find information when its exact location is not known and to link evidence to records and create history of evidence. The state-of-the-art technology allows casting of clear pictures of documents, physical evidence and court transcripts onto monitors at selected sites for the jurors, judge and the lawyer. Video conferencing is now possible, with the installation of a new local area network.

FPLC has already started to train its students in the use of the courtroom as part of its curriculum, thereby ensuring that these students are armed with the requisite skills before they graduate, thus gaining an edge over other graduating students. The Law Center will begin presentation and preparation training for practicing attorneys this month. Let us hope that FPLC's contribution to the world of hi-tech litigation goes to benefit not only students, but also practitioners in New Hampshire and other states as well.

*Sujata Chaudhri is a Master of Intellectual Property degree candidate from New Delhi, India.*

## WIPO Gives Law Center "The Golden Egg"

BY ROBERT SPESSARD

On November 10, 1998 FPLC's Professor Karl Jorda visited the Director General of the World Intellectual Property Organization (WIPO) in Geneva, Switzerland. Jorda expressed gratitude for the support that WIPO has given the school in the past and was able to secure an agreement from WIPO that will allow FPLC to expand its already world renowned intellectual property library.

The Director General agreed to donate to Franklin Pierce's intellectual property library, three copies of each new WIPO publication, as well as three copies of any past publications desired by the law center.

It is hard to understand just what the law center is receiving until you take a look at WIPO's publication index (which is available at [www.wipo.org](http://www.wipo.org)); it is there you can see the breadth of WIPO's donation. Everything from the Strasbourg Agreement, to the WIPO General Rules of Procedure, to intellectual

property laws and treaties will be available to researchers who have access to the Law Center's IP library. Enthusiastic about the donation, FPLC's intellectual property librarian, Jon Cavicchi (the only academic intellectual property librarian in the country), confirmed that, "This donation from WIPO will strengthen the Law Center's intellectual property library to where it has the strongest domestic intellectual property collection in the country."

"WIPO's donation is the Golden Egg of donations as far as we are concerned," Cavicchi stated after he handed me a copy of the WIPO Publication Index. As I looked over the 100 plus publications that were soon to be available to the Law Center, I began to understand just where he was coming from.

*Robert Spessard is a 1L JD candidate. He is interested in pursuing copyright, trademark and entertainment law.*

# THE NEW PATENT REGIME IN INDIA: TO BE OR NOT TO BE ?

BY KANISHKA AGARWALA

It is déjà vu. The wide cleave between the Legislature and the Executive over the proposed amendments to the Indian Patent Act, 1970 has once again compelled the Executive to resort to the transient solution of promulgating an Ordinance — a temporary rule with the same force as an Act of Parliament used to tide over a period when both Houses of Parliament are not in session. The Legislature, distressed at the consequences of an increase in the prices of pharmaceutical drugs and agro-chemicals, and the Executive, staring a deadline in the face, remain at variance. Each looks to the other for assistance in finding a way out of the impasse.

The Patents Act, 1970 (hereinafter "Act") contains the substantive law regarding patents in India. The Act was originally patterned on the British Patents Act. Subsequent amendments were informed by the need to ensure that patent rights were not worked to the detriment of consumers or to the prejudice of trade and industrial development of the country. Over the years, the Act has lagged behind growth in legislation in this sphere in most developed countries. Consequently, there are substantial differences between the provisions of the Act and the common minimum standards envisaged by TRIPS. The provisions at the heart of much of the present debate pertain to the grant of product patents for pharmaceuticals and agro-chemicals, compulsory licensing on account of non-working of the patent in India and the transitional provisions. Although the term of a patent is presently seven years, there is almost no debate regarding its enhancement to twenty years provided, of course, the issue of patentability is suitably resolved.

The WTO Agreement on Trade Related Aspects of Intellectual Property Rights (hereinafter "TRIPS") came into effect on January 1, 1995. Developing countries that did not provide patent protection for pharmaceutical and agricultural chemicals were given ten years to establish such protection by way of suitable legislation. As an interim measure, these countries were obliged to provide a "mailbox" or "pipeline" system to receive patent applications and assign these applications a priority date (Article 70). When suitable legislation is ultimately enacted, the applications will be examined in sequence according to the priority date. Until such time as the patent application is examined, the applicant shall have exclusive rights to market the invention/product subject to a few conditions.

