10-25-2013

12th Annual Conference on Recent Developments in IP Law and Policy

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Golden Gate University School of Law and the IP Law Center presents
The 12th Annual Conference on Recent Developments in Intellectual Property Law and Policy

October 25, 2013

Program Supplement
TO: IP Law Conference Participants
FROM: GGU IP Law Center and IP Law Faculty
DATE: October 25, 2013
RE: Welcome!

Welcome to the 12th Annual Conference on Recent Developments in Intellectual Property Law and Policy, presented by the Intellectual Property Law Center of Golden Gate University School of Law. This annual tradition, begun in late September 2001, was one of the first events developed as part of the foundation of our new IP Law Program. Over the years we have hosted presentations by leading thinkers in the area of IP Law, including Professor & former Senior Advisor to the Obama Administration Justin Hughes, New Yorker writer Ken Auletta, UC Irvine Law School Professor Dan Burk, Professor Susan Scafidi of the Fashion Law Institute, and many others.

We are pleased to present another great line-up of speakers and panels in this, our twelfth year. Our program leads off with Adjunct Professors and leading attorneys Justin Beck and Ron Finley discussing the Patent Law Year in Review. We follow with USF School of Law’s David Franklyn talking about recent developments in Right of Publicity Law. After a short break Wilson Sonsini’s Charles Tait Graves brings us up to date on Recent Developments in Trade Secret Law.

Following our lunch break, we are pleased to present a program by Robin Feldman, UC Hastings College of the Law on the topic of Patent Trolling: An Empirical Analysis of Patent Monetization Entities in US.

Continuing our series of interviews with in-house counsel, this year we present an interview by Professor Marc Greenberg of Alica Del Valle, in-house counsel at salesforce.com discussing the expectations of hi-tech companies with respect to managing outside counsel. We end with The Trademark Year in Review with Sally Abel of Fenwick & West LLP.

In the Spring term, The IP Law Center is planning to bring important participants in the IP bar and academy to the University to present their views as part of our Distinguished IP Law Speaker Series.

The Center’s online presence continues to grow as well. Our highly praised IP Law Book Review is in its first segment of its fourth volume. Bookmark the main site page, www.gguiplc.com to stay abreast of all of the Center’s activities and to link to the review and blog.

Lastly, enjoy the conference, and let us know what you think of the program. We are always looking for ways to improve your experience, and thank you for your attendance and support of IP law at Golden Gate.

Sincerely,

Marc Greenberg
William Gallagher
<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
<th>Speaker(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>8:30 - 9:00</td>
<td>Registration/Check-in</td>
<td>2nd floor lobby</td>
</tr>
<tr>
<td>9:00 - 9:15</td>
<td>Welcoming Remarks</td>
<td>Co-Directors Marc Greenberg &amp; William Gallagher</td>
</tr>
<tr>
<td>9:15 - 10:15</td>
<td>The Patent Law Year in Review</td>
<td>Justin Beck and Ron Finley, Beck, Bismonte &amp; Finley, LLP</td>
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<tr>
<td>10:15 - 10:30</td>
<td>Morning Break</td>
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<tr>
<td>10:30 - 11:30</td>
<td>Right of Publicity Law</td>
<td>David Franklyn, USF School of Law</td>
</tr>
<tr>
<td>11:30 - 12:30</td>
<td>Recent Developments in Trade Secret Law</td>
<td>Charles Tait Graves, Wilson Sonsini</td>
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<tr>
<td>12:30 - 1:45</td>
<td>Lunch</td>
<td>Pick up lunch in 2nd fl. lobby</td>
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<td>2:45 - 3:00</td>
<td>Afternoon Break</td>
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<tr>
<td>3:00 - 4:00</td>
<td>Managing Outside Counsel for High Technology Companies: A New Paradigm</td>
<td>Alica Del Valle of salesforce.com in conversation with Prof. Marc Greenberg</td>
</tr>
<tr>
<td>4:00 - 5:00</td>
<td>The Trademark Year in Review</td>
<td>Sally Abel, Fenwick &amp; West LLP</td>
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<tr>
<td>5:00 - 5:15</td>
<td>Closing Remarks</td>
<td>Co-Directors Marc Greenberg &amp; William Gallagher</td>
</tr>
<tr>
<td>5:15 - 7:00</td>
<td>Post-conference Reception</td>
<td>Room 6210</td>
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</tbody>
</table>
We have arranged a temporary wifi login on the GGU campus for October 25, 2013:

username: cpcnfrggg
password: SwYs5A

We kindly ask that you set the sound on all of your electronic devices to “silent” mode in order to minimize distractions during the program. Thank you and we hope you enjoy the conference.

At 12:30, lunch will be distributed in the 2nd floor lobby. Please form a single line and enjoy your lunch outside of the lecture hall. You may leave a jacket, but we recommend you take your valuables with you. We have a person monitoring the room so no one without a badge will enter except the cleaning staff. We have several locations where you can eat on campus including the Plaza (one level below the 1st floor), the GGU café at 40 Jessie St. behind the main building, and the 6th floor has quite a large space—take the elevator to 6 and exit the elevators with a sharp left. Please rejoin the lecture hall at 1:30-1:45 for the afternoon sessions.
Marc Greenberg

Marc H. Greenberg is Professor of Law, founding Director, and currently Co-Director of the Intellectual Property Law Center and Program at Golden Gate University of Law. A member of the faculty since 2000, he teaches Intellectual Property Survey, Internet and Software Law, Intellectual Property and New Technology, and Entertainment Law in the IP curriculum. He also teaches Civil Procedure, Business Associations and related courses in the general curriculum. He was the 2010-2011 Chair of the Art Law Section of the American Association of Law Schools, and is a past co-chair of the Copyright Section of the San Francisco Intellectual Property Law Association.

Professor Greenberg received his A.B. degree in English Literature from the University of California, Berkeley; and his J.D. from the University of California, Hastings College of the Law, where he served as an articles editor of the Hastings Constitutional Law Quarterly and published the first of his scholarly works analyzing the First Amendment cases of the Supreme Court’s 1978 term.

Professor Greenberg’s scholarship has focused on legal issues pertaining to content on the Internet, obscenity law in online contexts, and copyright issues both in the U.S and in China. He is presently working on a book focusing on comic books, creativity and the law. His articles have been published in the Berkeley Technology Law Journal, The Syracuse Journal of Law and Technology, The John Marshall Review of Intellectual Property Law, and The Loyola Chicago University Journal of International Law. Professor Greenberg is a member of the Books Editorial Board of the ABA IP Law Section.

Before joining the GGU faculty, Professor Greenberg practiced IP, entertainment and business law, in both transactional work as well as litigation, in several firms in Northern California. He was of counsel to Chickering and Gregory in San Francisco and was a managing partner in his own firm, Nelsen and Greenberg, also in San Francisco.
William Gallagher is Professor and Co-Director of the IP Law Center at the Golden Gate University School of Law, where he teaches courses on intellectual property litigation, intellectual property law, torts, and legal ethics. He also currently serves as Associate Dean for Faculty Scholarship. From 2009-2011, Professor Gallagher was a Visiting Scholar at the Center for the Study of Law and Society at the UC Berkeley School of Law.

Professor Gallagher received his JD from the UCLA School of Law; his Ph.D. from the University of California, Berkeley School of Law (Jurisprudence and Social Policy Program); his MA from the University of Chicago; and his BA from the University of California, Berkeley.


Before entering full-time academia, Professor Gallagher was a partner in the San Francisco office of Townsend and Townsend and Crew LLP, where he specialized in patent, copyright, trademark, trade secret, and related intellectual property litigation in both state and federal courts nationwide.
Justin T. Beck

Justin Beck has successfully practiced intellectual property law for more than 30 years, and has taught patent litigation and copyright courses in law school for the last seven years.

