

INTELLECTUAL PROPERTY RESEARCH TOOLS AND STRATEGIES

LEXIS v. WESTLAW FOR RESEARCH—BETTER, DIFFERENT, OR SAME AND THE QWERTY EFFECT?

JON R. CAVICCHI*

INTRODUCTION

There are synchronistic moments when in the process of writing. While contemplating this article, an email message made its way to my desk, past Pierce Law Center's spam firewall with the following subject line: "Pepsi v. Coke—Tell Us—Get \$10." Do IP researchers choose Lexis or Westlaw justified by taste? Surely you jest, some voice said to me. Repressing this message, I proceeded to compare platform content, perform literature searches, and poll students and IP professors.

Yet another synchronistic moment came as the email from those taking the poll steamed into my email. Many IP professors indicated that they made the choice based on first to use. Some users reported that they found one system easier than the other. The sense that I got was that it was hard for them to explain what they meant by easier. Then came an email from Pierce Law Professor Bill Hennessey who reported his choice based on first to use and suggested the results were the "qwerty effect." Brilliant—the "qwerty effect" is a phrase commonly used to describe the cause of a sub-optimal (usually anachronistic) solution to a problem where logically superior alternatives apparently exist. Related to qwerty is "path-dependence," used by some authors to mean simply

* Intellectual Property Librarian & Assistant Professor of Research, Franklin Pierce Law Center; LL.M., Intellectual Property, Franklin Pierce Law Center; J.D., Franklin Pierce Law Center. This article is dedicated to Daniel Lee Miller. To ensure accuracy, many of the descriptions of the databases and features on Lexis and Westlaw are derived from product descriptions on the vendor Websites, scope notes, IP Research Guides and other literature.

"history matters"—a broad conception. In economic development, for example, it is said that a standard that is first-to-market can become entrenched and that inferior standards can persist simply because of the legacy they have built up.

So, decisions to use Lexis or Westlaw that I projected would be made on cost, task analysis, content, functionality, and value added features are often made by matter of taste and history. "Many users choose based on function and not content...one system is "reliable" as the user defines the term—they know that the system will deliver data in a predictable way that appeals to them."¹

Let me drop the disclaimer that the comments based on the polls shared in this article are purely anecdotal. They represent academic users. There is no science to the comments. Any comprehensive conclusion requires a broad and deep survey of users across the broader spectrum of Lexis and Westlaw users. Likewise, some of my comments and criticisms are based on my professional experience and networking. My experience with Lexis and Westlaw is based on twenty-five years of use—from law student and legal research teaching assistant to lawyer to librarian and research professor. Having taught IP research courses for nearly fifteen years, I encounter the same question on a regular basis—is Lexis or Westlaw better for IP practice? My consistent response is: "Unfortunately, I must give the lawyer answer—it depends." This article will try to address some of tools and strategies I use to answer this question when pressed to expand the answer.

IS THIS A FOOL'S ERRAND?

This article is part of the larger series featured in IDEA. The goal of the series is to point out and hopefully educate IP researchers on IP tools and strategies—how to think about IP information and multiple access points. One theme is to teach the most elegant media mix for any research application. So, my real mission in the long run is to teach all of the options to work with primary and secondary legal resources as well as IP data. The real question is not Lexis v. Westlaw per se, but how to mix and match the free Web, print, and for fee databases. It is foolish to try to give any impression that choosing either of these services is a panacea, but discussing the pros and cons of each in the IP context does serve some instructional value.

If the choice of vendor is a matter of taste, is it foolish to try to teach the skills to compare such vendors? Will this change any minds? Many IP researchers lack critical consumer skills for many reasons. I will share my experi-

¹ Interview with Professor Barry Shanks, Franklin Pierce Law Center, in Concord, N.H. (Oct. 2006).

ence throughout the series, but my law librarian colleagues universally note certain themes. In this article, I will point out a few ways how I believe Lexis and Westlaw fail to teach these skills. Searchers develop bad habits and search skill deficiencies long before they are given the keys to Lexis and Westlaw. I agree with law librarian Brian Taylor who states,

It's a much more universal deficiency of knowledge about research resources and techniques. It begins in junior high school, and is not only unrelieved by high school, university and graduate school so-called "research" experiences, but is actually exacerbated by them. It is, in fact, an abysmal level of ignorance about how to do research, not only using Web and proprietary database sources, but the much wider range of resources.²

Finally, it is difficult and perilous to write an article on a topic involving two complex services with hundreds of files of use to IP researchers and dozens of beloved features to many. This examination attempts to be a broad overview but present some detail. Inevitably Lexis, West, and their devotees will be unhappy that I have failed to mention tools and strategies that should tip brand preference in their favor. Things change online daily, so there may be mistakes herein, and the poll is far from comprehensive.

THE POLL

I sent email to the IPPROFS listerv, third year law students at Pierce Law Center, and graduate students in our Master of Intellectual Property, Commerce and Technology (M.I.P.) and Master of Laws in Intellectual Property, Commerce and Technology (LL.M.) programs asking which service they prefer and why. I received comments from nineteen IP law professors and ten students. I attempt to capture the results in the table in appendix one. The raw comments can be found on my site that supplements the IP Tools Series at http://ipmall.info/hosted_resources/IDEAipnews/.

This poll is in no way scientific and was not intended to compile hard data. My hope was to collect some anecdotal evidence that academic users (many headed for the commercial job market) do not approach Lexis and Westlaw in any objective well-considered manner. Very few choose based on unique content. Several mention using Westlaw because of the exclusive monumental treatise *McCarthy's on Trademark Law* or Lexis because of the exclusive monumental treatise *Nimmer on Copyright*. The comments seem to indicate

² Cindy Carlson, *Notes from the Technology Trenches, Reader Responses: Teaching Cost Effective Searching & Bloomberg for Law Firms*, May 24, 2004, <http://www.llrx.com/columns/notes70.html>.

some perception that both services are undifferentiated masses of data. In the words of one law professor, “I have absolutely no knowledge in differences in content.”

Many taking the poll spoke in subjective, ill defined, hard to quantify words like: familiarity, comfort, completeness, user friendly, intuitive, look, feel. Many admit they use the system they learned first. So, this little slice of reality does lend some support to brand choice as a matter of taste and the “qwerty effect”—that history matters. Please look at the poll language. My table attempts to balance characterizing the words of those taking the poll with a desire to present the exact words used by users. I admit that many of the subjective terms could be further boiled down into more simplistic conclusions.

This poll is mirrored in part by law student blogs such as AutoAdmit.com with such deep law student analysis as:

Lexis is better because I use it...Westlaw has MUCH better prizes. Most people and law firms prefer Westlaw...used both in law school, and got a shit load of stuff...Lexis, because you CANNOT, and never will be able to Shepardize on Westlaw. Now I know you Westheads will say you can Key-Cite on Westlaw. But it's not Shepardizing!...one word, "Shepards" other than that it is like Coke and Pepsi, whichever you prefer...Westlaw is slightly more up-to-date, in terms of practical differences, there really aren't many. I prefer the interface of Lexis, but it's really just a matter of opinion...Westlaw because it's closer to Google than Lexis...when it comes to treaties and law reviews there is less than a ten percent difference in the scope and duration of coverage... Lexis has better customer service (which is really important when some jackass partner asks you to find an answer within the hour and you need to call the lexis reference librarians)...Lexis pisses me off because they have far fewer tables of contents for resources. I don't know why those fucking companies make it so god damned hard to *browse* their resources.³

My favorite line from a law student who has watched too many Beavis and Butt-Head episodes, “From what I've seen this is really only something that matters *to like* law librarians.” Well, this will keep law librarians in business for generations to come.

LITERATURE REVIEW

Consistent with the notion that in the minds of many, Lexis and Westlaw are basically equivalent and choice is a matter of taste, the homogenization of discussions of the two services using the term “Wexis” began almost ten years ago. The earliest reference to the term I could locate was *Wexis versus the*

³ AutoAdmit, LexisNexis v Westlaw string, (Sep. 2006) <http://www.autoadmit.com/> (spelling, case and grammar corrected to allow for readability).

Net,⁴ although intuition tells me that the term was used by law librarians earlier than this date. Hereinafter, I use the term as a short form.

There have been dozens of books written about legal research, computer assisted legal research, and *Wexis* since the systems emerged in the 1970s. Unfortunately, none that I reviewed devoted any significant portion to comparing the two systems. Most simply describe the content, query formulation, and associated services. None provide any meaningful comparison of the two platforms.

The *Legal Resource Index*, considered to be the broadest net you can cast to retrieve legal periodical literature, also shows that very few articles with titles on this topic. The earliest article I could locate is *A Comparative Analysis of the LEXIS and the WESTLAW Systems of Legal Information*.⁵ Several articles⁶ promised a rigorous comparison of *Wexis* but only seemed to spawn a few articles in practice-oriented journals the 1980s.⁷

The survey shows the evolution of periodical literature on the topic of *Wexis* covering the following topics:

- Web based services beyond *Wexis*
- Print treatise material migration to *Wexis*

⁴ See Jean McKnight, *Wexis versus the Net*, 85 Ill. B.J. 189 (1997).

⁵ Van Linh Tran, *A Comparative Analysis of the LEXIS and the WESTLAW Systems of Legal Information* (Unknown Binding 1977).

⁶ See Daniel P. Dabney, *The Curse of Thamus: An Analysis of Full-Text Legal Document Retrieval*, 78 Law Libr. J. 5 (1986); Craig E. Runde & William H. Lindberg, *The Curse of Thamus: a Response?*, 78 Law Libr. J. 345 (1986); Daniel P. Dabney, *A Reply to West Publishing Company and Mead Data Central on The Curse of Thamus*, 78 Law Libr. J. 349 (1986); Scott F. Burson, *A Reconstruction of Thamus: Comments on the Evaluation of Legal Information Retrieval Systems*, 79 Law Libr. J. 133 (1987).

⁷ Examples include:

Al Coco, *Full-text vs. Full-text plus Editorial Additions: Comparative Retrieval Effectiveness of the LEXIS and WESTLAW Systems*, 4 Legal Reference Services Q. 27 (1984); Cary Griffith, *Lexis v. Westlaw: Which System is Right for Your Law Office*, 25 Tenn. B.J. 16 (1989); Allan J. Onove, *A Comparison of the LEXIS and WESTLAW Databases*, 9 Legal Econ. 27 (1983); Sharon K. Peace, *Lexis v. Westlaw Round Three—Lexis Responds to Article Claiming Westlaw is Superior*, Pa. L.J.-Rep. Dec. 10, 1984, at S2, col. 1; Jeanne Seigle, *Lexis and Westlaw: An Analysis*, 23 Law Office Econ. & Mgmt. 314 (1982); Fred R. Shapiro, *Which is Better, Lexis or Westlaw? Here's a Checklist to Help Determine which Legal Database is Best for You*, 8 Cal. Law. 56 (1988); Joe K. Stephens, *LEXIS vs. WESTLAW; The Contest Heats Up*, 6 Legal Admin. 42 (1987); Dan Trigoboff, *One Trial Done, But Westlaw, Lexis Battle On*, L.A.

