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FROM THE EDITOR

TOP PATENT FIRMS-HOW THEY *RANKED*

This year's list has 164 law firms on it. The number of patents issued are United States only and reflect only those issued in the firm's name. We have added a third year (1994) to our table, and the average column reflects that. As usual, percentage change from 1995 to 1996 is also listed, as well as the number of registered patent attorneys with the firm for at least the last six months of 1996.

If your firm does not appear on the list, call us at 847-705-7194. We will be updating the list on our website at the end of March, and most likely, throughout the year. The survey forms were faxed, in some cases twice, and also followed up with a phone call. In most cases, the representative's name on the form called in and requested it be sent to him/her.

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A Great Gift Idea — The "Patent's Progress Poster". View it on our web site...or page 43 of this issue. A 26" x 36", depiction or drawing if you will of the steps necessary for patent issuance (or how the patent system works). The cost is $28.00 plus $6.00 for s/h. Total $34.00. We accept MC, VISA & AMEX... To order call 800-232-8078. Ask for Steve or Doug.

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FIRST NAME: M.I.: LAST NAME:

After the Economic Espionage Act:

HIRING, FIRING, AND DEALING IN CORPORATE AMERICA

BY STACEY A. BARLOW AND STASIA L. OGDEN



Stacey A. Barlow



Stasia L. Ogden

Stacey Barlow and Stasia Ogden are attorneys in the patent law department of Johnson & Johnson. The views expressed herein are those of the authors and are not those of Johnson & Johnson or its affiliates.

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This past October, President Clinton signed into law the Economic Espionage Act of 1996, making the misappropriation or theft of trade secrets a federal crime. The new law is intended to help protect trade secrets, which are vital to the competitiveness of U.S. companies. U.S. companies commit much time and money in the development of proprietary information such as marketing plans, production processes, and computer software, that will give them a competitive advantage in the marketplace. Without strong deterrents against the theft of such trade secrets, the competitive advantages hard earned by U.S. companies may be in jeopardy. Indeed, the House of Representatives' subcommittee on crime estimates that economic espionage costs U.S. businesses up to $50 billion a year.[1]

Prior to the enactment of the Economic Espionage Act of 1996, federal prosecutors had to rely on the National Stolen Property Act[2], wire fraud[3] or mail fraud statutes[4] in efforts to bring trade secret thieves to justice. In drafting those laws, Congress did not have the protection of trade secrets in mind and, therefore, did not expressly cover the theft or improper transfer of trade secrets. Thus, the new law provides the first specific federal means to protect U.S. companies against the theft or misappropriation of trade secrets.

With the new law, Congress has enacted a statute aimed directly at punishing any individual or organization engaged in the misappropriation or theft of a trade secret. A quick read of the Act reveals that it will likely offer protection of trade secrets as promised by Congress. Some are concerned, however, that it may go too far and even backfire in some instances.

With a more detailed review of the law, one discovers that the law casts a wide net with its definition of trade secret. A trade secret is broadly defined as all forms and types of financial, business scientific, technical, economic, or engineering information.[5] Furthermore, individuals and organizations who violate the law face potentially harsh penalties. An organization may be fined up to $5,000,000 and individuals involved could be imprisoned up to 10 years, fined or both. Moreover, if the illegal act benefits a foreign government, instrumentality, or agent, convicted individuals may be sentenced for up to 15 years with fines for organizations permitted up to $10,000,000 and individuals as high as $500,000.[6] In addition to fines and imprisonment, the Act provides for the possibility of criminal forfeiture as well.[7] Forfeiture of property used in or derived from a violation of the law would be at the discretion of the court according to Section 413 of the

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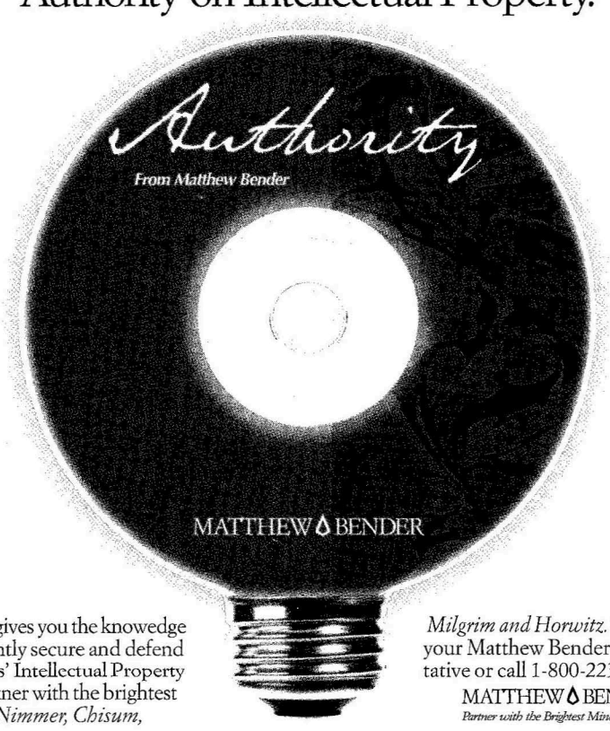

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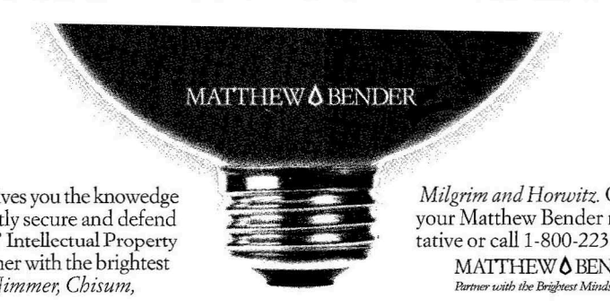
and computer software, that will give them a competitive advantage in the marketplace. Without strong deterrents against the theft of such trade secrets, the competitive advantages hard earned by U.S. companies may be in jeopardy. Indeed, the House of Representatives' subcommittee on crime estimates that economic espionage costs U.S. businesses up to $50 billion a year.[1]



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HOW THEY *Ranked*

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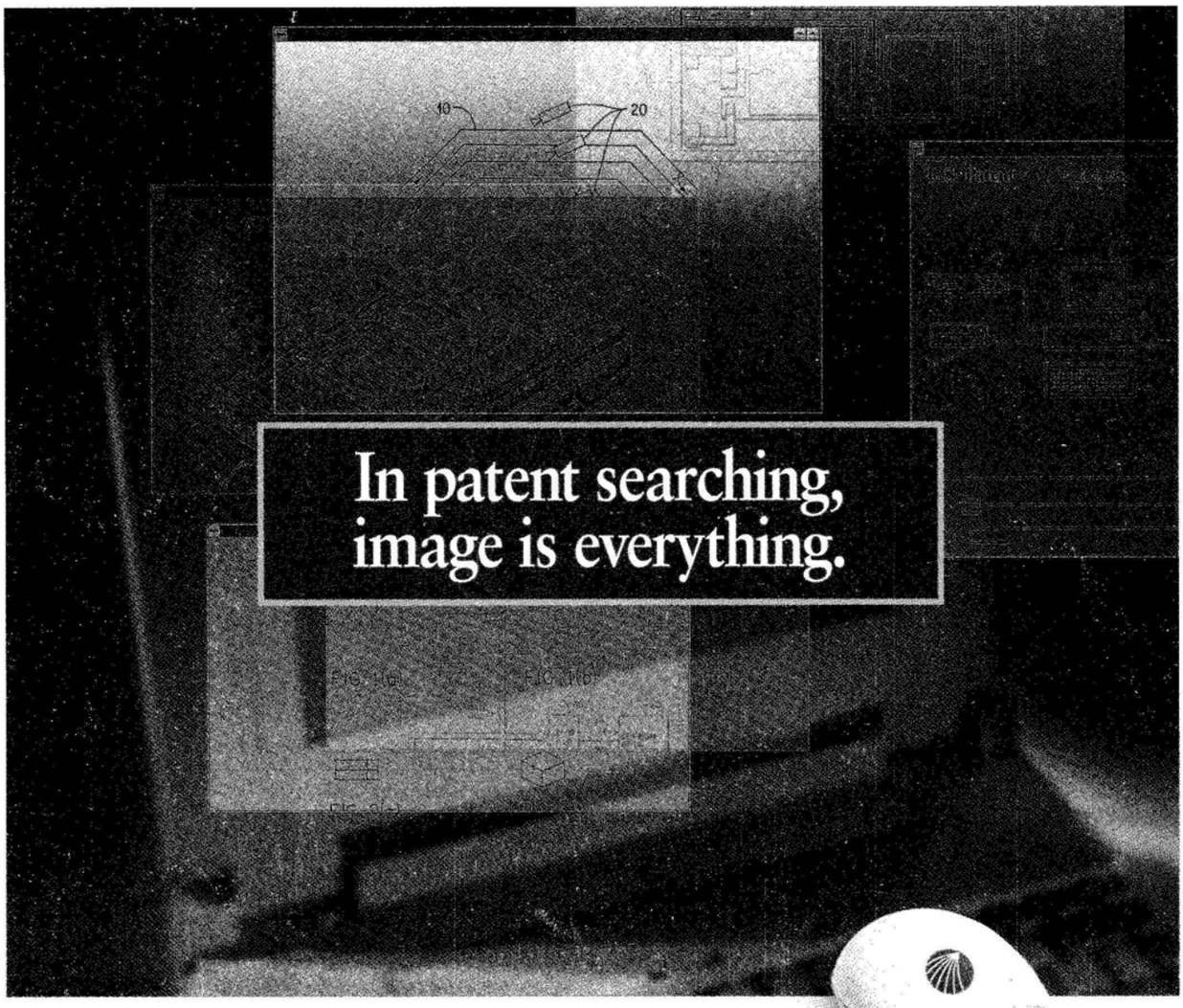
We have learned that many firms have corporate clients that they draft patent applications for but the clients prosecute the patents themselves and have them issued in their own name. While this may artificially ***deflate*** some firms' numbers, there is no way to verify those counts so we have chosen not to include them. We have also learned that some firms are brought in after a patent application has been written but not prosecuted. This could result in artificially ***inflated*** numbers.

(**Note**: It was recently brought to our attention that some firms may have been reporting not only United States patents but foreign issues as well. Since the list's inception we have stressed the fact we want only U.S., but cannot say with 100% certainty that some firms did not report both numbers. In the future, we will be asking for ***both*** sets of numbers.)

RANK	NAME	PATENTS ISSUED 1996	1995	1994	AVG.	% CHG. 95-96	# OF PAT. ATTYS
1	Oblon Spivak McClelland Maier & Neustadt	2445	2361	2532	2446.0	+3.6	67
2	Sughrue Mion Zinn Macpeak & Seas	2341	2389	2380	2370.0	-2.0	74
3	Cushman Darby & Cushman	1814	1624	1617	1685.0	+11.7	57
4	Burns Doane Swecker & Mathis	1418	1230	1287	1311.7	+15.3	78
5	Foley & Lardner	1219	1279	1159	1219.0	-4.7	71
6	Birch Stewart Kolasch & Birch	1210	1145	1110	1155.0	+5.7	32
7	Finnegan Henderson Farabow Garrett & Dunner	1131	955	1001	1029.0	+18.4	150
8	Lowe Price LeBlanc & Becker	982	930	1006	972.7	+5.6	42
9	Wenderoth Lind & Ponack	942	1000	964	968.7	-5.8	13
10	Antonelli Terry Stout & Kraus	904	854	976	911.3	+5.9	13
11	Ostrolenk Faber Gerb & Soffen	866	699	561	708.7	+23.9	20
12	Nixon & Vanderhye	833	851	928	870.7	-2.1	25
13	Hill Steadman & Simpson	831	845	763	813.0	-1.7	26
14	Blakely Sokoloff Taylor & Zafman	797	662	571	676.7	+20.4	35
15	Townsend & Townsend & Crew	796	647	840	761.0	+23.0	71
16	Armstrong Westerman Hattori Mcleland & Naughton	704	863	841	802.7	-18.4	18
21	Staas & Halsey	622	523	503	549.3	+18.9	n/p
22	Nikaido Marmelstein Murray & Oram	610	564	502	558.7	+8.2	n/p
23	Bacon & Thomas	578	491	550	539.7	+17.7	10
24	Leydig Voit & Mayer	523	598	588	569.7	-12.5	49
25	Limbach & Limbach	511	491	518	506.7	+4.1	33
26	Cooper & Dunham	498	537	444	493.0	-7.3	36
27	Knobbe Martens Olson & Bear	488	347	352	395.7	+40.6	49
28	Christensen O'Connor Johnson & Kindness	483	167	195	281.7	+189.2	30
29	Beveridge DeGrandi Weilacher & Young	475	374	282	377.0	+27.0	n/p
30	Spencer & Frank	470	446	502	472.7	+5.4	12
31	Skjerven Morrill Macpherson Franklin & Friel	455	361	296	370.7	+26.0	40
32	Darby & Darby	450	438	559	482.3	+2.7	40
33	Fay Sharpe Beall Fagan Minnich & McKee	447	388	429	421.3	+15.2	27
34	Wolf Greenfield & Sacks	446	380	442	422.7	+17.4	43
35	Harness Dickey & Pierce	444	389	434	422.3	+14.1	60
36	Browdy & Neimark	438	427	385	416.7	+2.6	6
37	Evenson McKeown Edwards & Lenahan	426	402	347	391.7	+6.0	0



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HOW THEY RANKED

RANK	NAME	PATENTS ISSUED 1996	1995	1994	AVG.	% CHG. 95-96	# OF PAT. ATTYS
41	Jacobson Price Holman & Stern	394	418	449	420.3	-5.7	11
42	Seed & Berry	394	488	149	343.7	-19.3	41
43	Brinks Hofer Gilson & Lione	392	369	306	355.7	+6.2	88
44	Greenblum & Bernstein	363	356	407	375.3	+2.0	21
45	Klarquist Sparkman Campbell Leigh & Whinston	350	300	224	291.3	+16.7	31
46	Curtis Morris & Safford	343	307	319	323.0	+11.7	31
47	Whitham Curtis Whitham & Mc Ginn	322	252	192	255.3	+27.8	9
48	Sprung Horn Kramer & Woods	308	320	335	321.0	-3.8	9
49	Felsman Bradley Gunter & Dillon	304	286	270	286.7	+6.3	18
50	Millen White Zelano & Branigan	301	268	358	309.0	+12.3	12
51	Connolly & Hutz	296	270	340	302.0	+9.6	14
52	Karl F Ross P.C.	289	282	283	284.7	+2.5	3
53	Brumbaugh Graves Donohue & Raymond	288	258	256	267.3	+11.6	38
54	Ratner & Prestia	284	242	216	247.3	+17.4	18
55	Young & Basile	280	316	115	237.0	-11.4	16
56	Lyon & Lyon	277	271	290	279.3	+2.2	64
57	Pravel Hewitt Kimball & Krieger	274	265	221	253.3	+3.4	24
58	Marshall O'Toole Gerstein Murray & Borun	272	284	290	282.0	-4.2	46
59	Brooks & Kushman	270	220	238	242.7	+22.7	34
60	Woodcock Washburn Kurtz Mackiewicz & Norris	269	257	304	276.7	+4.7	45
61	Dike Bronstein Roberts & Cushman	266	285	283	278.0	-6.7	16
62	Wood Herron & Evans	250	259	266	258.3	-3.5	28
63	Panitch Schwarze Jacobs & Nadel	242	191	160	197.7	+26.7	15
64	Pearne Gordon McCoy & Granger	239	186	193	206.0	+28.5	16
65	McAulay Fisher Nissen Goldberg & Kiel	230	206	205	213.7	+11.7	13
66	Sterne Kessler Goldstein & Fox	228	216	209	217.7	+5.6	36
57	Pravel Hewitt Kimball & Krieger	274	265	221	253.3	+3.4	24
58	Marshall O'Toole Gerstein Murray & Borun	272	284	290	282.0	-4.2	46
59	Brooks & Kushman	270	220	238	242.7	+22.7	34
60	Woodcock Washburn Kurtz Mackiewicz & Norris	269	257	304	276.7	+4.7	45
61	Dike Bronstein Roberts & Cushman	266	285	283	278.0	-6.7	16
62	Wood Herron & Evans	250	259	266	258.3	-3.5	28
63	Panitch Schwarze Jacobs & Nadel	242	191	160	197.7	+26.7	15
64	Pearne Gordon McCoy & Granger	239	186	193	206.0	+28.5	16
65	McAulay Fisher Nissen Goldberg & Kiel	230	206	205	213.7	+11.7	13
66	Sterne Kessler Goldstein & Fox	228	216	209	217.7	+5.6	36
67	Kane Dalsimer Sullivan Kurucz Levy Eisele & Richard	222	244	263	243.0	-9.0	9

RANK	NAME	PATENTS ISSUED 1996	1995	1994	AVG.	% CHG. 95-96	# OF PAT. ATTYS
71	Shapiro & Shapiro	213	194	137	181.3	+9.8	3
72	Bierman & Muserlian	213	234	222	223.0	-9.0	3
73	Dunlap & Codding	209	217	93	173.0	-3.7	5
74	Senniger Powers Leavitt & Roedel	209	255	122	195.3	-18.0	28
75	Brown Martin Haller & McClain	207	233	n/p	220.0	-11.2	12
76	Fitch Even Tabin & Flannery	203	169	206	192.7	+20.1	36
77	Graham & James	203	150	136	163.0	+35.3	31
78	Baker & Botts	199	202	206	202.3	-1.5	49
79	Price Heneveld Cooper DeWitt & Litton	197	234	216	215.7	-15.8	12
80	Weingarten Schurgin Gagnebin & Hayes	193	210	162	188.3	-8.1	14
81	Hamilton Brook Smith & Reynolds	190	133	145	156.0	+42.9	32
82	Zarley McKee Thomte Voorhees & Sease	185	196	187	189.3	-5.6	13
83	Cohen Pontani Lieberman & Pavane	184	148	108	146.7	+24.3	19
84	Renner Otto Boisselle & Sklar	181	146		163.5	+24.0	14
85	Scully Scott Murphy & Presser	180	189	198	189.0	-4.8	21
86	Ware Fressola Van Der Sluys & Adolphson	178	135	110	141.0	+31.9	9
87	Gifford Krass Groh Sprinkle Patmore Anderson & Citkowski	177	158	198	177.7	+12.0	15
88	Wells St. John Roberts Gregory & Matkin	174	114	124	137.3	+52.6	12
89	Parkhurst Wendel & Burr	170	239	223	210.7	-28.9	5
90	Baker Maxham Jester & Meador	164	120	105	129.7	+36.7	10
91	Jenkens & Gilchrist	160	54	66	93.3	+196.3	36
92	Reising Ethington Barnard & Perry	155	136	149	146.7	+14.0	19
93	Collard & Roe	154	173	144	157.0	-11.0	6
94	McAndrews Held & Malloy	152	n/p	n/p	n/a	n/a	31
95	Polster Lieder Woodruff & Lucchesi	150	136	157	147.7	+10.3	17
96	Kinney & Lange Anderson & Citkowski	148	150	158	152.0	-1.3	24
88	Wells St. John Roberts Gregory & Matkin	174	114	124	137.3	+52.6	12
89	Parkhurst Wendel & Burr	170	239	223	210.7	-28.9	5
90	Baker Maxham Jester & Meador	164	120	105	129.7	+36.7	10
91	Jenkens & Gilchrist	160	54	66	93.3	+196.3	36
92	Reising Ethington Barnard & Perry	155	136	149	146.7	+14.0	19
93	Collard & Roe	154	173	144	157.0	-11.0	6
94	McAndrews Held & Malloy	152	n/p	n/p	n/a	n/a	31
95	Polster Lieder Woodruff & Lucchesi	150	136	157	147.7	+10.3	17
96	Kinney & Lange	148	150	158	152.0	-1.3	24
97	Rothwell Figg Ernst & Kurz	147	117	125	129.7	+25.6	21
98	Dennison Meserole Pollack & Scheiner	146	128	145	139.7	+14.1	5

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102	Synnestvedt & Lechner	136	110	109	118.3	+23.6	13
103	Fliesler Dubb Meyer & Lovejoy	134	107	101	114.0	+25.2	19
104	Lee Mann Smith McWilliams Sweeney & Ohlson	130	123	90	114.3	+5.7	12
105	Rhodes Coats & Bennett	129	119	94	114.0	+8.4	15
106	Conley Rose & Tayon	127	81	50	86.0	+56.8	17
107	Lahive & Cockfield	126	111	118	118.3	+13.5	25
108	Sidley & Austin	125	88	100	104.3	+42.0	31
109	Hoffmann & Baron	123	88	72	94.3	+39.8	22
110	Harris Beach & Wilcox	120	150	207	159.0	-20.0	13
111	Westman Champlin & Kelly	119	89	93	100.3	+33.7	7
112	Morrison Law Firm	116	94	120	110.0	+23.4	7
113	Majestic Parsons Siebert & Hsue	115	84	86	95.0	+36.9	10
114	Salter & Michaelson	114	68	n/p	91.0	+67.6	n/p
115	Holland & Hart	113	n/p	n/p	n/a	n/a	15
116	Wood Phillips Van Santen Clark & Mortimer	112	109	158	126.3	+2.8	n/p
117	Robert W Becker & Associates	106	107	98	103.7	-.9	1
118	Kolisch Hartwell Dickinson McCormack & Heuser	101	56	n/p	78.5	+80.4	n/p
119	Greer Burns & Crain	101	81	52	78.0	+24.7	9
120	Griffin Butler Whisenhunt & Kurtossy	100	111	108	106.3	-9.9	5
121	Klauber & Jackson	98	70	72	80.0	+40.0	7
122	Jones Day Reavis & Pogue	95	133	114	114.0	-28.6	39
123	Needle & Rosenberg	95	60	n/p	77.5	+58.3	14
124	Haugen & Nikolai	94	100	128	107.3	-6.0	9
125	R E Bushnell & Law Firm	92	108	155	118.3	-14.8	6
126	Eckert Seamans Cherin & Mellott	92	82	114	96.0	+12.2	15
127	Davis & Bujold	91	82	123	98.7	+11.0	n/p
131	Thorpe North & Western	87	82	85	84.7	+6.1	9
132	Head Johnson & Kachigian	85	86	83	84.7	-1.2	9
133	Welsh & Katz	84	127	115	108.7	-49.4	22
134	Shlesinger Arkwright & Garvey	82	68	67	72.3	+20.6	n/p
135	Koda & Androlia	80	99	121	100.0	-19.2	2
136	Hedman Gibson & Costigan	75	65	69	69.7	+15.4	6
137	Testa Hurwitz & Thibeault	73	54	n/s	63.5	+35.2	26
138	Sheffe Pinckney & Sawyer	70	61	69	66.7	+14.8	5
137	Madson & Metcalf	68	65	43	58.7	+4.6	7
140	Hodgson Russ Andrews Woods & Goodyear	68	47	34	49.7	+44.7	4
141	Fishman Dionne Cantor & Colburn	67	108	87	87.3	-38.0	6
142	Shoemaker & Mattare	65	69	92	75.3	-5.8	2
143	Gottlieb Rackman & Reisman	62	43	56	53.7	+44.2	12
144	Fisher Christen & Sabol	60	44	n/p	52.0	+36.4	5
145	D'Alessandro & Ritchie	59	51	57	55.7	+15.7	8
146	Thorp Reed & Armstrong	53	35	17	35.0	+51.4	4
147	Saliwanchik & Saliwanchik	52	48	46	48.7	+8.3	9
148	Lackenbach Siegel Marzullo Aronson & Greenspan	52	54	79	61.7	-3.7	15
149	Myers Liniak & Berenato	50	45	42	45.7	+11.1	6
150	Law Offices of Barry R. Lipsitz	49	37	51	45.7	+32.4	2
151	Kirkpatrick & Lockhart	44	38	41	41.0	+15.8	12
152	Greenlee Winner & Sullivan	42	34	30	35.3	+23.5	3
153	Frost & Jacobs	41	56	50	49.0	-26.8	12
154	Dehlinger & Associates	37	31	30	32.7	+19.4	2
155	Winstead Sechrest & Minick	36	26	21	27.7	+38.5	10
156	Gerald E. Linden P.A.	35	41	39	38.3	-14.6	1
157	Weingram & Associates	34	29	28	30.3	+17.2	4

CLIENT DEVELOPMENT TOOLS:
Be Aware of Your Online Persona



BY: NANCY ROBERTS LINDER

E-mail certainly has made communicating a lot easier, but with the advent of using e-mail comes new challenges. First impressions, as we all know, are critical — and you rarely have a second chance to correct a poor perception or image. Thus, it bears emphasizing that great care should be taken when communicating with e-mail.