Before helping formation of the Beck, Bismonte & Finley, LLP law firm, he had been a partner at Skjerven Morrill for 15 years, specializing in patent and copyright litigation and headed that firm’s litigation department. Previously, he had been in-house counsel for two Silicon Valley technology companies, performing litigation and licensing efforts. Justin has had success handling patent and copyright disputes in a broad range of technologies, including wafer processing machinery, computer systems, memory devices, microprocessors, software, and medical devices.

Since 1999, he has been an Adjunct Professor of Law at Golden Gate University in San Francisco, teaching patent litigation and copyright. He writes on intellectual property matters for several legal publications. He participates in competitive bridge and enjoys sports and his dogs in his free time.
Ron Finley

Mr. Finley is the managing partner of the BBF litigation department. He specializes in intellectual property and complex commercial civil litigation, including patent, trade secret, licensing, trademark, and unfair competition. He has represented businesses and individuals in both state, federal and appellate courts, including many federal district courts around the US.

Mr. Finley advises international and U.S. clients on intellectual property issues spanning the semiconductor device and manufacturing equipment industries, including integrated circuits, software, wafer processing and metrology and electro-mechanical devices.

He is an Adjunct Professor of Law at Golden Gate University School of Law in San Francisco—where he teaches Patent Litigation.

As a trial lawyer, Mr. Finley has successfully resolved numerous disputes involving business, employment, and real estate matters, as well as wills, trusts and estates cases.

He earned a Bachelor of Science degree from Brandon University in 1983, a Bachelor of Arts from University of Franche-Comté in 1984, a Bachelor of Education from Brandon University in 1985, and his law degree from McGill University School of Law in 1998.

Mr. Finley is a member of the California State Bar, and is admitted to all California State and Federal courts, the Eastern District of Texas, the Court of Appeals for the Federal Circuit and the Supreme Court of the United States. He is a member of the American Bar Association, the American Intellectual Property Law Association, the Santa Clara County Bar Association and the San Francisco Bay Area Intellectual Property American Inn of Court.
David Franklyn

Professor David J. Franklyn spent five years in private practice as a litigator for Mayer, Brown & Platt in Chicago before he joined the law faculty at Northern Kentucky University Salmon P. Chase College of Law. At Salmon P. Chase College of Law, he received the Outstanding Professor of the Year Award. Franklyn has authored several articles on trademark and liability issues and collaborates with Senior Professor J. Thomas McCarthy on numerous projects.
Charles Tait Graves

Charles Graves is an IP litigation partner at Wilson Sonsini with a focus on trade secret law, and an adjunct professor at UC Hastings.
Robin Feldman

Robin Feldman is a Professor of Law and Director of the Institute for Innovation Law at UC Hastings College of the Law. She has received the Rutter Award for Teaching Excellence, the Visionary Award from the UC Hastings Board of Directors, and the 1066 Foundation Award for Scholarship. Professor Feldman has published two books, RETHINKING PATENT LAW (Harvard 2012) and THE ROLE OF SCIENCE IN LAW (Oxford 2009), as well as numerous articles in law reviews and in the New England Journal of Medicine. Her work was cited in the White House Report on Patent Assertion, and she has provided commentary for the Federal Trade Commission, the Department of Justice, the Patent & Trademark Office and various committees of the California legislature. Professor Feldman has also served as the Chair of the Antitrust Section of the American Association of Law Schools.