Daily, Apr. 25, 1988, at J. 5, col. 1; Judy Ann Ulrich, *Computer Assisted Legal Research Systems: LEXIS vs WESTLAW* (Unknown Binding 1986).

- Migration of Wexis from dedicated software to Web interface
- Wexis pricing options
- Billing Wexis research
- Cost effective Wexis research
- Case validation – Shepards v. KeyCite
- Statutory research on Wexis

All of these topics are relevant to choosing which service to use, yet none are comprehensive, and none cover topical research areas like IP.

Web searching was likewise futile for comprehensive Wexis comparison either generally or in IP applications. It seemed apparent as of 1998, even to law librarians, that the time to compare Wexis had come to an end. The law-lib listserv had a posting stating,

. . . both systems have grown so vast it is just impossible [to write articles comparing Westlaw and Lexis]. I think they are pretty close to even in their coverage of law-related material, tho there may still be some important differences in other areas. If you are looking to decide on one of the systems, it may be easier to focus on specific areas that are important to you, and then look at what is on each system in those areas.⁸

These difficulties continue to be discussed today. Kendall F. Svengalis, in what is considered to be a sacred text for legal information consumers, on the issue of choosing between Lexis and Westlaw, reflects the thinking to date:

For some time after the introduction of Lexis and Westlaw, it was common for reviewers to draw comparisons based on the size and scope of their respective databases. Prospective subscribers were often persuaded to adopt one system or the other because [coverage] was more extensive. . . . As time passed the subject matter and chronological coverage of both systems grew so extensive that such comparisons were largely futile. If one vendor added a database which gave it a perceived advantage, the other vendor followed suit or jumped ahead in another area. This competitive process of leapfrogging has helped ensure that both Lexis and Westlaw have databases so large that very few subscribers will ever begin to tap their full potential For those who wish to know which of the two systems is best, I can only say that "it depends." Each system has its strengths and both share the weaknesses of online information retrieval In fact, there are distinct advantages to having both systems if yours is a firm which expects to conduct considerable online research. . . . For a time, Lexis held the edge in terms of cost, largely due to its transactional pricing . . . but [s]ince that time, Westlaw and Lexis have both introduced transactional pricing and fixed rate plans tailored for the small law office, rendering these earlier cost comparisons obsolete. These developments have

⁸ Posting of Jeanne Trahan Faubell, *Westlaw v. Lexis Comparison Sources* (Nov. 12, 1998).

sharply narrowed the cost differential between these two major online services.⁹

On this topic I particularly recommend, *Which Is Better? Westlaw? Or Lexis/Nexis?*, wherein the author states,

I confront this question nearly weekly, occasionally from a law student, but more often from a practitioner downtown. It is a good question in so far as it reflects cost-consciousness, for these enormous electronic legal research databases are exceedingly expensive, but it often betokens as well a vast lack of understanding about the databases themselves. Note: Lexis/Nexis & Westlaw are far more distinguished by their enormous differences than by their similarities. They are not the same. Nor is it simply a matter of preference. It is not a simple matter, "Which is better?" Each of them is better suited than the other to solving some legal research problems, and each of them solves some problems the other cannot touch. The question is never "Which is better?," but "Which is better for this particular problem?"¹⁰

So, the literature supports my approach that IP researchers need to look at the questions being asked and the desired results sought. Only by knowing the needs can the IP searcher choose the service.

WEXIS UTTERLY FAIL TO BRAND THEIR SERVICES AT LEGAL SUPERMARKETS

Borlase takes us into the next phase of our struggle to determine which service is better for IP research. You may ask—what is the relevance of all of this general history on Wexis comparisons to IP research? Borlase teaches that the choice of services is determined by the tasks at hand. One of the themes of this series is—*the right tool for the right job*.

Another theme of this series is—*mix and match dedicated IP tools with general tools that serve IP research needs*. IP research from scholarship to practice is driven by the synergy of law and facts. Academic scholarship may differ from IP prosecution, that may differ from IP litigation. Regardless, all types of IP research looks to collect a wide range of data. Wexis are legal supermarkets. As such, which one serves IP researchers the best depends on the content and performance of the services as a whole.

Most IP researchers I encounter have little to no knowledge as to what products the two supermarkets have in common and what products are unique to

⁹ Kendall F. Svengalis, *The Legal Information Buyer's Guide and Reference Manual* 147 (Rhode Island Law Press 2006).

¹⁰ See Rod Borlase, *Which Is Better? Westlaw? Or Lexis/Nexis?*, 2000, <http://www.rodborlase.com/Guides/WhichBetter.html>.

each storefront. Wexis both own numerous print and online publishing content producers they vend via their services. Wexis both license data from substantial third party publishing content producers they vend via their services. Wexis both own other products that compliment their database holdings but are sold via other Web services. This is true of general and of IP content. I hope that the discussion that follows will make even clearer.

Why don't most searchers understand these supermarkets? My observation is that Wexis have in some ways reduced their commitment to teach users the spectrum of available data. Both vendors have scaled down or eliminated their training centers. Both vendors have scaled down their product literature both in print and online. Both vendors have scaled down their efforts to teach the non-legal data applications to law researchers. One past example is the excellent publication, *Beyond Legal Information: Searching DIALOG on WESTLAW a Guide for Law Students*.¹¹ I used this book for years. Unfortunately, this publication is the last I have seen from Thomson that attempts to teach the applications of the Dialog databases available to Westlaw users.

There are ways to find consolidated lists of databases of benefit to IP research on Wexis. Lexis provides the Searchable Directory of Online Sources "Source Locator," a powerful tool for retrieving targeted information about the more than 36,000 LexisNexis sources. To begin, supply search criteria for any field(s) in the search form below or press Submit for a comprehensive list. For best results, define your query using one or two categories. Go to <http://w3.nexis.com/sources/> The search by topic feature returns over four hundred IP related files. Be careful, as the locator is not comprehensive or perfect. For example, it did not show copyright registrations on the results list. Westlaw offer the IDEN database that is invaluable in locating IP databases. Both vendors offer IP research guides on the Web and in print. Beware—they are not comprehensive and are often out of date. For example, the Lexis IP Research Guide currently on the Web was last updated in July 2004!¹²

ANALYZE YOUR RESEARCH NEEDS—IP LITIGATION EXAMPLE

As a primary strategy, you need to do a thorough analysis of the range of research activities you intend to use as part of your subscription. At the Fall 2001 meeting of the Law Librarians of New England, a speaker from the former

¹¹ See Rosalie Massery Sanderson, *Beyond Legal Information: Searching DIALOG on WESTLAW a Guide for Law Students* (West 1993).

¹² The guides used for the preparation of this article can be found at http://ipmall.info/hosted_resources/IDEAipnews/.

giant IP law firm Testa, Hurwitz & Thibault stated that at that firm only fifteen percent of research was legal research. Eighty five percent of the research conducted was fact research.¹³ Prosecution practices have somewhat different needs from litigation practices. The same is true for transaction heavy practices. Wexis have dedicated tools for IP litigation. Litigation is driven by facts and law. Wexis tools support every phase of the IP litigation process including non-law data on:

- Parties (persons & companies)
- Witnesses
- Expert witnesses
- Judges
- Lawyers
- How IP cases are resolved
- Assets
- Jury instructions
- Dockets
- Settlements
- Briefs
- Transcripts
- Pleadings

If you are a litigator your choice might be driven by the non-IP content of each service. That said, the interview with the Lexis sales rep below indicates that the smaller firms use the services for legal research and not litigation development.

The same can be said of transactional practices that might use non-legal fact and business sources to craft the art of a deal, predict outcomes or do competitor intelligence work.

LEGAL RESEARCH

Almost all of those taking the poll think of Wexis for legal research. One of the themes of this series is that IP is “through and through” the law both on the domestic and global scale. Beyond patents, trademarks, copyrights, trade secrets and unfair competition, IP in the new millennium embraces many associated legal specialties, as well as interdisciplinary studies. Some associated legal specialties with IP synergy include, art law, bankruptcy, business, biodiversity, commercial torts, crimes, cultural rights, damages, debtor/creditor, economics, employment (trade secrets), entertainment law, environment (sustainable development), health, human rights, indigenous rights, insurance, remedies, sports, taxation, telecommunications, traditional knowledge, world trade and more.

¹³ From notes taken by author at Boston University on November 2, 2001 (on file with author).

PRIMARY SOURCES OF LAW

The search for primary sources of law often cannot be neatly contained within Lexis and Westlaw topical areas.

A second strategy for IP researchers is to mix and match dedicated IP tools with general collections that contain IP data. This theme holds true with the most basic IP legal research including cases, statutes, regulations, administrative decisions and procedural manuals.

CASES

Domestic

It is almost impossible to do a head to head comparison between Lexis and Westlaw cases. Lexis organizes IP cases into a number of different libraries, discussed below. Westlaw organizes all IP cases into the FIP-CS database— although the scope of this note does not define Westlaw considers as IP. Poll users seem to like both organization schemes. It is impossible to examine the total number of decisions in most Westlaw databases, as the maximum retrieval is 10,000 documents. Also confounding is the common belief that the two vendors offer unpublished opinions from various sources.

Some poll users report choosing Westlaw because of the ability to search by IP topics and key numbers for patent, trade regulation and copyrights and intellectual property. Westlaw makes you work to figure out what the topics include. You must refer to print digests for the “subjects included.” You also must expand the digests on Westlaw to read the entire outlines. While some searchers prefer the digest approach, others recall the tyranny of the controlled index approach and of not finding that “case on all fours” under the target key number. West does allow you to use the digest in a number of approaches, however. One way is to choose the West Key Number Digest topic and expand the topics to view the outline. KeySearch is a research tool powered by the West Key Number System that identifies the terms and key numbers most relevant to your legal issue and creates a query for you. It is discussed below. Finally, you can use a key number in a terms and connectors search.

