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## E-volving® news from Rader, Fishman & Grauer PLLC

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### Management System for E-discovery Means More Control -

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Technology - Lawyers have looked too hard for an e-discovery silver bullet. In reality, only careful and proactive management will avoid potential pitfalls while, at the same time, drive your cases to a more efficient and successful resolution. A simple yet detailed checklist can do that.

The earliest stages of a dispute are when the most significant steps of e-discovery are best carried out. This can be well before a suit is filed, running up through the early periods of discovery.

Click [here](#) for the complete article.

### Tweets, Twitts and Trademarks

St. Louis Cardinals manager Tony La Russa filed suit against Twitter, Inc. alleging, amongst other things, misappropriation of likeness and trademark infringement in connection with the name page "twitter.com/tonylarussa." The suit alleged a fake account was

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### GM's response to the 2009 APA-Intel Report:

#### Intellectual Energy Drives Green Technologies at GM

Innovation is important in any forward-looking company. GM's published patent applications have steadily increased and doubled to more than 1,000 in 2008. Moreover, GM currently has greater than 7,000 active pending and granted U.S. patents. In fact, GM ranked first in the recent Automotive & Parts patent scorecard, which ranks 2007 patents, by IEEE Spectrum. The entire report can be viewed [here](#) under the April 22, 2009 release.

### Business-Method Patents Will Get U.S. Supreme Court Scrutiny -

The U.S. Supreme Court announced on June 1 that it would determine whether patents should be granted for what are known as business methods. The case being considered involves a method for hedging risk in commodities trading. A claimed patent on this process, filed in 1997 by inventors Bernard Bilski and Rand Warsaw, was rejected by the U.S. Patent & Trademark Office on the basis that it simply involved a mental process and did not need any technology to implement. The full story can be viewed [here](#).

### En Banc Review Sought on Federal Circuit Decision Upholding Controversial Patent Rules -

created and being updated (the tweets) giving the false impression the posts were by Mr. La Russa. See complete story [here](#).

### The Naked Cowboy files suit against Clear Channel Communications.

Robert Burck, otherwise known more characteristically and stylistically as The Naked Cowboy alleged one of Clear Channel's radio stations created an imposter look a like thereby infringing his trademark image. The Naked Cowboy plays a guitar in the streets of New York City donning a pair of white briefs, cowboy hat and boots and not much else. See story [here](#).

GlaxoSmithKline PLC and inventor Triantafyllos Tafas have each petitioned the U.S. Court of Appeals for the Federal Circuit for an en banc rehearing of a March 20 decision that upheld the U.S. Patent and Trademark Office's authority to issue three of four patent rules. Patent lawyers believe the challenged rules would particularly drive up the cost of life sciences patents because they typically involve numerous claims to protect many compounds while scientists work on a final product. The entire story may be viewed [here](#).

### Legal quirk lets anyone sue firms over old patents -

A recent ruling on an obscure statute has opened the door for people to sue companies that stamp their products with expired patent numbers. The ruling appears to be the first of its kind upholding the constitutionality of a law allowing anyone to sue in the name of the government if they have evidence that a company is guilty of "false markings" that is, claiming patent protections that have expired or never existed. The person who sues gets to keep half of any money awarded, with the rest going to the government. The entire story may be viewed [here](#).

### Transforming Holden Caulfield - Parody, Fair Use or Rip-off -

Attorneys for J.D. Salinger seek a preliminary and permanent injunction against sequel to "The Catcher in the Rye," entitled "60 Years Later: Coming Through the Rye" by pseudonymous author, John David California. The Complaint alleges that the right to compose a sequel to the acclaimed novel or to use the character "Holden Caulfield" belongs solely to Salinger, and calls for damages in an unspecified amount.

The Complaint points to several instances where actual sentences from "Catcher" are used in the sequel, either verbatim or paraphrased, that are not referenced as excerpts from the original work.

Further, the protagonist in the sequel, identified as "Mr. C," allegedly imitates the character as developed by Salinger: Mr. C narrates his journey as he escapes from a retirement home as he explores the city of New York - much like the 16 year old Caulfield who left school to explore the city in the original.

Possible fair use defense? Maybe - it will likely depend on how "transformative" the sequel is. The U.S. Supreme Court has said that a use is transformative if it adds something new, with a further purpose or different character, altering the first with new expression, meaning or message. *Campbell v. Acuff-Rose music, Inc.*, 510 U.S. 569, 579 (U.S. 1994). It is possible, however, that Mr. California has borrowed a little too much from Salinger's novel to prevail in the copyright infringement suit. [See Case](#)

### More News -

The U.S. Chamber of Commerce is anxious to protect the intellectual property of companies seeking to combat climate change. See story at: [Climate Change and Intellectual Property](#)

### Firm News -

Rader, Fishman & Grauer is among the Top Trademark Firms in the USA according to the latest IPToday 2009 Top Trademark Firms list. See details [here](#).

Rader, Fishman & Grauer Partner, Chris Tobin will be speaking about Patent Basics 2009 at the upcoming Practising Law Institute seminar in New York City on July 15, 2009. Click [here](#) for details.

Jason Shanske has joined the Bloomfield Hills office of Rader, Fishman & Grauer PLLC. Prior to joining Rader, Fishman & Grauer, Shanske was a senior associate with an intellectual property law firm in Massachusetts. Jason also served as an adjunct professor at Franklin Pierce Law Center for patent practice and procedure courses.

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