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Law School Notes

Strength of IP academia here lures meeting

By Jerry Crimmins
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Chicago is a "very, very strong intellectual property academic area," said Troy A. Goetken, co-president of the Association of Patent Law Firms.

"There are very good IP programs [at] DePaul, Kent, John Marshall, Northwestern," Goetken said, "the University of Chicago a little bit."

Moreover, three Chicago law schools offer a master of laws degree in intellectual property. They are The John Marshall Law School, DePaul University College of Law and Chicago-Kent College of Law.

"Students that come out from Chicago law schools with an intellectual property focus," Goetken added, "do very well in finding jobs in Chicago and nationally and internationally."

This academic environment for IP is the reason why APLF holds its annual meeting in downtown Chicago. It is co-sponsored by the DePaul law school.

The meeting this year will be held on Sept. 21 in DePaul's building at 1 E. Jackson Blvd., Room 8005.

Members and non-members alike are invited to hear a whole day of presentations on the state of IP law in Argentina, Australia, Canada, Europe, India, Japan, Korea and the United States.

Professor Katherine J. Strandburg of DePaul provided an outline of some of the issues that will be discussed.

The U.S. Supreme Court, Strandburg said, has become very active in patent law in the last year or two, a phenomenon not seen since the 1980s.

She said she will review recent high court decisions in patent law and will discuss cases currently before the high court or expected to come before it.

Until very recently, she said, the U.S. Supreme Court had pretty much stopped taking patent cases since the Court of Appeals for the Federal Circuit was created in 1982.

(The Federal Circuit was created by merging the Court of Customs and Patent Appeals and the Court of Claims as a response to forum shopping in patent law cases among the various circuits of the U.S. courts of appeals.

The high court probably got involved again as a result of concerns raised by the National Academy of Sciences and the Federal Trade Commission about the status of the patent system, according to Strandburg.

One such case she will discuss is *eBay v. MercExchange*, No. 05-130.

"It's a huge change in patent law," she said. Before that case, the custom established by the Federal Circuit was that whenever a court found that a patent was infringed upon, the court would issue an injunction to stop produc-

tion of the item that infringed someone else's patent, Strandburg said.

But in *eBay*, the high court said courts in patent infringement cases should apply the traditional tests to determine whether injunctions should be issued, the same legal tests that are used in all other litigation. One such test is whether payment of damages is an adequate or inadequate solution, Strandburg said.

The *eBay* case has aroused a lot of interest in the industrial community. In modern technology, she continued, an infringement of a patent on a minor component of the software can result in an injunction that stops production of a much larger product.

Moreover, she said, some people complain that firms today that don't produce anything "go digging around to buy up patents everybody has forgotten about, and go looking, trolling, for patent infringements."

Some other presentations that will be made at the meeting include discussions of the new European Patent Convention for 2007; the extent to which living matter may be patented in Argentina and India; and how the abolition of opposition proceedings in Japan and Korea may affect patent litigation in those countries.

Interestingly, Strandburg said, the U.S. is considering the establishment of opposition proceedings, which are not now allowed in this country.

She said an opposition proceeding "means that after a patent is issued, you don't have to wait to be sued for infringement; you can go to the patent office to say, 'I oppose this patent.'"

Such an "opposition proceeding" might allow several opponents to combine efforts and is considered cheaper than court litigation, according to Strandburg.

Barbara B. Bressler, the new director of DePaul's Center for Intellectual Property Law and Information Technology, said the cost to attend the program, which runs from 7:30 a.m. to 4:30 p.m. on Sept. 21, is \$100. The fee includes a light breakfast and lunch.

People can sign up, Goetken said, at www.aplf.org.

This year's meeting is coordinated by Howard L. Bernstein, a partner at Sughrue, Mion PLLC in Washington, D.C.

The APLF had been holding its annual meeting at a hotel near O'Hare International Airport, said Goetken, of Chicago's McAndrews, Held & Malloy Ltd.

But the members said that they wanted more interaction with Chicago academics. Thus Goetken and DePaul Professor Robert R. Kwall, who was then head of the school's Center for Intellectual Property Law & Information Technology, got together so that today DePaul co-sponsors the annual event and provides the space.