Both Lexis and Westlaw offer access at a premium to the full text of cases published in *U.S. Patents Quarterly* and *USPQ Second Series*, considered by many to be the most authoritative case reporting service in intellectual property decisions for more than seventy years. USPQ reports IP court and administrative decisions since 1929 with a wealth of intellectual property decisions of the U.S. Supreme Court, U.S. Court of Appeals (including the Federal Circuit), U.S. Court of Federal Claims (and its predecessor, U.S. Claims Court), U.S.

District Courts, Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office, Trademark Trial and Appeal Board, U.S. Tax Court, state courts, and various special courts. The Library publishes decisions often weeks before they appear anywhere else.

Like the West system you can retrieve all cases on point with BNA's exclusive classification system, regarded by some to be the industry standard for IP decisions. Also, like West, you can determine quickly which rulings boost your arguments with headnotes prepared by BNA legal editors that summarize the facts and court's rationale for each point of law addressed in every case.

Is there any difference in using U.S.P.Q. on Lexis or Westlaw? No head to head analysis was done. West literature does note that Westlaw coverage is back to 1926, while the Lexis file begins in 1946. This difference is probably inconsequential to most users.

Foreign & International

In the words of Professor Tom Field, long gone are the days where "expertise stops at the U.S. border." IP practice is often global and often requires you to look at judicial and administrative decisions from non-US sources. This is where the difficult decision between Lexis and Westlaw gets even more difficult.

Lexis does not offer foreign IP cases in their topical libraries. Westlaw does offer selected European cases in their IP topical area. The IP-RPT database contains documents from the courts of the United Kingdom, other European countries, courts of the European Union, EU member states, and other courts worldwide as selected by the editors of the law reports, as well as transcripts provided by Smith Bernal Reporting Limited and other transcribers that relate to intellectual property. A document is a decision, judgment, or order.

This database includes documents released for publication in law reports published by Thomson Legal, Regulatory brand Sweet & Maxwell, and transcripts. Coverage varies by publication, extends back to 1966, and includes the following reports: *Entertainment & Media Law Reports*, *European Copyright & Design*, *European National Patent Reports*, *European Patent Office Reports*, *European Trade Mark Reports*, *Fleet Street Reports*, and *Reports of Patent Cases (on behalf of U.K. Patent Office)*.

Both services offer non-US material by region and country. For example, Westlaw offer the following areas: Asia and the Pacific Rim, Central America and the Caribbean, European Union, Europe and the United Kingdom, Middle East and North Africa, and South America and Sub-Saharan Africa. Unfortunately, you need to drill down each menu to find whether they have any case law collection for the region. Many have none.

Similarly, Lexis offers non-US material by region and country. Examples include: Argentina, Asia/Pacific, Australia, Canada, Dutch, Europe, Germany, Guam, India, Malaysia, Mexico, Scotland, Singapore, South Africa, and U.K. Some of these libraries offer cases and some do not. You need to drill down each menu to find the answer. The *Directory of Online Services* can help on a case-by-case basis.

STATUTES

Domestic

Statutes are statutes are statutes—right? Well, maybe. Again, both Lexis and Westlaw offer IP statutes in their topical areas and libraries. Lexis IP Libraries restrict your searching to titles fifteen, seventeen or thirty-five depending on the library. The Westlaw FIP-USCA database includes any statute referencing IP terms no matter where they appear in the U.S. Code. There are approximately five hundred sections of the U.S. Code that cover IP terms. As a result, if you subscribe to the Lexis IP Library you would not get these IP laws. This requires that you once again define what types of research you would use the services to perform since many of these laws may not be relevant to your core practice.

If you are an IP specialist, you seldom need to choose a service based on researching the U.S. Code. You are more often interested in changes and proposed changes to the U.S. Code. This information can be obtained by any number of ways on Wexis including news sources, bill tracking databases, and use of statutory validation tools like Shepards and KeyCite.¹⁴

Another consideration is that choice of service might relate in part to features that do not relate to IP. One service might have features that are not key to finding an IP statute but have some value added to your research. Two examples follow.

Exclusive to Westlaw is StatutesPlus, a series of links that will help you understand how courts have interpreted a statute. Other helpful tools in the Links for Display include the following:

- Table of Contents displays the hierarchical position of the statute in the statutory code. Statues do not exist as independent entities but must be read and interpreted in the context of surrounding statutes.

¹⁴ A thorough review of these ways is beyond the scope of this article.

- Versions displays the statute as it existed at different times. Not all legal research will involve the current version of a statute and may involve the version of the statute in effect when the incident occurred.
- Section Outline allows you to jump directly to subsections of the statute and to the fields of the statute, such as Credits, Historical Notes, References, and Notes of Decisions (Annotations).
- Notes of Decision provides links to cases that construe a statute.
- Editor's Notes include congressional reports, public laws, and West editors' analysis of the significance of changes in language in the documents and of the discussions that preceded enactment of each amendment.
- Cross References, along with the Table of Contents, allows you to view other statutes that may impact your statute. There are also links in the Full Text Document to other relevant statutes.

Also exclusive to Westlaw is the KeyCite feature called, Pending Legislation that identifies proposed bills that may affect your federal statute. Each citation receives an editorial treatment at the end of the citation (e.g., “repealed,” “amended,” “new section added,” etc.).

New to Westlaw in 2006 are the 50 State Statutory Surveys that make quick work of the time-consuming chore of finding and comparing state statutes on a particular legal topic. While this collection has yet to offer databases on core IP topics such as state trademark and unfair competition laws, it does offer coverage of related commerce and technology topics such as Sarbanes-Oxley requirements, E-commerce Taxes, the Uniform Computer Information Transaction Act, anti-spam Laws, electronic surveillance, and internet broadband and other telecommunications issues.

That said, both Lexis and Westlaw offer you:

- the latest version of IP statutes
- annotated codes for interpretive cases, cross references, and history
- access to a statute when you don't know the citation format
- ability to view surrounding statutes as they appear in books
- customized field/segment searching
- natural language searching, which is useful for when you are searching for statutes in multiple states, i.e. state trademark laws
- finding tools such as table of contents, indices, and hyperlinks for when you have a scarce amount of information.

Foreign IP Statutes

As discussed in the last section on case law, both services offer non-US material by region and country. A discussion of all those libraries and topical areas is beyond the scope of this article. You need to check the print or electronic database directories when you are considering becoming a subscriber if this primary source material is needed for your research.

Having said that, Lexis and Westlaw might argue that you get access to foreign IP law as part of the online versions of the analytical loose-leaf treatises. At this point, a distinction must be made between sources that discuss foreign IP law (often referred to as IP Manuals or law and practice sets) and those that provide foreign law. Westlaw offers the treatises in the *Throughout the World Series*, but a review of the print versions show that these are IP manuals that do not contain the text of foreign laws. Likewise, Lexis publishes the *World Law and Practice Series*, but only the patent title by Baxter contains the text of foreign laws. Beware—these resources are not updated with the frequency of domestic statute databases.

Treaties

Given how driven IP law and practice are by treaties and other international agreements, it is surprising that Lexis and Westlaw do not have these source materials in their IP topical areas.

The exception is on Lexis. Lexis offers Intellectual Property Treaties in the FILE-NAME: TREATY. These files cover selected IP documents from Volume 1 of *Basic Documents of the International Economic Law*. This file is not comprehensive, and the Lexis source note indicates that the file has an atypical update schedule as received from the publisher. The file is located at Patent Law [also Trademark and Copyright] > Statutes & Legislative Materials > Intellectual Property Treaties.

That said, both vendors offer international law topical areas where you can find IP content, but a review of these databases is beyond the scope of this article.

Administrative Materials: Regulations, Procedural Manuals, & Board Decisions

Like statutory research, Lexis and Westlaw fundamentally differ on how they organize the Code of Federal Regulations involving IP matters. Lexis offers:

- Patent Library: *CFR* Titles 19 (Customs Duties), 37 (Patent, Trademark & Copyright), *Federal Register* and *CFR – Titles 19 and 37 Federal Register Documents Relating to Patent Issues and Manual of Patent Examining Procedure* and PTO Board Decisions.
- Trademark Library: *CFR* Titles 19 (Customs Duties), 37 (Patent, Trademark & Copyright), *Federal Register* and *CFR – Trademark Notices, Federal Register – Trademark, Unfair Competition and Trade Secret Notices, Trademark Manual of Examining Procedure, Trademark Trial and Appeal Board Manual of Procedure* and PTO Board decisions.
- Copyright Library: *CFR* Titles 19 (Customs Duties), 37 (Patent, Trademark & Copyright), *Federal Register* and *CFR – Patent, Copyright and Trademark*
- *Federal Register – Copyright, Copyright Office Regulations*

Westlaw offers the same materials in their IP topical area:

- Code of Federal Regulations (FIP-CFR)
- Manual of Patent Classification (FIP-USPATCL)
- Board of Patent Appeals and Interferences Decisions (FIP-BPAI)
- Copyright Office Practices (FIP-CPYPRC)
- Manual of Patent Examining Procedure 8th Edition (FIP-MPEP8D)
- Trademark Manual of Examining Procedure (multiple editions) (FIP-TMEP4TH), (FIP-TMEP3D), (FIP-TMEP2D)
- Trademark Trial and Appeal Board Decisions (FIP-TTAB)
- Federal Register (FIP-FR)
- Patent & Trademark Office Decisions (FIP-PTO)
- Trademark Trial and Appeal Board Manual of Procedure (multiple editions) (FIP-TBMP2D), (FIP-TBMP1D)

The FIP-CFR database contains CFR Titles that deal with IP anywhere in the CFR, including, but not limited to titles: 2, 5, 7, 10, 14, 19, 21, 26, 32, 37, 47, 48, 49 and 50. There are over seven thousand CFR sections in this database. Lexis users might say, “No matter, I just want quick access to the CFR sections relevant to my practice.” That is a good response. The Lexis libraries approach does lack the depth one can gather from the contents of FIP-CFR. That said, you could always use the full CFR database on either service for a survey of IP regulations beyond the Patent and Copyright Offices.

Rule Changes

Access to 37 CFR can be found in dozens of free places. As a result, the value added to Lexis and Westlaw might be in changes in the status of the regulation under consideration. These can be rules changes as well as interpretive administrative and judicial decisions.

As you can see, both services parse out IP Federal Register content. Both services allow you to set up alerts for rules changes.