With the increasing use of e-mail, it seems that many professionals have "let their hair down" when it comes to communicating, which can be potentially harmful to one's image. Reputations can be compromised and even damaged by failing to follow the basic rules of business etiquette.

Whether you participate in discussion groups or just communicate with your clients and colleagues via e-mail, it is important to always adopt these basic tenants of e-mail and business etiquette:

1. **Write using a "business conversation" tone.** While e-mail is meant to be less formal, it should not preclude you from using proper grammar and English. Keep the tone of the e-mail communication professional and avoid using colloquialisms (such as "see ya tomorrow").
2. **Typing is important.** When typing your e-mail message or response, type as you would when writing a business letter, using proper punctuation and capitalization. Never type in all capital letters, it is considered shouting. Check your spelling. Most e-mail software today has built in spell checking features, but of course, always proof your messages before you hit the "send" button.
3. **Never use profanity.** It never ceases to amaze me how careless people can be when communicating with e-mail, especially when racist remarks, sexual innuendos or profane language is used. Remember, even though you believe e-mail is private, it is basically a written communication (like a letter) which can be passed on to others. Don't compromise your professional image by using inappropriate language or references in an e-mail message which could be used against you.
4. **Respond promptly.** E-mail has "instantaneous response" implications. Thus, if you do not read your e-mail on a daily basis, you could be doing yourself a disservice. Individuals expecting instantaneous feedback, and not getting it, may make assumptions about your responsiveness to their inquiries—which can translate into lost business opportunities.
5. **Take care with confidential information.** When sending confidential information over the Internet, be sure to encrypt the message. There is always a chance that you may type an e-mail address incorrectly and end up sending your message to the wrong party. This also holds true for discussion groups. Like dealing with the media, if you are concerned about your comments being used out of context, do not announce or post them publicly. IPT

Nancy is the Principal of her own firm, Nancy Roberts Linder Consulting, located in LaGrange, Illinois. She can be reached at (708) 482-0760 or via e-mail at nrl@nrlinder.com.

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In Search Of . . . Patents On The Web

IBM LAUNCHES COMPREHENSIVE, FREE U.S. PATENT SEARCH WEB SITE

San Jose, CA — IBM today launched one of the most comprehensive free World Wide Web services for finding and viewing information contained in more than 2 million U.S. patents issued in the past 26 years.

Leveraging its technical skills in databases, digital libraries and electronic commerce, IBM's Patent Serve site http://-www.ibm.com/patents permits anyone with access to the World Wide Web to search and retrieve information free of charge on patents granted since 1971. Searches can be requested by patent number or by keywords in certain patent information categories: title, inventor, assignee, claims, attorney/agent and patent references.

Full images of nearly 1 million U.S. patents issued since 1987 can also be viewed free of charge. IBM intends to add the images of the 1974-1986 patents during the first few months of 1997.

Using a web order form, copies of U.S. patents can be easily ordered for a fee from Optipat, Inc., with delivery by mail, fax or on CD-ROM.

In time, IBM intends to expand its patent server's capabilities to include searching of the full text of patents, international patent data and links to other patent-information vendors providing additional supplementary services.

IBM's Patent Server site is an outgrowth of a capability developed within IBM's Research Division that has enabled IBM's own researchers and patent attorneys to search U.S. patents for the past year. "It saved us time and money, so we thought it would be a valuable resource to the public as well," said Marshall Phelps, vice president, IBM intellectual property and licensing. "Being able to view the patent images is especially important because so much critical information is contained in a patent's figures and drawings."

"Our site provides more patent images for free viewing than any other Web site we're aware of," he added.

Free access to such comprehensive patent information is also expected to hasten the pace of innovation across the board, because inventors can more easily find and improve upon or license—rather than inadvertently duplicating—inventions that have already been made.

Another goal of IBM's Patent Server project is to create a comprehensive, easy-to-use digital archive prototype for making public information available on the World Wide Web. This activity is expected to help increase the number of people who recognize the value of Internet-based activities and the number of public-and private-sector organizations worldwide that will create similar servers for their internal and external needs.

TECHNICAL DETAILS

IBM's Patent Server provides easy access to the information in patents issued by the U.S. Patent and Trademark Office from January 5, 1971 to December 17, 1996. Information and images of newly issued patents will be regularly added to the database. The server supports simple searching by keyword, phrase or patent number as well as more advanced searching using boolean operators (<and>, <or>, <not>).

Within any patent, reference made to other U.S. patents are hyperlinked, allowing users to locate and view the "prior-art" by simply clicking on the cited patents. These links are bi-directional and use IBM's DB2 relational database to permit easy access to later patents that reference the document being viewed.

In addition, IBM's Patent Server includes information on patents that have lapsed and entered the public domain before reaching their maximum lifetime because their required maintenance fees had not bee paid.

IBM's Patent Server Web site uses many open-system technologies. When all of the images are loaded into the system, some 1.2 trillion bytes of patent data will reside on about 2,800 CD-ROMs made by Optipat from the official public information files of the U.S. Patent & Trademark Office. (The information available today—including images of patents issued since 1987—are on about 1,300 CD-ROMs.)

The IBM home page can be found on the Internet at: http://www.ibm.com. More details about the technological achievements of IBM Research scientists can be found on the IBM Research home page at: http://-www.research.ibm.com. IPT

MICROPATENT® JOINS IBM IN PROVIDING FREE PATENT INFORMATION

MicroPatent will offer the Online Gazette, the company's Internet version of the United States Patent & Trademark Office's Official Gazette, free of charge.

East Haven, CT—The announcement on January 9th that IBM has made available 26 years of U.S. patent information and 10 years of corresponding images on the Internet marks yet another vendor entering the already crowded commercial patent database market. Following IBM's lead, MicroPatent will open its new Online Gazette, which was priced at a subscription rate of $600 per year, to users free of charge.

The Online Gazette, which is part of MicroPatent's PatentWEB site (www.micropat.com), contains fully searchable summary information, which includes abstracts and exemplary claims, for each of the approximately 2,500 new U.S. patents issued each week. In addition, the exemplary drawings and the chemical structures/equations found in the exemplary claims are part of each Online Gazette record. Users can construct full Boolean searches using 16 fields, and then browse the hit list as if flipping through the pages of the print copy. As a result, the site makes it dramatically easier for scientific researchers, information professionals, patent attorneys, or anyone to immediately decide whether or not a particular patent is

The Official Gazette (OG) is a weekly publication of the United States Patent & Trademark Office and has been published continuously since Volume 1 (January-June) was issued in 1872. Each edition of the OG features a brief summary of all the new patents issued each week, including exemplary drawings. Approximately 2,500 new patents are covered in each issue, as well as administrative information such as expired and reinstated patents, reexamination and reissue applications, announcements, changes in procedures, and requests for comments. The Online Gazette contains

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Lincoln, Wilson, and Brandeis: The Golden Thread of Invention

BY ARTHUR P. GERSHMAN

Most patent attorneys are aware that Lincoln was an inventor, having authored U.S. patent number 6,469, directed to a bellows-like device on a ship plying inland waterways to decrease the difficulty of traversing rapids.[1]

Carl Sandberg, of course, has the most lyric description of Lincoln's conception of his invention[2]: On a trip back East, mostly for "politickin,'" Lincoln spoke on the same bill as William H. Seward, Governor of New York, at Boston's Tremont Temple.

At Albany he stopped off and talked with Thurlow Weed, the Whig boss of New York; they went out and visited Millard Fillmore, the whig candidate for Vice President. He rode on the Erie Canal to Buffalo, visited Niagara Falls, went down to Lake Erie, and overland to Chicago and Springfield.

After visiting his family, his law partner [William H. Herndon], and friends, he turned his law-office corner into a shop where he whittled on a wooden model of a steamboat with 'expansible buoyant chambers, sliding spars, and ropes and pulleys.' It was an invention, he told Herndon, and was going to work a revolution in steamboat navigation. On the way from Niagara Falls, the steamboat he was on got stuck on a sand-bar; the captain ordered barrels, boxes, and empty casks forced under the vessel; they lifted the vessel off the sandbar with their 'expansible buoyant chambers.' So Lincoln finished off a model, and wrote a description of its workings, all to be patented.

A golden thread gently binds Lincoln, Wilson, and Louis Dembitz Brandeis. It is the golden thread of invention.

Louis D. Brandeis (1856-1941) served on the U.S. Supreme Court from 1916 to 1939. A member of the Massachusetts bar, he was a Democrat in private practice when appointed. He served as counsel for variously: the government, industry, and "for the people" in numerous administrative and judicial proceedings, both state and federal.[3]

Brandeis, according to Richard M. Abrams[4] "contributed the first serious challenge to the major rationale of the consolidation movement," that is, the antitrust movement in the progressive era. Brandeis quoted Woodrow Wilson in a series of articles prepared for Harper's Magazine in 1913, which were subsequently brought together in book form as *OTHER PEOPLE'S MONEY* and how the Bankers use it.

Chapter 1, "OUR FINANCIAL OLIGARCHY," starts as follows:

> President Wilson, when Governor, declared in 1911:
>
> 'The great monopoly in this country is the money monopoly. So long as that exists, our old variety and freedom and individual energy of development are out of the question.'
>
> The final chapter concludes as follows:
>
> President Wilson has said wisely:
>
> 'No country can afford to have its prosperity originated by a small controlling class. The treasury of America does not lie in the brains of the small body of men now in control of the great enterprises...It depends upon the inventions of unknown men, upon the originations of unknown men, upon the ambitions of unknown men.'

Belying the adage that a prophet is without honor in his own land, Brandeis had prophetically been catapulted from a relative obscure radical lawyer into the highest echelon of public office in the land with his appointment to the Supreme Court of the United States of America by President Woodrow Wilson in 1914. Upon his confirmation after a bitter battle in the Senate, Louis D. Brandeis became a legendary figure in American social, political, and legal history. IPT



ENDNOTES

1. See AIPLA Bulletin, January-February 1996 for some interesting material not readily available elsewhere, as well as OG May 22, 1849, available on the floor of the main USPTO Search Room.
2. Sandberg, Carl, Abraham Lincoln The Prairie Years, Vol. 1, Harcourt Brace & World, NY 1926, at p. 401.
3. Lockhart, Kamisar & Choper, "Constitutional Law" Appendix A[4] West Publishing, 1964.
4. Brandeis, Louis D., OTHER PEOPLE'S MONEY and how the Bankers use it, Ed. Richard M. Abrams, Harper Torchbooks, NY 1967.

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THE CUTTING EDGE

Intellectual Property Today™ is pleased to announce the addition of a new section, **The Cutting Edge.** With its information on current technological developments, **The Cutting Edge** will keep you informed on all phases of your practice. This section includes financial information (how intellectual property issues affect companies' revenue, profits, etc.), patent pending technology, newly issued patents, licensing/technology transfer agreements, etc. If you have information that is appropriate for **The Cutting Edge**, send it along to us.

LICENSING

AudioFAX IP LLC Issues License to Premiere Technologies for Fax Patents

AudioFAX IP LLC and **Premiere Technologies** (Nasdaq: PTEK) announced that they entered into an agreement for a long-term, nonexclusive license covering the use of specific AudioFAX patented fax technologies. The patents cover fax broadcast, fax mailbox, and other fundamental fax applications, including Internet-based store and forward faxing. This agreement will settle the patent infringement litigation initiated by AudioFAX against Premiere in July 1996 and against DeltaTel, Inc. in October 1996. As part of the agreement, Premiere will be able to pass the license for the Premiere products and services through to its customers and strategic partners.

Trusted Information Systems and
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Trusted Information Systems and IBM Announce Patent and Software License Agreement

Trusted Information Systems (Nasdaq:

Digimarc Extends the Reach of its Copyright Communication System Extensis Licenses PictureMarc Reader

Digimarc Corporation, the leader in digital watermark products and technology, today announced a relationship with **Extensis Corporation** which extends the reach of Digimarc's end-to-end copyright communication system. Extensis has agreed to license the PictureMarc™ Reader for inclusion in future versions of its graphics and imaging tools, offering copyright protection from the point of image creation to image management and viewing. PictureMarc from Digimarc™ imperceptibly embeds copyright and authorship information in images. The PictureMarc Reader automatically detects the presence of a Digimarc watermark in an image and notifies the user with a visual indication that copyright and authorship information is present. Using the Reader, users can display the watermark contents and gain access to image creator contact details. Extensis plans to place the PictureMarc Reader in its key graphics and imaging tools. As a result, photographers, illustrators, and image distributors will be able to rely on automatic notification of copyright and instant access to contact details across an even wider group of image consumers.

HADCO Signs Licensing Agreement for Micro Vias

HADCO Corporation (Nasdaq: HDCO) announced the signing of a licensing agreement allowing HADCO to produce micro vias using IBM's patented Surface Laminar Circuit - Dry Film (SLC-DF) technology. Micro vias are holes smaller than eight mils (200um) in diameter. With the development of chip scale packaging at the micro vias to satisfy the rapid growth in demand for this technology.

HADCO Signs Licensing Agreement for Micro Vias

HADCO Corporation (Nasdaq: HDCO) announced the signing of a licensing agreement allowing HADCO to produce micro vias using IBM's patented Surface Laminar access to image creator contact details. Extensis plans to place the PictureMarc Reader in its key graphics and imaging tools. As a result, photographers, illustrators, and image distributors will be able to rely on automatic notification of copyright and instant access to contact details across an even wider group of image consumers.

PATENT APPLICATIONS

Paracelsian Files Patent Application Covering Use Of Novel Compounds for HIV

Cooperative research now under way with National Cancer Institute (NCI) to evaluate effectiveness of these novel compounds in NCI's HIV-1 model systems.

Paracelsian Inc. (Nasdaq: PRLN) announced that it has filed a patent application with the U.S. Patent and Trademark Office, relating to inhibiting CD4+ T cell depletion induced by HIV-1 infected cells. The human immunodeficiency virus (HIV) infects cells of the immune system known as CD4+ T cells. HIV infection eventually produces the loss of CD4+ T cells, resulting in the onset of AIDS. Paracelsian scientists have discovered methods of protecting CD4+ T cells from being destroyed by HIV-1 infected cells.

Innovative Medical Services Announces Patent Application Filing

Innovative Medical Services (Nasdaq: PURE) announced that it has filed an application with the U.S. Patent and Trademark Office for patent protection of its electronically automated version of the popular Fillmaster purification system. The electronically automated version of the Fillmaster provides easier and more precise measurement than the original Fillmaster. Users simply key in the amount of filtered water

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with the U.S. Patent and Trademark Office for its newly developed phase detector technology. The invention is described in the application as a "Balanced and Synchronized Phase Detector for an AC Induction Motor Controller." The device improves motor stability, increases energy savings levels and is specifically designed to work effectively with energy efficient motors. Nicholas Anderson, the primary inventor and PEC's President stated that the device has the ability to adapt to the particular operating characteristics of the motor on which it is installed. PEC will utilize this technology in its current product line while the Patent Office processes the application.

PATENTS ISSUED

Novartis Corporation Receives Patent for Controlling Corn Insects

Novartis Corporation received a U.S. patent today for the control of insect larvae in corn plants. The patent covers a method of protecting corn against insects, including European corn borers, which are killed when they eat corn plants containing the Bacillus thuringiensis (Bt) protein. U.S. Patent No. 5,595,733 is the first patent granted in the U.S. directed to this method of insect control.

Oncor Receives Patent on Novel DNA Amplification Technology

Oncor, Inc. (Amex: ONC) announced that it has been issued US Patent 5,593,840 covering its Tri-Amp nucleic acid amplification technology. DNA (nucleic acid) amplification is a widely-used technology in molecular medicine. When compared to current methods, Oncor's Tri-Amp is designed to offer improved specificity in target detection by reducing background. In addition, Tri-Amp incorporates a novel system that may be used to further reduce background at the detection step of the procedure. The resulting improvement in specificity, which does not compromise sensitivity, is of practical benefit, particularly when detecting nucleic acid sequences present in very low numbers.

BCAM International Announces Three U.S. Patents Issued on its Intelligent Surface Technology

Opens Up New World of Comfort and Fit to Wide Range of Products

BCAM International, Inc. (Nasdaq: BCAM) announced that the United States Patent Office has granted the software technology company three new patents in addition to BCAM's three existing patents relating to the Company's "Intelligent Surface Technology" (IST), further advancing BCAM's patent coverage of this exceptional breakthrough technology. These six patents, combined with a notice of allowance on a European patent and four pending U.S. patents, will give BCAM total intellectual property protection that differentiates its intelligent surface technology from traditional pneumatic (non-intelligent) systems.

BioSpecifics Technologies Corp. Gains U.S. Patent for Treatment of Dupuytren's Disease

BioSpecifics Technologies Corp., (Nasdaq: BSTC) announced that it has been granted patent number 5,589,171 by the U.S. Patent Office for the use of its collagenase enzyme to treat Dupuytren's disease. This is the 9th U.S. patent BioSpecifics has received or been assigned for the use of collagenase in humans. The use of collagenase for the treatment of Dupuytren's disease has previously received Orphan Drug Designation from the FDA.

Intelligent Medical Imaging Issued U.S. Patent for Medial Slide Holder

Intelligent Medical Imaging announced the issuance from the United States Patent and Trademark Office (USPTO) for its design of an Improved Medical Slide Holder. The Medical Slide Holder patent issued by the USPTO provides a simple, yet critical, interface between laboratory personnel and the MICRO21 system. The proprietary features of the Medical Slide Holder provide a platform which repeatedly locates and secures slide samples for review withing the MICRO21 system. These features are essential to maintaining the processing speed of various MICRO21 system applications. The easy to load Medical Slide Holder allows laboratory personnel to preload a multitude of slides in just a manner of minutes, and the design is flexible enough to support slide samples for all microscopic procedures performed by the MICRO21 system. After processing, the Medical Slide Holders provide a convenient method for archiving and storage of viewed slide samples. Thus, providing additional time savings to laboratory personnel.

Genelabs Receives Broad Patent For Gene-Regulating Drugs

Patent Covers Therapeutic Methods for Potential New Class of Drugs

Genelabs Technologies, Inc. (Nasdaq: GNLB) announced that it has received United States Patent #5,578,444 for "Sequence-Directed DNA-Binding Molecules Compositions and Methods." The patent covers therapies in which a small-molecule drug will act by binding to a sequence-specific region of a gene and displacing a regulatory protein from its binding site, potentially creating an entirely new field of drugs for the regulation of disease-associated genes. The patent specifically claims a method for altering the binding characteristics of a DNA-binding protein (e.g., a transcription factor) by adding a small-molecule drug that binds to a target region in the DNA that is adjacent to but does not overlap the regulatory factor binding site by greater than four base pairs.

LXR Biotechnology Announces Patent for Drug Targeting HIV, Chemotherapy and Radiation Therapy

LXR Biotechnology Inc. (Amex: LXR) announced the issuance of a United States patent for Lexirin, its lead compound for the treatment of gastrointestinal disorders, most importantly those resulting from HIV, chemotherapy and radiation therapy. The patent includes claims for methods of producing Lexirin, its composition and its use in inhibiting apoptosis (programmed cell death). In the first quarter of 1997, LXR Biotechnology plans to complete a Phase I trial of Lexirin for the treatment of AIDS-related diarrhea. In the second

Continued On Page 16

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BCAM International Announces Three U.S. Patents Issued on its Intelligent Surface Technology

Opens Up New World of Comfort and Fit to Wide Range of Products

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Continued From Page 15

quarter of 1997, the company plans to commence Phase I/II trials for treating diarrhea resulting from chemotherapy and radiation therapy as well as a Phase II trial for treating AIDS-related diarrhea.

Magnetic Resonance Diagnostics Receives Third U.S. Patent

Magnetic Resonance Diagnostic Corp. (MRD), announced that the company has received its third United States patent. The patent, 5,592,086, covers additional underlying technology behind MRD's magnetic resonance analyzer and its various market-specific instruments. The patent covers the company's method for analyzing and affecting the natural resonance signature of a substance. Upon completing the analysis, each resonance pattern is determined to be in- or out-of-phase. By applying additional specific resonance patterns, the company's products either increase, decrease, flatten or nullify those patterns that are out-of-phase, thereby achieving the desired effect on the chemical or substance.

North American Vaccine Announces Issuance of Vaccine Patent

North American Vaccine, Inc. (Amex: NVX) announced that the United States Patent Office has issued a patent covering chemically modified meningococcal B polysaccharides, and conjugate vaccines incorporating the modified polysaccharides. Another aspect of the patent is that it covers a method of eliciting an antibody response against group B meningococcal and E. coli K1 bacteria. International patent applications have been filed throughout the world, and foreign patents have issued in several jurisdictions including the European Patent Office covering Europe. This patent and the pending patent applications have been licensed exclusively to the Company by the National Research Council of Canada.

Genetic Vectors, Inc. Granted U.S. Patent for its EpiDNA Picogram Assays

Genetic Vectors, Inc., (OTCBB: GVEC) chemically modified meningococcal B polysaccharides, and conjugate vaccines incorporating the modified polysaccharides. Another aspect of the patent is that it covers a method of eliciting an antibody response against group B meningococcal and E. coli K1 bacteria. International patent applications have been filed throughout the world, and foreign patents have issued in several jurisdictions including the European Patent Office covering Europe. This patent and the pending patent applications have been licensed exclusively to the Company by the National Research Council of Canada.

content of DNA in therapeutic products to assure that the level does not exceed 10 picograms per injected dose. The patented Assay is easy to use and generates test results within three hours.

Infosafe Systems Granted Patent for Method of Retrieving Digital Information

Infosafe Systems, Inc. (Nasdaq: ISFEU, ISFEA) announced that it has been granted a patent by the U.S. Patent and Trademark Office for its system for retrieving information or other digital products from a secure electronic source that simultaneously employs: a method of decryption, a method of product branding, and a data log that records the item identification and its unique brand code. Under this patented system, a unique brand code is automatically added to the decrypted information, and is recorded in a data log as part of the corresponding item identification. U.S. Patent No. 5,592,549, issued January 7, 1997, covers Infosafe's method for retrieving digital information or product from any secure electronic source, which is comprised of: a) an information retrieval device; b) a device which affixes a unique branding code; c) a decryption device and d) a data logging device that records the item identification and its brand code. The system may be hardware-based, software-based or a combination. The Infosafe patent covers any type of decryption technology, branding code and logging device. The branded product may be licensed for free usage, rental or purchase, and distributed by electronic media, such as CD-ROM, DVD, Internet or local area (intranet) networks.