India accepted WTO membership on December 30, 1994. In meeting the WTO obligations, India had two choices. One, immediate compliance and amendment of the Act. Two, take advantage of the transition period and allow full-scale patents on products from 2005; the interim period being filled by the device of mailbox applications and Exclusive Marketing Rights (hereinafter "EMR"). India chose the second option and on December 31, 1994, an Ordinance to amend the Act was promulgated. This Ordinance lapsed in March 1995 and the government introduced the Patents (Amendment) Bill to the Lower House of Parliament. The Lower House ratified it but the Upper

House did not. Since ratification by both Houses of Parliament is required for a Bill to become law the Act stood unchanged and without TRIPS compliance.

In July 1996, the WTO received its first intellectual property case with the U.S. complaint that India was violating TRIPS. In September 1997 the WTO's Dispute Settlement Body ruled against India and India's subsequent appeal to the Appellate Tribunal of the WTO was rejected in December 1997. The EC also lodged a complaint, which the Dispute Settlement Body decided against India. In January 1998 India was granted a fifteen-month implementation period which expires on April 19, 1999. The USTR Charlene Barshefsky said, "The message from the panel is clear: for developing countries benefiting from the phase-in of TRIPS obligations, the phase-in will not be a free ride".

The present debate on the proposed amendment to the Act is informed by compelling arguments on both sides. It is argued that India should amend the Act with immediate effect because the interim measures could cause great harm by granting patent-like rights in the shape of EMR without patent-like scrutiny. Furthermore, it might prove difficult to dislodge the holder of the EMR in the future if the patent does not meet the standard of patentability when the mailbox applications are ultimately examined.

The other side of this argument is that before such legislation can be fully adopted, profound systemic and attitudinal changes will be required. The present system of patent examination and enforcement will need restructuring and the notion that knowledge is a public good will have to be replaced with a view that it is commercial property. The attainment of these paradigm mindshifts will require considerable time, which will be afforded by the phase-in period.

There is serious concern about the lack of public interest being a factor in TRIPS. It is argued that the rise in costs of pharmaceuticals resulting from TRIPS compliance will jeopardize public health by taking medicines beyond the reach of a large populace of the country. Further, the rise in the cost of seeds will threaten the existence of farmers apart from having a domino effect downstream. This is countered by arguments suggesting that stronger institutions for indigenous research and development and the salutary effect of market forces will prevent such a scenario from materializing.

*(Continued on page 11)*



# ICANN: Internet Corporation for Assigned Names and Numbers

BY SUJATHA SUBRAMANIAM

**O**n July 1, 1997, as part of the Administration's Framework for Global Electronic Commerce, President Clinton directed the Secretary of Commerce to privatize the management of the Domain Name System (DNS). On June 5, 1998, the Department of Commerce (DOC) published its Statement of Policy, Management of Internet Names and Addresses, 63 Fed. Reg. 31741 (1998) addressing the privatization of technical management of the DNS in a manner that will allow robust competition and facilitate international participation. The Statement of Policy invited private organizations to submit a proposal establishing a process for transition from government to private management based on the principles of stability, competition, bottom-up coordination, and global representation. From the responses, the DOC decided the proposal submitted by Internet Corporation for Assigned Names and Numbers (ICANN) was the most feasible plan toward privatization of the DNS. On November 25, 1998, the DOC signed a Memorandum of Understanding with ICANN to facilitate this transition. However, the DOC's choice has been highly criticized.

The Statement of Purpose required the new organization to possess certain structural features; in particular, an interim board that is both geographically diverse and has a mixture of technical and management experts. Second, presence of supporting organizations that will be responsible for reviewing, developing and recommending policies to the Board. Third, for a transparent decision making process.

Although ICANN's bylaws indicate it has met these requirements, its internal structure has been criticized industry-wide. Critics allege that the interim board was appointed behind closed doors and does not represent the interests of developing countries and international trademark holders. The majority of internet stakeholders maintain that the proposed bylaws neither reflect their opinions nor include their suggestions. The lack of membership structure and accountability of the Board members has spawned fears of a cartel-like situation in domain name administration. Further, several Internet players see the role of supporting organizations in both nominating members to the

board and financially supporting ICANN as a conflict of interest. Finally, although provided by ICANN's bylaws, the transparency of its decision making process has been fiercely criticized in public board meetings. Internet players have alleged mere publication of meeting minutes does not establish a transparent process and have demanded more public involvement in all decisions affecting the Internet made by the Board.