Lexis allows you to Shepardize the CFR. An IP example follows:

37 C.F.R. 1.301

CITING DECISIONS

3RD CIRCUIT - U.S. DISTRICT COURTS

1. Cited by:
Allegheny Ludlum Corp. v. Comer, 1992 U.S. Dist. LEXIS 20950, 24 U.S.P.Q.2d (BNA) 1771 (W.D. Pa. July 28, 1992)
[nos. 2-5 omitted]

FEDERAL CIRCUIT - COURT OF APPEALS

6. Cited by:
Gechter v. Davidson, 116 F.3d 1454, 1997 U.S. App. LEXIS 14073, 43 U.S.P.Q.2d (BNA) 1030 (Fed. Cir. 1997)

PATENT & TRADEMARK OFFICE

7. Cited by:
Ex parte Vossen, 1967 Dec. Comm'r Pat. 29, 155 U.S.P.Q. (BNA) 109 (Pat. & Trademark Office Bd. App. 1967)

ADMINISTRATIVE AGENCY DECISIONS

8. Revised by:
1053 Off. Gaz. Pat. Office 25
[nos. 9 & 10 omitted]

This result seems to mirror the print IP Shepards that cites a limited set of secondary sources. Compare KeyCite for the same regulation that reports over one hundred citing references including: *Manual of Patent Examining Procedure*, *Federal Register*, citing patents as well as numerous secondary sources including treatises, practice materials, journals. KeyCite also reports court documents

such as U.S. appellate court documents including appellate petitions, motions, filings and briefs.

These value added Westlaw tools were recently commented on by Pierce Law Library Director, Professor Judith Gire in causal conversation. She noted that in teaching legal research, the listed benefits in this area of research currently tips in favor of Westlaw.

One of the general, but applicable to IP research, value added tools exclusive to Westlaw is the new service, RegulationsPlus. It offers federal regulations plus innovative search tools and analytical aids making it easier than ever to:

- locate a relevant Code of Federal Regulations (CFR) section
- find interpretative cases and administrative opinions
- validate the status of a CFR section
- view Federal Register summary information
- access prior versions and archival Federal Register content
- find statutory authority
- track new regulations

Secondary sources

Secondary sources lead you to the law and explain the law. They also expand your research by providing additional references to other primary and secondary authorities. Both services offer a wide variety of secondary sources on the spectrum from news to practice materials to scholarly resources.

Common Secondary Sources

Periodicals

Both offer most IP related academic law reviews. That said, be wise and use a strategy that runs throughout the series—always check the scope of a database. For various reasons, the coverage dates on each service often vary, so the belief that searching IP periodicals on both services is the same is wrong and potentially fatal. Also, be on notice that some of the best commercial IP periodicals are not on Lexis or Westlaw. Always ask or check the print or online database guides before you subscribe.

Because of the fundamental differences in the way Lexis and Westlaw organize their IP data it is difficult to compare periodical holdings head to head. As discussed below, Westlaw has an IP topical area, while Lexis had separate Libraries for IP, commerce, and technology areas. Westlaw has nearly sixty IP periodical titles in their IP area, if you add the contents of the journals and law

reviews section with the newsletter section. This dichotomy is artificial since newsletters are periodicals. The Lexis library structure makes it more difficult to search all IP periodicals. For example, the Patent Library periodicals folder only allows you to search: Area of Law - By Topic/Patent Law/Legal News/Legal News/Legal News By Practice Area/Technology & Intellectual Property Law. This is a selected full-text group file of the *American Intellectual Property Law Association Quarterly Journal*; *ABA Patent, Trademark & Copyright Committee Reports and Summary of Proceedings*; *Harvard University Journal of Law and Technology* and *Journal of Law and Technology*.

Most IP researchers know that many IP articles are published in non-IP sources, so any comprehensive searching would have to be in a large database of all periodicals, which may fall outside of a subscription to one of the IP slice subscription plans, as discussed below.

News services are more up to date than most periodicals. A detailed discussion of this appeared in another article in this series, so I will not elaborate at this time.¹⁵

Treatises and Practice Materials

Most books (commonly known by librarians as treatises) are not online. Legal publishers are divided into five major groups: Thomson, Reed Elsevier, Wolters Kluwer, other publishers with subsidiaries, and independent publishers. Comprehensive sites of legal publisher lists include: American Association of Law Libraries,¹⁶ AcqWeb,¹⁷ and Findlaw.¹⁸

IP is global, so IP researchers need to consider the scope of materials on each service: North America, Europe, Asia Pacific, Latin America, and Global. Major IP publishers include: Aspen (Kluwer), Bender (Lexis), Bureau of National Affairs, Business Laws Inc. (Thomson West), Clark Boardman Callahan (Thomson West), Commerce Clearing House (Kluwer), Law Journal Press (American Lawyer Media), Oceana (Oxford), Oxford University Press, Practising Law Institute, Sweet & Maxwell (Thomson). There are many general publishers that produce many excellent IP treatises including Ashgate, Edward Elgar, Nolo Press, and Wiley.

¹⁵ See, Jon R. Cavicchi, *Intellectual Property Research Tools And Strategies: Keeping Up To Date With IP News Services And Blogs; Drowning In A Sea Of Sameness?* 46 IDEA 453 (2006).

¹⁶ Available at <http://www.aallnet.org/committee/criv/resources/tools/list/>

¹⁷ Available at <http://acqweb.library.vanderbilt.edu/pubr/law.html>

¹⁸ Available at <http://www.findlaw.com/04publications/>

Professional organizations often produce important legal treatises. Examples include the American Bar Association and the International Trademark Association. INTA materials are not on Westlaw. Some ABA materials are.

Governmental Organizations are prolific producers of IP data. Most of the secondary source materials are not on Westlaw. Examples include all materials from the United States Patent Office and the World Intellectual Property Organization.

This is important to IP researchers because certain treatises are common to both services and some are exclusive. If you know the IP treatise tool you want to use, you must determine whether it is available on one or both services.

IP Secondary Sources Common to Both Lexis and Westlaw

The treatise sections that follow report mostly serial treatises, online loose-leaf services and titles that have regular (often annual) editions.

One major IP treatise content provider common to Westlaw is the Practising Law Institute (PLI) with IP related titles on Westlaw including:

- Federal Circuit Yearbook: Patent Law Developments in the Federal Circuit
- Copyright Law: A Practitioner's Guide
- How to Write a Patent Application
- Intellectual Property Course Handbook Series (dozens per year – all topics)
- Landis on Mechanics of Patent Claim Drafting
- Likelihood of Confusion in Trademark Law
- Patent Law: A Practitioner's Guide
- Patent Licensing: Strategy, Negotiation, and Forms
- Patent Litigation Law
- Substantial Similarity in Copyright Law
- Trade Secrets: A Practitioner's Guide
- Trademark Law: A Practitioner's Guide

Bureau of National Affairs (BNA), while restricted to most law school users by both vendors, is a prime IP publisher because of its case law reporter and periodicals. Both services carry the flagship IP databases:

- BNA Corporate Practice Portfolios: Intellectual Property
- BNA Patent Trademark & Copyright Daily
- BNA Patent, Trademark & Copyright Journal
- BNA United States Patents Quarterly
- BNA World Intellectual Property Report

Again, do not assume because you use a BNA title in print or that either service has some BNA content, all BNA content is on both services. For example, I see the following BNA IP related products only on Westlaw: *BNA Bio-Tech Watch*, *BNA Computer Technology Law Report*, and *BNA Treatise: Patents and the Federal Circuit*. Why both services don't have BNA content parity is a mystery.

Another huge category of materials is the enormous multi-volume sets by both vendors dealing with federal practice, procedure, discovery, proof of facts, legal forms, and more. Both offer these sets online. Since another theme of this series is to know where the IP material lives in huge general law sets and databases. As a result, factor this in when subscribing. Never assume these materials are part of your subscription.¹⁹

IP Treatise Sources Exclusive to Lexis

Matthew Bender, acquired by Lexis in 1998, had been for decades a leading provider of IP analytical legal information in print authored by the leading experts in the IP community. Access to former Bender treatises has been cited in my polls as well as the interview with the Lexis rep, discussed below, as one major reason to choose Lexis. If legal research is your main task, several of these treatises are considered essential. That said, as noted below, access can be purchased on daily, weekly, and monthly bases to allow use for time limited projects. These treatises include:

- Baxter World Patent Law
- Business Law Monographs: Intellectual Property
- Chisum on Patents
- Court of Appeals for the Federal Circuit Practice & Procedure
- Current Legal Forms for Intellectual Property
- Gilson on Trademark Protection & Practice
- Intellectual Property Counseling and Litigation
- International Copyright Law and Practices
- Milgrim on Licensing
- Milgrim on Trade Secrets
- New York Intellectual Property Handbook
- Nimmer on Copyright
- Patent Law Digest

¹⁹ A discussion of these materials is beyond the scope of this article.

- Patent Law Perspectives
- Patent Licensing Transactions
- Patent Litigation Procedure & Tactics
- Patent Office Rules and Practice
- Taxation of Intellectual Property
- Trademark and Unfair Competition Deskbook
- Trademark Manual of Examining Procedure
- World Trademark Law and Practice

While both Lexis and Westlaw offer analytical treatises by the respected publisher John Wiley, for some reason, the Westlaw Directory following this trail: Directory Location: All Databases > Directories and Reference Materials > Databases Listed by Provider > John Wiley & Sons shows no IP treatises. The Lexis Patent Library at Legal > Area of Law - By Topic > Patent Law > Treatises & Analytical Materials > John Wiley offer several exclusive IP titles, including:

- Essentials of Patents
- Intellectual Property Infringement Damages: A Litigation Support Handbook
- Intellectual Property Assets in Mergers & Acquisitions
- Patent Strategy: The Manager's Guide to Profiting from Patent Portfolios
- Intellectual Property Damages: Guideline & Analysis
- Valuation of Intellectual Property and Intangible Assets

IP Treatise Sources Exclusive to Westlaw

Bernard Callaghan founded Chicago-based Callaghan & Company in Chicago in 1864, and his large and well-known downtown bookstore was advertised as "Callahan's Three Miles of Law Books." Perley Clark Boardman, Alvin P. Weisker, and Edward S. Mersedrew, three law book salespeople from Lawyers Cooperative Publishing, established the Clark Boardman Company in 1916 in New York City and Rochester, New York. The Thomson Corporation acquired Callaghan in 1979 and Clark Boardman in 1980. These companies were merged in 1991. Like Matthew Bender, CBC was a major publisher of IP treatises such as *McCarthy's on Trademark*. Use of these treatises was cited by polltakers as one reason to choose Westlaw. These treatises include the following titles:

- Biotechnology and the Law (BIOTECHLAW)

- Computer Software: Protection, Liability, Law, Forms (COMPSOFT)
- Copyright Law in Business and Practice (COPYLBP)
- Copyright Registration Practice (COPYREG)
- Corporate Compliance Series: Intellectual Property (CORPC-IP)
- Designs & Utility Models Throughout the World (DUWORLD)
- Domain Names - Global Practice and Procedure (DOMAIN-GPP)
- Eckstrom's Licensing in Foreign and Domestic Operations (ECKLICN, ECKLICN-JV and ECKLICN-FO)
- Federal Circuit Patent Case Digests (PATDIGEST)
- Federal Income Taxation of Intellectual Property (WGL-TAXIP)
- Federal Unfair Competition: Lanham Act 43a (UNFAIRCOMP)
- Franchise and Distribution Law and Practice (FRANCHDIST)
- Intellectual Property and Antitrust Law (IPANTITRST)
- Intellectual Property Due Diligence in Corporate Transactions (IPDD)
- Intellectual Property in Commerce (IPCOMMERCE)
- Intellectual Property in Mergers & Acquisitions (IPMA)
- Intellectual Property Law for Business Lawyers (IPLBL)
- Intellectual Property Litigation Guide: Patents and Trade Secrets (IPLITGUIDE)
- IP Strategy: Complete Intellectual Property Planning, Access & Protection (IP-STRAT)
- Law of Copyright (COPYLAW)
- Law of Merchandise and Character Licensing ((LMCL)
- Licensing and the Art of Technology Management (LICENSATM)
- Licensing Law Handbook (LICLAW)
- Lindey on Entertainment, Publishing and the Arts (LINDEY, LINDEY3D)
- McCarthy on Trademarks and Unfair Competition (MCCARTHY)
- Modern Licensing Law (MODLICENLAW)
- Modern Patent Law Precedent (MPATLAWP)
- Moy's Walker on Patents (MOY-PAT)
- Multimedia and Technology Licensing Agreements (TECHLIC)
- Patent Applications Handbook (PATAPP)
- Patent Damages Law and Practice (PATDAMAGES)
- Patent Law Basics (PATBASICS)
- Patent Law Fundamentals (PATLAWF)
- Patent Law Handbook (PATLAWHAND)

- Patent Law, Legal and Economic Principles (PATLEGECON)
- Patent Law Practice Forms (PATPRACFRM)
- Patent Licensing: Strategy, Negotiations, and Forms (PLIREF-PATLIC)
- Patents Throughout the World (PATWORLD)
- Protecting Intellectual Property Rights Across Borders (PROTIPBORD)
- Trade Secrets Law (TRDSECRET)
- Trade Secrets Throughout the World (TRADESEC)
- Trademark Law Practice Forms, 2d (TMPRACFORM)
- Trademark Practice Throughout the World (TMPRWLD)
- Trademark Registration Practice (TMREGPRAC)
- Trademarks Throughout the World (TMWORLD)

Note that according to Lexis Customer Service, Lexis removed *American Lawyer Media* and *Law Journal Press* as sources in April, 2006 for contract reasons. According to West Web, on May 1, 2006, West became the exclusive legal research provider for American Lawyer Media (ALM) content. The content includes a sizable number of IP, commerce, and technology loose-leaf treatises.

BEYOND LAW—DOCKETS, BRIEFS, MOTIONS, PLEADINGS, & VERDICTS

A discussion of the Westis wars on court document databases is beyond this article. Generally, on Lexis follow the trail: Area of Law > Briefs, Motions, Pleadings, & Verdicts into the Patent, Trademark and Copyright Libraries. Westlaw offers IP motions and pleadings in their IP topical area. These link to the COURT DOCS service. The scope note shows: IP-PLEADINGS contains pleadings, complaints, and answers relevant to Intellectual Property litigation practice filed in state and federal courts. IP-MOTIONS includes motions and memoranda relevant to Intellectual Property litigation practice filed in state and federal courts. FIP-BRIEF contains briefs of interest to attorneys practicing in the area of the area of Intellectual Property. FPT-BRIEF contains briefs of interest to attorneys practicing in the area of the area of patent law, and FTM-BRIEF contains briefs of interest to attorneys practicing in the area of the area of trademark law.

Both companies have acquired docket-tracking companies. Also, discussed above, both vendors offer online versions of their extensive general practice and pleading titles. The theme of this article continues—if you need these types of materials, either ask Lexis or Westlaw or do your own homework.

Apropos to this article is one new database as an example of what value added IP info to look for when subscribing to either platform. West e-*lert*, Vol. 6, No. 4 (May 2006) announced a new Westlaw database, Patent Docket Summaries (PAT-DOCK-SUM), that allows you to monitor patent-related lawsuits. Perhaps you need to keep an eye out for litigation related to patents in which your client has an interest, or you want to follow litigation involving similar patents. Maybe you want to keep track of litigation involving your clients' competitors. Now you can perform those tasks online with PAT-DOCK-SUM, and you can automate your monitoring in PAT-DOCK-SUM by creating a WestClip entry!

The PAT-DOCK-SUM database offers features and information you won't find using other Westlaw databases or with other online legal research services. Similar databases from other services only provide skeletal information about the lawsuit and the patent itself. Also, most can be searched with very limited criteria—the patent number, the particular district court, and the filing date of the lawsuit. According to the Westlaw e-*lert*, competitors' docket records simply don't contain a lot of patent information. Also, some competing docket research services are not particularly current compared to PAT-DOCK-SUM and our other Dockets databases. Finally, the breadth of coverage in PAT-DOCK-SUM exceeds that of LexisNexis and our other competitors.

You can search the PAT-DOCK-SUM database by patent number, party name, inventor name, patent assignee name, terms and phrases in the patent abstract and title, patent class number, and filing date of the case. Records are usually added to PAT-DOCK-SUM within forty-eight hours or less of their actual filing date. Some of Westlaw competitors may take two to four months from the filing date to update their records. I also noticed that Westlaw has recently added Trademark Docket Summaries (TM-DOCK-SUM) to the Trademark tab.

BEYOND LAW SOURCES—IP REGISTRATIONS

Patents

The answer to the question whether patent searching on each service is better, different, or the same is also extremely difficult to determine. Once again, you need to look at the application of the patent data to your research. The analysis gets more involved as each company has divisions or associated companies that offer additional patent searching solutions.

Patent searching is a broad term that covers many types of searches including some of the following types that are synonymous and overlapping: prior art, patentability, preliminary, novelty, infringement, freedom to operate, right

to make, clearance, right to use, justification, validity, state of the art, continuing, family, corresponding, and landscape.

Let me gratuitously scold both Lexis and Westlaw for not offering patent data in spreadsheet format. Large patent data projects require data manipulation. The lack of this feature rules out the use of either service for certain patent projects.

That said, any patent searching comparison is beyond the scope of this article. What we can talk about is patent data. Who has more? The answer is Westlaw, because Westlaw offers the Dialog family of patent databases as well as some by other database producers. Both services offer U.S., European, Patent Cooperation Treaty, Patent Abstracts of Japan, and INPADOC. Westlaw does have the Dialog advantage of many additional patent files, both bibliographic and full text. To this, I have heard Lexis respond that their patent files cover eighty-five percent of the world patent documents. Again, you must focus on the application of patent data at hand and draw conclusions from that point of view. Westlaw offers the following exclusive patent databases:

- Chinese Patent Abstracts in English (CHINAE) 1985-
- CLAIMS/Reassignment and Reexamination (R&R) 1980-
- CLAIMS/Reference (CLAIMSREF) Current data
- CLAIMS/U.S. Patent Abstracts (USPA) 1950-
- Derwent LitAlert (LITALERT) 1973-
- Derwent Patent Status File (PATSTAT) 1973-
- Derwent Patents Citation Index (PATCITE) varies
- Derwent World Patents Index (WPI) 1963-
- Derwent World Patents Legal (DWPL) 1963-
- French Patents (PATENTS-FR) 1961-
- IMSworld Patents International (IMSPI) Current data
- LitAlert (LTA) 1970

KeyCite's Patent Citator for U.S. patents will tell you if there has been a change in the legal status of your patent; if your patent has been involved in litigation; if there are any new patents citing to your patent; if there are any U.S. cases or Patent and Trademark Office decisions that mention your patent; or if your patent has been mentioned in any analytical sources. This service covers U.S. patents from 1976 to date plus partial coverage of older patents. Patent Citator informs you of new U.S. patents and patent applications that have cited to an existing patent, Federal litigation involving a patent (from Derwent® LitAlert), any discussion of a patent in U.S. cases or Patent & Trademark Office decisions (including U.S.P.Q.), mention of a patent in over seven hundred legal journals or law reviews, and U.S. patent assignments.

LEXIS ADVANTAGES?

It is impossible in this article to say which service is better for patent searching. What we can do is to look at some of the Lexis features and advantages that might appeal to patent searchers, depending on the type of search. These features include:

- more than three million U.S. patents issued since 1790 – (an important exclusive)
- associated with them are approximately ten million pages of drawing sheets and embedded images of mathematical equations and chemical structures
- group file searching
- individual files design and plant patents
- individual files by date range, year and century
- more patent classification assist files
- Core Terms feature
- Get Drawing Sheet feature
- access PDF of Official Patent
- order Patent File History / Wrapper from REEDFAX
- link to claims section
- link to Patent Family Reports. According to the most recently posted *Lexis IP Research Guide*,

since a patent provides protection only within the country where it is granted, it is necessary to file for patents in every country where patent protection is desired. A “patent family” includes all the application filings and subsequent patent publication stages made on an invention, across global patent authorities. Each LexisNexis patent contains a link to a report in PDF format that is extracted from the MicroPatent Patent Index (MPI). MPI is a [Thomson produced] bibliographic database that provides patent family coverage for seventy-one countries or regional patent authorities. In addition, Legal Status information is included for 42 patent authorities. MPI combines the European Patent Office’s INPADOC collection with other EPO files, such as their examiner data collection (DOC.db), and supplements them with content and features exclusive to MicroPatent. Each report is available for an additional charge.

- Ability to Shepardize a patent with one click when viewing a patent

NON-PATENT LITERATURE

As with patent data, Westlaw takes the lead in non-legal Dialog databases that can be used for patent searches. Dialog group database categories

include: aerospace, agriculture, architecture, automotive research, biosciences, biotechnology, chemical, ceramics, composites, computers, construction, defense, food, drugs, ecology, electronics, electrical engineering, food, forestry, geology, geophysics, geosciences, health, instrumentation, manufacturing, mechanical engineering, medical devices, metals, meteorology, mining, nuclear science, nursing, nutrition, oil and gas, petroleum, paints and coatings, pharmaceutical, science and technology, software, textiles, toxicity, and telecommunications.