NOTICE OF ALLOWANCE

ImmunoGen Receives Patent Allowance on Antibody Humanization Technology

Patent Covers Antibodies for Use in New Targeted Anti-Cancer Compounds

ImmunoGen, Inc. (Nasdaq: IMGN) announced that the U.S. Patent and Trademark Office has issued a Notice of Allowance on the company's technology for producing mouse antibodies that appear human to the immune

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LodgeNet Entertainment Corp. (Nasdaq: LNET) announced that it has received from the U.S. Patent and Trademark Office an official notice of allowance of its application for a U.S. patent for its interactive video game system for hotels. The patent is expected to be issued in due course in accordance with customary patent office procedures.

Nitinol Medical Technologies, Inc. Announces Allowance of Claims by U.S. Patent Office

Nitinol Medical Technologies, Inc. (Nasdaq: NMTI) announced that its claims for the Company's novel, retrievable vena cava filter have been allowed by the U.S. Patent Office. Vena cava filters are used for the prevention of pulmonary embolism (a blood clot which lodges in the vessels supplying blood to the lungs). Specifically, these emboli (clots), which often develop initially in the veins of the legs, can break loose and travel up the vena cava, through the heart and into the blood vessels of the lungs, causing acute respiratory and circulation problems. Vena cava filters are intended to trap these clots before they can reach the lungs. Those at high risk for pulmonary embolism include post-operative orthopedic and neurosurgery patients, cancer patients undergoing surgery and chemotherapy and severe trauma victims. There are 600,000 incidents of pulmonary embolism diagnosed in the U.S. each year, with 125,000 to 150,000 deaths per year.

INTERNET

Seven New Top Level Domain Names Are Added for Internet Addresses

The number of names available to specify Internet locations, such as Web sites and e-mail addresses, will increase and more firms will be allowed to act as registrars for the names, under a plan announced today by the **International Ad Hoc Committee** (IAHC). Internet users will have 7 new generic Top Level Domains (gTLDs), in addition to the existing ones (.com, .net, and .org), under which they may register Internet names, when the plan is implemented.

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reported net income of $42,000, or $0.00 per share for the second quarter, which included $308,000 in litigation expense associated with patent litigation initiated by a competitor and a class action securities lawsuit. The patent litigation was decided in the company's favor in late December 1996. Net income for the six months was $202,000, or $0.01 per share, which included $636,000 in litigation expense. For the second quarter and six months of the previous year, the company had net losses of $457,000 or $0.02 loss per share, and $330,000 or $0.01 loss per share, respectively.

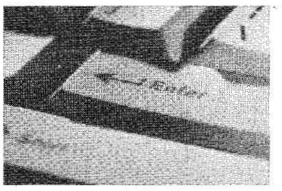
SLT Reports Fourth Quarter and 1996 Financial Results

Surgical Laser Technologies Inc. (Nasdaq: SLTI) announced its financial results for the fourth quarter and for the year 1996. Sales for the fourth quarter 1996 were $3,009,000 compared to $2,416,000 in the third quarter 1996 and $3,784,000 in the fourth quarter 1995. Net loss for the fourth quarter was $263,000, or 3 cents per share, compared to the fourth quarter 1995 net income of $3,883,000. The fourth quarter 1995 net income included a net gain of $5,926,000 from the settlement of patent litigation, or 60 cents per share. Additionally, fourth quarter 1995 results included non-recurring charges of $1,525,000, or 16 cents per share, which consisted of reserves on certain inventories and the write-off of certain intangible assets. Excluding the non-recurring charge and the net gain from the settlement of the patent litigation from the results of the quarter, the company posted a net loss of $518,000, or 5 cents per share, for the fourth quarter 1995.

SETTLEMENT

Crow's Hybrid Agrees to Settlement with Pioneer in Germplasm Lawsuit

Crow's Hybrid Corn Company of Milford, Ill. has agreed to a settlement with Pioneer Hi-Bred International, Inc. (NYSE: PHB) concerning a lawsuit regarding alleged misuse of Pioneer's intellectual property. Pioneer, based in Des Moines, Iowa, sued Crow's in 1994 alleging unlawful use of Pioneer® brand hybrids and inbreds in its own corn breeding and product development program. Crow's alleged the varieties in question had been developed from material purchased by Crow's in 1982. In addition to a monetary settlement, Crow's has agreed to refrain from sales of certain alleged infringing hybrids and to refrain from the use or sale of any Pioneer germplasm that would knowingly violate any Federal or State Intellectual Property Laws. Crow's will continue to sell all other varieties. Crow's management has also agreed to identify and help secure the return of breeding material involving third parties.



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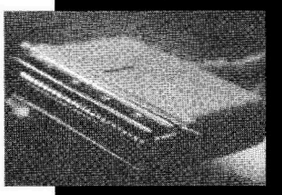

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INTERFERENCE PROCEEDINGS

Board of Patent Appeals and Interferences Gives Luxtron Favorable Ruling on Ripp

Luxtron Corporation announced today that the U.S. Board of Patent Appeals and Interferences ruled in its favor on the action (Patent Interference No. 103,474) it brought for determination of the ownership of the invention of the non-contact wafer temperature method widely known as the "Ripple Technique." The action resulted from Texas Instruments' claim of ownership of this method. The ripple technique is used in single-wafer processing, to measure both temperature and emissivity of filmed wafers. It has been successfully applied in a number of single-wafer processing tools, including AG Associates' RTP tools. This in-situ pyrometric method uses the background light flicker—or ripple—to carry out its measurements. IPT

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Comprehensive Drug Abuse Prevention and Control Act of 1970.[8]

Although the statute provides certain sweeping definitions, two elements required to prove theft of a trade secret still pose potentially significant hurdles for prosecutors. First, the law requires proof that the alleged thief had knowledge that the offense will injure the owner of the trade secret and knowingly converts that trade secret. Second, the law requires proof of intent to convert or injure. Historically, it is difficult to obtain evidence showing what is in one's mind. Therefore, proving one's state of mind, such as one's intent to do something or what knowledge one has could make this new law challenging to enforce.

One aspect of the law is perhaps of particular importance to preserve the competitive edge the U.S. has in today's global market. The law reaches a foreign instrumentality or foreign agent by providing for extraterritorial jurisdiction. Section 1837 indicates that this chapter applies to conduct occurring outside of the United States when "the offender is a natural citizen or permanent resident alien of the United States, or an organization organized under the laws of the United States . . .; or an act in furtherance of the offense was committed in the United States."[9] Presumably, this Section will enable U.S. companies to crack down on foreign companies who send industrial spies to infiltrate U.S. businesses for the purpose of retrieving trade secrets for the foreign companies' exploitation.

On the other hand, could Section 1837 backfire and be used more easily

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On the other hand, could Section 1837 backfire and be used more easily

against U.S. companies by foreign governments and corporations? For example, it would appear that a foreign company can always apply this law a U.S. corporation accused of stealing a trade secret belonging to a company in the foreign land. It seems that the foreign company could request that the U.S. Attorney prosecute the case under the U.S. law. Reverse the roles and the U.S. company may not have any recourse under the Act.

Once some cases have been prosecuted under the new law, companies will have the benefit of the courts' interpretation of various sections of this statute. Until then, how should U.S. companies proceed under the new law? The new law is relevant in two commonly occurring situations: 1) employee turnover, when hiring or firing employees who may be carrying trade secrets, and 2) business transactions, when dealing with outside companies where trade secrets may be involved (e.g., joint ventures, confidentiality agreements etc.). There are steps that companies can take to protect themselves from criminal liability under this law in these situations.

When an employee changes companies, the hiring company can take measures to limit the possibility of trade secret theft occurring under the Economic Espionage Act. One measure that can be taken is educating new employees on the definition of a trade secret, the meaning of the new statute, and the possible penalties facing the company and the individual should a trade secret be misappropriated. One way to disseminate this information to new employees is by providing a written statement to this effect in a policy manual accessible to all employees. If a company has an orientation program, it would be a good time to review this state-

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the Act. Particular care should be taken with high level executives and other employees routinely exposed to valuable trade secrets.

With respect to business transactions, the Act throws in a new consideration. Companies often disclose confidential or proprietary information to third parties under agreements that prohibit the third party's use of that information. Formerly violation of such a clause constituted breach of that agreement. Now, under the new law, the breaching party may also face criminal sanctions. Therefore, it is important to impress these new consequences upon employees receiving confidential or proprietary information from third parties.

The new statute significantly increases the importance of drawing a clear line between legitimate efforts to gather public-domain market intelligence, and improper efforts to obtain competitors' trade secrets. When stating its intentions by this legislation, Congress distinguished between those individuals "who seek to capitalize on the personal knowledge, skill or abilities they may have developed" and those individuals "who leave their employment and use their knowledge about specific products or processes in order to duplicate them or develop similar goods for themselves or a new employer in order to compete with their prior employer."[10] Nevertheless, it behooves companies to take precautions against the misappropriation of the many trade secrets that they are exposed to with new employees and in daily business transactions with outside companies. IPT

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ENDNOTES

1. D. Goodin, "Busting Industrial Spies", The Recorder, American Lawyer Media, L.P.,



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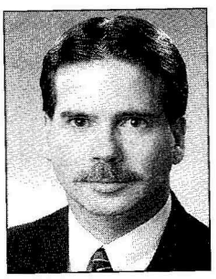
Vietnam And Its 1996 Patent Law



BY THOMAS T. MOGA
HARNESS, DICKEY & PIERCE

A RECOVERED AND RECOVERING NATION

One country under discussion at a conference on international trade I attended some time back was Vietnam. During the period for questions and answers, a gentlemen inquired of the Vietnamese representative: "So when will you begin trading with the outside world?" The response was polite, if not simply direct: "I do not believe we ever stopped such trade." The world has changed much in the 20 years since the end of the Vietnam war. At least in the uniquely awkward confines of Western relations with Vietnam, most of us are rushing to catch up.

THE TRADE EMBARGO

The United States as well as other countries imposed trade sanctions against North Vietnam through the Vietnam war and on the whole country after 1975. These sanctions impacted upon international loans from the IMF as well as the World Bank in addition to restricting trade. While strictly maintained on U.S. nationals, many foreign nations that cooperated in the trade embargo gave in to the hard realities of economics and a number of the sanctions were eased over time. Between 1988 and 1993 some

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US$ 6 billion of registered capital investment flowed into Vietnam.

There were many reasons for the foreign attraction. While relatively well educated

ended, and on July 11, 1995, the normalization of diplomatic relations was announced.

A MARKET ECONOMY AFTER ALL

Within the years following reunification, it became apparent to the Government of Vietnam that its economy demonstrated virtually no growth, while neighboring Malaysia, Singapore, and Thailand were enjoying remarkable prosperity. To correct things, a policy of economic reform was embraced by the Government in 1986. Vietnam has been on the road to a market economy for over ten years.

PATENTS, CAPITALISM, AND CHANGE

There is naturally a gap between effective patent laws and actual enforcement of patent rights in many developing countries. In China, for example, the 1985 Patent Law is as good as many of the laws of more developed nations, perhaps arguably better. However, patent enforcement in China requires improvement, thus creating a gap between law and practice. In Vietnam, this gap has not been as wide as one might expect, not because Vietnam's enforcement is regionally better than average, but—at least until last year—Vietnam's laws have not kept pace with those of its neighbors. Largely as a result of the rapid movement of Vietnam towards a market economy, national laws were revised on a piecemeal basis, resulting in an odd patchwork of laws. With respect to those laws in Vietnam which regulated business activity, the U.S. Department of Commerce declared that they were "inadequate, incomplete, contradictory, and often unenforceable." (**Asia Business Center Newsflash Series**, Document No. 9998, September 1995)

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Keenly aware of this problem, in 1996 the National Assembly of Vietnam replaced the old civil laws with a comprehensive Civil Code which contains 838 articles,

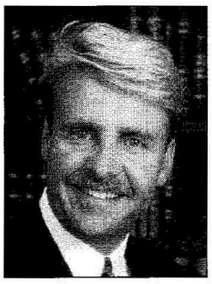
changes to patent practice wrought by the new 1996 laws were subtle changes. Both patents for "inventions" and for "utility solutions" remain available in Vietnam: "State protected industrial property rights shall include inventions, utility solutions, industrial designs, trademarks, appellations of origin and property right over other subjects as may be stipulated by law." (Article 781 of the **Articles Relating To Intellectual Property Of The New Civil Code Of The Socialist Republic Of Vietnam**, hereinafter "**the New Civil Code**") The introduction of **the New Civil Code** did not alter the scope of patentable subject matter which still provides patent protection for, inter alia, chemical and pharmaceutical products, genetic material food stuff for humans, and fodder for animals. Provisions for working and compulsory licensing still exist in Vietnam.

However, as between the present laws and those which were in effect before July 1, 1996, two areas of change are noteworthy. One change concerns utility solution patents and novelty and the other change concerns priority dates for patent registrations of all kinds. Beyond these two changes, the pre-1996 patent laws remain substantially intact.

With respect to the first change, novelty for purposes of the utility solution patent was based upon the state of the art in Vietnam. According to the new Code, novelty for purposes of supporting an application for utility solution patent is based upon the worldwide state of the art: "A utility solution is a new technical solution relative to the level of technology then existing in the world and which may find application in various social and economic fields". (Article 783 of **the New Civil Code**)

With respect to the second change, the "effective date" for invention and utility solution patents was, prior to July 1, 1996, the priority date or the date of filing of an acceptable application with the National Office of Industrial Property, the date of display of an invention at an official international exhibition (if the application was subsequently filed in Vietnam within six months of the display date), or, in the case of a PCT filing, the filing date of the earliest

Successful Inventing



BY NICHOLAS J. WEBB

Over the past decade thousands of inventors have fallen victim to fraudulent "product development companies." These companies advertise widely soliciting the interest of amateur inventors. These companies will typically claim that they have made fortunes for their client inventors. This is virtually never the case. In fact federal law enforcement agencies have reviewed the files of some companies with over twenty thousand clients and discovered that only three had ever truly licensed their product invention. The good news is that by following a simple guideline you can successfully develop your product without falling victim of fraud. Consider the following key factors when developing your product idea.

PROTECT YOUR IDEA

Before discussing your product idea with anyone you should contact a registered patent attorney. A patent attorney can conduct a novelty search in order to determine if your product idea has already been invented. Remember, that over two thousand patents are filed each week and the likelihood of finding some relevant invention is good. Secondly, your patent attorney will work with you in the preparation of a patent application and will further advise you on how to protect the confidentiality of your idea.

INVESTIGATE

Before working with any product development company you should contact your state attorney general's office and the local better business bureau. Contacting these agencies will determine if there are unresolved complaints or fraud issues. Additionally, there is a great organization, The Inventors Awareness Group, dedicated to helping private inventors. This organization maintains a national database of fraudulent organizations while concurrently providing a resource list of reputable companies. To contact the Inventors Awareness Group call 413-739-3938.

UNDERSTAND THE INVENTION PROCESS

Unfortunately, most amateur inventors do not truly understand the process required for financially viable inventing. Further, many inventors suffer from one or all of the following pitfalls.

Invention Centricity

Invention Centricity is literally the problem associated with falling in love with your product idea. This temporary state of hysteria will cloud your ability to truly evaluate the viability of your product idea. The hallmark of all successful inventors is someone who has invented thousands of products but has developed only a handful. For example, I recently had a discussion with a Dentist that had invented a toothbrush in 1958 and is still trying to find a company to license this product. In other words, in order to become financially viable as an inventor you will need to quickly evaluate the true marketability of your product and to move on to develop or discard your product idea.

The Close Circle Of Analysis

Unfortunately most inventors conduct an analysis of their product idea by asking the wrong people for feedback. This typically begins by soliciting the response of your spouse and friends. Unfortunately, however, the feedback that you will receive will be supportive in nature and rarely provide the expertise necessary to provide you with any meaningful feedback. Another common mistake in soliciting feedback is through colleagues. Remember that colleagues possess your same frame of reference in terms of vantage point.

EVALUATE YOUR PRODUCT IDEA

The most important thing you can do in avoiding wasting time and money resources is to evaluate your product in it's key areas of concern. I have developed an analysis process called the Triangular Method Of Technology Assessment (TMTA). The TMTA takes into consideration the following three key factors.

Need Assessment

In your need assessment you should evaluate the true user need and the corresponding benefits that your product provides. You should further determine if this need is being adequately met by existing product technology. It is also important to determine the value of your product benefits and the significance of the corresponding need.

Build Analysis

In this phase of your analysis you should determine the manufacturer ability of your product idea. You should also determine materials, manufacturing processes, and prepare some preliminary costs in order to compare your delivered cost with competitive alternatives.

Sell Analysis

There are many factors that will determine the marketability of your product idea. These factors include market factors, regulatory and third-party reimbursement factors. You should also thoroughly evaluate all competitive products in order to compare your costs and features and benefits to existing technology.

Remember, never before in the history of the United States has there been greater opportunities for the individual inventor. Many companies, large and small, are looking for their users to develop their next generation of technologies. By following some of the guidelines set forth in this article you could begin the process of building your dreams without breaking the bank. IPT

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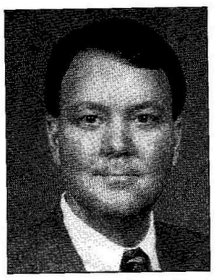

BY W. SCOTT PETTY

W. Scott Petty, a member of the Atlanta law firm of Jones & Askew, is a patent attorney who focuses on intellectual property issues for the computer and communications industries. Scott can be reached via telephone at 404-818-3700 or by E-mail at "spetty@jonesaskew.com."

Remember the last time you faced the challenge of determining the appropriate Trademark Class for an application to register a trademark for your client's Internet-related software? For example, if your client wishes to register a mark used in connection with software downloadable from a web site, should the software be identified as a computer service and classified under Class 42, "Miscellaneous Services," or does the downloadable software fall within the "Electrical Apparatus and Instruments" category of Class 9. Likewise, should an application to register a mark for an on-line magazine be placed within the "Publications" category of Class 16, or classified as a computer service under Class 42? What advice can you offer your client when faced with these questions of first impression in Cyberspace? Fortunately, the U.S. Patent & Trademark Office has now solved this dilemma by releasing guidelines for identifying and classifying computer-related goods and services, which are posted on its web site at: "http://www.uspto.gov/web/offices/tac/-domain/domcl.html."

OK—is downloadable software classified as a good in Class 9 or a service in Class 42? The Trademark Office has harmonized U.S. trademark practice with the practice of other countries for the classification of downloadable computer software. The Trademark Office has recommended use of the following description format for downloadable computer software:

> Computer software [specify function of the software, e.g., for use in word processing] that is downloaded from a remote computer site.
>
> Regardless of whether the software is prerecorded on a disk or downloadable from a remote server site, the description of the software in the trademark application must specifically define the function of the software.

Should an on-line magazine be classified as a publication in Class 16 or a computer service in Class 42? The Trademark Office's response to this question rests on the determination that publications in Class 16 are "hard goods." Because on-line computer publications are electronically transferred to the viewer via a computer connection, the Trademark Office considers this activity to be a computer service rather than a tangible paper product. Consequently, applications for marks used in connection with on-line magazines and books should be registered within Class 42. The Trademark Office recommends the following description format for use with applications for marks used with on-line publications:

> Computer services, namely, providing on-line [indicate specific nature of the publication] in the field of [indicate subject matter of the publication].
>
> Similar to publications in Class 16, the subject matter of the on-line publication itself does not affect the classification for this computer service.

publications are electronically transferred to the viewer via a computer connection, the Trademark Office considers this activity to be a computer service rather than a tangible paper product. Consequently, applications for marks used in connection with on-line magazines and books should be registered within Class 42. The Trademark Office recommends the following description format for use with applications for marks used with on-line publications:

> Computer services, namely, providing on-line [indicate specific nature of the publication] in the field of [indicate subject matter of the publication].
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> Similar to publications in Class 16, the subject matter of the on-line publication itself does not affect the classification for this computer service.

What if my client's software is an on-line service? If your client's software is an on-line service, such as a service that provides information in the field of Class 35 (Business), 36 (Insurance & Financial); 37 (Construction & Repair); 39 (Transportation & Storage); 40 (Material Treatment); or 41 (Education and Entertainment), then the appropriate Trademark class from this set should be designated in the trademark application. For example, if your client is a "content provider" who offers an information service via a web site, then this service should be classified within Classes 35, 36, 37, 39, 40 and 41 based upon the subject matter of the information provided to the consumer. A recommended description for services offered by a content provider is:

> Providing information in the field of [define subject matter] by means of a global computer network.

An exception to this guideline is made for content providers who offer information in a wide variety of fields; the general nature of the information transmitted via the Internet dictates identifying this service as a computer service in Class 42.

