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## Blog with the USPTO

On Tuesday, November 12, the USPTO Director David Kappos launched a new blog "to foster a direct dialogue with the USPTO's stakeholders and the general public." The blog can be found at [www.uspto.gov/blog](http://www.uspto.gov/blog).

According to the press release, the blog is "part of an extensive effort to reach out to the IP community and actively engage USPTO stakeholders in an effort help to the agency better serve the American public." Director Kappos hopes that people find the blog "to be a useful vehicle for providing input to me directly and giving us the feedback we need to be able to better serve our constituents and the American people." Therefore, Director Kappos has encouraged individuals from all segments of the IP community to share their ideas and concerns on the blog. In his first post, Kappos addresses a variety of topics, including proposed patent reform legislation. See [news](#).

## USPTO Announces Program to Accelerate the Patent Process for Small Entity Inventors -

The USPTO recently announced a pilot program that

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## Rader, Fishman & Grauer Represented Lec Tec Corporation in \$23M win -

Endo Pharmaceuticals has announced that it would pay LecTec Corporation \$23 million dollars to settle the case that accused the company of infringing two patents related to medicated adhesive patches.

Rader, Fishman & Grauer and Provost Umphrey of Texas represented LecTec Corporation in [LecTec Corp. v. Chattem Inc. et al.](#), case number 5:08-cv-00130, in the U.S. District Court for the Eastern District of Texas. See story [here](#).

## Largest Patent Infringement Award in History Upheld -

The U.S. District Court for the Eastern District of Texas recently upheld what is considered to be the largest patent infringement award ever handed down. In June 2009, a jury concluded that Abbott Laboratories had willfully infringed two patents owned by Centocor, Inc and New York University. The patents covered Humira®, a popular arthritis drug. The jury awarded Centocor \$1.168 billion in lost profits and an additional \$504 million as a reasonable royalty. After the decision, Abbott alleged that one of the patents at issue was invalid on the ground of inequitable conduct and laches. Abbott also alleged that the asserted claims were indefinite. The District Court disagreed and left the award undisturbed. See details [here](#).

## Rader, Fishman & Grauer Represents Ruby Tuesday Designs In Recent Trademark Infringement Suit -

will provide qualifying small entity inventors with greater control over the priority in which their applications are examined. Generally, new patents are examined in the order that they are filed; however, the applications of small entity inventors that qualify for this program will be advanced to the front. To qualify, a small entity inventor must have two or more currently pending patent applications and be willing to abandon an application that has not been examined. Not only will this program benefit small entity inventors, but it will also aid in reducing the backlog of unexamined patents. See news [here](#).

The maker of Kamelflage® ladies' underwear filed suit against Camelflage LLC alleging willful infringement of Ruby Tuesday's rights in the mark KAMELFLAGE®, asserting that Camelflage's business is a blatant copy of Plaintiff's products and name. Stay tuned for more details. See [complaint](#), [article](#).

#### Coach Sues Target For Trade Dress Infringement of its Luxury Handbags -

Coach Services, Inc. recently sued mass retailer Target Corporation in the Southern District of New York over bags the luxury handbag maker declares too closely resemble its own designs. The bags in dispute purportedly resemble Coach's Ergo bag designs, launched in 2008 and marketed as an ergonomically correct product, and Coach's Signature Patchwork bags, which have patches in different fabrics and/or colors somewhat resembling a patchwork quilt, which were also introduced in 2008. Coach claims Target began selling exact and/or confusingly similar reproductions of its designs in the summer of 2009. Coach's complaint seeks injunctive relief, as well as an undetermined amount in damages. Previously, Coach sued the retail giant in 2006 claiming Target was selling a copy of one of its handbags. That case was settled outside of court. See complaint [here](#).

#### Disputes Over Counterfeit Goods Sold On eBay Continue in International Courts -

Despite eBay's efforts at screening unlawful items, the Paris Commercial Court recently fined eBay over \$2.5 million for "the unlawful marketing" of Christian Dior, Givenchy and other LVMH perfumes and cosmetics. The online auction site must pay damages to LVMH Moët Hennessy Louis Vuitton SA for allowing key word searching for Christian Dior, Kenzo, Givenchy and Guerlain perfumes on its site without authorization, in violation of an injunction issued in June 2008. General manager of eBay in France, Alex von Schirmeister calls the fine "disproportionate given that eBay complied with the injunction." Schirmeister continues, "[i]t is out of step with our legal victories in France, UK, Germany, Belgium and the US."