Similar to the Dialog side of Westlaw, the Nexis side of Lexis has many non-patent prior-art resources. The LexisNexis services offer broad collections of prior-art research sources. These are valuable sources for performing historical prior-art searches as well as monitoring emerging research trends. Check News & Business > Market & Industry > By Industry & Topic. You'll see folders for Computing & Technology, Energy & Utilities, and Medical & Healthcare, just to name a few. The *Lexis Directory* lists a Prior Art Research Files category in the Patent Law Library. Online follow the trail Legal > Area of Law - By Topic > Patent Law > General News & Information to find folders for communications, computers, electronics, energy, technology, and transportation.

TRADEMARKS

Trademark searching is as complex as patent searching in many ways. Lexis uses the CCH Corsearch search engine and indexing and Westlaw uses the Thomson ~ Dialog TRADEMARKSCAN search engine and indexing.²⁰ I have never seen any "head to head" comparison of the two.²¹

A straight comparison of number of trademark registration files favors Westlaw. Lexis might respond that it doesn't matter which service you use if all you need is to search U.S. registrations. As a result, I will simply present the coverage of both services. Both platforms offer the value added tool of providing post-issuance activity.

²⁰ It is beyond the scope of this article to compare the search algorithms used by Lexis and Westlaw.

²¹ For a discussion of the challenges in trademark searching, see Jon R. Cavicchi, *Intellectual Property Research Tools And Strategies: Trademark Searching Tools And Strategies; Questions For The New Millennium*, 46 IDEA 649 (2006).

LEXIS TRADEMARK FILES

- Combined International, U.S. Federal and U.S. State Trademarks Combined
- International Trademarks
- Combined Federal & State Trademarks
- Canada Trademarks
- European Community Trademarks
- United Kingdom Trademarks
- Federal Trademarks
- State Trademarks
- World Intellectual Property Organization Trademarks
- U.S. Trademark Design Code Manual

Searches of U.S. trademark registrations are the most popular. Take for example the FEDTM file that has active records from April 7, 1884 through present as well as inactive records from April 5, 1887 through present. This file contains federal trademarks and applications licensed to Lexis through CCH Corsearch, a member company of CCH Legal Information Services. It contains thorough information on trademark name, status, registration, goods and services, current and prior owners, TTAB actions, and current and prior assignment records. Additionally, images and WIPO design codes and descriptions are provided for design marks. The types of documents included in this file are: trademarks, service marks, certification marks, and collective marks. It is updated regularly—according to Lexis Source Information “[a] typical update schedule/as received from the publisher.”

Like Lexis patents images, in some files you can click on Get Trademark Design to get the image. There is no original trademark document image. The design image does not print as part of the basic record. You must download the image as a separate file.

WESTLAW TRADEMARK DATABASES

- | | |
|--|---|
| • TRADEMARKSCAN- All (ALL-TM) | • TRADEMARKSCAN- Ireland (IRELAND-TM) |
| • TRADEMARKSCAN- North America (NA-TM) | • TRADEMARKSCAN- Italy (ITALY-TM) |
| • TRADEMARKSCAN- U.S. Federal (FED-TM) | • TRADEMARKSCAN- Liechtenstein (LIECH-TM) |
| • TRADEMARKSCAN- U.S. State | • TRADEMARKSCAN- Lithuania |

- (ST-TM)
- TRADEMARKSCAN- Canada (CAN-TM)
- TRADEMARKSCAN- Europe (EURO-TM)
- TRADEMARKSCAN- European Community (EC-TM)
- TRADEMARKSCAN- Austria (AUSTRIA-TM)
- TRADEMARKSCAN- Benelux-Merkenbureau (BENELUX-TM)
- TRADEMARKSCAN- Czech Republic (CZECH-TM)
- TRADEMARKSCAN- Denmark (DEN-TM)
- TRADEMARKSCAN- France (FRANCE-TM)
- TRADEMARKSCAN- Finland (FIN-TM)
- TRADEMARKSCAN- Germany (GER-TM)
- TRADEMARKSCAN- Hungary (HUNGARY-TM)
- (LITHU-TM)
- TRADEMARKSCAN- Monaco (MONACO-TM)
- TRADEMARKSCAN- Norway (NOR-TM)
- TRADEMARKSCAN- Poland (POL-TM)
- TRADEMARKSCAN- Slovak Republic (SLOV-TM)
- TRADEMARKSCAN- Spain (SPAIN-TM)
- TRADEMARKSCAN- Sweden (SWEDEN-TM)
- TRADEMARKSCAN- Switzerland (SWITZ-TM)
- TRADEMARKSCAN- United Kingdom (UK-TM)
- TRADEMARKSCAN- International Register (WIPO-TM)
- TRADEMARKSCAN - American Samoa (AS-TM)
- TRADEMARKSCAN - Puerto Rico (PR-TM)

Like Westlaw patents images, in some files you can *Click to View* to get the image. There is no original trademark document image. The design image does print as part of the basic Westlaw record. You can also download the image as a separate file.

COPYRIGHT REGISTRATIONS

The U.S. COPYRIGHTS database on Westlaw, produced by Dialog Information Services, Inc., provides access to registration details for all active copyright and mask-work registrations on file at the U.S. Copyright Office. According to the Westlaw scope note, this database was designed primarily as a fast screening tool for checking the ownership and registration status of a particular work. The database is also useful for checking a particular individual's or entity's portfolio of registered works. The database contains three types of records: monograph records, legal document records, and serials. Monograph records contain information on the initial registration and renewal of a work.

Legal document records contain information on assignments and other information pertaining to the ownership status. Over 533,000 serial publication records registered with the U.S. Copyright Office from 1978 to the present have been added to U.S. COPYRIGHTS.

Each record contains the title of the work, the owner's name, the registration number, an indication of whether the work is published or unpublished, the class and retrieval code assigned by the U.S. Copyright Office, and other pertinent information about the work and nature of the registration. Registered works that have been renewed are also in the database with the status designation of renewal. U.S. COPYRIGHTS includes works registered under the Copyright Act of 1976 and subsequent amendments, including the Semiconductor Chip Protection Act of 1984. Basic data are obtained directly from Catalog Distribution Service of the Library of Congress in conjunction with the U.S. Copyright Office. Database enhancements are created by Dialog Information Services, Inc. Active registrations: January 1, 1978 to the present. The database is updated weekly.²²

Lexis presents copyright registration in several files:

- U.S. Copyrights Combined Files
- U.S. Copyrights - Legal Documents
- U.S. Copyrights - Monographs
- U.S. Copyrights - Serials

The ALLCPY file is a group file consisting of all three types of Copyright documents: monographs, legal documents and serials. Each record in this file contains the title of the work, the owner's name, the registration number, an indication of whether the work is published or unpublished, the class and retrieval code assigned by the U.S. Copyright Office, and other pertinent information regarding the work and the nature of the registration.

BEYOND WEXIS CONTENT—HOW THE IP INFORMATION IS ORGANIZED AND ACCESSED

As the discussion so far has proceeded, certain things have become obvious:

- there are hundreds of IP related databases

²² Approximately ten thousand new records of which eighty percent are registrations/renewals, fifteen percent are legal document records, and five percent are changes to existing records.

- there are hundreds of general databases that serve data essential to IP research
- many users choose a service as a matter of taste with no comprehensive knowledge of all of the information for their use
- Lexis and Westlaw organize their content in different ways
- Databases are added and deleted by the vendors on a regular basis and few users are able to keep up to date on content changes.

That said, we have hit upon a paradoxical point. There are some IP users who know (or think they know) exactly what content lives on the service of their choice. They know the primary sources as well as the lead treatises and group secondary source databases. There are some users who use a service as a matter of taste and need to be guided to databases based upon the task at hand, and then there are the power users like myself that know exactly how to find sources and get annoyed by all of the extraneous approaches.

I find the “menuization” and “folderization” on *Wexis* to be extra steps in my way to the databases. I prefer to go directly to a database from the main logon screen. I often identify databases by memory or using the print and online *Wexis* database directories, but many users need tools to drill down to potential databases.

Wexis developers now offer multiple access methods to IP data. I have no doubt that they have teams that study user habits and roll out redundant access methods to meet the approaches of different preferences. My colleagues have convinced me that this is a good thing. Information professionals will not make users into librarians. As a result, the vendors and legal research instructors need to assist users at their level of experience, not what level we would want them to be at. Many users want everything to look and act like Google. So be it.

Now that the rant is over; the polls discussed in this article do show that some users choose based on how *Wexis* organize their data.

LEXIS

This discussion must be prefaced with observations that in 2006 Lexis is integrating a solutions based approach that will undoubtedly augment the numerous organizational approaches to their content.

LexisNexis products, discussed below, are being categorized into Total Practice Solutions including:

- Client Development - strengthen client relationships, increase client referrals, retain your best clients, and target new clients intelligently.

- Research Solutions - accessing comprehensive and exclusive information sources.
- Practice Management - protect a firm's data, monitor, and control and recover costs, and increase billable time by organizing workflow.
- Litigation Services - draft a document, conduct discovery, perform legal research, gather intelligence, and other litigation associated tasks

Having said that, let's start from the Lexis main menu. One thing is obvious. Lexis offers users more options to search their files including greater breakdown by topic and more ability to search group files. Some searchers love this, and others do not. Lexis offers areas of law by topic. These areas of law are traditionally known as "*Lexis Libraries*." They offer the following libraries:

- Patent
- Trademark
- Copyright
- Cyberlaw
- E-commerce

Lexis allows you to add a tab for each library you work with on a regular basis. Many IP users like this feature. When you go to an IP library via the main menu or tab, look for the Research Tasks link that walks you through common tasks. This is also a research button approach discussed below.

One strategy for keeping track of where you are, where you have been, and where files are located is to keep your eye on the top of the screen for the research trail. For example: Legal > Area of Law - By Topic > Patent Law > Treatises & Analytical Materials > Matthew Bender(R) > Chisum on Patents.

You can use the *Guided Search Forms* button to select a specific guided search form from a hierarchy that groups these forms into major topic categories like Areas of Law. When you select an IP topic category, a list of the guided search forms available to you under that category appears. With the Guided Search Forms sub-tab, you select a guided form that has one or more recommended IP sources already identified. You can then select the specific guided search form that best meets your needs. Once you choose IP topics, you then add keywords to search individual or group primary and secondary source materials.