The guidelines described above also apply to Classes 38 (Communications) and 42 (Miscellaneous), but with the following twists. First, providing telecommunications connections for the Internet is a communications service within Class 38 because these connections are "ONLY the technical means by which one computer can communicate with another." This suggests that a "telecommunications provider," which provides the data transfer mechanism for the Internet, is different from a "link provider" that offers the computer/server connection for a user to access a content provider. Typical telecommunications providers are AT&T, Sprint and MCI, whereas common link providers include local Internet Service Providers (ISPs), America Online, Prodigy and CompuServe. Although a link provider may use telecommunications connections to enable a computer user to access information on a web site, the link provider offers "access" services classified within Class 42. An appropriate description for access services is:

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> (1) Providing multiple-access to a global computer information network for the transfer and dissemination of a wide range of information; or

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RECENTLY FILED / DECIDED PATENT & TRADEMARK CASES

RECENTLY FILED PATENT CASES

97-45 Filed:970107
3M
vs.
JOHNSON & JOHNSON CONSUMER PRODUCTS
5,230,701

97-166 Filed:970128
4 HEALTH INC.
vs.
GENERAL NUTRITION
4,818,492

96-20192 Filed:961226
ADVANCED TECHNOLOGY LABORATORIES.
vs.
DIAGNOSTIC ULTRASOUND, INC.
DES. 369,307; 5,381,795; 5,474,073

96-3631 Filed:961219
AUGUSTUS JOHNSON, ET AL.
vs.
A.G.F. MANUFACTURING CO.
4,655,078

96-3260 Filed:961206
AMI/REC-PRO, INC.
vs.
ILLINOIS TOOL WORKS, INC. ET AL
5,573,614; 5,558,613; 4,655,862; 4,909,017; 4,894,975

97-20037 Filed:970110
ANSWER PRODUCTS, INC.
vs.
ROCKSHOX, INC.
5,445,401

97-20045 Filed:970113
APPLIED MATERIALS
vs.
ADVANCED SEMICONDUCTOR MATERIALS AMERICA ET AL
4,498,609

97-0064 Filed:970124
ARMAMENT SYSTEMS & PROCEDURES, INC.
vs.
FLAGSHIP INDUSTRIES
5,365,139

97-38 Filed:970117
ASTEN, INC.
vs.
WAGNER SYSTEMS CORP.
4,581,794

97-136 Filed:970130
AUDIOLINK, INC.
vs.
CIRCLE V RANCH CENTER, ET AL
5,143,289

97-0017 Filed:970103
AUTOMATED BUSINESS COMPANIES, INC.
vs.
XEROX ET AL
4,837,797

97-10 Filed:970107
AUTOMATED BUSINESS COMPANIES, INC.
vs.
SHARP ELECTRONICS CORP. ET AL
4,837,797

97-201 Filed:970124
BAYVIEW TECHNOLOGY GROUP, INC.
vs.
LINSKYS CORP.
5,477,476

97-34 Filed:970131
BENCHMARQ MICROELECTRONICS, INC.
vs.
DALLAS SEMICONDUCTOR CORP.
4,730,121; 4,873,665; 5,050,113; 5,210,846; 5,267,222; 5,299,156; 5,315,549; 5,398,326

97-485 Filed:970123
BETTER SLEEP MFG., CO.
vs.
SUPERWARES, INC
5,014,860; 5,289,927; 5,348,168; 5,443,173



96-8561 Filed:961227
BLAIR INDUSTRIES, INC.
vs.
MERCURY FOAM CORPORATION & AMERICAN SEALCUT CORP.
5,544,748

97-203 Filed:970123
BLUE FOX TACKLE CO. ET AL
vs.
HART TACKLE CO., INC.
5,050,334

97-69 Filed:970109
BRITA WASSER-FILTER SYSTEM ET AL
vs.
RECOVERY ENGINEERING ET AL
4,969,996

97-354 Filed:970130
BUSINESS OBJECTS
vs.
BRIO TECHNOLOGY
5,555,403

97-42 Filed:970122
BYRON DONZIS
vs.
NIKE, INC.
4,874,640; 5,225,715

96-4609 Filed:961223
CADTRAK CORP.
vs.
EVEREX SYSTEMS, INC.
4,197,590

96-4611 Filed:961223
CHARLES B. NOVAL DBA NOVAL ENTERPRISES
vs.
DENNCO, INC.
5,269,527; DES. 346,838

97-58 Filed:970113
CLYDE CORP.
vs.
SPOKANE INDUSTRIES, INC.
5,184,784

97-14 Filed:970107
COMPUTER DESIGN, INC.
vs.
NEDGRAPHICS, INC.
4,888,713; 5,175,806

97-397 Filed:970121
COMTEMPORT, INC..
vs.
THE BADGE CO., INC.
5,398,435

97-26 Filed:970110
CRYSTAL SEMICONDUCTOR CORP.
vs.
OPTI, INC., ET AL
4,746,899; 4,851,841; 5,226,4839

96-915 Filed:961224
CUSTOM FORM MFG'ING., INC.
vs.
YORK PRODUCTS, INC.
4,958,876

97-642 Filed:970131
DATA POINT CORP.
vs.
COMPRESSION LABORATORIES, INC. ET AL
4,710,817; 4,847,829

97-213 Filed:970113
DEAN R. CORREN
vs.
IBM CORP.; CASIO, INC.
4,827,410

97-0027 Filed:970108
DIRECTED ELECTRONICS
vs.
BARETTA VEHICLE SECURITY ET AL
5,534,845

97-0025 Filed:970108
DIRECTED ELECTRONICS
vs.
PRECISION ENGINEERED INDUSTRIES
5,534,845

97-0032 Filed:970108
DIRECTED ELECTRONICS, INC.
vs.
DELTA ELECTRONICS SECURITY
5,534,845

97-136 Filed:970130
AUDIOLINK, INC.
vs.
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5,143,289

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97-0032 Filed:970108
DIRECTED ELECTRONICS, INC.
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DELTA ELECTRONICS SECURITY
5,534,845

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RECENTLY FILED PATENT CASES

97-0030 Filed:970108
DIRECTED ELECTRONICS, INC.
vs.
THE RIGHT CONNECTION
5,534,845

97-28 Filed:970108
DIRECTED ELECTRONICS, INC.
vs.
KEYMASTER VEHICLE SECURITY
5,534,845

97-33 Filed:970108
DIRECTED ELECTRONICS, INC.
vs.
VAMPIRE AUTO SECURITY
5,534,845

97-0029 Filed:970108
DIRECTED ELECTRONICS, INC.
vs.
DRIVEN TECHNOLOGIES, INC
5,534,845

97-0031 Filed:970108
DIVERSIFIED ELECTRONICS, INC.
vs.
BODYGUARD VEHICLE SECURITY
5,534,845

97-97 Filed:970110
DOUGLAS F. TRETTIM
vs.
GB LAX CO., ET AL
4,861,042

97-236 Filed:970122
DYNAMIC ISOLATION SYSTEMS, INC.
vs.
FURON, SEISMIC ENERGY PRODUCTS ET AL
4,117,637; 4,499,694

97-110 Filed:970114
EAST CENTRAL WAX COMPANY, INC.
vs.
EASTMAN CHEMICAL CO.
5,112,652; 5,160,679

96-21097 Filed:961231
EATON CORP.
vs.
NTEK CORP.
4,724,325

97-13 Filed:970106
ELIE P. BATISTE
vs.
OK 1 MANUFACTURING CO., ET AL
4,726,007

97-0036 Filed:970107
ELK INDUSTRIES, INC.
vs.
VOICE TECHNOLOGIES GROUP, INC.

EAST CENTRAL WAX COMPANY, INC.
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4,726,007

97-0036 Filed:970107
ELK INDUSTRIES, INC.
vs.
VOICE TECHNOLOGIES GROUP, INC.
4,124,773

97-0098 Filed:970114
ELK INDUSTRIES, INC.
vs.
DIGITAL TECHNICS, INC

97-3 Filed:970103
EMI GROUP
vs.
MOSEL VITELIC, INC.
4,581,546; 4,459,685; 4,355,377; 4,660,178

97-0707 Filed:970203
ENVIRON PRODUCTS, INC.
vs.
INTELPRO CORP., ET AL
5,593,971; 5,590,981; 5,567,083

97-20010 Filed:970106
FAROUNDJA LABORATORIES, INC.
vs.
DWIN ELECTRONICS, INC.
4,876,596

97-247 Filed:970114
FENTON GOLF TRUST
vs.
COBRA GOLF, INC.
5,395,109

96-2182 Filed:961224
FEULING R & D, INC.
vs.
SIMPSON RACE PRODUCTS
5,271,102

97-0007 Filed:970115
FILTROIL, N.A., INC.
vs.
DRIVELINE SPECIALTY
4,935,135

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97-0171 Filed:970122
FLA ORTHOPEDICS, INC.
vs.
ELIE P. BATISTE
4,726,077

97-0037 Filed:970103
FLAIR INTERNATIONAL CORP.
vs.
A.O.SMITH CORP.
4,039,123; 4,404,613

97-20052 Filed:970115

Cases Listed

97-0171 Filed:970122
FLA ORTHOPEDICS, INC.
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97-0037 Filed:970103
FLAIR INTERNATIONAL CORP.
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4,039,123; 4,404,613

97-20052 Filed:970115
GENMARK AUTOMATION
vs.
OPTICAL SPECIALTIES, INC.
5,007,784

96-19 Filed:970106
HASBRO INT'L., INC.
vs.
SUPREME TOYS (H.K.) LTD.
5,471,967

96-75721 Filed:961220
HASCO SPRING IND., INC.
vs.
TOWER AUTOMOTIVE, INC.
5,294,097

97-050 Filed:970110
HEARTSTREAM, INC.
vs.
PHYSIO-CONTROL CORP.
5,591,213

96-1205 Filed:961231
HESTER INDUSTRIES, INC.
vs.
CHECKER MACHINE, INC.
RE. 33,510; RE. 35,259

96-4122 Filed:961220
HOCKERSON-HALBERSTADT, INC.
vs.
AND 1, INC.
4,322,895

97-20046 Filed:970114
INTEL CORP.
vs.
BRUCE A. LEHMAN
DID NOT SPECIFY

97-0649 Filed:970130
INTERMATIC, INC.
vs.
DABMAR CO.
5,378,171

96-75630 Filed:961213
JAMES W. HENDRY
vs.
CINPRES LIMITED
4,923,666; 4,824,732

97-20065 Filed:970121
JOHNSON & JOHNSON ASSOC., INC.
vs.
R.E. SERVICE CO., INC.
5,153,050

97-0083 Filed:970108
KENSINGTON MICROWAVE LIMITED
vs.
BYTE BROTHERS, INC.
5,502,989

97-0077 Filed:970115
KRB MACHINERY CO.
vs.
REBAR MACHINE SALES, INC.
5,355,708

96-8675 Filed:970107
LAGOS, INC.

97-20065 Filed:970121
JOHNSON & JOHNSON ASSOC., INC.
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REBAR MACHINE SALES, INC.
5,355,708

96-8675 Filed:970107
LAGOS, INC.
vs.
JACK Z. ZEMER
NA

96-1073 Filed:960729

97-10 Filed:970123
MAGNADYNE CORP.
vs.
SEQUEL SECURITY SYSTEMS, INC.
5,234,214; 5,476,396

97-543 Filed:970203
MAGNEQUENCH INT'L., INC.
vs.
YBM MAGNEX INT'L., INC
4,851,058

96-3436 Filed:961224
MEAD CORP.
vs.
HENSCHEL-STEINAU, INC.
5,586,687

97-33 Filed:970109
MICHAEL F. VANLANDINGHAM
vs.
POLLUTION CONTROL, INC.
5,361,931

97-26 Filed:970116
MONARCH MARKING SYSTEMS
vs.
COMTEC INFORMATION SYSTEMS
5,594,838

96-21087 Filed:961224
MONSTER CABLE PRODUCTS, INC.
vs.
RECOTON CORP., ET AL
DES 323,643

97087 Filed:970113
MONTELL NORTH AMERICA, INC.
vs .
THE DOW CHEMICAL CO., INC.
4,495,338

97-0096 Filed:970121
MYCOGEN CORP.
vs.
ECOGEN, INC.
5,188,960; 5,126,133

97-52 Filed:970131
NORDX/CDT INC.
vs.
SIECOR CORP.
5,040,867

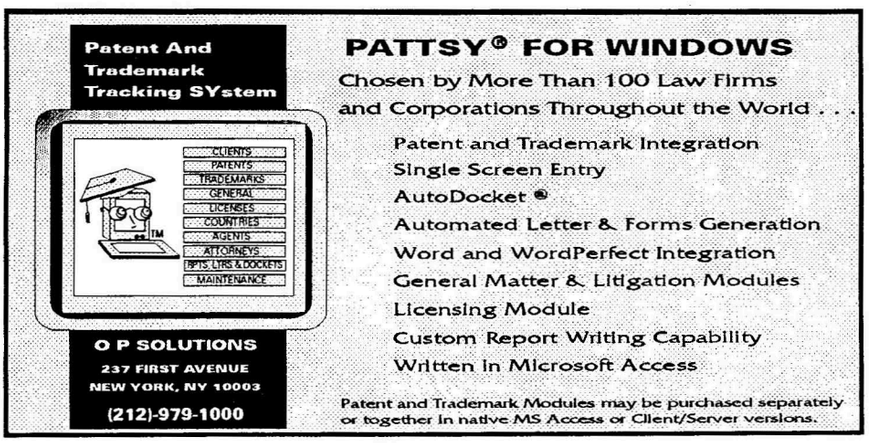
97-39 Filed:970121
NOVARTIS SEEDS INC.
vs.
MONSANTO COMPANY
5,595,733

97-170 Filed:970121
NOVARTIS SEEDS, INC.
vs.
PIONEER HIGH-BRED INT'L., INC.
5,595,733

97-40 Filed:970121
NOVARTIS SEEDS, INC.
vs.
DEKALB GENETICS CORP.
5,595,733

97-39 Filed:970114
OAKLEY, INC.
vs.
JAY-J ENTERPRISE CP., INC. ET AL
4,859,048; DES. 365,591; DES. 376,381; DES, 369,375

96-5439 Filed:961112
OFF DUTY GEAR, INC.
vs.
PHOENIX PRESS INT'L.
NA



96-1034 Filed:961227
OWEN MUMFORD USA, INC.
vs.
GAINOR MEDICAL USA, INC.
4,869,249

97-0040 Filed:970106
PAUL MUELLER CO.
vs.
SUPERSTILL TECHNOLOGY, ET AL
4,671,856; 4,902,197

97-89 Filed:970110
POINT OF CARE TECHNOLOGIES, INC. ET AL
vs.
HOFFMAN-LA ROCHE, INC. ET AL
5,212,102



96-1145 Filed:961210
POLYMER COMPOSITES, INC.
vs.
KAWASAKI STEEL CORP. ET AL
4,559,262; 5,019,450; 5,213,889; B1 5,019,450; B1 5,213,889

97-0077 Filed:970110
PPG INDUSTRIES, INC.
vs.
GUARDIAN INDUSTRIES CORP.
5,593,929

97-86 Filed:970116
PRECIOUS BUNDLES
vs.
ZENOFF PRODUCTS LLC
5,519,906

97-555 Filed:960127
PRODUCT RESOURCES GROUP, LLC
vs.
BUDDARY
5,337,915

96-01044 Filed:961107
PROGRESSIVE GAMES, INC.
vs.
ALYSTRA, INC., ET AL
5,288,077; 5,544,893

97-235 Filed:970113
PUBLICATIONS INT'L., LTD.
vs.
FUTECH EDUCATIONAL PRODUCTS, INC.
5,167,508; 5,417,575; 5,484,292

97-0075 Filed:970115
RACING STROLLERS INC.
vs.
KOOL-STOP INT'L., INC.
DES. 369,579

96-8897 Filed:961219
RAIN BIRD SPRINKLER MFG. CORP.
vs.
K-MART CORP.
DES 305,454

97-0019 Filed:970103
RETCONN, INC.
vs.
PALCO CONNECTOR, ET AL
4,917,630

97-0010 Filed:970103
RICHARD F. FADUS
vs.
INTERNATIONAL PAPER, ET AL
5,186,321

97-464 Filed:970122
SAAR-HARTMETALL UND WERKZENG GMBH
vs.
ADDISON MACHINE ENGINEERING, INC.
4,710,078

97-20069 Filed:970122
SEMICONDUCTOR PACKAGING MATERIALS
vs.
SMI ELECTRONICS OF AMERICA ET AL
4,291,815

97-635 Filed:970130
SEQUEL SECURITY SYSTEMS, INC.
vs.
MAGNADYNE CORP.
5,324,214

97-0080 Filed:970117
SOUTHERN CA SOUND IMAGE, INC.
vs.
JBL, INC.
5,519,178

97-89 Filed:970117
STARK AQUATIC SYSTEMS, INC.
vs.
ASTRAL PRODUCTS, INC.
4,588,106

97-39 Filed:970114
OAKLEY, INC.
vs.
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4,859,048; DES. 365,591; DES. 376,381; DES, 369,375

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RECENTLY FILED PATENT CASES

97-019 Filed:970106
STX, INC.
vs.
BRINE, INC. ET AL
5,566,947

97-26 Filed:970114
SUMITOMO CHEMICAL
vs.
GENERAL ELECTRIC CO.
4,315,086

97-178 Filed:970109
SUNCAST CORP.
vs.
AVON PLASTICS, INC.
5,501,036

97-0271 Filed:970127
SYQUEST TECHNOLOGY, INC.
vs.
NOMAI, S.A.; NOMUS, INC.; ET AL
5,400,201; 5,523,962; 5,218,563; 4,920,462

97-00031 Filed:970108
TECHNIMARK, INC.
vs.
CRELLIN, INC.; SONOCO PRODUCTS, INC.
4,702,433; 4,702,433

97-75 Filed:970109
TELEBRANDS CORP.
vs.
E. MISHAN & SONS, BEST BUYS DIRECT
5,347,720; 5,076,791

97-149 Filed:970114
TERADYNE, INC.
vs.
CREDANCE SYSTEMS CORP.
4,902,986

96-7003 Filed:970102
THE COLONEL'S INC.
vs.
PENDA CORP.
5,540,473

97-187 Filed:970123
THE GSI GROUP, INC.
vs.
AVEMARAU EQUIPAMENTOS AGRICO LAS
5,311,839; 5,462,017

97-118 Filed:970113
THE PERKINS-ELMER CORP.
vs.
PHARMACIA BIOTECH, INC.
5,047,524; 5,262,530; 4,415,732; 4,458,066;
5,132,418

97-70166 Filed:970114
THERMA-TRU CORP.
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STANLEY WORKS
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97-70165 Filed:970114
THERMA-TRU CORP.
vs

96-8331 Filed:961219
THOMAS M. DEMARCO
vs.
HI-VAC CORPORATION
4,790,865; 4,718,924

97-74 Filed:970117
TOTAL CONTAINMENT
vs.
ENVIRON PRODUCTS, INC.
5,553,971; 5,567,083; 5,590,981

96-1230 Filed:961217
ULTRA-TEX SURFACES, INC. ET AL
vs.
HILLS BROTHERS CHEMICAL CO.
5,502,941

96-1232 Filed:961217
ULTRA-TEX SURFACES, INC., ET AL
vs.
OMEGA PRODUCTS CORP., ET AL
5,502,941

97-20003 Filed:970102
UMAX DATA SERVICES, INC.
vs.
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5,175,426

97-20004 Filed:970103
UMAX DATA SYSTEMS, INC.
vs.
MUSTEK, INC.
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97-40 Filed:970117
UNIEK, INC.
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ROBOBOND LIMITED
5,514,318

96-1087 Filed:961230
US ROBOTICS MOBILE COMM.
vs.
SIMPLE TECHNOLOGY
5,183,404; 5,336,099; 5,338,210; 5,532,898;
5,547,401

Listed

97-40 Filed:970117
UNIEK, INC.
vs.
ROBOBOND LIMITED
5,514,318

96-1087 Filed:961230
US ROBOTICS MOBILE COMM.
vs.
SIMPLE TECHNOLOGY
5,183,404; 5,336,099; 5,338,210; 5,532,898;
5,547,401

97-27 Filed:970114
VIBRO-METER SA
vs.
ENDEVCO CORP.
4,488,240; 4,608,650; 4,935,846

96-21084 Filed:961223
ZIRCON CORP.
vs.
LWI HOLDINGS
4,099,118; 4,464,622

RECENTLY DECIDED PATENT CASES

96-6724 Filed:961015
ADAMS APPLE DISTRIBUTING, L.P.
vs.
CALIFORNIA SAFE
5,372,076

96-8105 Filed:961119
ADVANCED SOURCE INDUSTRIAL CO., LTD
vs.
L. LEE HUMPHRIES, ET AL
5,575,324

95-1013 Filed:950530
COMMUNICATIONS TECHNOLOGY CORP.
vs.
KEPTEL, INC.; ANTEC CORP.
4,337,374

96-1219 Filed:960516
DAVID A. BUCK
vs.
OILFIELD DIE MANUFACTURING CO. ET AL
4,576,067

94-1527 Filed:940627
FIREGEAR, INC.
vs.
MORNING PRIDE MANUFACTURING, INC. ET AL
4,897,886; 5,001,783; 5,131,097

96-7242 Filed:961104
HURLETRON, INC.
vs.
J.M. HEAFORD LIMITED
4,697,514

96-4873 Filed:960807
JACK-POST CORPORATION
vs.
CARDINAL AMERICAN CORP.
DES. 290,911

90-1015 Filed:900926
JOHN MICHAELS
vs.
ART BETTERLEY ENTERPRISES, INC.
4,622,090

92-587 Filed:921211
JOHNSTOWN AMERICA CORP.;
JAC PATENT CORP.
vs.
TRINITY INDUSTRIES, INC.
4,361,097

96-3382 Filed:960917
MARIN MOUNTAIN BIKES, INC.
vs.
JACK-POST CORPORATION
vs.
CARDINAL AMERICAN CORP.
DES. 290,911

90-1015 Filed:900926
JOHN MICHAELS
vs.
ART BETTERLEY ENTERPRISES, INC.
4,622,090

92-587 Filed:921211
JOHNSTOWN AMERICA CORP.;
JAC PATENT CORP.
vs.
TRINITY INDUSTRIES, INC.
4,361,097

96-3382 Filed:960917
MARIN MOUNTAIN BIKES, INC.
vs.
CANNONDALE CORP.
5,201,537

96-10631 Filed:960814
MARSHALLTOWN TROWEL CO.

