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Strategic Claim Construction

by: Steven R. Hansen and
Leigh C. Taggart,
Rader, Fishman & Grauer

The phone rings. Your client has been sued by a competitor for patent infringement. He is certain that the asserted patent is not at all like his product and that he could not possibly infringe it. After studying the claims and the accused product, you see some claim elements that you believe are not present in the product and begin to build an infringement defense. Now you have some decisions to make. [This article](#) provides strategic guidance for evaluating and making these decisions.

E-Commerce

The Stalking Horse - Systemax Inc. recently announced that it has signed a "stalking horse" agreement to purchase selected assets of Circuit City's e-commerce business. Systemax believes the transaction, if completed, would further extend its position as a leader in online retailing of value-priced, branded consumer electronics. The story may be viewed [here](#).

Copyright infringement
warnings via email

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Automaker Patent Intelligence Report -

Gibbs Delivers Automaker Patent Intelligence Report To Obama's Auto Task Force -

President Obama's Task Force on Autos received the Automaker Patent Assets Intelligence Report (2009 APA-Intel Report) comparing the patent portfolio assets of General Motors, Ford, Chrysler, Toyota and Volkswagen. The APA-Intel Report presents findings that show how the US automakers have managed innovation, and their patent assets over the past decade. The report shows that GM, Ford and Chrysler may be sitting on patent assets that could be directly exploited for immediate revenue and market share increase, perhaps well in excess of \$100 million. The Report also hints that US automakers may be sitting on many sub-quality and non-core patents that could be divested to immediately cut costs. The full story, as well as a link to the entire report may be viewed [here](#).

Patent Reform Bill Goes to the Senate -

On April 2, 2009, the House of Representatives agreed to send a newly amended patent reform bill to the Senate for a vote. The move marks a big step forward for the bill (S.515) which is still likely to face a significant battle in the full Senate. The bill would introduce several changes in the patent system, including a first-to-file rather than first-to-invent patent system. In the last Congress, a patent reform bill, HR 1908 was passed in the House of Representatives in September 2007. However its companion bill - S.1145 - failed to make it to the Senate floor for a vote in 2008. The full story can be viewed [here](#).

Better Luck Next Time

AT&T will be initiating a program whereby copyright holders may submit the Internet addresses of infringers who download copyrighted materials, which use AT&T as their ISP. Once notified, AT&T will forward the infringement warning on to their respective customer without divulging the identity of the customer to the copyright holder. See story [here](#).

Three Strikes - You're Out! Well not yet at least...

France's Parliament recently shot down a bill to combat Internet piracy, which would have taken a tough stance on illegal downloading of copyrighted materials. Individuals found to have illegally downloaded content would be sent up to three warnings, after which their Internet connection would be suspended for up to one year. See article [here](#).

A federal appeals court ruled against Amgen in the in re Kubin case. In 2000, the US Patent and Trademarks office rejected a patent application submitted by Immunex for the gene encoding the NAIL protein, which plays a role in immune response, because isolating the gene took "routine skill." Amgen, which bought Immunex in the interim, appealed the decision. "The court's ruling is one of many signs that claims based on gene sequences are getting much tougher scrutiny now than in the past," Science Insider's Eliot Marshall says. The decision by the court may be accessed [here](#).

Fraud, Interrupted -

TTAB ruling (non-precedential): Fraud May be "Cured" Post-Registration

In a non-precedential decision from October 2008, the issue of fraud was revisited with respect to whether fraud can be "cured" after a registration has issued. This Board panel adopted the approach of the panel majority in University Games in ruling that correction of a false statement regarding use, if made before a registration has been challenged, creates "a rebuttable presumption that [registrant] did not intend to commit fraud." *Zanella Ltd. v. Nordstrom, Inc.*, Opposition No. 91177858 (October 23, 2008) [not precedential]. See article [here](#).

OHIM Economic Stimulus Package:

The Office for Harmonization in the Internal Market (OHIM) has reduced Community trademark fees by 40%. Beginning May 1, 2009, the cost to apply for a Community trade mark is 900 Euros for online applications. In this time of economic crisis, OHIM's reduction in fees will likely promote trademark filings amongst small and medium-sized companies, for whom the hefty fees for filing a Community trademark application are a weighty burden. See article [here](#).

Keyword Advertising - use in commerce?

Second Circuit - no longer the favored forum for defendants in keyword advertisement infringement cases.

In its April 3, 2009 decision, the Second Circuit in *Rescuecom Corp. v. Google Inc.* held that search engines selling advertisements keyed to a registered trademark constitutes a use of the mark in commerce. The court distinguished the keyword scenario from the pop-up ad issue in *1-800 Contacts v. WhenU*, noting that a search engine's recommendation of trademark terms as keywords and the sale of those keywords are not merely internal uses and that such practices clearly involve the "display" of a mark. However, to violate the Lanham Act, a defendant must do more than use another's mark in commerce; such use must cause likelihood of confusion or mistake. If Google is found liable for trademark infringement, this decision will have a significant impact on the multibillion-dollar keyword advertising business. See complete article [here](#).

More News -

[Intel's Andy Grove Wades, Briefly, into Patent-Reform Debate](#)

[XEROX CEO, Ann Mulcahy - Don't cut back on innovation](#)

[Microsoft Ordered to Pay \\$388 Million in Patent Lawsuit](#)



Firm News -

RFG Attorney, Mary Margaret O'Donnell was named one of *Crain's Detroit Business 40 under 40*. The article can be viewed [here](#).

In addition, five RFG attorneys were named *Michigan Super Lawyers* and two attorneys were named *Rising Stars* by Law & Politics, a national journal of legal and political issues. R. Terrance Rader of Troy, Michael D. Fishman of Birmingham, Richard D. Grauer of Huntington Woods, Michael B. Stewart of Birmingham and Glenn E. Forbis of Commerce were named *Michigan Super Lawyers*. Mary Margaret L. O'Donnell of Royal Oak and Tracy L. Zawaski of Royal Oak were named *Rising Stars*.

Only 5 percent of the total lawyers in Michigan are listed as *Michigan Super Lawyers* and 2.5 percent are listed as *Rising Stars*.

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