In the last couple of months, ICANN has made efforts to resolve questions relating to its membership structure, increase transparency of its operation and decision making process, and provide a more diverse geographical representation. ICANN interim board members have proposed to achieve transparency by holding open public meetings in conjunction with regular board meetings followed by the publication of meeting minutes that will include issues on which votes were taken and the position of individual members on such votes. Further, ICANN elected an advisory committee that will propose approaches to membership criteria, rights, and responsibilities.

ICANN's policy decisions in operating the Internet will greatly affect individuals and corporations worldwide on diverse issues such as free speech, access, cost, and privacy. Although the interim board has been fairly responsive to public opinions and has amended its bylaws considerably, the organization has a long way to go. Important issues such as trademark questions concerning domain names and development of membership structure that will the majority of stakeholders remain unresolved. ICANN's recognition and prompt resolution these, and other concerns will pave the road for their global acceptance as a common entity providing a much needed structure in the changing contours of the landscape of the Information Age.



*Sujatha Subramaniam is a MIP candidate. She has LL.M. from the University of Notre Dame and is interested in pursuing a career in copyright and trademark law.*

*(Continued from page 10)*

The incongruity of having one of the world's largest trained manpower resources and a weak patenting regime is also pointed out.

Recently, the Union Cabinet considered a new Patent (Amendment) Bill similar to the one proposed in March 1995. However, due to a lack of majority in Parliament, inadequate education of the people on the issues that confront India, and faulty floor management, the Bill was not presented to the Upper House of Parliament (the Lower House having ratified it). The government proposes to promulgate an Ordinance containing the proposed amendments to tide over the present period and meet the April deadline. The same story all over again with the lapse of valuable intervening time and fraught with risk. If the Ordinance is not ratified in the next session of Parliament (in which

case it will automatically lapse), or the Amendment Bill not passed, India will have failed to comply with the TRIPS requirements and will have come perilously close to the April deadline, which would seriously jeopardize India's commitment to TRIPS.

On the bright side, there are many people in India's political, industrial and scientific communities that are cognizant of the gravity of this situation and are engaged in the process of building a consensus on the issues involved. Time, however, is not on their side.



*Kanishka Agarwala is a MIP candidate. He is a general practitioner from India specializing in intellectual property law.*



# Digital Technology and Copyright: A Threat or A Promise? An Overview of the Seventh Biennial Intellectual Property System Major Problems Conference

BY RICHARD D. ROSE

As America celebrated the discovery of the new world over Columbus Day last October, Congress passed its response to the brave new world of digital technology with the Digital Millennium Copyright Act of 1998 (the "DMCA"). Originally, many copyright owners feared that the proliferation of digital technology signaled "the end of copyright." The simple click of a mouse suddenly made it much easier to copy and distribute any copyrighted work to three million of your closest friends via the Internet. However, with the passage of the DMCA, others believe digital technology is becoming a source of too much protection and control of copyrighted and even public domain works. The question then remains: Is digital technology a threat or a promise to copyright? This was the focus of the more than 35 scholars, industry representatives, attorneys and government officials from around the world who gathered at Franklin Pierce Law Center last November 14th for the Seventh Biennial Intellectual Property System Major Problems Conference.

The DMCA has sought to address several major issues surrounding digital technology, such as providing remedies for circumventing copyright protection systems and establishing the bounds of online service provider liability. At the conference, Marybeth Peters, Register of Copyrights at the U.S. Copyright Office, described the act as a significant benefit to copyright owners since it allows the U.S. to join two new World Intellectual Property Organization (WIPO) treaties that update international copyright standards for the Internet era. Furthermore, she pointed out that the anti-circumvention provision of the DMCA provide both a remedy for unauthorized copying and an incentive for digital technology to continue to advance.