If you know the library and file names of the sources you want to search (for example, CHISUM), you can use the Command Searching button instead of selecting sources from the source hierarchy. Only short names (such as PATENT; CHISUM) can be used in the Command Searching box. Long names (such as Chisum on Patents) cannot be used.

The Research Tasks button allows you to click a link for the Research Task page that best fits your area of law interest. Each page includes a set of search forms and content links chosen by Lexis information experts to help you research that specific area. Unfortunately, at this time, Patents is the only IP area supported. One value added tool to this approach is that Lexis is now showing some of the associated products for IP searchers as part of the new solutions approach. Common patent tasks include legal research, find news, look at prosecution or litigation materials, and get a patent. This approach also allows you to search the titles of all IP sources to identify files of interest.

Need help starting your research? Lexis Search Advisor is a finding tool for legal data based on areas of law and related legal topics. It can help target your legal issue, identify appropriate sources, and formulate your search request. At this time you can choose patent, trademarks, copyrights, and trade secrets. Oddly, cyberlaw and e-commerce are not listed areas despite having established libraries and tabs for these areas. For example, if you want to research the patent statute requirement that an invention be new to get a patent, you would choose patent. An outline of patent law appears. Click on the novelty link. You then can choose which sources to search proceed with your terms and connectors or natural language search. Click on the information button, and Lexis will define the area you have chosen. For example, Anticipation & Novelty > Patent Law > Anticipation & Novelty covers the novelty requirements for patentability outlined in sections 102 (a), (e), and (g) of title 35 of the United States Code Service, including anticipating events, issues of fact and law, and the standards for evaluating anticipation. Sections 102 (a), (e), and (g) provide that an invention must be unknown by others in order to be patentable.

LexisNexis Total Litigator is a new approach to the delivery of IP data. There now appears on Lexis screens a purple button to go to Total Litigator. LexisNexis Litigation Services offers litigators critical products, services, and content mapped to the way litigators think and work, according to the litigation process itself. Available through an intuitively organized platform Total Litigator helps you gain access to hard to find Lexis files.

Need to draft an IP document, conduct IP discovery, perform IP legal research, gather intelligence, or perform other tasks associated with IP litigation? Total Litigator provides a unique strategic advantage for litigators by creating a single web platform that integrates the LexisNexis complete portfolio for litigators with a single ID patterned around the various tasks attorneys have to accomplish throughout the litigation lifecycle.

One obscure strategy for an IP specialist is to monitor the LexisNexis InfoPro site at <http://www.lexisnexis.com/infopro/> on a regular basis. The LexisNexis Librarian Relations Group welcomes you to the website especially designed for Legal Information Professionals. Updated weekly, the InfoPro Web

site is the place to go to first for the most up-to-date information about LexisNexis products and services of interest to legal searchers. The Directory of Online Sources at <http://w3.nexis.com/sources/> is the most up to date access point for information on all IP files.

WESTLAW

As with Lexis, we will start our review of Westlaw data organization from the main logon screen. If you choose to set the *Westlaw Directory* as your main screen, you will get the full picture of the products within this legal supermarket. From the Directory, you can choose the topical practices area link that leads you to intellectual property. Unlike Lexis' patent, trademark and copyright libraries, West collects all IP materials in the topical area. Some users choose Lexis because of the smaller IP topical "slices".

Westlaw allows you to add tabs to your menu page; since Westlaw has the huge IP topical area, it allows you to add a wider range of tabs including: intellectual property, patent practitioner, trademark, e-commerce, and Canada IPSources. Let me gratuitously add that this migration from the IP topical area to break out tabs similar to Lexis is not often elegant. This has led to a hodgepodge of consolidated all-IP databases as well as smaller patent, trademark, and copyright databases that are not obvious from the IP topical area menus.

The Publications List link allows you to display an alphabetical list of all databases. A search box is provided to allow you to search for IP databases.

The Westlaw Database Wizard will suggest databases for you to search. It asks, what are you trying to find? This initial steps allow you to choose an area of law and jurisdiction(s). The next step is perilous if you choose to rely on this method to find a database. You enter a keyword—you are not given a pre-defined menu. Narrow searches lead to narrow database choices. The result is a custom menu based on your step choices. A trail might look like this: Directory Location: All Databases > Topical Materials by Area of Practice > Intellectual Property. Beware— this Wizard might cast a spell and not point you toward the needed database.

KeySearch is a research tool powered by the West Key Number System that identifies the terms and key numbers most relevant to your legal issue and creates a query for you. Click a Browse KeySearch subtopic or its corresponding topic to browse more subtopics. Choosing the KeySearch topic intellectual property leads to an odd assortment of topics uncommon to any West scheme including:

- Actions and Proceedings
- Attorney Fees
- Biotechnology and Chemical Inventions
- Medicine
- Music
- Patents

- Computers and Online Services
- Copyrights Royalties
- Crimes and Offenses
- Cybersquatting
- Domain Names
- Entertainment
- Genetics
- Infringement
- Internet
- Licenses
- Plagiarism
- Registration
- Satellites
- Semiconductor Chips
- Service Marks
- Software Licenses
- Trade Dress
- Trade Names
- Trade Secrets
- Trademarks

These topics break out into sub-topics. Click on a sub-topic to get a search screen that allows you to choose what type of primary or secondary source to search. You may add keywords to limit your search within the source or just click on the source to get all documents. Beware of this approach as Westlaw will formulate a very broad search and give you huge results sets.

Why not organize Westlaw IP content exactly the way you want? Enjoy custom access to pre-selected portions of Westlaw. Westlaw Integration Solutions allows you to integrate Westlaw into your portal or intranet. You can have direct, desktop access to the IP information you need most, which means increased productivity and efficiency. It provides a direct access channel to focused IP legal, news, and business information.

Westlaw Integration Solutions is a suite of customizable components that integrate into the infrastructure you already have. You can build a database search box for your intranet, giving you seamless and easy access to the database. You can build other Search Boxes and links allowing you to turn your intranet site into a multifaceted tool for accessing Westlaw. Finally, you can build links to documents, search results, and KeyCite results, or build a search box to find a document by citation, to KeyCite a database, to search a database, or to search the Westlaw database directory.

WEXIS IS ONLY A SMALL PIECE OF THE WEXIS PARENT IP PRODUCT LINES

Other IP Web Solutions Not Part of Wexis

Westlaw is part of Thomson Legal and Regulatory.

LexisNexis (www.lexisnexis.com) is a leading provider of information and services solutions, including its flagship Web-based Lexis and Nexis research services, to a wide range of professionals in the legal, risk management, corporate, government, law enforcement, accounting, and academic markets. A

member of Reed Elsevier Group (www.reedelsevier.com), LexisNexis serves customers in one hundred countries with thirteen thousand employees worldwide. LexisNexis Worldwide includes Web products in North America, Latin America, Europe, Africa, and Asia. Most Lexis users have no idea you can get Lexis IP data vended via IP products around the globe.

“Flagship” Lexis is one of fifty Web based services of the larger LexisNexis part of Reed Elsevier. Lexis also participates in many Web products as an Alliance partners.²³

What this means is that Wexis users only have access to the “flagship” services Lexis and Westlaw. Not only do users not know what is on Wexis, the many other IP services are not integrated. How can major corporations so woefully cross-market related products to potential consumers? Both Thomson and LexisNexis now brand themselves as solutions companies, providing solutions to the many needs of IP researchers.

LexisNexis/Reed IP Solutions

LexisNexis/Reed has an IP Product Team. A team located around the globe identifies and creates solutions for the IP product segment. The current team includes:

Peter Vanderhader, Vice President for Global IP
Todd Cohen, Vice President for IP
Brian Ellias, IP Product Manager
Mike Hudelson, IP Segment Director
Jack Malooly, IP Specialist

Use the Products & Services listing at <http://www.lexisnexis.com/productsandservices> to search for information about the LexisNexis family of products and services. You can choose a product or service by specific name, or find the option right for you by browsing offerings by occupation, task, or featured products. Lexis presents the IP Life Cycle Product Support Page at http://www.lexisnexis.com/practiceareas/ip/ip_products.asp

Beyond flagship products include:

- Patent and Trademark Delivery Services
- Patent and Trademark File History Services
- PatentOptimizer™
- Prior Art Search Services

²³ See <http://www.lexisnexis.com/partners/>

- Japanese Patent Machine Translations
- Manual Translation Services
- *Hot Docs* LexisNexis Automated Intellectual Property Forms, which includes both government-issued and author-drafted versions of the forms from the extensive Matthew Bender collection of intellectual property forms
- *REEDFAX Document Delivery* at <http://www.reedfax.com/>

LexisNexis recently joined forces with Univentio, a foremost provider of global patent information, to meet the growing need for timely and comprehensive patent information and tools. LexisNexis will offer Univentio data, a comprehensive collection of patent data in the world, through a powerful innovative patent search platform specifically designed for the needs of IP professionals as well as through Lexis.

IPInstaLaw powered by Equerion is a powerful new tool designed for IP professionals with global coverage and up to date information. Including IP practice & proceedings and IP legislation & regulations, the service covers trademarks, patents, designs, and more from over more than two hundred countries.

Thomson IP Solutions

Kenneth Kunkle is the Senior Product Developer, Intellectual Property for Thomson ~ West. Beyond Westlaw, a product of Thomson Legal and Regulatory, are a host of solutions that are part of other Thomson Divisions. WestLegalEd is also part of Thomson Legal and Regulatory and has over six hundred continuing legal education seminars on IP topics.

Like the LexisNexis IP Cycle approach, Thomson Scientific Solutions/Brands offers “Key IP Consultancy Products.”²⁴ With intellectual property licensing revenues globally exceeding US \$150 billion, intellectual property is growing in financial importance. Thomson solutions can help you use intellectual property to generate revenue and increase shareholder value for your clients by:

- identifying new industries and markets for clients to exploit
- spotting key inventors to recommend to clients
- monitoring the activity of your clients' competitors
- finding gaps in clients' patent portfolios

²⁴ See <http://scientific.thomson.com/products/solutions/ip/>

- discovering new or additional uses for clients' existing patents
- looking for ways to sell or donate intellectual property to generate revenue for clients

Thomson claims to be “the world’s leading patent and scientific information provider, helping our customers stay ahead of their competitors by providing them with key technical, scientific, and business information drawn from patents, industry standards, research journals, and conference proceedings.”