Professor Feldman received a B.A. from Stanford University graduating Phi Beta Kappa, and a J.D. from Stanford Law School, graduating the Order of the Coif and receiving the Urban A. Sontheimer Award for graduating second in the class. After graduation, Professor Feldman clerked for The Honorable Joseph Sneed of the U.S. Court of Appeals for the Ninth Circuit.
Alica Del Valle

Alica Del Valle, a native of Mexico City, currently serves as Trademark Counsel for salesforce.com, inc. salesforce.com is a leader in enterprise cloud computing, recognized by Forbes as the most innovative company in the world. Ms. Del Valle is responsible for developing, managing, and enforcing salesforce.com, inc.’s global trademark portfolio, developing departmental processes, instituting and managing domain name disputes and acquisitions, negotiating terms in technology licensing, settlement of infringement matters, and strategic alliances, and IP due diligence.

Prior to joining salesforce.com, Ms. Del Valle worked for an IP specialty firm counseling clients in digital marketplace and new media matters and served as a Staff Attorney for the Supreme Court of California.

Ms. Del Valle received undergraduate degrees in English and Legal Studies from the University of California, Berkeley and her Juris Doctorate from the University of California, Davis School of Law.

She currently serves on an Academic Committee of the International Trademark Association, on the Boards of Directors of the San Francisco Intellectual Property Law Association and Bar Association of San Francisco Barristers Club, and the BASF Technology Committee.
Sally Abel

Sally M. Abel is Chair of the Trademark Group, focusing her practice on international trademark and trade name counseling, including the development and management of international trademark portfolios and trademark rights on-line.

Sally has repeatedly won international, national, state and Silicon Valley accolades as a preeminent trademark lawyer. The International Who’s Who of Trademark Lawyers 2013 ranked her among the top three trademark lawyers in the U.S.—the only one of the three specializing in counseling and prosecution—and the top 10 trademark lawyers in the world.

Ms. Abel was a pioneer in the international debate over trademark rights on the Internet, including serving as INTA’s representative on the 11-member International Ad Hoc Committee (IAHC), the international body organized by the Internet Society, to restructure the domain name system. At the invitation of the World Intellectual Property Organization (WIPO), Ms. Abel also participated in WIPO’s First Meeting of Consultants on Trademarks and Internet Domain Names held in Geneva in February, 1997. Through WIPO and the National Arbitration Forum, she has served as a neutral panelist in over 60 domain name disputes brought under ICANN’s UDRP system.
The Patent Law Year in Review
Justin Beck and Ron Finley, Beck, Bismonte & Finley, LLP

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The Patent Law Year in Review
Justin Beck and Ron Finley, Beck, Bismonte & Finley, LLP

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The America Invents Act
An Interim Report Card
Justin T. Beck and Ron C. Finley
The Patent Law Year in Review
Justin Beck and Ron Finley, Beck, Bismonte & Finley, LLP

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Background

• AIA enacted September 2011
• Phased in over 18 months
• Response to complaints that patent system was impeding innovation
• Goals
  ▫ Improve the PTO
  ▫ Improve patent quality
  ▫ Reduce litigation costs
False Marking:
A Surprising Success
Background

• Intentional false marking prohibited since 1834
• Enforced by private party on behalf of U.S. (qui tam)
• Original minimum penalty $100 per offense
• 1952 revision modified to maximum $500 penalty per offense
• Until 2009, courts held “offense” was series of related acts, so penalties were trivial.
False Marking - the Golden Age

- In 2009, Federal Circuit held each falsely marked article was a separate offense
- Solo Cup: Maximum penalty increased from $1500 to $10,800,000,000,000 ($10.8 trillion).
- False Marking filings jumped from less than 10 in 2008-2009, to over 1000 in the next 18 months.
AIA to the Rescue

- AIA requires actual injury for all actions
- Constitutional challenges failed
- False marking filings virtually disappeared
Problem: Bad Patents

Solution: Fix the PTO
Pre-AIA

- PTO underfunded
- Little control over user fees
- Congressional cash cow
- Result:
  - Weak examiner staff
  - Poor technical support
  - Bad patents
PtO Self Funding

- Make PtO self-sufficient
- PtO sets fees
- But Congress still controls the budget
- “Trust fund” for overages
The Patent Law Year in Review
Justin Beck and Ron Finley, Beck, Bismonte & Finley, LLP