Adapting copyright to meet changes in technology is not a new challenge, according to Dean Marks, Senior IP Counsel for Time Warner in Los Angeles. He recounted that digital technology was originally perceived much like VCRs in the "Betamax" case of *Sony Corp. of America v. Universal City Studios, Inc.*, but, just as VCRs became the best thing to happen to the film industry, such is also the case with digital technology. However, according to Matthew Oppenheim, Associate Counsel for the Recording Industry Association of America, it is important to protect the digital environment until the technological protections are in place, because "[new technology] won't serve us if pirates get to dominate the market first."

Many conference participants believed that the key to protecting the digital environment lies in educating the public about copyrights. Christopher Murray, Chairman of the Entertainment, Media & Intellectual Property Department of the law firm of O'Melveny Myers, stated that he believed the eternal arms race between crackers and locksmiths is never going to be finally won by one side or the other "so long as the general public believes private copying for noncommercial use is not wrong in the digital environment." Also in agreement, Sallie Weaver, Executive

Administrator for the Screen Actor's Guild, pointed out that people don't realize who their copying hurts. She said that it's not just the "evil empires" of Microsoft or Warner Brothers, but rather "human beings who to pay their rent just like you and me who are affected by [private] copying." Mihály Ficsor, Assistant Director General WIPO, agreed but expressed that education efforts must extend beyond the public to focus on law makers as well. Furthermore, Mr. Ficsor stated that such education is needed to counter the belief that private copying is a kind of God-given privilege, and concluded that such an attitude is not justified and has no basis in any international treaty.

Also discussed at the conference was the controversial issue of the DMCA's online service provider (OSP) liability. According to Jeremy Williams, Senior Vice President and Deputy General Counsel for Warner Brothers, an OSP is now required to respond to complaints of unauthorized copyrighted material being posted on their service by taking down the infringing site. Frank Politano, Trademark and Copyright Counsel for AT&T, added that this provision limits the OSP liability for just being a "pipe." Furthermore, Matthew Oppenheim expressed that a DMCA-OSP provision that is of particular interest to the recording industry is the Subpoena to Identify Infringers Provision. He said this requirement allows aggrieved copyright owners to uncover infringing parties thus eliminating "a large part of the anonymity that has existed on the Internet... which has allowed rampant infringement of music." Shira Perlmutter, Associate Register for Policy and International Affairs at the U.S. Copyright Office, explained that the OSP provisions in the DMCA do not create a new system, but rather embody the voluntary system that was in place prior to the act. She concluded that "the new legislation helps give OSPs a realistic out."

As the conference concluded, most participants seemed to agree that the proliferation of digital technology provides great opportunities to copyright owners. However, as Bernard Sorkin, Senior IP Counsel for Time Warner in New York pointed out, along with the silver lining of opportunities a digital world also poses great threats. The challenge then remains to find the balance between protecting the rights of copyright owners and still preserving the fair use and public domain advantages that exist in today's brave new world of digital technology.



*Richard D. Rose is a 2L with a background in the recording industry. He is focusing on the law of copyright, trademark, and licensing, and upon graduation plans to practice entertainment and new media law.*

# Copyleft: A Different Approach to Software Protection

BY KERRIE A. PEDONE

Imagine that you are a software developer. You can remember the Internet when it was in black and white, before copyrights and computer giants took it over (before Microsoft). You find a great program on the net – well, almost great. You do what you have done in the past: modify the program so it suits your purpose. Then you see something new, the copyright notice and license agreement. The notice is the not so little blurb that tells you that you will be subject to immense fines and jail if you modify, distribute, decompile or sell this program. Now you own a copy of an almost great program that you cannot modify to make it great.

Richard Stallman is a software developer who remembers not only the Internet in black and white but remembers life before the Internet. In response to the way that formerly collaborative developers were being separated by proprietary software he wanted to create an operating system that contained no proprietary parts. Users could load this system onto their computers, modify it to meet their needs and redistribute it to their neighbors, friends, family, colleagues and even complete strangers without violating the author's copyright. He called this project the GNU's not Unix System ("GNU").

One way to allow successive users to modify and redistribute programs would have been to allow the software to enter the public domain. Stallman had seen other public domain software be usurped out of the public domain by other users. To prevent this he had to design a new type of protection for his software. The system he created combined the protections of copyright with a special type of license, which he calls the GNU General Public License ("GPL"). The GPL is much less restrictive than the typical software license. The combination of this relaxed license and the copyright protections it provides is called copyleft.