Spring
1997

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US Patent 4,580,012

RECLASSIFIED: 379/245
379/89 X, 379/198 X, 379/280 X

ASSIGNMENT: September 29, 1982 - ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).
Correspondence: JERRY W. MILLS BAKER, MILLER, MILLS & MURRAY 40TH FLR., 2001 BRYAN TOWER DALLAS, TX 75201
Assignor: MATTHEWS, GORDON H., signed on September 22, 1982
Assignor: TANSIL, THOMAS B., signed on September 27, 1982
Assignee: ECS TELECOMMUNICATIONS, INC. 1241 COLUMBIA, RICHARDSON, TX 75081 A CORP. OF DE
Reel/Frame: 4052/0307

ASSIGNMENT: December 20, 1982 - CHANGE OF NAME (SEE DOCUMENT FOR DETAILS).
EFFECTIVE DATE NOV. 1, 1982
Correspondence: BAKER, MILLER, ET AL 2001 BRYAN TOWER DALLAS, TX 75201
Assignor: ECS TELECOMMUNICATIONS INC., signed on November 1, 1982
Assignee: VMX INC., A CORP. OF DE.
Reel/Frame: 4074/0834

CITED BY: 4,720,848 issued on January 19, 1988 to Akiyama Communication system with voice announcement means
4,747,126 issued on May 24, 1988 to Hood Voice mail system on magnetic tape
4,805,094 issued on February 14, 1989 to Oye Multi-channel memory access circuit
5,163,085 issued on November 10, 1992 to Sweet Digital dictation system with voice mail capability
5,172,404 issued on December 15, 1992 to Hashimoto System for coupling telephone answering device and voice mail apparatus together
5,179,627 issued on January 12, 1993 to Sweet Digital dictation system
5,199,062 issued on March 30, 1993 to Von Meister Telephone communications system including a digital telephone switch, a voice response unit and a stored program sequence for controlling both the switch and the voice response unit
5,206,900 issued on April 27, 1993 to Callele Automated attendant
5,222,120 issued on June 22, 1993 to McLeod Long distance telephone switching system with enhanced subscriber services
5,255,309 issued on October 19, 1993 to Katz Telephonic-interface statistical analysis system
5,259,023 issued on November 2, 1993 to Katz Telephonic-interface statistical analysis system
5,450,475 issued on September 12, 1995 to Miyagaki Method for controlling electronic telephone switches
5,452,099 issued on September 19, 1995 to Von Meister Method and system for storage and/or transmission of confidential facsimile documents
5,455,903 issued on October 3, 1995 to Jolissaint Object oriented customer information exchange system and method
5,475,748 issued on December 12, 1995 to Jones Automatic telephone system with function for multiple out dialed calls per caller
5,519,766 issued on May 21, 1996 to Jones Message length reporting system for telephone communication system
5,528,670 issued on June 18, 1996 to Elliot Voice message-based administration system
4,817,086 issued on March 28, 1989 to Oye Integrated switching system and announcement circuit
4,837,804 issued on June 6, 1989 to Akita Telephone answering voiceprint discriminating and switching apparatus
4,885,763 issued on December 5, 1989 to O'Brien Voice mail system with improved detection and cancellation
4,922,520 issued on May 1, 1990 to Bernard Automatic telephone polling system
4,957,679 issued on September 18, 1990 to Moore Method of making interfolded sheets of plastic film
5,287,498 issued on February 15, 1994 to Perelman Message transmitting system wherein recipient site is determined using information concerning the relationship between the sender and recipient sites
5,555,292 issued on September 10, 1996 to Eckhart Pabx with voice mail device
5,561,707 issued on October 1, 1996 to Katz Telephonic-interface statistical analysis system
5,054,054 issued on October 1, 1991 to Pessia Voice applications generator
5,063,522 issued on November 5, 1991 to Winters Multi-user, artificial intelligent expert system

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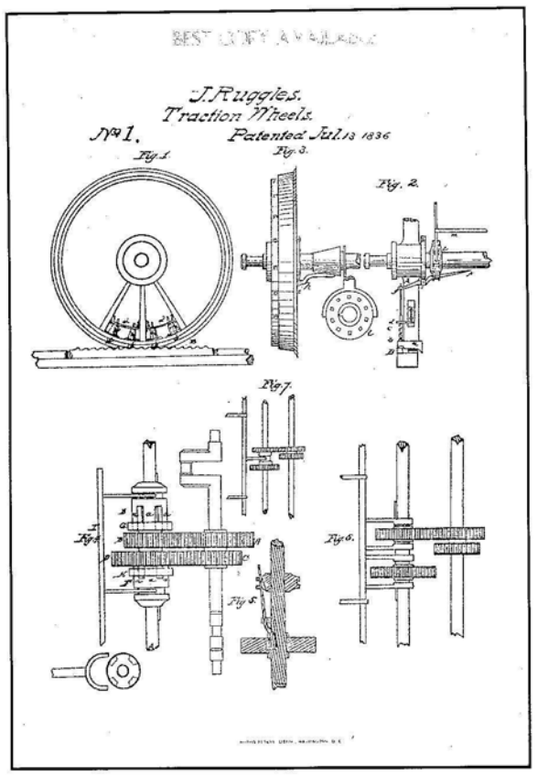

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United States Patent [19] [11] **Patent Number: 5,052,680**

Malewicki et al. [45] **Date of Patent: Oct. 1, 1991**

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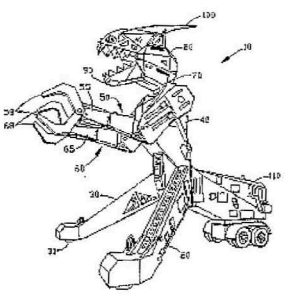

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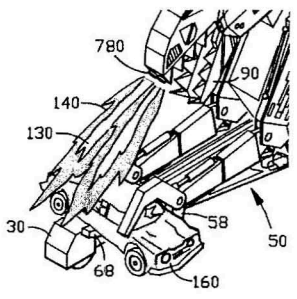

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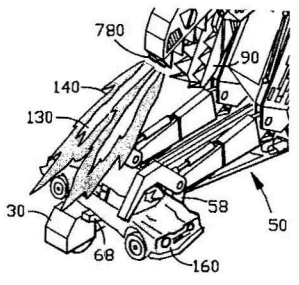

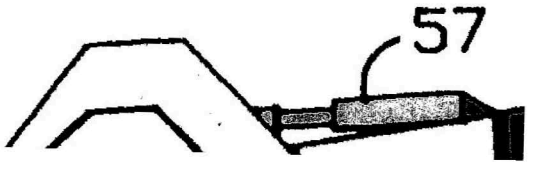

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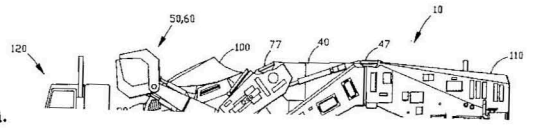

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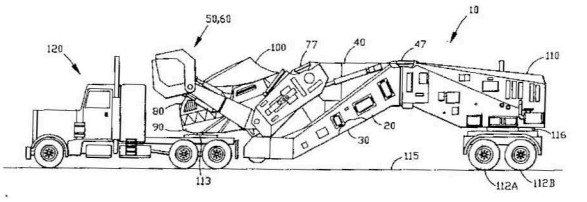

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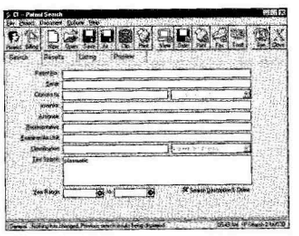

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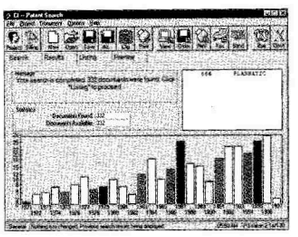

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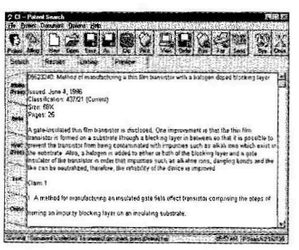

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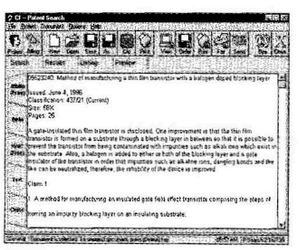

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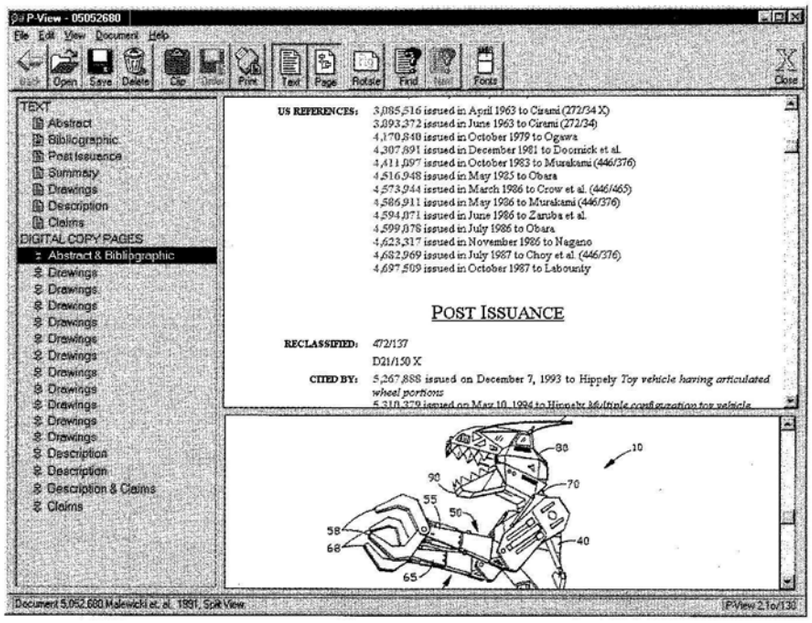

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95-1399 Filed:950622
NICHOLS MARGARITIS
vs.
LIBERTY MAINTENANCE, INC.
OHIO DEPT. OF TRANSPORTATION
5,299,655

95-2621 Filed:950906
NUTRAMAX LABORATORIES, INC.
vs.
VETRACEUTICAL SERVICES, INC. ET AL
5,364,845;

94-7129 Filed:941122
PHONOMETRICS, INC.
vs.
RESINTER OF NORTH AMERICA CORP. F/K/A
SOFITELS OF NORTH AMERICA
3,769,463

93-2714 Filed:931223
PLUS ENGINEERING, INC.
vs.
COLORADE TIME SYSTEMS, INC. ET AL
5,097,602; 5,246,232

95-5888 Filed:951109
PRINCE SPORTS GROUP, INC.
vs.
SPALDING & EVENFLOW COMPANIES, INC.
4,531,738; 4,618,148

96-6220 Filed:961009
PUBLICATION INT'L. LTD.
vs.
GOLDEN BOOKS PUBLISHING CO., INC. ET AL
5,167,508; 5,417,575; 5,484,292

96-968 Filed:961206
RYAN ENGINEERING & DESIGN., INC.
vs.
WATERSON CHEN AND
CONCEPTS ENTERPRISES, INC.
DES. 372,821

96-0987 Filed:961113
SAM MOORE FURNITURES IND., INC.
vs.
THE PACE COLLECTION, INC.
DES. 359,176

93-202 Filed:930706
SAMUEL L. PALLIN, M.D.
vs.
JACK A. SINGER, M.D. ET AL
5,080,111

95-5245 Filed:951005
SECURITY AND ACCESS LTD. ET AL
vs.
MITSUBISHI AMERICA INC. ET AL
ELECTRIC AMERICA, INC.

95-1987 Filed:951219
SKUTT CERAMIC PRODUCTS, INC.
vs.
DUNCAN ENTERPRISES, INC.
5,477,029

95-337 Filed:951114
TEAM EQUIPPE USA, LTD
vs.
SUN VALLEY SKI TOOLS, INC.
4,721,020

97-75 Filed:970109
TELEBRANDS
vs.
E. MISHAN & SONS, ET AL
5,347,720; 5,076,791

95-32 Filed:NA
TEXMAX, INC.
vs.
EXIDE CORP.
4,758,126;

97-0187 Filed:970123
THE GSI GROUP, INC.
vs.
AVEMARAU EQUIPAMENTOS AGRICLOAS, LTDA
5,311,839; 5,462,017

96-1167 Filed:961217
TROVAN LTD ET AL
vs.
DESTRON-FEARING CORP. ET AL
5,012,236; 5,095,309; 5,198,807

RECENTLY FILED TRADEMARK CASES

97-13 Filed:970103
3M
vs.
MICROSOFT
1,046,353; 1,198,694; 1,284,295

97-246 Filed:970128
AIRCRAFT BRAKING SYSTEMS CORP.
vs.
HUNTINGTON VALLEY INDUSTRIES, INC.
983,148

97-0089 Filed:970121
ALAMO GROUP, INC.
vs.
ADUCO INT'L., INC.
1,137,828; 1,159,062

96-1391 Filed:961227
AMERISPEC, INC.
vs.
THOMAS P. WEINTZ, ET AL
1,497,266

96-2534 Filed:961231
AN APPLE A DAY, INC.
vs.
TELCO COMMUNICATIONS GROUPS, INC.
1,895,344



970206 Filed:970117
ANEX ELECTRICAL CO., LTD.
vs.
SUN-MATE CORP.
1,025,891

96-1291 Filed:961219
ARTHUR TREACHER'S, INC.
vs.
CARTER L.T.D
1,114,186

96-1710 Filed:960916
ATHLETE'S FOOT MARKETING ASSOCIATES
vs.
LEE SPECIALTY INC.
1,004,286; 1,094,685; 1,631,686; 1,631,948;
1,634,135

96-8921 Filed:961220
BARRY KIESELSTEIN ENTERPRISES, INC.
vs.
WEST COAST JEWELRY IMPORTS
1,315,676



97-181 Filed:970116
BRODERBUND SOFTWARE, INC.
vs.
COREL CORPORATION
1,395,538

96-8230 Filed:961122
CHANEL, INC.
vs.
BARRY STROMER & DOES 1 THROUGH 5
1,177,400; 1,241,264; 1,241,265; 1,314,511;
1,347,677; 1,501,898; 1,510,757; 1,654,242

96-8229 Filed:961122
CHANEL, INC.
vs.
BIANCA'S FASHION STUDIO;
& DOES 1 THROUGH 5
1,177,400; 1,241,264; 1,241,265; 1,314,511;
1,347,677; 1,501,898; 1,510,757; 1,654,242

96-8194 Filed:961122
CHANEL, INC.
vs.
LESLEY & HOWARD FASHIONS;
& DOES 1 THROUGH 5
1,177,400; 1,241,264; 1,241,265; 1,314,511;
1,347,677; 1,501,898; 1,510,757; 1,654,242

96-8227 Filed:961122
CHANEL, INC.
vs.
ELLIE'S DESIGNS; & DOES 1 THROUGH 5
1,177,400; 1,241,264; 1,241,265; 1,314,511;
1,347,677; 1,501,898; 1,510,757; 1,654,242

96-8228 Filed:961122
CHANEL, INC.
vs.
A TOUCH OF SPRING; & DOES 1 THROUGH 5
1,177,400; 1,241,264; 1,241,265; 1,314,511;
1,347,677; 1,501,898; 1,510,757; 1,654,242

96-1359 Filed:961219
CHOCOLATES A LA CARTE, INC.
vs.
FREDERICK CHARLESLEVY, ET AL
1,698,210; 1,684,779; 1,946,668; 1,937,979;
1,689,471

97-43 Filed:970117
COMPUTER CURRENTS PUBLISHING CORP.
vs.
JAY COMMUNICATIONS INC.
1,804,416

96-1259 Filed:961231
COTTER & CO.
vs.
TRUE VALUE MAINTENANCE
1,182,134; 1,158,245; 1,167,469; 1,971,101;
1,90,538; 1,165,207; 1,165,206; 1,131,205;
1,131,206; 1,128,202; 1,128,203; 1,179,003 ET AL

4,721,020

97-75 Filed:970109
TELEBRANDS
vs.
E. MISHAN & SONS, ET AL
5,347,720; 5,076,791

95-32 Filed:NA
TEXMAX, INC.
vs.
EXIDE CORP.
4,758,126;

CARTER L.T.D
1,114,186

96-1710 Filed:960916
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vs.
LEE SPECIALTY INC.
1,004,286; 1,094,685; 1,631,686; 1,631,948;
1,634,135

96-8921 Filed:961220
BARRY KIESELSTEIN ENTERPRISES, INC.
vs.
WEST COAST JEWELRY IMPORTS
1,315,676

COMPUTER CURRENTS PUBLISHING CORP.
vs.
JAY COMMUNICATIONS INC.
1,804,416

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COTTER & CO.
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TRUE VALUE MAINTENANCE
1,182,134; 1,158,245; 1,167,469; 1,971,101;
1,90,538; 1,165,207; 1,165,206; 1,131,205;
1,131,206; 1,128,202; 1,128,203; 1,179,003 ET AL

INTELLECTUAL PROPERTY TODAY MARCH, 1997 27

RECENTLY FILED TRADEMARK CASES

97-194 Filed:970123
CREATIVE LABS, INC., ET AL
vs.
DATA LAB CORPORATION, ET AL
1,862,271

97-40004 Filed:970108
DBT VENTURES, INC.AL
vs.
AMERICA ONLINE ET AL
74/670-656

97-56 Filed:960108
DDD MOTEL CORP.
vs.
HILTON HOTELS CORP.
1,497,275

97-223 Filed:970128
DIGI INT'L., INC.
vs.
TELEBIT CORP.
2,019,613

97-0070 Filed:970115
DIRECTED ELECTRONICS, INC.
vs.
AAMP OF AMERICA ET AL
1,937,900; 1,961,709; 1,954,475; 1,822,608

97-70264 Filed:970122
DOCTOR'S ASSOC., INC.
vs.
KENNETH WATSON, ET AL
1,174,608; 1,179,567

97-0277 Filed:970127
DUNCAN V. FRASER
vs.
WORLDS, INC.
1,933,687

97-0001 Filed:970106
EDDIE ROLLIN
vs.
MALACO RECORDS & TAPES, INC., ET AL
1,845,982

97-422 Filed:970121
EMANUEL LAW OUTLINES, INC.
vs.
THE NUMINA GROUP
1,271,768; 2,008,749

97-6 Filed:970106
ERA FRANCHISE SYSTEMS, INC.
vs.
HATMON REALTY CO., ET AL
1,003,531

Available January 31, 1997

97-0001 Filed:970106
EDDIE ROLLIN
vs.
MALACO RECORDS & TAPES, INC., ET AL
1,845,982

97-422 Filed:970121
EMANUEL LAW OUTLINES, INC.
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THE NUMINA GROUP
1,271,768; 2,008,749

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ERA FRANCHISE SYSTEMS, INC.
vs.
HATMON REALTY CO., ET AL
1,003,531

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97-024 Filed:970130
F. SCHUMACHER & CO.
vs.
CARPETON MILLS, INC.
1,756,996; 709,694; 2,011,559

97-352 Filed:970117
FEDERAL EQUIPMENT CORP.
vs.
PUMA INDUSTRIAL CO., LTD ET AL
1,670,042

96-7484 Filed:961220
FLANIGAN'S ENTERPRISES, INC.
vs.
QUARTERDECK OF FORT LAUDERDALE, INC.
1,161,376; 1,033,387; 1,093,023; 1,161,377

97-0450 Filed:970122
FOTIS & SON IMPORTS, INC.
vs.
SPARTAN BROTHERS, INC., ETAL
1,797,981

97-0105 Filed:970107
GENERAL HOUSEWARE CORP.
vs.
DENNIS TOEPPEN
1,220,606

97-284 Filed:970127
GENERAL MEDIA COMMUNICATIONS, INC.
vs.
BATON ROUGE SPORTS RESTAURANTS, INC.
DBA THE GOLF CLUB, ET AL
880,922; 1,020,498; 1,074,534; 1,121,403;
1,128,612

96-2248 Filed:961230
JOHN NIGHTENGALE, ETC., ET AL
vs.
JAMES GEORGE ETC., ET AL
2,001,099

97-236 Filed:970128
HORTON MFG. CO., INC.
vs.
HUNTER'S MFG. CO., INC., ET AL
2,021,579

97-20086 Filed:970124
HYPERION LLC
vs.
HYPERION SOFTWARE CORP.
1,812,624; 1,215,545; 1,191,392

97-6 Filed:970103
IMATION CORP.
vs.
SEIKO INSTRUMENTS, U.S.A., INC.
1,225,652

97-91 Filed:970121
INDY LUBE SERVICE CO., INC.
vs.
INDY FAST OIL & LUBE CENTERS
HORTON MFG. CO., INC.
vs.
HUNTER'S MFG. CO., INC., ET AL
2,021,579

97-20086 Filed:970124
HYPERION LLC
vs.
HYPERION SOFTWARE CORP.
1,812,624; 1,215,545; 1,191,392

97-6 Filed:970103
IMATION CORP.
vs.
SEIKO INSTRUMENTS, U.S.A., INC.
1,225,652

97-91 Filed:970121
INDY LUBE SERVICE CO., INC.
vs.

INDY FAST OIL & LUBE CENTERS
1,592,359

97-0090 Filed:970117
JOLLIBEE FOODS CORP.
vs.

97-086 Filed:970122
LA SALSA HOLDING CO., ET AL
vs.
L.S. NEVADA, INC., ET AL
1,257,963; 1331,404; 1,417,032; 1,990,923;
2,009,794

97-364 Filed:970117
MAGNACOM DATA PRODUCTS
vs.
MAGNACOM DISTRIBUTORS, INC.
1,658,587

96-6039 Filed:961224
MANHATTEN BAGEL CO., INC.
vs.
RONALD DECARLO ET AL
1,538,593

96-5191 Filed:961217
MARALLE, INC.
vs.
HOLLYWOOD ENTERTAINMENT CORP.
1,314,123; 1,848,749

96-2196 Filed:961226
MICROSOFT CORP.
vs.
MICRO STAR; ET AL
1,200,236; 1,966,382; 1,684,033; 1,689,468

96-8417 Filed:961220
MINNESOTA FATS BILLIARD FACTORY, INC.
vs.
FEULING SPORTS, INC.
1,825,276

97-60 Filed:970108
MULTIFOODS SPECIALTY DISTRIBUTION, INC.
vs.
SYSCO CORP.
1,627,393

96-8938 Filed:961220
NATIONAL CUSTOMER ENGINEERING, INC.
vs.
LOCKHEED MARTIN CORP.
1,579,895; 1,264,024

97-0054 Filed:970128
ORECK CORP.
vs.
VACUUM CLEANER CENTER
1,454,954; 1,143,124; 893,623; 1,854,207

97-0208 Filed:970117
ORLIMAR GOLF CO,
vs.
GOLF STAR USA, INC., ET AL
1,556,973; 1,514,729; 1,558,172

96-3700 Filed:961227
PAN AMERICAN WORLD AIRWAYS, INC.
vs.
PAN AM JET CORP.
1,160,329
vs.
LOCKHEED MARTIN CORP.
1,579,895; 1,264,024

97-0054 Filed:970128
ORECK CORP.
vs.
VACUUM CLEANER CENTER
1,454,954; 1,143,124; 893,623; 1,854,207

97-0208 Filed:970117
ORLIMAR GOLF CO,
vs.
GOLF STAR USA, INC., ET AL
1,556,973; 1,514,729; 1,558,172

96-3700 Filed:961227
PAN AMERICAN WORLD AIRWAYS, INC.
vs.
PAN AM JET CORP.
1,160,329

97-20090 Filed:970127
PEBBLE BEACH CO.
vs.
JAWAD ABUZAID

97-629 Filed:970130
PLANNED PARENTHOOD FEDERATION OF AMERICA, INC.
vs.
CATHOLIC RADIO, ET AL
6088,113; 1,020,124

97-64 Filed:970109
RBI BEAUTY INDUSTRIES, INC.
vs.
ASANTE LABORATORIES, INC.
1,966,558

97-27 Filed:970106
RISH'S. INC.
vs.
BRAVO!, LLC
19461

96-9000 Filed:961223
SAN MIGUEL CORP.
vs.
RAMAR INT'L CORP.
74/254,359

97-30009 Filed:970115
SANDHILL WHOLESALE OF OHIO, INC.
vs.
P&P MARKETING, INC.
1,201,920

97-0085 Filed:970107
SARALEE CORP.
vs.
BAGS OF NEW YORK, INC., ET AL
1,071,000; 1,846,801; 1,070,999; 1,309,779

97-70057 Filed:970107
SHELL OIL CO.
vs.
IN TISSAR ISMAIL ET AL
1,760,294

97-8059 Filed:970129
SIGMA CHI FRATERNITY
vs.
BUNEL PROUD PINS
1,152,026; 218,796; 566,397

97-3036 Filed:970124
SNYDER INDUSTRIES, INC.
vs.
DENNIS C. & SUANN M. TROUT
75/148,027

96-9087 Filed:961227
STREAMLIGHT, INC.
vs.
STREAMLIGHT DIGITAL, INC. DBA FINGERPRINT FILMS
1,155,473; 1,479,512; 1,531,840

96-3670 Filed:961224
SUPREME INTERNATIONAL CORP.
vs.
ANHEUSER-BUSCH, INC.
1,569,866; 1,081,853; 1,034,409; 1,849,971; 1,928,826

97-6 Filed:970106
TERRI LEE ASSOC., L.L.C., ET AL
vs.
DOLL CITY, U.S.A.
75/152,479; 75/162,949; 75/162,324

97-31 Filed:970121
THE ANTIOCH CO.
vs.
FAMILY TREASURES, INC.
1,979,739

96-016 Filed:970122
THE NETWORK CONNECTION, INC.
SEAGATE TECHNOLOGY, INC.
vs.
SEAGATE TECHNOLOGY, INC.
1,908,575

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97-153 Filed:970109
TKI FOODS, INC.
vs.
MARK-LYNN INDUSTRIES, INC.
1,564,065; 1,362,250; 1,846,417; 1,838,523

97-51 Filed:970124
TN TECHNOLOGIES INC.
vs.
TN TECHNOLOGIES HOLDING INC., ET AL
1,800,491

97-0056 Filed:970106
TOM KELLY STUDIOS, INC.
vs.
INT'L COLLECTORS SOCIETY ET AL
1,455,824



96-1247 Filed:961226
VAN'S INC.
vs.
ITEMS INT'L., INC.
75/091541

97-462 Filed:970122
VIENNA SAUSAGE MFG. CO,
vs.
P0ETER SDRALIS, ET AL
918,269

97-0012 Filed:970108
WIZARDS OF THE COAST
vs.
MILLINER PRINTING CO., INC. ET AL
1,919,923

97-0009 Filed:970103
WRQ, INC.
vs.
REFLECTION TECHNOLOGY, INC.
1,475,672; 1,698,819; 1,992,867; 1,688,349; 1,838,998

97-0007 Filed:970103
ZTEK CO.
vs.
Z-TEK CORP.
1,527,424; 1,727,206; 1,732,621

RECENTLY DECIDED TRADEMARK CASES

96-415 Filed:960520
A.G.S. OF HANOVER, INC.
vs.
THE GAP, INC.
1,843,039

95-8653 Filed:951220
AMERICAN ASSOC. OF WOMEN
vs.
NET, INC., ET AL
1,916,922

96-1328 Filed:960502
BARTH-1328
vs.
PABST BREWING CO.
1,829,734; 1,829,481

96-10252 Filed:960208
BOSE CORP.
vs.
JBL, INC.