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Result

• Significant, targeted fee increases
• Improved budgeting and planning processes
• Creation of regional offices
• But still subject to Congress
Anti-Troll Provisions
Trolls: An Introduction

- Most patent cases brought by “trolls” aka “non-practicing entities.”
- Troll cases often settled for cost of defense
- Most (but not all) studies indicate trolls impede innovation
AIA Remedy

- Prohibit joinder of unrelated defendants (aimed at mass lawsuits filed in the Eastern District of Texas)
- Restrictions on business method patents
- Damage limitations rejected by Congress
Joinder

- Old practice
  - Join 10+ defendants in single case
  - Pick off the smaller defendants
  - Go to trial against the deep pockets
- New practice
  - Sue 10+ defendants in separate cases
  - **Consolidate for purposes of discovery**
  - Pick off the smaller defendants
  - Go to trial against the deep pockets
The Result

D+
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Justin Beck and Ron Finley, Beck, Bismonte & Finley, LLP

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More Troll Measures Coming

- Identification of interested parties
- Loser pays
- Higher pleading requirements
- Limited discovery before claim construction
- Limited electronic discovery
- Stays on customer suits
Stronger PTO Review

- Half a million patent applications filed annually
- Backlog is over 700,000
- PTO has only about 6000 examiners
- No way to spot important applications
Solutions

- Publication of applications coupled with opportunity for public comment
- Improved review of already issued patents
  - Ex parte Reexamination
  - Post-grant review
  - Inter partes review
Public Comment

- Until 2001, applications were secret
- Gradually process became more open
  - Publication after 18 months encouraged
  - Public PAIRS
  - Public comment generally ignored
- AIA requires PTO to consider “preissuance submissions” in certain circumstances
Post-Grant Challenges

- Evolutionary process
  - Ex parte reexamination  -- 1989
  - Inter partes reexamination  -- 2000
The Patent Law Year in Review
Justin Beck and Ron Finley, Beck, Bismonte & Finley, LLP

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AIA Revolution
PTO – the Alternative to Litigation
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Inter Partes Review

- New trial board created
- Strict time limits
- Limits on amendments
- Limited discovery
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Result

- IPR filings are increasing
- Patent firms developing IPR practices
- But
  - Still very early
  - Regional offices delayed

IN PROGRESS
First to File
First to File

- Pre-AIA
  - First to invent
  - One year grace period to file
  - Very complex rules to resolve priority disputes
First to File
American Style

- Rest of world has first to file with absolute novelty
- Strong political opposition in Congress to absolute novelty
- Compromise: first to file with one year grace period from public disclosure
First to File

- AIA
  - First inventor to file
  - One year grace period
  - Potentially complex derivation and disclosure rules
Simple Example

**Pre-AIA**
- A invents 1/1/2010
- B invents 2/1/2010
- B files
- A files
- RESULT: A wins

**Post AIA**
- A invents 6/1/2013
- B invents 7/1/2013
- B files
- A files
- RESULT: B wins
Not So Simple Example

Pre-AIA
- B invents
- A invents
- A discloses publicly
- B files
- A files
- Result: B wins

Post-AIA
- B invents
- A invents
- A discloses publicly
- B files
- A files
- RESULT: A wins
### Even Harder Example

<table>
<thead>
<tr>
<th>Pre-AIA</th>
<th>Post AIA</th>
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<tr>
<td>• A invents</td>
<td>• A invents</td>
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<tr>
<td>• A discloses publicly</td>
<td>• A discloses publicly</td>
</tr>
<tr>
<td>• B invents</td>
<td>• B invents</td>
</tr>
<tr>
<td>• B discloses publicly</td>
<td>• B discloses publicly</td>
</tr>
<tr>
<td>• B files</td>
<td>• B files</td>
</tr>
<tr>
<td>• A files</td>
<td>• A files</td>
</tr>
<tr>
<td>• RESULT: A wins</td>
<td>• RESULT: ?</td>
</tr>
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</table>
“Subject Matter” Disclosures