In May, eBay won several rulings against L'Oreal in French and British courts, which found eBay had met its obligations to combat sales of counterfeit goods. In February, eBay prevailed in Germany against the Rolex Group over the sale of counterfeit watches. In July of 2008, eBay won a huge victory over Tiffany & Co., who sued eBay for facilitating auctions involving counterfeit Tiffany jewelry. In that case, the District Court for the Southern District of New York held, "it is the trademark owner's burden to police its mark and companies like eBay cannot be held liable for trademark infringement based solely on their generalized knowledge that trademark infringement might be occurring on their websites." Tiffany Inc. v. eBay Inc., 576 F. Supp.2d 463, 527 (S.D.N.Y. 2008). Appeals hearings regarding this injunction and related LVMH cases are scheduled for May 2010.

#### Harjo's Challenge Came Too Late - Supreme Court Denies Petition for Certiorari -

The U.S. Supreme Court recently turned away an appeal from a group of Native Americans who argue the name of the NFL's Washington Redskins football team is offensive and disparaging. This puts an end to the 17-year court battle instituted by Suzan Shown Harjo in 1992 to have the Redskins trademarks declared invalid.

In their petition, the Native American Parties contended that the Redskins' marks should never have been registered and that the registrations were therefore void ab initio, justifying immediate

cancellation. Section 14(3) of the Lanham Act provides for cancellation of a registration "at any time," if the subject mark was registered "contrary to the provisions" of Section 2(a) of the Act. 15 U.S.C. § 1064(3). Pursuant to Section 2(a), no mark shall be registered if it consists of or comprises "matter which may disparage . . . persons, living or dead, . . . or bring them into contempt, or disrepute . . ." 15 U.S.C. § 1052(a). See petition [here](#) (431 pages).

### Who Owns the Materials Developed for Public School Classrooms?

According to a recent article in The New York Times, an entrepreneurial spirit has motivated many teachers to cash in by selling their lesson plans online. Commercial websites and individual teachers' blogs allow teachers to sell everything from algebra exercises to sports playbooks online. One teacher from North Carolina has earned "an average of \$750 a month from lessons based on her three decades of teaching middle school classics." Some teachers have used their additional funds to supplement their classroom libraries or to stock up on necessary school supplies, but others are using the money for personal expenses, such as, vacations and mortgage payments. Accordingly, this entrepreneurial spirit is leading school officials to ask "who owns material developed for public school classrooms?" See details [here](#).

### Printed Publication: a § 102(b) pitfall -

Correctly timing a product's marketing with its patent application yields a stronger patent portfolio. Similarly, a competitor's product publication could protect a company from an infringement lawsuit by invalidating a plaintiff's asserted patent. Both business practices require an understanding of 35 U.S.C. § 102(b), which states that a patent is invalid if it was described in a printed publication more than one year prior to the date of the application.

Recently in *Iovate Health Sciences, Inc. v. BNN, Inc.*, No. 2009-1018, slip op. (Fed. Cir. Nov. 19, 2009), the court found that a Professional Protein ad constituted an anticipatory publication under § 102(b) of Iovate's patented method for enhancing muscle performance. BNN used this June 1996 ad to invalidate Iovate's patent, which claimed a priority date of November 13, 1996, and eliminate Iovate's infringement claim. See [Iovate Health Sciences, Inc. v. BNN, Inc.](#) for the complete opinion.

### Putting structure into a means-plus-function claim

Applicants disclosing algorithms in their specification provide an argument against indefinite rejections, under 35 U.S.C. § 112, when claiming a computer implemented function in a means-plus-function claim (§ 112 ¶ 6 permits a function's structure to be described in the specification).

This practice follows the reasoning in *Aristocrat Technologies Australia Pty Ltd. v. International Game Technology*, 86 USPQ2d 1235 at 1240 (Fed. Cir. 2008), where the court held that "in a means-plus-function claim . . . the disclosed structure . . . [may be a] special purpose computer programmed to perform [a] disclosed algorithm." In following *Aristocrat*, the BPAI rejected a means-plus-function claim for lack of structure after finding no corresponding algorithm and held that claim indefinite, in [Ex Parte Rodriguez, 08-0693 \(BPAI 2009\)](#).

### Firm News -

**Rader, Fishman & Grauer attorneys Linda Kennedy and Linda Monge have both been elected to Partner.** Linda Kennedy specializes in intellectual property litigation and counseling. Linda Monge focuses mainly on trademark and copyright law, including foreign and domestic prosecution and litigation as well as agreements and assignments.

Rader, Fishman & Grauer Partners R. Terrance Rader and Michael B. Stewart have been selected as *2010 Best Lawyers*.

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