95-1642 Filed:950315
DOWBRANDS, L.P.
vs.
ECOSTYLE, INC.
753,442; 774,262; 828,335; 1,017,724; 883,902

96-234 Filed:960329
HSDF, INC.
vs.
STRATEGIC MAPPING, INC.
COPYRIGHT

96-3689 Filed:960807
MARS, INC.
vs.
RIPPLE JUNCTION DESIGN, CO., ET AL
165,982; 396,914; 418,332; 983,429; 981,235

96-424 Filed:961025
PRESTOLITE POWER CORP.
vs.
A.C.E INTERNATIONAL CO., INC.
1,799,095

96-5654 Filed:960906
RAM GOLF CORP.
vs.
ODYSSEY SPORTS, INC.
1,498,769

96-741 Filed:960919
REYNOLDS METALS CO.
vs.
DOLLAR GENERAL CORP.
1,070,888

96-3715 Filed:960619
THE NAPOLEON HILL FOUNDATION
vs.
DESTINY SEMINARS INT'L., INC.
1,534,048; 1,522,049; 1,938,630; 1,973,581

97-31 Filed:970121
THE ANTIOCH CO.
vs.
FAMILY TREASURES, INC.
1,979,739

96-016 Filed:970122
THE NETWORK CONNECTION, INC.
SEAGATE TECHNOLOGY, INC.
vs.
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1,908,575

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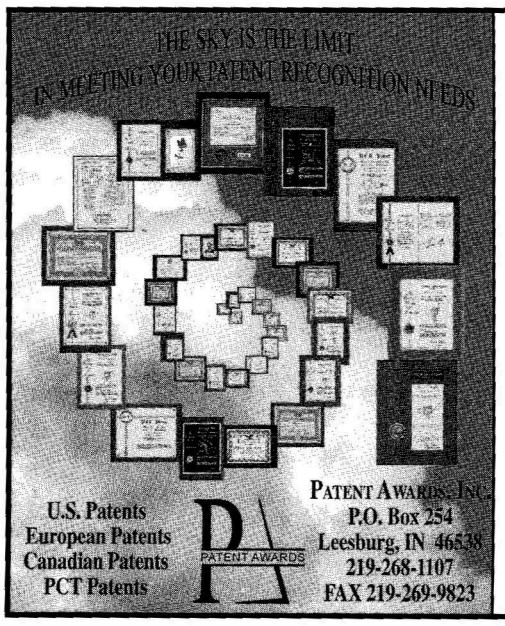
1,534,048; 1,522,049; 1,938,630; 1,973,581

INTELLECTUAL PROPERTY TODAY MARCH, 1997 29



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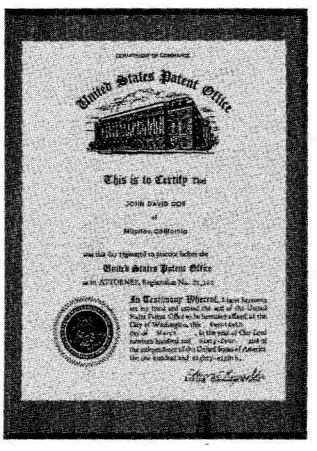

Signature Financial Group as an Inventory Distributor

WOULD THE COURT VIEW THE CLAIM DIFFERENTLY?

BY J. RANDALL BECKERS OF STAAS & HALSEY

Mr. Beckers can be reached via phone at 202-434-1500 or e-mail: jrbeckers @s-n-h.com

In the next few months the Federal Circuit will hear oral arguments in the case of *State Street Trust Co. v. Financial Signature Group*. The Massachusetts District Court held on a Motion for Summary Judgment that the independent claim was not patentable under 35 U.S.C. section 101 as directed to an abstract idea in the form of a mathemat-

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c. first means for initializing the storage medium;
d. second means for processing data regarding assets in the portfolio and each of the funds from a previous day and data regarding increases or decreases in each of the fund's assets and for allocating the percentage share that each fund holds in the portfolio;
e. third means for processing data regarding daily incremental income, expenses, and net realized gain or loss for the portfolio and for allocating such data among the funds;
f. fourth means for processing data regarding daily net unrealized gain or loss for the portfolio and for allocating such data among each fund; and
g. fifth means for processing data regarding aggregate year end income, expenses, and regarding increases or decreases in each of the fund's assets and for allocating the percentage share that each fund holds in the portfolio;
e. third means for processing data regarding daily incremental income, expenses, and net realized gain or loss for the portfolio and for allocating such data among the funds;
f. fourth means for processing data regarding daily net unrealized gain or loss for the portfolio and for allocating such data among each fund; and
g. fifth means for processing data regarding aggregate year end income, expenses, and capital gain or loss for the portfolio and each of the funds.

If this claim is converted into a claim

b. storage means for storing data on a storage medium;
c. first means for initializing the storage medium;
d. second means for processing data regarding items in the inventory and each of the warehouses from a previous day and data regarding increases or decreases in each of the warehouse's items and for allocating the percentage share that each warehouse holds in the inventory;
e. third means for processing data regarding daily incremental increases, decreases, and net realized gain or loss for the inventory and for allocating such data among the warehouses;
f. fourth means for processing data regarding daily net unrealized gain or loss for the inventory and for allocating such data among each warehouse; and
g. fifth means for processing data regarding aggregate year end increases, decreases, and yearly gain or loss for the inventory and each of the warehouses.

Under such cases as *Arrhythmia*, the above altered claim would likely be viewed

regarding daily incremental increases, decreases, and net realized gain or loss for the inventory and for allocating such data among the warehouses;
f. fourth means for processing data regarding daily net unrealized gain or loss for the inventory and for allocating such data among each warehouse; and
g. fifth means for processing data regarding aggregate year end increases, decreases, and yearly gain or loss for the inventory and each of the warehouses.

Under such cases as *Arrhythmia*, the above altered claim would likely be viewed

as one directed not to an abstraction but to allocating inventory gains and losses.

Does the fact that the Signature claim is

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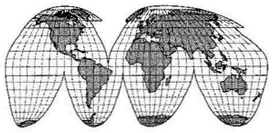

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SOFTWARE PRACTICE NEWS

Selling the Sizzle In Cyberspace



BY GREGORY A. STOBBS OF HARNESS, DICKEY & PIERCE

I'm convinced Being Digital has become the mad cow disease of the human race. Ever since Nicholas Negroponte wrote in his book, Being Digital, that future commerce will not be about goods, but about information, the commercial world has gone mad. According to Nicholas, in the digital world of cyberspace, bits count; atoms don't. Why build product and ship to customer, when you can ship information and have customer build product? It's all know how, no sweat.

We all know that the sizzle sells the steak, and the proffered benefits of bits-vs-atoms is the sizzle in cyberspace. As I see it, we're in for one big cyberspace barbecue.

Why have proponents of UCC Article 2B inflated this proposed law from one that simply covered mass-market software shrinkwrap contracts into one that now engulfs all transactions involving information? Simple. The contract lawyers want the sizzle in cyberspace to be at their barbecue. And you're all invited!

Why did our Patent Commissioner don his Copyright Lobbyist chef's hat and apron to flip burgers at the recent WIPO treaty negotiations? Simple. The copyright lawyers want the sizzle in cyberspace to be at their barbecue. The disturbing thing about the copyright lawyer's barbecue is its Hollywood-centric agenda: no "fair use" in anything that can be licensed, even a de minimis screen of information; no "first sale" doctrine — electronically forwarding violates both reproduction and distribution rights of copyright law; online service providers are required to serve as copyright police. The boldest move grants copyright protection in data. That will all but erase the distinction between the expression, which can be protected and the idea, which shall not be.

I don't want to sound anti-barbecue, but I fear all the cyberspace sizzle is distracting us, perhaps turning us all a bit mad. Does digital age technology truly create such profound legal problems that we must now rush to "change all of intellectual property law as we know it?" I doubt that very much. Stripped of its sizzle, we're talking about something very fundamental: the transfer of information. The human race has been transferring information (talking, teaching and learning) for at least the last 50,000 years, and our current laws reflect those 50,000 years of wisdom.

Surely technology can have an impact. The invention of writing and later the invention of the printing press both have had a profound impact. They have allowed Euclid, Shakespeare, Newton and Einstein to speak to us today. In this context is "digital age" technology really that different? Or has the sizzle masked the plain fact that digital information is still just information. (Sorry Walt Disney, I've got Einstein on the line and your Mickey Mouse anti-copying law is blocking reception.)

I will concede that the Internet has the potential to become the central nervous system of modern society. That is precisely why I shudder to see these self-proclaimed Internet brain surgeons getting out their scalpels and drills to hack out a new set of laws that could sever our collective right brain from our left. Wouldn't it be better just to wait, at least until the sizzle subsides? IPT

Next month I'll discuss how we patent attorneys can sell the sizzle in our barbecue. (Pass the hot sauce.)

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A Copyright Weapon Against Gray Market Goods



BY WILLIAM E. MAGUIRE

OH DARK THIRTY

It's 3 a.m...your phone rings and your Japanese distributor tells you he heard a rumor that 200 of your snowboards which he sold to a Japanese retail chain last season are now headed back to a national discount store in the U.S. with stores on the west and east coasts, which will no doubt spoil your sales efforts for this season. WHAT DO YOU DO! This is not a bad dream, in spite of the pepperoni pizza you had last night and you are not Keanu Reeves.

INTRODUCTION

The above sequence of events could trigger several responses... from reaching for the Pepto to calling your lawyer (hopefully not until after 8 a.m. with respect to the latter). The call to your lawyer may have better results in terms of a remedy specific to the reentry into the U.S. of previously sold hard goods to Japan, however. This is the case because of a recent Federal Court decision which held that the "First Sale Doctrine", found in §109 (a) of the Federal Copyright Statute (17 U.S.C.§109(a)), does not bar a claim of copyright infringement *involving exportation and later importation*

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This new federal court decision involves a specific fact situation with respect to the journey or trade route of the goods at issue

channels. *Parfums Givenchy, Inc. v. Drug Emporium, Inc.*, 38 F.3d 477, 481, fn. 6 (9th Cir. 1994). Nevertheless, for the purposes of this article the *exportation and later importation of copyrighted goods* shall be treated as gray market goods.

THE U.S.C.A. 9TH

The U.S. Court of Appeal for the 9th Federal Judicial Circuit (U.S.C.A. 9th) has jurisdiction with respect to claims in the following states:

> Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Hawaii, the Territories of Guam, the No. Mariana Islands

If you're still with me, the U.S.C.A. 9th recently made the above-referenced ruling in the matter of *L'Anza Research International, Inc. v. Quality King Distributors, Inc.* (hereinafter, L'Anza), U.S.C.A. 9th, No. 95-56447, Oct. 23, 1996. In this case, L'Anza, a manufacturer and distributor of hair care products sued Quality King for copyright infringement based on §602(a) (17 U.S.C. §602(a)) of the U.S. Copyright Statute, which prohibits the importation of U.S. Copyrighted goods acquired outside of the U.S. without the authorization of the copyright owner.

CAUGHT IN CARMEL

In this particular case, L'Anza discovered some of its products being sold to a retailer in Carmel, California. Unfortunately, this product had previously been sold overseas by L'Anza to a foreign distributor for a reduced price which did not factor in costs for marketing, promotion and warranties for the product in the U.S. Fortunately, however, L'Anza was able to discover these products owing to the fact

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doing so, Quality King was able to undercut the U.S. market for the same products sold by L'Anza in the U.S. marketplace, thus spoiling L'Anza's market in the U.S.

COPYRIGHT REGISTRATION

Another important piece of this puzzle is the fact that L'Anza owns the copyright *for the labels* on many of its hair care products (which is available with respect to both the text and accompanying art on either or both the product container and packaging). The L'Anza copyright registration was issued on January 7, 1994 (Copyright Registration TXU 593-178).

> **HINT:** The savvy snowboard manufacturer is probably already realizing that they too should be incorporating text and artistic elements on their snowboards. In this regard, since most boards are sold without stomp pads, it would be easy to include text specifications and/or rad advertising copy, together with graphic art or photographic elements, on the board prior to lamination (in the same location as the stomp pad, for example). Also, don't forget to register your copyrights with the Copyright Office in Washington, D.C. as the registration (or proof of having filed an application for same) is necessary in order to file a lawsuit in Federal Court for copyright infringement (17 U.S.C. §411(a)).

COPYRIGHT COLLISION

The dispute between L'Anza and Quality King placed two different sections of the Copyright Statute squarely at odds, namely, §109(a) v. §602(a). The defendant, Quality King asserted that §109(a), otherwise known as the "First Sale Doctrine", provides that after sale of its

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which had been sold by Sebastian to a distributor in South Africa, who had agreed to only distribute said product to professional hair salons in So. Africa, followed by the importation back into the U.S. of the same product after resale by the same So. African distributor to a third party importer (one of whom (coincidentally?) was our friend, namely, Quality King. Please note that the Third Circuit includes Delaware, New Jersey, Pennsylvania and the Virgin Islands (not exactly a snowboarding judicial district). Specifically, the Sebastian court held that the "First Sale Doctrine" bars an action under §602(a) even if the goods were sold outside of the U.S., so long as the goods were manufactured in the U.S. and sold by the copyright owner. As stated previously, §602(a) prohibits the unauthorized importation of goods acquired outside the U.S. and was cited by L'Anza in support of its position.

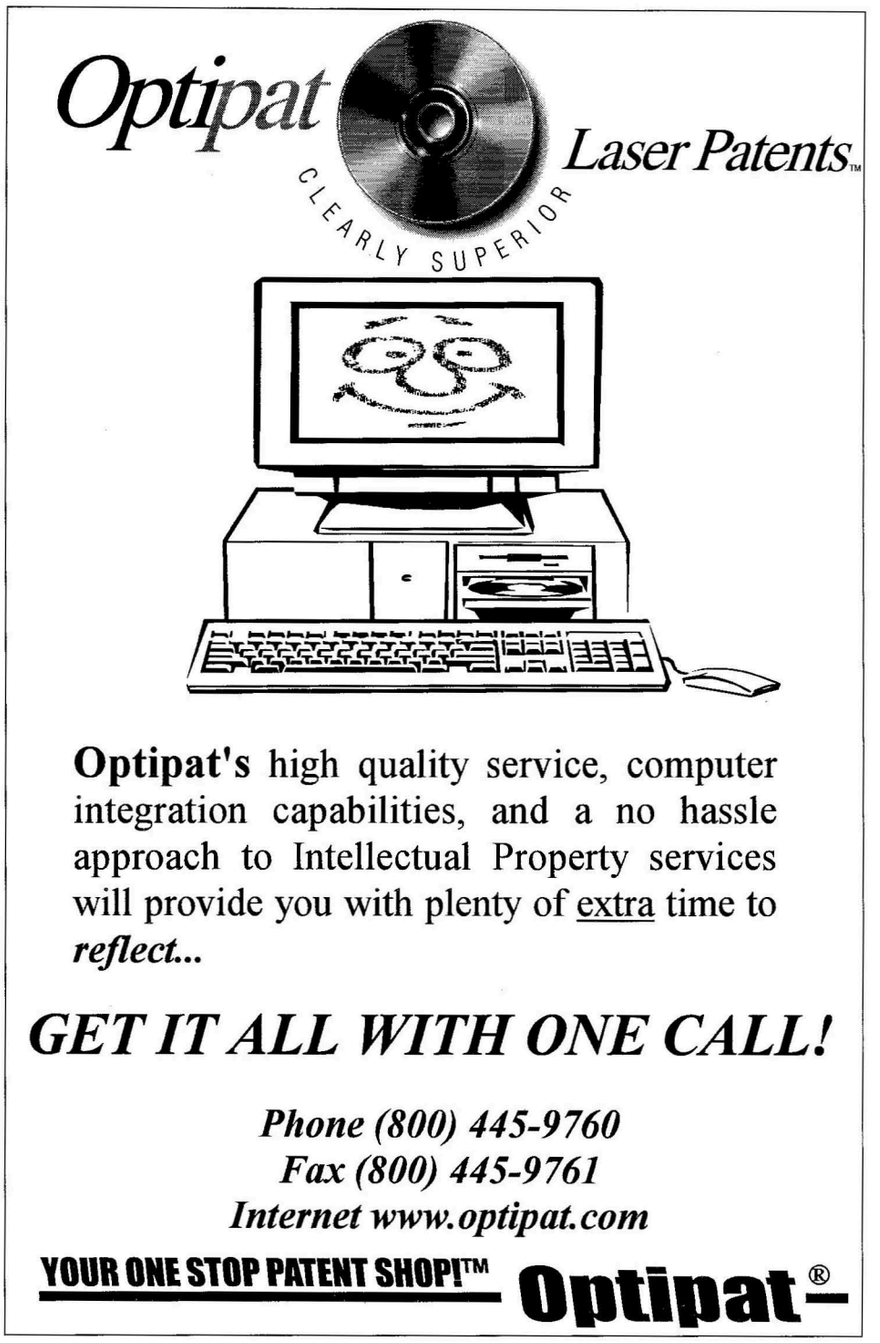
Nevertheless, in spite of the Sebastian court ruling, the 9th Circuit in L'Anza declined to adopt the approach taken by the 3rd Circuit. The rationale of the 9th Circuit in ruling that §602(a), in this instance prevailed over §109(a), was that to permit the entry into the U.S. of product not authorized by the U.S. copyright owner would render the purpose of §602(a) meaningless, as the express purpose of §602(a) was to prevent the unauthorized importation into the U.S. of goods acquired outside of the U.S.

Therefore, what we have now is (apparently) "a failure to communicate" (or agree) between the 9th and 3rd Circuits. Please note that with this split in authority, the time may now be ripe for a decision by the U.S. Supreme Court to provide a uniform decision... Do you think they're listening in D.C?

CONCLUSION

The practical implication of the L'Anza decision is that our U.S. snowboard manufacturer reaching for the Pepto may now have a separate remedy... at least in the 9th Circuit. He will have to buy more Pepto if his boards are shipped to retailers in Pennsylvania, however. On the other hand, if his boards are shipped back to the U.S. and they show up on store shelves in 9th Circuit states, e.g., California, Oregon, Washington, Idaho), then our manufacturer may not lose sleep and may be able to rely on the L'Anza decision... unless, of course, he can't remember if he *registered his copyrights* or worse, his boards are *'clean'* and only depict his trademark (in this case, DUH™ Snowboards) and do not include either textual or artistic elements capable of being registered with the Copyright Office. Finally, did he *mark or tag* his boards for later identification and tracing purposes... it could be a long night! IPT

Mr. Maguire is in private practice in the Los Angeles area of Westwood where he specializes in the areas of trademark, copyright, licensing, arbitration and mediation. He has been a member of the California bar since 1981, has an LL.M. degree in Intellectual Property, and was previously Senior Counsel for Malibu Comics Entertainment, Inc., a subsidiary of Marvel Entertainment Group, Inc. He has also served as outside trademark, copyright and licensing counsel for the television series, BAYWATCH®. He currently represents clients in the entertainment, publishing, videogame, snowboard, skateboard, clothing, cosmetics and restaurant industries. Phone: (310) 470-2929 Fax: (310) 474-4710 or 470-2174 E-Mail: maguire@artnet.net Web Sites: http://www.copyrightesq.com or http://-www.trademarkesq.com



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MOVING UP & MOVING ON

Thomas I. Ross from *Hill, Steadman & Simpson* in Chicago, IL to *Dressler, Rockey, Milnamow & Katz* in Chicago, IL

C. Scott Talbot from *Howrey & Simon* in Washington, DC to *Morgan, Lewis & Bockius* in Washington, DC

Richard S. Meyer from *Howrey & Simon* in Washington, DC to *Morgan, Lewis & Bockius* in Washington, DC

Felix L. Fischer from *Christie, Parker & Hale* in Pasadena, CA to *AlliedSignal Turbocharging Systems* in Torrance, CA

Stuart M. Goldstein from *Clark, Ladner, Fortenbaugh & Young* in Cherry Hill, NJ to *Hollstein, Keating, Cattell, Johnson & Goldstein* in Voorhees, NJ

Kent S. Burningham from *Workman, Nydegger & Seeley* in Salt Lake City, UT to *Trask, Britt & Rossa* in Salt Lake City, UT

Marc S. Kaufman from *Sughrue, Mion, Zinn, MacPeak & Seas* in Washington, DC to *Epstein, Edell & Retzer* in Rockville, MD

Andrea C. Walsh from *Ciba Geigy Corporation* in Research Triangle Park, NC to *American Home Products* in Parsippany, NJ

R. Stevan Coursey from *Isaf, Vaughan*
Kent S. Burningham from *Workman, Nydegger & Seeley* in Salt Lake City, UT to *Trask, Britt & Rossa* in Salt Lake City, UT

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R. Stevan Coursey from *Isaf, Vaughan & Kerr* in Atlanta, GA to *Arthur A. Gardner & Associates* in Atlanta, GA

Steven S. Korniczky from *Knobbe*

Margaret A. Kirick from *Vaden, Eickenroht & Thompson* in Houston, TX to *Pennzoil Products Company* in Houston, TX

Harvey D. Fried from *GE/RCA Licensing Corporation* in Princeton, NJ to *Quarles & Brady* in West Palm Beach, FL

Jo Anne M. Denison from *Michael, Best & Friedrich* in Chicago, IL to *Denison & Associates* in Chapel Hill, NC

Kenneth J. LuKacher from *Nixon, Hargrave, Devans & Doyle* in Rochester, NY to *Harris, Beach & Wilcox* in Rochester, NY

John L. Dauer from *Kane, Dalsimer, Sullivan, et al* in New York, NY to *Weil, Gotshal & Manges* in New York, NY

John D. Hubbard from *W.R. Grace & Commpany* in Lexington, MA to *Millipore Corporation* in Bedford, MA

Helen A. Greer from *Wolf, Greenfield & Sacks* in Boston, MA to *Nutter, McClennen & Fish* in Boston, MA

William A. Knoeller from *Watson Cole Stevens Davis* in Washington, DC to *Burns, Doane, Swecker & Mathis* in
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William A. Knoeller from *Watson Cole Stevens Davis* in Washington, DC to *Burns, Doane, Swecker & Mathis* in
Alexandria, VA

Michael J. Gratz from *Nilles & Nilles* in

Gregory L. Porter from *Dow Chemical Company* in Midland, MI to *Arnold, White & Durkee* in Houston, TX

Carla J. Dolce from *Felsman, Bradley, Gunter & Dillon* in Fort Worth, TX to *Dolce & Thomas* in Dallas, TX

Noland J. Cheung from *Thorp, Reed & Armstrong* in Pittsburgh, PA to *Bayer Corporation* in Pittsburgh, PA

James Trosino from *Howard, Rice, Nemerovsky, Canady, Robertson & Falk* in San Francisco, CA to *Fish & Neave* in Palo Alto, CA

FAY, SHARPE, BEALL, FAGAN, MINNICH & McKEE in Cleveland, Ohio is pleased to announce that **Mark S. Svat** has become a partner in the firm and that **Steven M. Auvil, R. Scott Speroff, John F. Collins, Cindy A. Cherichetti** and **Steven M. Haas** have become associated with the firm. Mr. Auvil joins the firm from *Jones, Day, Reavis & Pogue*; Mr. Speroff from *Maginot, Speroff & Addison*; Mr. Rollins from *Rockey, Rifkin & Ryther*; Ms. Cherichetti from *Burns, Doane, Swecker & Mathis, LLP* and Mr. Haas from *Oldham & Oldham Co., LPA.*

S. Svat has become a partner in the firm and that **Steven M. Auvil, R. Scott Speroff, John F. Collins, Cindy A. Cherichetti** and **Steven M. Haas** have become associated with the firm. Mr. Auvil joins the firm from *Jones, Day, Reavis & Pogue*; Mr. Speroff from *Maginot, Speroff & Addison*; Mr. Rollins from *Rockey, Rifkin & Ryther*; Ms. Cherichetti from *Burns, Doane, Swecker & Mathis, LLP* and Mr. Haas from *Oldham & Oldham Co., LPA.*

TOWNSEND & TOWNSEND & CREW ANNOUNCES THE RETURN OF ASSOCIATE

has rejoined the firm's Palo Alto office as an associate. Practicing in Townsend's Electronics Group, he will continue to prosecute patent applications directed to software, computer architecture and electrical devices before the United States Patent and Trademark Office and abroad. In addition, Mr. Kurkowski will advise clients on infringement and validity issues related to software and electronics matters. The hiring comes on the heels of the firm's largest expansion in its history. The addition of Mr. Kurkowski brings to 22 the number of attorneys hired in 1996 in Townsend's offices in San Francisco, Palo Alto, Denver and Seattle.