- Inventor’s public disclosures within one year of filing are not prior art
- Independent third party disclosures of same “subject matter” as inventor’s disclosure are not prior art.
- Examples:
  - A discloses screw; B later discloses nail
    - A claims screw
    - A claims fastener
  - A discloses “flat head screw”; B later discloses “Screw”
  - A discloses “flat head screw”; B later discloses “flat head screw, Philips screw, and hex screw”
  - A discloses “screw”; B later discloses “flat head screw”
Time Line for Answers

• First to file effective March 2013

• First PTO appellate decision by 2015

• First court decisions by 2015/16
Majority and Minority Positions on Preemption under the Uniform Trade Secrets Act

**Majority position – Single Tier of Protected Information**

The UTSA preempts common law claims arising from the same facts as a trade secret claim. UTSA claims represent the exclusive tort remedy for allegations that a party misused non-public business information.

**Minority position – Second Tier of Protected Information**

Overlapping common law tort claims are available for information constituting a failed trade secret claim. Courts typically refer to the information as “proprietary” or “confidential but not secret.”
Majority vs. Minority Position on Trade Secret Preemption

Tier 1
Trade Secret

Tier 2
“Confidential/Proprietary but not Secret”
Public Domain

Majority position

Minority position
Robin Feldman, U.C. Hastings School of Law

Professor Robin Feldman
UC Hastings Law
Robin Feldman, U.C. Hastings School of Law

The America Invents Act 500: Effects of Patent Monetization Entities on US Litigation
By Sara Jeruss, Robin Feldman & Joshua Walker
Robin Feldman, U.C. Hastings School of Law

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Data-Driven Law-Making

<table>
<thead>
<tr>
<th>Entity Description</th>
<th>2007</th>
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<td>University</td>
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<td>Insufficient Evidence</td>
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Percent of Cases Filed

Line Graph: The percentage of cases filed from 2007 to 2011 shows a trend for each entity type.

Robin Feldman, U.C. Hastings School of Law

### Slide 5

<table>
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<tr>
<th>Year</th>
<th>Operating Company</th>
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</table>
Slide 6

**INSTITUTE FOR INNOVATION LAW**

Data-Driven Law-Making

Most Frequent Filers in Sample, By Number of Lawsuits Filed

- Jens Erik Sorensen
- Abbot Laboratories
- Arrivalstar S.A.
- Accacia Subsidiaries
- Guardian Media Technologies
- Eli Lilly & Company
- GS Cleantech Corporation
- Monsanto Company
- Network Signatures, Inc.
- Raytheon, LLC
- Sepracor Inc.

- Individual or Trust
- Monetizer
- Operating Company
### All Plaintiff Case Outcomes

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<td>Case is Ongoing</td>
<td>95</td>
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<td>Favored in Consent Judgment</td>
<td>22</td>
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<td>Claim Defendant Favored in Consent Judgment</td>
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<tr>
<td>Procedural – Dismissal</td>
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<tr>
<td>Loss on Summary Judgment</td>
<td>12</td>
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<tr>
<td>Procedural – Stay</td>
<td>12</td>
</tr>
<tr>
<td>Win on Default Judgment</td>
<td>8</td>
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<tr>
<td>Win on Trial and Judgment</td>
<td>3</td>
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<tr>
<td>Loss on Trial and Judgment</td>
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<tr>
<td>Win on Appeal</td>
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<td>Loss on Appeal</td>
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<td>Loss on Default Judgment</td>
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### Outcomes By Plaintiff Type