- Thomson patent searching, analysis, and IP management solutions include:
 - Derwent World Patents Index - the most comprehensive database of global, value-added patent documents
 - Aureka - advanced IP management and analysis platform
 - Delphion - full-text patent documents with powerful search technology plus analysis and productivity tools
 - MDC - high quality IP management services
 - PatentWeb - the world's largest commercial collection of patent data with over 50 million full-text and front-page records
 - MicroPatent
 - DIALOG
 - Document Solution - provides access to full-text items from virtually any publication within or outside of the ISI database.
 - Thomson Data Analyzer - works with both in-house and commercial patent and scientific databases to deliver information snapshots and graphs providing unique insight into companies' portfolios and technology landscapes; the successor to the highly successful Derwent Analytics
 - Thomson Patent Store - to obtain original patent documents from around the world
 - Web of Science - access to current and retrospective multidisciplinary information, author abstracts, and cited references from approximately 8,500 research journals in the world.

Wexis Pricing

The Legal Information Buyer's Guide and Reference Manual publishes an annual review of Lexis and Westlaw pricing schemes.²⁵ Both vendors offer four basic pricing models: hourly, transactional, flat-rate plans (including topical areas such as IP), and customized negotiated plans. Lexis also offers Matthew Bender Online, which covers most of the big name IP treatises discussed above.

Low, Fixed-Cost Pricing

For smaller law firms and organizations, WestlawPRO, LexisONE and Lexis Advantage Flat Rate Libraries are often the right choice. These low-cost, fixed monthly-fee plans are available for specific jurisdictions, practice areas such as IP, news sources, and other information categories. Lexis also offers smaller sub-set libraries such as the Trademark and Copyright and Trademark and International Patent Flat-Rate Libraries. LexisONE Practice Area Research Materials can be paid for one day, one week, or one or more months. User prices start as low as \$40/day, \$66/week, and \$129/month. Be very careful when buying a subscription, and ensure that it includes the IP analytical treatises you want, as they may come at a premium. The Patents Plus Plan on Westlaw gives you access to three of West's resources for patent attorneys: the Patents Library, Intellectual Property Primary Law Library, and IP Analytical Resources. The Patents Plus Plan also provides access to the KeyCite Patent Citator.

Pay As You Go

Using your credit card, you can access state and federal case law, statutes, and a wide variety of additional Lexis and Westlaw resources. Find documents by entering citations, case titles, or docket numbers. Use the Shepards and KeyCite online citatory services to determine whether any case, statute, administrative decision, or federal regulation is good law.

Beware of Add On Charges for IP Plans:

Unless you have a customized negotiated plan that covers all of the databases, services, and documents you need, avoiding additional charges can be

²⁵ Kendall F. Svengalis, *The Legal Information Buyer's Guide and Reference Manual* 147 (Rhode Island LawPress 2006).

like walking through a land mine field. At many turns, clicks will result in additional charges. Some examples, depending on plan might include:

- searching databases not in your plan
- searching Dialog databases at a premium
- displaying Dialog search results
- displaying original patent documents
- displaying patent family reports
- ordering patent file wrappers
- other per document pricing
- displaying images
- clicking on a hypertext link to view a referenced document
- multiple-database searches
- printing charges

INTERVIEW WITH A LEXIS SALES REP—“HOW I SELL TO IP LAWYERS”

Since I have been in the academic Lexis market for so many years, I thought it might be helpful to interview a law firm rep about how Lexis is sold to IP lawyers. Sales rep, Greg Vokes covers the New Hampshire territory. Greg has sold legal research tools for Lexis and other publishers for almost two decades. The following is a summary of our conversation.

On content:

IP lawyers know why they want Lexis access. I am not an IP lawyer. I let the IP lawyer steer the conversation. IP lawyers are a different animal. I start off talking about our value added features, such as Shepardizing IP including not only primary sources but also patents. I emphasize that Shepards is 130 years old compared with West's KeyCite, that is only nine years old. I generally don't sell against Westlaw—they can't compete with our analytical treatises, such as Chisum and Horwitz for patent practice and Nimmer on Copyright. There is no competition with Westlaw in selling Lexis to IP Lawyers.

I asked Greg whether his clients ask him about non-IP materials. His response was that it is rare for an IP lawyer to buy Lexis access for associated materials—99.9% of IP lawyers use Lexis for primary and secondary source materials.

On functionality:

Beyond content, Greg's clients buy access because of ease of use:

One big selling point is that most IP lawyers find Lexis more user friendly than Westlaw. I get these comments all the time. Lawyers like Lexis cases. They don't have to think like West editors. Lawyers love Lexis boolean, terms and connectors, and natural language searching. Lawyers love Lexis statutes because the table of contents feature is quite prominent on Lexis—a lot easier than on Westlaw. Another feature lawyers love is copy with cite, as it saves clicks and keystrokes. IP lawyers don't use Search Advisor (online topical digest) to drill down to the file level. Many IP lawyers buy a flat rate plan. Search advisor leads to files not covered by their plans that result in transactional pricing.

On IP pricing:

The most common choice with small firms is the IP Library flat rate plan. Lexis can customize and drill down to exactly the materials the customer wants. We can sell stand-alone access by file, such as trademark registrations. West *also has an* IP flat rate library, but pricing *is* not close. For example, Lexis solo IP Library pricing can be as low as two hundred dollars per month. Comparable West access is higher per month—take it or leave it. West tries to sign clients up for three years. Lexis puts no pressure for multi-year contracts. Typical is a five percent increase per year. Contrary to common belief, there is no bump up for extensive use, but Lexis reserves right to look at use. I have never seen a use based increase in my ten years as a Lexis rep. We don't sell much access to Lexis or Bender analytical IP materials on demand that often, as it is more expensive. It makes more sense to buy flat rate access to the IP Library.

On selling IP products:

"Our ongoing training on IP products usually is by conference calls. We have live online walk-throughs. Field reps don't have contact with the IP development team. We fill out weekly feedback forms. The IP editors are the layer between reps and the IP development team."

CUSTOMER SUPPORT

Wexis both offer the following customer support:

- Product literature. Both vendors have reduced IP related print materials. Online PDF versions are often out of date. Both vendors rate weak in this area.
- Free web-based lessons and tutorials. Web training has taken the lead over face-to-face Wexis training at Pierce Law. Take as many lessons as you want, in any order, at your own pace. At the end of each lesson, you will be invited to ask questions and provide feedback on the course. The IP tutorials will help you understand the

process of researching issues related to intellectual property law, as well as introduce you to some of the fundamental resources and search techniques that will help you complete your intellectual property research more efficiently. IP certification courses are offered. Certain eLearning modules, web and telephonic trainings are not available to law school customers.

- Live help via online chat. Only Lexis offers chat assistance. Note that only a small segment of Lexis research attorneys handle chat.
- Face to face live training
- Customer service phone support. All representatives from both vendors have law degrees. West promotes the idea that you can call and ask for an IP reference attorney. They are hard to connect with at times. West IP reference attorneys do not work the full Westlaw shifts. They are available 7am-7pm (CST). Many have limited experience with the Dialog patent databases on Westlaw. Lexis uses all generalists but they claim that all get ongoing IP training.
- Home pages. The search pages on the home pages bring up search site boxes. Type in IP keywords to find everything IP on these sites. Lexis also offers a Knowledge Base at <http://support.lexis.com/>

GENERAL STRATEGIES TO SELECTING LEXIS OR WESTLAW FOR IP PRACTICE

- know when you need premium over free web
- learn unique content on each service
- do you have access to unique Lexis and/or West content in print?
- consider using the services on a "pay per view" basis unless you are ready for a subscription
- define the range of research tasks you need to perform: legal research, fact research, patent, trademark, copyright searching, public record searching
- do you need business, science, interdisciplinary data...?
- consider related products from vendors—they often give multi-product discounts
- use sales reps from both vendors to educate you. If they don't know the answer, make them do research for you
- haggle, haggle, and haggle—both vendors cut custom deals beyond the set packages

- negotiate firm-wide access to the most cost effective contract and consider requesting a single account for yourself on the alternate service
- get a trial period from both simultaneously to see that would help as well
- speak with colleagues
- Google for up to date comparison articles
- troll blogs for comments and reviews
- use vendor sites—look for free tours, features, product literature guides, and training
- speak with librarians
- if you have flat rate access in college, grad school, or law school, use the services extensively
- get on vendor email mailing lists to keep up to date with content and functionality

CONCLUSION

This article could easily be double in size to cover all the bases. As I was concluding this article, an IDEA editor came to my office to check some footnotes. I told her that this article was coming to a close, and she immediately said, “So, what’s your conclusion; which is better for IP research?” Alas, we end where we start. There is no one answer. Only you can define which service best meets your information needs. I hope this article has informed you on some content and features to consider in helping you define your needs. I use Lexis and Westlaw liberally, which gives me the advantage to compare and contrast on an ongoing basis. We also return to the ongoing themes of this series. Lexis and Westlaw are doing battle with a host of no cost and low cost information providers. The smart IP researcher faced with having to pay for Wexis access will craft a package that includes those features and databases that may be beyond cost effective alternatives.

APPENDIX I

<i>Factor</i>	<i>IP Profs (19)</i>	<i>3Ls (10)</i>	<i>M.I.P./LL.M (10)</i>
I prefer Lexis	8	6	0
I prefer Westlaw	9	5	9
I use both	2	5	2
Learned Lexis 1st	4	1	0
Learned Westlaw 1st	5	1	0
Familiarity/comfort with Lexis	0	1	0
Familiarity/comfort with Westlaw	3	1	1
Like Lexis data organization, navigation	1	2	0
Like Westlaw data organization, navigation	2	2	2
Like Lexis search options	2	1	0
Like Westlaw search options	0	0	1
Lexis is more complete	0	0	0
Westlaw is more complete	1	1	0
Like Lexis look & feel, browser interface	3	2	0
Like Westlaw look & feel, browser interface	3	2	1
Lexis more user friendly/intuitive	0	3	0
Westlaw more user friendly/intuitive	3	0	2
Lexis returns better search results	0	1	0
Westlaw returns better search results	0	0	0
Like Lexis unique features	1	1	0
Like Westlaw unique features	0	1	0
Need Lexis unique IP content	3	2	0
Need Westlaw unique IP content	1	0	3
Like West Digest & key numbers	2	2	2
TWEN drives my use	2	0	0
Like Lexis customer service	0	0	0
Like Westlaw customer service	0	0	2
Turned off by Lexis technical issues	2	0	0
Turned off by Westlaw technical issues	2	1	0