"We are delighted to have Jim return to the firm," says James G. Gilliland, Jr., Managing Partner at Townsend. "His technical expertise, which he so ably demonstrated during his three years at Townsend, further strengthens a practice area we continue to expand."

Mr. Kurkowski returns to Townsend after practicing for over a year with the law firm of Hale & Dorr in Boston where he specialized in patent acquisition and enforcement. Prior to his experience at Townsend, Mr. Kurkowski practice patent law as an associate at the law firm of Howrey & Simon in Washington, D.C.

From 1984 to 1987, Mr. Kurkowski was an electrical engineer in the Space Systems Division of the General Electric Company. At GE, he designed a processor for a military microcomputer and built a data interface circuit for the MX program utilizing microcomputer technology.

Mr. Kurkowski earned a J.D. from the University of Pennsylvania Law School in 1990 and an M.S. in Systems Engineering from the University of Pennsylvania in 1986. He received his B.S. in Electrical Engineering from Tufts University in 1984.

Townsend & Townsend & Crew LLP has 108 attorneys in San Francisco, Palo Alto, Denver and Seattle. The firm specializes in intellectual property, antitrust and commercial litigation. The firm's Web site is located at www.townsend.com.

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have joined the firm's Intellectual Property Law practice concentrating in all aspects of patent, trademark and copyright law.

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BIOTECHNOLOGY ATTORNEY JOINS FOLEY & LARDNER'S MADISON OFFICE

Madison, WI—Phillip B.C. Jones, an accomplished scientist and attorney, has joined **Foley & Lardner's** Madison office as an associate in the Biotechnology/Pharmaceutical Group.

Dr. Jones comes to the Madison office from Foley & Lardner's Washington, D.C., office, where he practice intellectual property law for three years, preceded by a year of practice at Sterne, Kessler, Goldstein & Fox. He focuses his practice on the prosecution and protection of biotechnology patents for domestic and international companies, universities and government institutions.

Dr. Jones holds a Ph.D. in physiology/pharmacology from the University of California-San Diego, where he graduate summa cum laude in 1982. He has written approximately 40 scientific papers plus numerous articles on biotechnology patenting, regulation, licensing, technology transfer and Internet-related legal issues.

Dr. Jones earned his J.D., cum laude, from the University of Kentucky College of Law in 1992. Prior to studying law, he taught at the UK Medical Center for three years and served a postdoctoral fellowship for four years at the Stanford University School of Medicine. He holds bachelor's and master's degrees in biology from California State University-Fullerton, graduating with honors for both degrees.

Dr. Jones is a member of the American Intellectual Property Law Association, the American Society of

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Pennsylvania in 1986. He received his B.S. in Electrical Engineering from Tufts University in 1984.

Townsend & Townsend & Crew LLP has 108 attorneys in San Francisco, Palo Alto, Denver and Seattle. The firm specializes in intellectual property, antitrust and commercial litigation. The firm's Web site is located at www.townsend.com.

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Continued From Page 35

Biochemistry and Molecular Biology, the Association of University Technology Managers, Inc. and the Internet Society. He is admitted to practice in Kentucky and the District of Columbia, and before the U.S. Patent and Trademark Office and the United States Court of Appeals for the Fedearl Circuit.

CHICAGO'S INTELLECTUAL PROPERTY ARENA HAS NEW LEGAL POWERHOUSE

Chicago, IL — Two of Chicago's top intellectual property law firms has joined forces, combining skill creation and protection of intellectual property rights with extensive litigation experience.

Dressler, Goldsmith, Milnamow & Katz, Ltd. has merged with the litigation practice of **Keith Rockey** — formerly Rockey and Associates — to create **Dressler, Rockey, Milnamow & Katz, Ltd.** Also adding to the new firm's litigation capabilities is **Tom Ross**, formerly a partner with *Hill, Steadman & Simpson*. The combined practice is located in Dressler's offices at Two Prudential Plaza.

The merger, which occurred just after the first of the year, "melds complementary practices to provide a complete package of legal services for the intellectual property arena," said Martin L. Katz, President of Dressler, Rockey, Milnamow & Katz.

"There is a real synergy between Keith Rockey's litigation practice and our practice, in the intellectual property field," Katz said. "Clearly we now have the ability to offer clients a broader

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range of services than we had before."

Dressler, Goldsmith, Milnamow & Katz mad a name for itself during the last 40

Milnamow has been in private practice since 1964, after working as a patent examiner in the U.S. Patent and Trademark Office as well. Max Dressler, the firm's founder, has been retired for over 20 years.

Rockey, a Fellow of the American College of Trial Lawyers and another former examiner for the U.S. Patent and Trademark Office, started his own firm in 1989 after 20 years with McDougall, Hersh & Scott. He has developed a reputation for being an effective litigator in patent infringement, contract and inventorship disputes. Currently, Rockey is representing Deere & Co. in a patent infringement dispute brought against it by Caterpillar Co.

Ross, also a former examiner for the U.S. Patent and Trademark Office, has been actively litigating patent cases for 15 years.

Rockey and Katz started talking about a possible merger after Rockey realized his litigation practice was growing more than he and his two partners could handle.

"We had a very limited capability to prepare and prosecute patent applications on behalf of our clients," Rockey said. "Marty's firm had that capability. Within the intellectual property community, we're clearly perceived as more of a factor than before because of the merger."

Combined, the firm represents a host of Fortune 100 companies, including Johnson & Johnson, Abbott Laboratories, Deere & Co., Illinois Tool Works, The BOC Group Inc., CPC International Inc., and FMC Corporation, and several large foreign companies, as well as prestigious universities including Northwestern University, the University of Chicago and

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the University of Illinois.

The creation of Dressler, Rockey, Milnamow & Katz also gives the firm the

associated with larger firms," Katz said. "The collective firm is a full-service firm. We're not the largest firm in the city; but our combined experience and proven quality is unsurpassed."

INTELLECTUAL PROPERTY PARTNER JOINS FOLEY & LARDNER

Milwaukee, WI — C. Thomas Sylke, an intellectual property attorney with nearly 12 years of experience in patent and trademark counseling, prosecution, licensing and litigation has joined *Foley & Lardner's* Milwaukee office as a partner in the Intellectual Property Department.

Mr. Sylke comes to *Foley & Lardner* from *Whyte Hirschboeck Dudek* S.C. in Milwaukee, where he had practice since 1985.

Mr. Sylke has extensive and varied experience advising clients with regard to patents, trademarks, trade secrets and copyrights; preparing and prosecuting domestic and foreign patent applications for many technologies; and assisting clients in trademark development and enforcement. He also has represented clients in intellectual property infringement litigation and trade secret misappropriation cases.

Mr. Sylke is registered to practice before the U.S. Patent and Trademark Office and various federal district and appellate courts. He is a director of the Wisconsin Intellectual Property Law Association and a member of the International Trademark Association and the Patent, Trademark and Copyright Section of the American Bar Association. He has served as a guest lecturer for the University of Wisconsin

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Law School and the UWM College of Engineering. Most recently, Mr. Sylke served on the Wisconsin Joint

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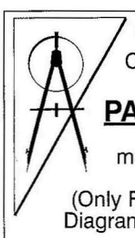

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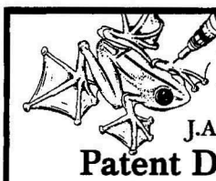

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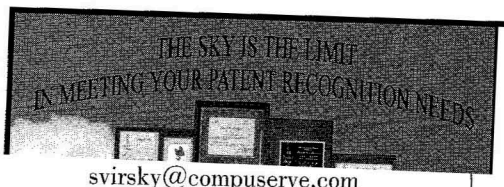

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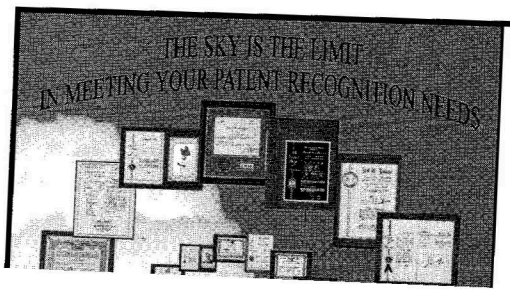

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CD-ROM Version of Traditional Brief Using Hypertext Links Created by Fish & Richardson

Washington, DC — The first legal brief using hyper text mark-up language ("HTML") ever to be submitted to a U.S. court of law accompanied a traditional brief filed today in the U.S. Court of Appeals for the Federal Circuit in Washington D.C.

The filing, Yukiyo, Ltd. v. Shiro Watanabe, et al (United States Court of Appeals for the Federal Circuit Appeal No. 97-1115) was mad by the intellectual property law firm of Fish & Richardson P.C. on behalf of Dr. Gerald G. McLaughlin, a New York dentist and renowned lecturer on dental practices, who sued eight dental laboratories for infringing his porcelain dental veneer patent.

The CD-ROM brief uses hypertext links to provide easy and immediate access to all referenced material including cases, statutes, trial transcripts, patent office documents and video depositions.

Noting the benefits of the CD-ROM format and hypertext links, Francis X. Gindhart, the attorney at Fish & Richardson P.C. who supervised the production of the CD-ROM says, "This is the first time that anyone has been able to file a legal brief, and all the underlying references, in a single electronic format, will revolutionize the way the court receives and processes information."

On January 22, in Marco Island, Florida, Mr. Gindhart will demonstrate the use of the HTML brief at the American Intellectual Property Law Association mid-winter meeting.

Mr. Gindhart, who joined the appellate group of Fish & Richardson in 1996, is the former clerk of the U.S. Court of Appeals for the Federal Circuit. He also wrote the Federal Circuit Rules adopted in 1988.

Yukiyo, Ltd. v. Shiro Watanabe, et al was tried in San Jose, California. On June 27, 1996, a federal jury returned a verdict in Dr. McLaughlin's favor, finding his patent claims valid. Later, the trial Judge overturned the verdict and the case was appealed to the United States Court of Appeals for the Federal Circuit.

Fish & Richardson P.C. is a national intellectual property and technology law firm founded in 1878 in Boston, Massachusetts. Today the firm has 150 lawyers and offices in Boston, Houston, Silicon Valley, Southern California, Twin Cities, Washington, D.C. and New York.

JOHN MARSHALL HOSTS 41ST ANNUAL CONFERENCE ON INTELLECTUAL PROPERTY LAW

Chicago, IL — The Center for Intellectual Property Law at the John Marshall Law School presented its 41st annual Conference on Developments in Intellectual Property Law. The two day conference, Feb. 27 and 28, was held at the law school.

Speakers focused on the latest information and decisions affecting patents, trademarks, copyright and trade secrets, as well as the implications of recent international actions.

Among the special guest presenters was Larry Goffney, acting deputy assistant secretary of commerce and deputy commissioner of patents and trademarks. He addressed participants during a 12:30 p.m. lunch on Feb. 27.

Other presenters that day included Shira Perlmutter, associate register for policy and international affairs with the Library of Congress, addressing "International and Legislative Developments in the U.S. Copyright Office;" John Marshall Professor Doris Long outlined "Database Protection: Berne Convention Treaty Update;" Raymond Nimmer of the University of Houston Law School discussed "UCC 2B;" Marguerite G. Gear of RSA Data Security Inc. presented "Advising Your Client on Exporting Software: Giving your Client Cryptic Advice;" and Joseph Rolla, Jr., director of Group 2300 in the U.S. Patent Office, on "Software Guidelines."

In the Feb. 28 morning program, Judge Paul Michel of the Court of Appeals of the Federal Circuit addressed "In View of Markham," and Robert Hart of the Gas Research Institute discussed "Strategic Alliances." Joining them were Attorneys Howard W. Rockman of Sonnenschein, Nath & Rosenthal and James A. Scheer of Welsh & Katz who discussed "How to Obtain Broad Patent Protection in View of Most Recent CAFC Decisions."

The afternoon program focused on recent developments in trade secrets presented by Melvin F. Jager of Brinks, Hofer, Gilson & Lione; copyrights presented by William J. McGrath of Davis, Mannix & McGrath; trademarks presented by Mark V.B. Partridge of Pattishall, McAuliffe, Newbury, Hilliard & Geraldson; and patents presented by William Rooklidge of Howard, Rice, Nemerovski, Canady, Falk & Rabkin.

THOMSON & THOMSON INTRODUCES NEW INTELLECTUAL PROPERTY RESEARCH SERVICE AVAILABLE THROUGH THE WORLD WIDE WEB

Suite of Resources Streamlines Work Flow for IP Professionals

New York, NY — Thomson & Thomson (T&T), the world leader in trademark and copyright services, today introduces a new intellectual property research service at the Legal Tech-New York Conference.

"In today's competitive business environment, the demand for easier access to information is greater than ever before. And it's even more so for the intellectual property community," says Robert S. Christie, President & CEO of Thomson & Thomson. "But, at the same time, IP professionals recognize the need to work smarter. So, we've created an environment that provides our customers with a direct link to T&T quality content and trademark expertise."

Christie views the service as a natural progression in intellectual property research. "In 1983, T&T introduced **TRADEMARKSCAN®**, the first on-line research service for the preliminary screening of trademark availability. Today, we're introducing the quintessential

Continued On Page 44

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INTELLECTUAL PROPERTY TODAY MARCH, 1997 41

PATENT BOX SCORE

GLOSSARY

NUMBER OF PATENTS: The number of patents granted by the U.S. Patent Office. The number excludes design patents and other special cases.

CURRENT IMPACT INDEX: A measure of how important a company's patents are based on how often they're cited in other patents, which shows how frequently they're used as the foundation for other inventions. For example, a company's 1995 index is computed by first calculating the average number of times the patents it was granted in each of the previous five years were cited in new patents granted in 1995. Those figures are divided by the average number of 1995 citations for all U.S. patents in each of the previous five years. That yields a citation rate for each year. A rating of 1.0 means that the company's patents were cited as often as the overall average. A rating of 1.2 means that the company's patents were cited 20% more often than average. Finally, the citation rate for each of the five years is averaged to get the 1995 rating.

TECHNOLOGICAL STRENGTH: The Number of Patents times the Current Impact Index.

SCIENCE LINKAGE: The number of references per patent to journal papers and other scientific publications. The higher the number, the more the company is doing research and development at the forefront of science and technology.

TECHNOLOGY CYCLE TIME: The median age of the U.S. patent references cited in the company's new patents. The lower the number, the more quickly the company is replacing one generation of inventions with another.

DATA: CHI RESEARCH, INC.

COMPANY	NUMBER OF PATENTS			CURRENT IMPACT INDEX			TECHNOLOGICAL STRENGTH			SCIENCE LINKAGE			TECHNOLOGY CYCLE TIME***		
	1995	AVG.* 1991-95	TREND** 1991-95 %/YR.	1995	AVG.* 1991-95	TREND** 1991-95 %/YR.	1995	AVG.* 1991-95	TREND** 1991-95 %/YR.	1995	AVG.* 1991-95	TREND** 1991-95 %/YR.	1995	AVG.* 1991-95	IMPR.**** 1991-95 %/YR.
ELECTRONIC															
Group Composite	8238	7982	3	1.19	1.27	-3	9781	10148	0	0.83	0.69	11	6.4	6.1	2
Canon	1105	1043	9	1.39	1.53	0	1539	1602	10	0.80	0.68	14	6.6	6.3	2
Matsushita Electric	976	806	15	1.25	1.25	0	1215	1006	16	1.14	0.92	11	5.9	5.7	1
Sony	854	594	30	1.32	1.35	-2	1130	796	27	0.89	0.63	26	5.6	5.4	3
Eastman Kodak	773	863	-1	1.16	1.29	-4	899	1114	-4	0.93	1.00	0	8.4	7.8	2
Xerox	558	515	13	1.52	1.80	-3	848	920	11	1.32	1.01	9	6.3	6.4	-2
Philips NV	581	601	-6	0.96	0.96	-1	559	582	-7	0.90	0.69	15	6.8	6.3	3
Fuji Photo Film	531	635	-8	1.02	1.16	-7	544	745	-14	0.44	0.38	8	6.3	5.9	2
Samsung	495	381	26	1.05	0.98	4	519	379	31	0.32	0.26	4	5.9	5.6	5
Sharp	409	408	2	1.14	1.20	-3	465	488	0	1.49	1.11	18	5.7	5.5	1
Ricoh	293	320	-1	1.32	1.43	0	387	458	-2	0.56	0.50	32	5.3	5.1	4
Olympus	218	204	8	1.42	1.41	2	309	289	10	0.50	0.57	20	5.5	5.1	4
Nikon	227	133	33	1.30	1.33	4	294	177	39	0.29	0.29	40	5.5	5.1	4
AMP	204	223	-7	1.37	1.62	-6	280	367	-13	0.91	0.79	8	7.3	6.7	1
Konica	183	216	-5	1.16	1.26	-5	213	273	-9	0.44	0.45	-2	5.6	6.0	3
Pioneer	157	198	-2	1.11	1.22	-5	175	243	-7	0.94	0.57	37	5.1	5.1	3
Eastman Kodak	773	863	-1	1.16	1.29	-4	899	1114	-4	0.93	1.00	0	8.4	7.8	2
Xerox	558	515	13	1.52	1.80	-3	848	920	11	1.32	1.01	9	6.3	6.4	-2
Philips NV	581	601	-6	0.96	0.96	-1	559	582	-7	0.90	0.69	15	6.8	6.3	3
Fuji Photo Film	531	635	-8	1.02	1.16	-7	544	745	-14	0.44	0.38	8	6.3	5.9	2
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Ricoh	293	320	-1	1.32	1.43	0	387	458	-2	0.56	0.50	32	5.3	5.1	4
Olympus	218	204	8	1.42	1.41	2	309	289	10	0.50	0.57	20	5.5	5.1	4
Nikon	227	133	33	1.30	1.33	4	294	177	39	0.29	0.29	40	5.5	5.1	4
AMP	204	223	-7	1.37	1.62	-6	280	367	-13	0.91	0.79	8	7.3	6.7	1
Konica	183	216	-5	1.16	1.26	-5	213	273	-9	0.44	0.45	-2	5.6	6.0	3
Pioneer	157	198	-2	1.11	1.22	-5	175	243	-7	0.94	0.57	37	5.1	5.1	3
Sanyo Electric	122	127	-3	1.08	1.14	-3	132	145	-6	0.61	0.74	24	6.1	5.9	3
Brother	117	184	-18	0.96	1.18	-13	113	235	-29	0.20	0.24	15	5.8	5.4	3
Murata Mfg.	118	92	11	0.93	0.93	0	110	87	17	0.59	0.30	87	7.8	7.3	2



Actual poster size is 26" x 36".



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WHAT'S NEW — RESOURCE GUIDE

Continued From Page 41

intellectual property workstation. It will truly revolutionize the industry."

Available at www.thomson-thomson.com, the service is the first truly Web-based intellectual property search system, according to Tom Barrett, Vice President of Interactive Media. "It's actually a suite of resources, within a single desktop environment, that streamlines the work flow of IP professionals," says Barrett. "And because it's so powerful and easy to use, it leapfrogs traditional on-line services in terms of flexibility, efficiency and access."

The first service in the suite is the company's **TRADEMARKSCAN** databases, now with a powerful "smart" search feature that automatically asks the many questions necessary to uncover sound-alike or trademarks. The databases also boast an elegant display that includes rapid retrieval of trademark logos as part of the full text of a trademark record.

The next resource in the suite is the extremely popular **T&T Domain Name Database**, "the single best place on the Web to search for domain names - bar none," says Barrett. It combines a unique interface and powerful search capability to locate domain names registered with Network Solutions, Inc. (NSI). Finally, **Inbox** is an electronic document delivery and archiving service that works faster than fax or overnight delivery, and is, according to Barrett, "getting rave reviews from our customers." He also notes that full text of a trademark record.

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these are only the first of many more resources planned for 1997.

Adds Barrett, "We've designed a business research tool that completely changes the way business maintains and protects its valuable intellectual properties."

QUESTEL•ORBIT ANNOUNCES NEW PRINTING ENHANCEMENT

Format Based Pricing Gives Users More Flexibility

McLean, VA — Questel•Orbit, a member of France Telecom Multimedia, announced a new enhancement to the Orbit online system Format Based Pricing (FBP). This new feature offers cost cutting benefits to the users, while providing more options and flexibility in displaying search results.

A long standing and popular feature of Orbit is the ability to easily create customized (tailored) prints by listing the desired fields after the PRINT command. Previous to the release of Format Based Pricing, tailored print options incurred the maximum record charge. With FBP, Orbit now checks the fields requested against the predefined Orbit prints formats and charges appropriately. For example, the print command PRT TI is now free!

This is the second major Orbit print enhancement release this year (the first being the standardized print formats in the patents databases) and is the most significant. Format Based Pricing also provides additional display flexibility with the PowerSearch multifile environment.

"The Format Based Pricing enhancement to Orbit is consistent with our goal of maximum record charge. With FBP, Orbit now checks the fields requested against the predefined Orbit prints formats and charges appropriately. For example, the print command PRT TI is now free!

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"The Format Based Pricing enhancement to Orbit is consistent with our goal of delivering mission critical information at value leading prices," said Michael Wilkes, Vice President of Questel•Orbit's U.S. operations. "We are proud to offer our Orbit subscribers increased flexibility in their online searching."