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<th>Monetizer</th>
<th>Individual or Trust</th>
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</thead>
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<td>79.30%</td>
<td>83.54%</td>
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<td>Favored in Consent Judgment</td>
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<td>3.80%</td>
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<td>Claim Defendant Favored in …</td>
<td>0.70%</td>
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<tr>
<td>Procedural – Dismissal</td>
<td>3.86%</td>
<td>1.27%</td>
<td>12.12%</td>
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<tr>
<td>Loss on Summary Judgment</td>
<td>3.16%</td>
<td>3.80%</td>
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<tr>
<td>Procedural – Stay</td>
<td>2.46%</td>
<td>5.06%</td>
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<tr>
<td>Win on Default Judgment</td>
<td>1.75%</td>
<td>2.53%</td>
<td>3.03%</td>
</tr>
<tr>
<td>Win on Trial and Judgment</td>
<td>0.70%</td>
<td>2.53%</td>
<td>3.03%</td>
</tr>
<tr>
<td>Loss on Trial and Judgment</td>
<td>0.70%</td>
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<td>Win on Appeal</td>
<td>0.35%</td>
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<tr>
<td>Loss on Default Judgment</td>
<td>0.35%</td>
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<tr>
<td>Loss on Appeal</td>
<td>0.35%</td>
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</table>
Robin Feldman, U.C. Hastings School of Law

The America Invents Act 500 Expanded: Effects of Patent Monetization Entities
By Robin Feldman, Tom Ewing & Sara Jeruss
Forthcoming UCLA J.L. & Tech. (2013)
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INSTITUTE FOR INNOVATION LAW
Data-Driven Law-Making

% of Cases Filed

0% 10% 20% 30% 40% 50% 60% 70%
2007 2008 2011 2012

Operating Company
Monetizer
Other Entity
University
Insufficient Evidence
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---

### Data-Driven Law-Making

<table>
<thead>
<tr>
<th>Year</th>
<th>Operating Company</th>
<th>Monetizer</th>
<th>Individual or Trust</th>
<th>Insufficient Evidence</th>
<th>Other Entity</th>
<th>University</th>
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<tbody>
<tr>
<td>2007</td>
<td>4,377</td>
<td>2,648</td>
<td>1,009</td>
<td>113</td>
<td>66</td>
<td>17</td>
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<tr>
<td>2008</td>
<td>3,789</td>
<td>1,814</td>
<td>895</td>
<td>129</td>
<td>12</td>
<td>36</td>
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<tr>
<td>2011</td>
<td>4,253</td>
<td>6,244</td>
<td>498</td>
<td>120</td>
<td>407</td>
<td>37</td>
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<tr>
<td>2012</td>
<td>3,832</td>
<td>4,606</td>
<td>579</td>
<td>75</td>
<td>100</td>
<td>39</td>
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Defendants Sued per Month by Monetizers

Month AIA Passed

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[Graph showing cases filed per month by monetizers from 2007 to 2012.]
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Top 10 Most Frequent Filers

- ArrivalStar SA: 186
- TQP Development: 105
- GeoTag Inc: 100
- Brandywine Communications Technologies: 93
- Pragmatus AV: 82
- Ronald A. Katz Technology Licensing, L.P.: 69
- The Tawnsaura Group, LLC: 69
- Network Signatures, Inc.: 57
- Blue Spike, LLC: 56
- Uniloc Corporation: 53
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### INSTITUTE FOR INNOVATION LAW

