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## Apple & Google Are Resorting To Fisticuffs

In the beginning (3 years ago), Google and Apple had a Partnership that created the hottest Smartphone on the market. Over the last six months, these tech giants have been jousting over patents, software applications, and even company acquisitions -most notably, Apple's patent suit against HTC (Google's Android OS partner). With Apple's iPad on the horizon and Google's Android being placed in tablet PCs,

## Patent Backlogs Cost the Global Economy \$11.4 Billion?

The United States Patent and Trademark Office (USPTO) and the UK Intellectual Property Office (UKIPO) are in the process of developing a plan to reduce patent backlogs in both offices. As part of the plan, the offices will optimize reuse of work on patent applications filed jointly in both countries. The plan follows a recent study by London Economics indicating that "the cost to the global economy of the delay in processing patent applications may be as much as £7.65 (\$11.4) billion each year."

See [news](#).

## March Madness - A Trademark Cinderella Story

How did "March Madness" become a trademark? The Fifth Circuit provided a comprehensive answer a few years ago in *March Madness Athletic Association, LLC v. Netfire Inc.*, 120 Fed. Appx. 540, 544-45, 2005 U.S. App. LEXIS 1475(5th Cir. 2005). As the court stated: The Illinois High School Association "has organized an annual boys' high school basketball tournament in Illinois since 1908. Since the 1940s, IHSA has used the term 'March Madness' to refer to the IHSA Tournament. IHSA first attempted to register March Madness in 1990. At that time it discovered an entity called Intersport had registered the phrase on December 12, 1989. Intersport's registration was for 'entertainment services, namely, presentation of athletic and entertainment personalities in a panel forum' regarding the NCAA Tournament.

the IP and technology landscape could be reshaped for corporations and consumers alike. See story [here](#). See CNBC [video](#) for commentary.

### **Struggling Economy Affecting Appeals, Oppositions?**

At the February 2010 USPTO Trademark Public Advisory Committee meeting, Trademark Trial and Appeals Board statistics provided indicate the number of new appeals filed (down 11%) and oppositions (down 25%) have dipped compared to 2009 statistics.

Also, the total number of final decisions on the merits is down 44% from 2009; presumably due to the Board's concentrated efforts at revising the Trademark Trial and Appeal Board Manual of Procedure.

See [TTAB Statistics](#).

### **Supermarket Sued for Alleged Patent Infringement**

"IHSA and Intersport eventually came to an agreement, on July 24, 1995, whereby Intersport assigned its registered service mark to IHSA in return for a perpetual license to use March Madness for its sports programming and a share of royalty payments received by IHSA.

"IHSA claimed exclusive rights to 'March Madness', and it licensed the phrase for any use, even uses that did not relate to the IHSA Tournament. Its commercial licensees included Wilson Sporting Goods, Pepsi and the Chicago Tribune. IHSA also licensed March Madness to other state high school associations for the nominal fee of \$10.

"The NCAA's first use of the phrase 'March Madness' is generally traced to 1982, when CBS broadcaster Brent Musberger used the phrase to describe the NCAA Tournament. The NCAA began licensing March Madness in 1988 as one of a set of marks relating to NCAA championships.

"In the early 1990s, both IHSA and NCAA were claiming exclusive rights to all commercial uses of March Madness. In 1996, IHSA sued an NCAA licensee, GTE Vantage, that created a basketball video game that made use of the phrase March Madness. In December 1996, the Seventh Circuit, in *Illinois High School Ass'n v. GTE Vantage*, rejected IHSA's claim to rights over March Madness in the context of the NCAA Tournament. 99 F.3d 244, 247-48 (7th Cir. 1996).

"Following the Seventh Circuit decision in *GTE Vantage*, IHSA and NCAA decided to work together to protect their rights in March Madness. After several years of negotiation, IHSA and NCAA formed [the March Madness Athletic Association LLC] on February 29, 2000. IHSA and NCAA each transferred all rights it held in March Madness to MMAA, and in return each received a license to use the term in relation to its basketball tournament. As of August 2003, MMAA held seven registered service marks or trademarks for March Madness, an additional five for America's Original March Madness and another for March Madness Experience." See related article [here](#)

### **Microsoft's "Spy Guide" Causes A Draconian Shutdown**

The Kroger Co., a well known supermarket chain in the Midwestern and the Southern states, has been sued over its use of a fuel rewards program. The suit was brought by Excentus Corporation after months of licensing discussions failed. In its suit for willful patent infringement, Excentus is seeking enhanced damages and an injunction that would prevent Kroger from using the patented technology in its fuel rewards program. See story [here](#).

Microsoft filed a complaint with Network Solutions, a web hosting company, to remove a copy of Microsoft's "Spy Guide" from Cryptome.org. The "Spy Guide" is a 22 page document that details methods for law enforcement agencies to hack Windows Live, Xbox Live, and MSN Messenger. In response, Network Solutions shutdown the entire Cryptome.org website. The internet community uproar caused Microsoft to withdraw their complaint and renewed the debate on the government's right to snoop into people's electronic private lives. More about the story [here](#).

### Coach Inc. Sues Kmart Corp.

Coach Inc. filed suit against Kmart Corp. for copyright and trademark infringement after a Coach representative went into a Manhattan Kmart and purchased a luggage set with a design "confusingly similar to the Coach Op Art." According to the complaint, "[t]he luggage set was examined by Coach and found to be counterfeit merchandise." See story [here](#).

### TiVo Stock Increases More Than 50% One Hour After CAFC Decision

The Court of Appeals for the Federal Circuit ratified the contempt order handed down by the United States District Court for the Eastern District of Texas against EchoStar. The contempt order was related to a permanent injunction requiring EchoStar (1) to stop making, using, offering to sell, and selling the receivers that had been found to be infringing and (2) to disable the DVR functionality in existing receivers, with some exceptions. Click [here](#) for more.

### Copyright Registration

The Supreme Court has recently echoed the long-held rule that registration of one's design or slogan or other work is not a necessary step to obtaining copyright protection. Registration is a prerequisite only to suing for copyright infringement. Indeed, the Court held that registration is not even a necessary step to enable a Court to adjudge the validity of an unregistered copyright, although it is a necessary step to qualify a copyright owner to sue. Reed Elsevier, Inc. v. Muchnick, No. 08-103, 559 U.S. \_\_\_ (2010).

### RFG Firm News

**RFG Attorney, Linda D. Kennedy**, was recently elected to **Partner** at the firm. Linda joined Rader, Fishman & Grauer as an Associate Attorney in 2005. She

specializes in intellectual property litigation and counseling.

**RFG Attorney, Linda E. Monge**, was recently elected to **Partner** at the firm. Linda joined Rader, Fishman & Grauer as a legal assistant in 1997. She became an Associate Attorney in 2003. Linda focuses her practice mainly on trademark and copyright law, including foreign and domestic prosecution and litigation as well as agreements and assignments.

RFG Bloomfield Hills office recently hosted an ABA Roundtable titled: **"Hot Topics in the Parallel Universe of Patent Reexamination and Patent Litigation."** RFG Partner, **Charlie Bieneman**, served as Moderator for the event. See roundtable [outline](#).

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