For more information on any of the enhancements to the Questel or Orbit systems, contact the Questel•Orbit customer service help desk at 800-456-7248, or e-mail "info@questel.orbit.com." Additional product information is available on the Questel•Orbit home page at http://-www.questel.orbit.com/patents/.

DERWENT ANNOUNCES FREE PATENT SEMINAR SERIES ON STN AND DIALOG

Derwent has announced the schedule for its Winter/Spring 1997 International Patent Seminars, which are provided free of charge to those interested in learning more about patent information and searching. The first seminar, titled International Patent Information, provides training on patent procedures within major patenting organizations across the world, including the EPO, PCT, and JPO. Attendees can also learn about proposed changes to the USPTO, key terminology within the patent industry, and the importance of searching global patent information. The second, Derwent World Patents Index (DWPI) Workshop, is designed to teach all the basics of searching DWPI, the world's most comprehensive database of enhanced global patent information. For Dialog users, this seminar will also include searching techniques for Derwent LitAlert, a unique online database that tracks patent & trademark litigation filed in U.S. District Courts.

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We have translated thousands of patents over the past 22 years.
Our translators are experienced professionals who always
translate into their native language for grammatical and

WHAT'S NEW — RESOURCE GUIDE

NEW BNA *SUPPLEMENT* INCLUDES I.P. REGULATORY DEVELOPMENTS THROUGH OCTOBER 1

Washington, D.C. — The new *October 1996 Supplement* to the full text reference ***Patent, Trademark, and Copyright Regulations*** has been published by The Bureau of National Affairs, Inc. (BNA).

The new supplement includes regulatory developments between December 1, 1995 and October 1, 1996 affecting U.S. patents, trademarks, and copyrights. The looseleaf material is incorporated into the book's binder for all new purchasers of the main volume.

The *October 1996 Supplement* updates the binder's sections on patent applications, trademark applications, government rights and agency proceedings, Copyright Office rules, and contract rights and government patents. In addition, the binder's trademark and copyright indexes are updated to reflect recent developments.

Two new appendixes provide the Patent and Trademark Office's (PTO) policy guidelines on product and process claims in light of ***In re Ochiai*** and the policy guidelines for examining design patent applications for computer-generated icons. The index contains the final, revised PTO examination guidelines for computer-implemented inventions.

Patent, Trademark, and Copyright Regulations, *October 1996 Supplement* may be purchased alone (408 pp. Looseleaf/ISBN 1-57018-045-8/Order #1045-PR6/$55.00 plus tax, shipping and handling) or with the main volume (1 Volume Looseleaf/with binder and tabs/Order #1046-PR6/$125.00 plus tax, shipping and handling) may be purchased from BNA Books, P.O. Box 7814, Edison, NJ 08818-7814. Telephone orders: 1-800-960-1220. Fax orders: 1-908-417-0482. A free catalog of BNA law books is available 1-800-960-1220 or sending a request on the Internet to "books@bna.com." BNA's home page, which includes an online catalog of BNA books, can be found on the World Wide Web at "http://www.bna.com/bnabooks".

MUSIC MATTERS.COM LAUNCHES WEB SITE TO INFORM LAWYERS ABOUT MUSIC LICENSING

New York, NY — While music is one of the hottest tools to incorporate into a web site, issues of music usage and ownership are fast becoming growth areas for the legal community. Music Matters.Com (www.musicmatters.com) today announced its launch of the Internet's most useful, innovative and informative web site regarding the licensing of music.

Music Matters.Com is an easy-to-understand site to help attorneys address clearance concerns related to music licensing. The site is already gaining support from numerous music publishers as a thorough resource for licensing music.

"The goal of the site is to educate people about music licensing so that those who are interested in using music can manage the approval process and contact the appropriate resources," states Stu Cantor of Music Matters.Com. "Lawyers, music industry professionals, web developers and consumers can all benefit from the information provided by music Matters.Com. It is an all inclusive web site about a topic which is often difficult for people to research," states Monica Corton of Music Matters.Com.

Understanding what music publishers do and who they are is critical in understanding how music is licensed. No music should be released or distributed in any manner unless a license is secured with a music publisher or a music publisher's representative. The third section of the site contains resources of major and independent music publishers including the names of licensing contacts, addresses, phone, fax, e-mails, URLs and brief descriptions of the music catalogs owned by each company.

Music Matters.Com divides into a free are and a pay area. The free area includes information about the hosts of the site, a table of contents of the pay area, and a Terms and Conditions page. Users must consent to the agreement in order to access the downloading instructions. The pay area costs $19.50 and can be accessed by following three easy steps in the downloading process. Music Matters.Com information is protected by a sophisticated encryption program called SoftLock. In order to open Music Matters.Com, the user must purchase a password from SoftLock either by e-mail or toll-free telephone number. The password unlocks Music Matters.Com information for user's review on his computer. If the user sends Music Matters.Com information to other users, it will re-lock and invite a purchase from these potential users.

The creators of the site hope that by distributing Music Matters.Com on the Internet, they will be able to reach everyone that has an interest in learning how to license music.

HARNESS, DICKEY & PIERCE ANNOUNCES FOUR NEW PARTNERS

Harness, Dickey & Pierce, P.L.C. is pleased to announce that Robert M. Siminski, Stephen T. Olson, Stanley M. Erjavac and Robert J. Lenihan, II have become principals in the firm as of January 1, 1997.

Robert M. Siminski has been with the firm since 1990 and his current practice includes obtaining, enforcing and licensing patents, trademarks and copyrights in various fields, including primarily the chemical and mechanical arts.

Stephen T. Olson has been with HD&P since 1991. His current practice includes obtaining, enforcing and licensing patents in diverse technical areas primarily relating to the mechanical and electromechanical arts preparing clearance opinions and designing around patents.

Stanley M. Erjavac joined Harness, Dickey & Pierce in 1992 and focuses his current practice on intellectual property litigation, patent and trademark procurement, licensing and counseling.

Robert J. Lenihan, II joined the firm as a principal from Colombo & Colombo P.C. His current practice includes litigation at both Federal and State levels, dispute resolution, general corporate defense, licensing litigation, product liability defense, and negotiation and litigation of noncompetition agreements. IPT

shipping and handling) may be purchased from BNA Books, P.O. Box 7814, Edison, NJ 08818-7814. Telephone orders: 1-800-960-1220. Fax orders: 1-908-417-0482. A free catalog of BNA law books is available 1-800-960-1220 or sending a request on the Internet to "books@bna.com." BNA's home page, which includes an online catalog of BNA books, can be found on the World Wide Web at "http://www.bna.com/bnabooks".

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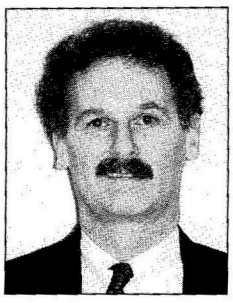
INTELLECTUAL PROPERTY TODAY MARCH, 1997 45

Who Owns What You Paid For??

THE WORK-FOR-HIRE RULES



BY LARRY M. ZANGER

Larry Zanger is the Co-Chairman of the Information Technology Law Department at the Chicago law firm of McBride, Baker & Coles and a former Chairman of the Computer Law Committee of the Chicago Bar Association. He concentrates his practice in the information technology industry and represents software developers, consultants, systems integrators and software, hardware dealers and distributors and the users of technology. Please feel free to call him at 312-715-5780, or contact him at his e-mail address "zanger@mbc.com" with your questions and comments. Please visit the McBride, Baker & Coles web page at http://www.mbc.com.

If I were to pose the following hypothetical, how would you answer it: Let's assume that you hire an independent consultant to develop a computer program for you. You design the specifications for that program, you test the program, supervise the corrections which the consultant makes to the program so that it fully conforms to your specifications and you pay the consultant in full for all of the work that he does for you. After the program has been delivered to you and installed on your system, you discover

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that the consultant is marketing "your" program and has licensed it to one of your competitors at a fraction of the price you paid "works made for hire" rules, a frequently overlooked and often devastating anomaly in the copyright ownership rules you would not logically expect to exist.

The "works made for hire" rules, which apply with respect to any work (except for nine listed below) prepared by an independent contractor, are an exception contained in the U.S. Copyright Act. Under the act, ownership of the copyright in a work generally belongs to the author or authors of that work. The author is typically the person who actually created the work, the person who first translated an idea into a fixed, tangible expression who is entitled to copyright protection. Under the "works made for hire" exception, the employer of the author, or another person for whom the work was created, is deemed to be the author and is granted ownership of the copyright, unless there is a written agreement to the contrary.

In the context of our example, the works made for hire doctrine has vast significance for the free-lance creator of computer programs and other creative works. The Copyright Act provides that a "work made for hire" exists under one of two sets of circumstances. In the first, the work must have been prepared by an employee within the scope of his employment. In the second, three distinct conditions must be met:

a the work must have been specially commissioned;

b the work must have been the subject of a written agreement between the parties stipulating that the work was to be treated as one

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b the work must have been the subject of a written agreement between the parties stipulating that the work was to be treated as one

made for hire; and

c the work must fall into one of nine categories defined by the Act. The

Violence v. Reid, and interpreted the "works made for hire" doctrine. The Court dealt at length with the statutory language comprising the "work for hire" test: "a work prepared by an employee within the scope of his or her employment." The Court noted that the Copyright Act did not define these terms and decided that the term "employee" had the meaning given to it by the common law of agency.

In determining whether a hired party was an employee under the general law of agency the Court looked at a long list of factors, to determine if the hiring party had the right to control the manner and means by which the work is accomplished. It looked at twelve factors to help that decision, stating that no one of these factors is determinative:

1 the skill required;
2 the source of the instrumentalities and tools;
3 the location of the work;
4 the duration of the relationship between the parties;
5 whether the hiring party has the right to assign additional projects to the hired party;
6 the extent of the hired party's discretion over when and how long to work;
7 the method of payment;
8 the hired party's role in hiring and in paying assistants;
9 whether the work is part of the regular business of the hiring party;
10 whether the hiring party is in business;
11 the provision of employee benefits;
12 the tax treatment of the hired party.

After applying these factors to the relationship between the CCNV and Reid, the Supreme Court decided that Reid was an independent contractor and not an employee of the CCNV.

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SUBSEQUENT REFINEMENT OF THE REID RULES

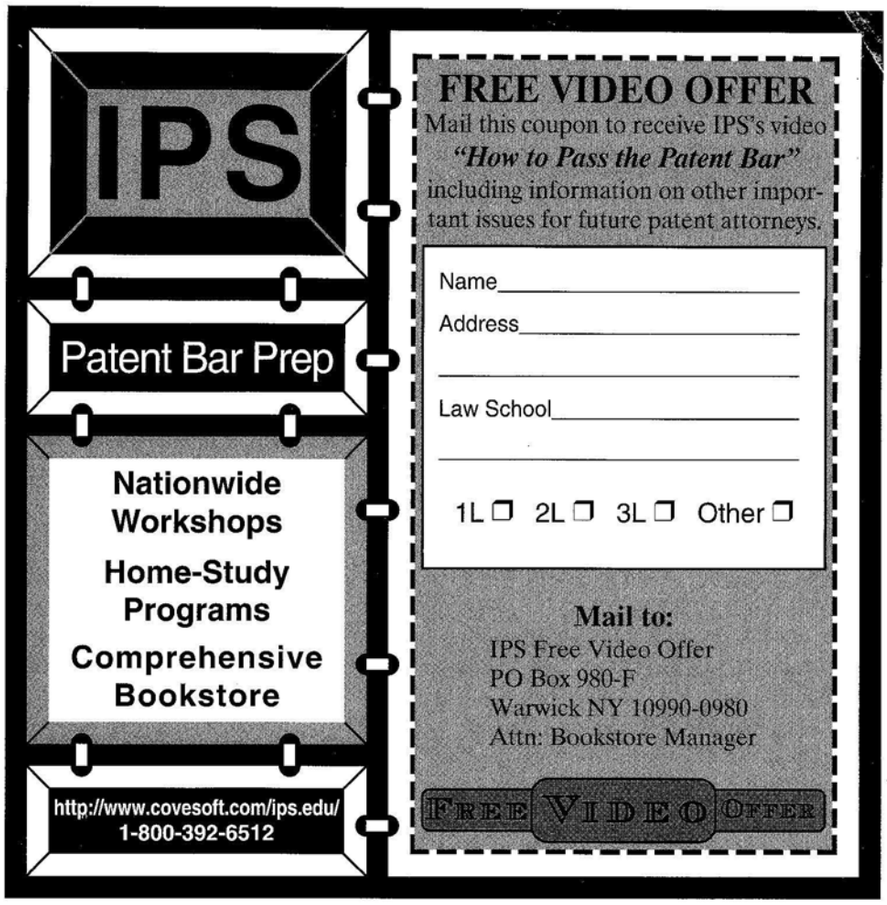
In *Aymes v. Bonelli*, the Second Circuit

the work. This independence was restricted only by the hiring party who directed and instructed the programmer on what was wanted from the programs.

Although the programmer worked semi-regular hours, he was not always paid by the hour and on occasion presented his bills to the hiring party as invoices. At times, the programmer would by paid by the project and given bonuses for finishing the project on time. However, he received no health insurance or other benefits from the hiring party. In addition, the hiring party never paid the employer's percentage of the programmer's payroll taxed and never withheld any of his salary for federal or state taxes. In fact, he was give Internal Revenue Service Form 1099, Non-Employee Compensation, instead of Form W-2 typically given to employees. The parties disputed the ownership of the copyright in the work and they decided that the programmer was an independent contractor and therefore, without a written assignment of the copyright, owned the program.

The court stated that the Reid test can be easily misapplied, since it consists merely of a list of twelve possible considerations that may or may not be relevant in a given case. Reid established that no one factor was dispositive, and gave no direction concerning how the factors were to be weighted. The Bonelli court declared that it did not necessarily follow that because no one factor was held to be dispositive that all of the twelve factors are equally important, or indeed that all factors have relevance in every case. The factors should also not merely be tallied, the court continued, but should be weighed according to their significance in the case.

In this case, the court determined that the most important factors were the hiring party's right to control the manner in which the programmer created the programs, the programmer's professional skill, the fact that the hiring party provided no employee benefits or social security taxes for the programmer and the hiring party's right to assign other projects to the programmer in addition to the creation of the work in question. The remaining factors in the Reid test were determined to be relatively insignificant or negligible because they were either indeterminate or inapplicable to the facts of this case. IPT



Motorola Settles With Rockwell International; Files Suit Against U.S. Robotics

Patents Covering V.34 Modem Standard at Issue

Motorola Inc. and **Rockwell International Corporation** announced a settlement in Motorola's litigation against Rockwell with respect to the infringement of a number of Motorola's patents, including those for high-speed modem technology. The patents at issue primarily cover technologies essential to the International Telecommunications Union (ITU) V.34 modem standard. As part of the settlement, Rockwell has secured a license for the patents involved in this litigation. Several of the present proprietary 56K modem technologies include a return — or upstream — data path based on the V.34 standard. This use of V.34 technology in 56K modems also may require a license from Motorola.

In a related item, Motorola Inc. also announced that it has filed a complaint in U.S. District Court against U.S. Robotics Corporation of Skokie, Ill., for the infringement of a number of Motorola's patents for high-speed modem technology. The patents at issue cover technologies essential to the International Telecommunications Union (ITU) V.34 modem standard. Some of the patents also may apply to V.34-style return paths for next-generation (56K) modems.

In response to the patent infringement suit filed by Motorola, U.S. Robotics issued the following statement:

U.S. Robotics believes it has meritorious defenses to Motorola's claims and intends to mount a vigorous defense of the lawsuit. It is regrettable and unnecessary that Motorola has chosen to resort to the courts rather than to act in accordance with its often professed commitment to making its technology adapted for use in communications standards available on a "fair, reasonable and non-discriminatory basis." Unfortunately, after many months of negotiations, spanning the entire course of Motorola's similar suit against Rockwell International (which was reported to have been settled on the same day the suit against U.S. Robotics was filed), Motorola continued to demand more than reasonable compensation for its alleged intellectual property. Having made certain representations concerning the basis on which its intellectual property would be licensed if incorporated in the International Telecommunications Union (ITU) V.34 modem standard, Motorola subsequently changed its demands after the standard was adopted and became accepted. IPT

that the hiring party provided no employee benefits or social security taxes for the programmer and the hiring party's right to assign other projects to the programmer in addition to the creation of the work in question. The remaining factors in the Reid test were determined to be relatively insignificant or negligible because they were either indeterminate or inapplicable to the facts of this case. IPT

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day the suit against U.S. Robotics was filed), Motorola continued to demand more than reasonable compensation for its alleged intellectual property. Having made certain representations concerning the basis on which its intellectual property would be licensed if incorporated in the International Telecommunications Union (ITU) V.34 modem standard, Motorola subsequently changed its demands after the standard was adopted and became accepted. IPT

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CALENDAR OF EVENTS — 1997

COMPUTER LAW

April 24-25, 1997. THE 1997 COMPUTER AND TELECOMMUNICATIONS UPDATE. (ANA Hotel, Washington, D.C.). Sponsored by Computer Law Association. CLA's Annual Update Conference to keep you up to date on recent developments in the merging fields of Computers and Communications Law. For more information contact Barbara Fieser at CLA 703-560-7747;Fax: 703-207-7028; E-mail: clanet@aol.com.

April 28-29, 1997. COMPUTER LAW: NEGOTIATING AND DRAFTING ISSUES FOR COMPLEX TRANSACTIONS. (The New York Hilton Hotel, New York, NY). Co-chairs: Richard Raysman, Brown Raysman & Millstein, New York, and Joseph P. Zammut, Fulbright & Jaworski LLP, New York. Highlights: This program covers building and operating a Web-based business; software development; licensing and distribution; outsourcing; system integration to media publishing and licensing for CDROM and the World Wide Web. For more information or to register, call Randi Desko at 800-888-8300 ext. 6111; e-mail: seminars@ljextra.com.

INTELLECTUAL PROPERTY

April 3-4, 1997. INTERNATIONAL INTELLECTUAL PROPERTY LAW AND POLICY. (Fordham University School of Law, New York, NY). Sponsored by: Fordham University School of Law. Highlights: Conference outsourcing; system integration to media publishing and licensing for CDROM and the World Wide Web. For more information or to register, call Randi Desko at 800-888-8300 ext. 6111; e-mail: seminars@ljextra.com.

INTELLECTUAL PROPERTY

April 3-4, 1997. INTERNATIONAL INTELLECTUAL PROPERTY LAW AND POLICY. (Fordham University School of Law, New York, NY). Sponsored by: Fordham University School of Law. Highlights: Conference on international copyright, patent, trademark law, with speakers from WIPO, EC Commission, U.S. government, acad-

Highlights: This course examines practical aspects of litigation technique, antitrust and intellectual property audits, and insurance coverage for intellectual property claims. For more information or to register, call 800-CLE-NEWS (253-6397).

April 25-26, 1997. MASTER CLASS ON APPELLATE ADVOCACY. (The John Marshall Law School Center for Intellectual Property Law, Chicago, IL). For more information or to register, call Pamela Medina; 312-987-1420; Fax: 312-427-7128; e-mail: 6medina-@jmls.edu.

April 26, 1997. ETHICS FOR INTELLECTUAL PROPERTY PRACTITIONERS. (Crystal Gateway Marriott, Crystal City, VA). The program features the Hon. Lawrence J. Goffney, Jr., Acting Deputy Assistant Secretary of Commerce & Acting Deputy Assistant Commissioner of Patents and Trademarks; the Hon. Claude M. Hilton, U.S. District Court Judge; Professor John L. Costello, George Mason University School of Law; and James W. Carroll, Jr., Assistant Bar Counsel, Virginia State Bar. Arlington Patent Attorney Richard C. Litman will be moderator of the program. Topics include the approaches of the Patent and Trademark Office and Virginia State Bar to intellectual property ethics, intellectual property ethics and litigation, and analyzing conflicts of interest. Please contact the Arlington County Bar Association at (703) 358-4465 for more information.

April 30 - May 2, 1997. AMER-

School of Law; and James W. Carroll, Jr., Assistant Bar Counsel, Virginia State Bar. Arlington Patent Attorney Richard C. Litman will be moderator of the program. Topics include the approaches of the Patent and Trademark Office and Virginia State Bar to intellectual property ethics, intellectual property ethics and litigation, and analyzing conflicts of interest. Please contact the Arlington County Bar Association at (703) 358-4465 for more information.

April 30 - May 2, 1997. AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION - SPRING MEETING. (San Antonio Marriott Rivercenter, San Antonio, TX). For

July 28 - August 1, 1997: Mediation of Intellectual Property Disputes. For more information or to register, contact: Graduate Programs at 603-228-1541; e-mail: graduateprograms@fplc.edu.

June 25-29, 1997. IPL 1997 SUMMER CONFERENCE. (San Diego Marriott Hotel & Marina, San Diego, CA). Sponsored by: American Bar Association-Intellectual Property Law Section. For more information or to register, call 312-988-5639.

August 1-6, 1997. ABA-IPL 1997 ANNUAL MEETING. (Park Hyatt, San Francisco, CA). Sponsored by: American Bar Association-Intellectual Property Law Section. For more information or to register, call 312-988-5639.

October 16-18, 1997. AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION ANNUAL MEETING. (Crystal Gateway Marriott Hotel, Arlington, VA). Sponsored by: American Intellectual Property Law Association. For more information or to register, call 703-415-0780.

LICENSING

June 26-29, 1997. LES (USA & CANADA) SUMMER MEETING. (The Drake Hotel, Chicago, IL). Sponsored by: Licensing Executives Society (USA & Canada). For more information or to register, call 703-836-3106.

LITIGATION

April 3, 1997. EXAMINING THE EXPERT WITNESS. (The Warwick Hotel, Philadelphia, PA). Sponsored by

LICENSING

June 26-29, 1997. LES (USA & CANADA) SUMMER MEETING. (The Drake Hotel, Chicago, IL). Sponsored by: Licensing Executives Society (USA & Canada). For more information or to register, call 703-836-3106.

LITIGATION

April 3, 1997. EXAMINING THE EXPERT WITNESS. (The Warwick Hotel, Philadelphia, PA). Sponsored by American Law Institute-American Bar Association Committee on Continuing Legal Education (ALI-ABA). Faculty: Tim Hallahan, Clifford E. Haines, and

Global Prior Art



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- *Semiconductors*
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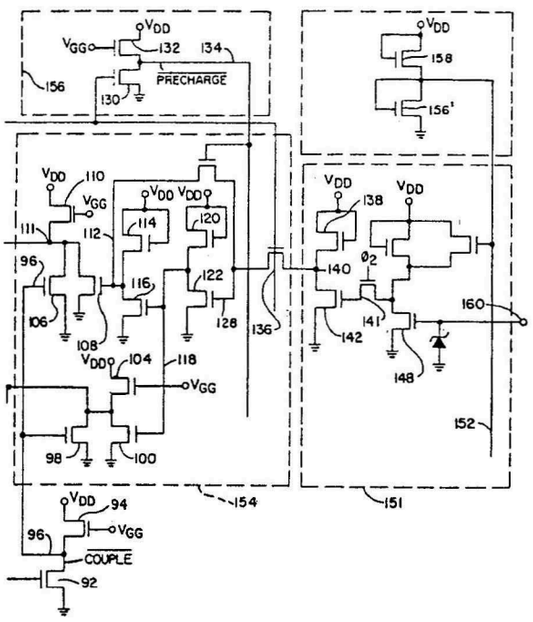

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