The concept is simple. The author holds the copyright on the software. When the author transfers the software to a user he gives the users some additional rights that the usual license does not grant. It allows the user to modify and copy the program. It even allows the user to sell the program. If the user transfers the program to another user the first user must transfer the same license that user received. The distributor cannot reserve any more rights in the changes than the original author

reserved in the original piece of software. They must allow their customers to modify, copy and/or distribute the software.

There are other limits to the license. Credit must be given to the author of each portion of the software. The end user must not claim to have authored any portion of the work that he or she is not actually the author of. Further, the user has to take responsibility for the changes that he or she made. A user cannot claim that someone else wrote his or her changes.

There are almost no prohibitions on how much a distributor may charge for the software subject to this type of license. The single prohibition is the charge to access machine-readable source code for programs distributed in binary form. The charge is limited to the actual cost of producing a copy of the source code. This limit is to prevent distributors from preventing users from having access to the source codes. Such prevention by the laws of economics would circumvent the whole purpose of the copyleft license.

If you would like more information or to view a copy of this license, it is available online at [www.gnu.org.gpl.html](http://www.gnu.org.gpl.html). Stallman and others who support his efforts hope to expand use of copyleft to other, non-software works. Stallman has also started the Free Software Foundation to promote use of copyleft and to distribute software titles covered by copyleft. The Foundation can also be reached via the Internet at [www.gnu.org](http://www.gnu.org).



*Kerrie Pedone is a 2L and will be working for the law offices of Frank N. Dardano in Somerville, MA this summer.*



## Distinguished Jurist-in-Residence

The Honorable Paul R. Michel, Circuit Judge of the CAFC, will be at FPLC as Distinguished Jurist-in-Residence during the week of April 5, 1999. This is a special honor for the school because Judge Michel has recently been selected as this year's Jefferson Medalist by the New Jersey Intellectual Property Law Association for his "extraordinary contributions to the U.S. intellectual property law system." He will receive the Jefferson Medal the United States highest award in intellectual property on June 11, 1999 in Short

Hills, New Jersey.

As a visiting jurist, Judge Michel will participate FPLC activities by delivering a general lecture, giving guest lectures in relevant classes, judging moot court exercises, attending student IP law association events. Additionally, he will be talking informally with the FPLC faculty, staff, career services and students to discuss their interests and concerns regarding the law schools' mission, curriculum development, initiation of new programs, and career planning with regard to the future of intellectual property.

## FPLC STUDENTS RECEIVE LEFKOWITZ MOOT COURT HONORS

**F**ranklin Pierce Law Center students placed 1st and 3rd overall, as well as earning Best Brief and Best Oralist Team for the Saul Lefkowitz Moot Court Competition Eastern Regionals. The competition, featuring a trademark ownership and priority of use problem, was held on February 20, 1999 at the Federal District Courthouse in New York City.

Representing FPLC were Molly McPartlin and Steve Zemanick, Gina McCool and Jim Laboe, and Yuko Watanabe and Richard Rose.

Coached by Professor Susan Richey and Dana Metes (3L), the students competed against schools including Suffolk, Syracuse, Howard and New York Law. Molly and Steve are now preparing for the National Competition held on March 20 in Washington, DC.

Congratulations to everyone who competed in the Eastern Regionals and best of luck to Molly and Steve on March 20.

## CALENDAR

### **APRIL 16-17**

Basic Patent Cooperation (PCT) Seminar  
FPLC, Concord, New Hampshire  
(See [www.fplc.edu/pct.htm](http://www.fplc.edu/pct.htm) for more information)

### **MAY 22-26**

International Trademark Association  
1999 Annual Meeting, Seattle

### **JUNE 1- JULY 30**

Intellectual Property Summer Institute  
FPLC, Concord, New Hampshire  
(See [www.fplc.edu/ipb/ip\\_ipsi.htm](http://www.fplc.edu/ipb/ip_ipsi.htm) for more information)

### **JUNE 20-23**

Association of Corporate Patent Counsel  
Silverado Country Club, Napa Valley

### **JULY 20-24**

Advanced Licensing Institute  
FPLC, Concord, New Hampshire



Franklin Pierce Law Center  
2 White Street  
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