**Data-Driven Law-Making**

<table>
<thead>
<tr>
<th>Case Outcomes</th>
<th>Count</th>
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<tbody>
<tr>
<td>Likely Settlement</td>
<td>6,200</td>
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<tr>
<td>Case is Ongoing</td>
<td>4,483</td>
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<tr>
<td>Interdistrict Transfer</td>
<td>506</td>
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<tr>
<td>Consolidation</td>
<td>468</td>
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<tr>
<td>Procedural - Dismissal</td>
<td>371</td>
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<tr>
<td>Procedural - Stay</td>
<td>293</td>
</tr>
<tr>
<td>Claimant Favored in Consent Judgment</td>
<td>283</td>
</tr>
<tr>
<td>Claim Defendant Win on Summary Judgment</td>
<td>154</td>
</tr>
<tr>
<td>Claimant Win on Default Judgment</td>
<td>89</td>
</tr>
<tr>
<td>Claimant Win at Trial</td>
<td>54</td>
</tr>
<tr>
<td>Claim Defendant Win at Trial</td>
<td>41</td>
</tr>
<tr>
<td>Claim Defendant Favored in Consent Judgment</td>
<td>31</td>
</tr>
<tr>
<td>Claimant Win on Summary Judgment</td>
<td>11</td>
</tr>
<tr>
<td>Claim Defendant Win on JMOL</td>
<td>5</td>
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<tr>
<td>Claimant Win on JMOL</td>
<td>2</td>
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<tr>
<td>Claim Defendant Win - Judgment on the Pleadings</td>
<td>1</td>
</tr>
<tr>
<td>Procedural - Severance</td>
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</table>

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### Table: Data-Driven Law-Making

<table>
<thead>
<tr>
<th>All Case Outcomes</th>
<th>Operating Company</th>
<th>Monetizer</th>
<th>Individual or Trust</th>
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</thead>
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<tr>
<td>Likely Settlement</td>
<td>71.81%</td>
<td>74.76%</td>
<td>75.94%</td>
</tr>
<tr>
<td>Interdistrict Transfer</td>
<td>5.45%</td>
<td>7.09%</td>
<td>5.12%</td>
</tr>
<tr>
<td>Consolidation</td>
<td>5.42%</td>
<td>6.88%</td>
<td>0.68%</td>
</tr>
<tr>
<td>Procedural - Dismissal</td>
<td>4.25%</td>
<td>3.25%</td>
<td>9.73%</td>
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<tr>
<td>Procedural - Stay</td>
<td>3.19%</td>
<td>4.22%</td>
<td>1.71%</td>
</tr>
<tr>
<td>Claimant Win on Default Judgment</td>
<td>1.26%</td>
<td>0.55%</td>
<td>1.37%</td>
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<tr>
<td>Claim Defendant Win - Judgment on the Pleadings</td>
<td>0.02%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Claimant Favored in Consent Judgment</td>
<td>5.10%</td>
<td>0.25%</td>
<td>0.68%</td>
</tr>
<tr>
<td>Claim Defendant Favored in Consent Judgment</td>
<td>0.32%</td>
<td>0.46%</td>
<td>0.17%</td>
</tr>
<tr>
<td>Claimant Win on Summary Judgment</td>
<td>0.19%</td>
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</tr>
<tr>
<td>Claim Defendant Win on Summary Judgment</td>
<td>1.59%</td>
<td>1.86%</td>
<td>3.07%</td>
</tr>
<tr>
<td>Claimant Win at Trial</td>
<td>0.77%</td>
<td>0.30%</td>
<td>0.85%</td>
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<td>Claim Defendant Win at Trial</td>
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<td>0.30%</td>
<td>0.51%</td>
</tr>
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<td>Claim Defendant Win on JMOL</td>
<td>0.04%</td>
<td>0.04%</td>
<td>0.17%</td>
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<tr>
<td>Claimant Win on JMOL</td>
<td>0.02%</td>
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</tr>
<tr>
<td>Procedural - Severance</td>
<td>0.02%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
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INSTITUTE FOR INNOVATION LAW
Data-Driven Law-Making

- Public Notice 32%
- No Public Notice 17%
- Asserted Patents No Having On-Line File Wrapper 51%
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[Graph showing the number of asserted patents over the age of asserted patents (Years), with quarters 1st Q., 2nd Q., 3rd Q., and 4th Q. indicated.]
Managing Outside Counsel for High Technology Companies: A New Paradigm
Alica Del Valle of salesforce.com in Conversation with Prof. Marc Greenberg

Notes
The Trademark Year in Review
Sally Abel, Fenwick & West LLP

Notes