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Intellectual Property Litigation

Confluences and Connections

Navigating Emerging Hazards in Intellectual Property Law

- Hear perspectives on copyright, trademark, and patent litigation from judges, in-house counsel, experts, and litigators
- Enjoy networking opportunities with IP and commercial litigators from across the country in fabulous Minneapolis



May 13–15, 2020

Minneapolis Marriott City Center

Minneapolis, MN

Renowned in-house counsel from Fortune 500 companies, judges, and trial attorneys from across the country will meet in Minneapolis—in the Land of 10,000 Lakes—for this truly “Super Conference.” Along with cutting-edge and timely presentations on intellectual property issues, this first-ever DRI conference in Minnesota offers an unprecedented opportunity to network with industry counsel and preeminent attorneys. From guest speakers such as NFL Hall of Famer and former Supreme Court of Minnesota Justice Alan Page, to industry leaders and in-house counsel focusing on key IP issues and strategies, you will benefit from the unique focus on litigation in the IP space that sets this seminar apart from all others. Another bonus is that the DRI Commercial Litigation Committee is hosting its annual seminar at the same time in adjacent rooms. Attendees will be free to attend any presentation, enhancing the “confluence and connections” with our DRI colleagues. Register now for this “can’t miss” event and discover why Minnesota is called the “Star of the North.”



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PRESENTED BY **DRI's Intellectual Property Litigation Committee**

Register online now at dri.org or complete the form in the back.

What You Will Learn



- How to manage parallel patent proceedings
- Top strategies on litigating copyright infringement cases in music
- What corporate counsel wishes you knew about IP litigation issues

Members Get More

- Access to **LegalPoint**™ at **dri.org**: Committee newsletters, seminar course materials, and other publications.
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PROGRAM SCHEDULE

Click on any speaker name to view bio.

WEDNESDAY, MAY 13

1:30 p.m. **Registration for Young Lawyers Breakout**

YOUNG LAWYERS BREAKOUT

2:00 p.m.–5:15 p.m.

2:00 p.m. **Practice Pointers: Dos and Don'ts for Young Lawyers (Judges Panel)**

Courtroom advocacy can be one of the greatest adjustments for young lawyers entering and mastering in the practice of law. This panel of judges will address what it takes to impress judges, both in filings and in courtroom advocacy; how to lose and gain credibility in front of a judge; common pitfalls for young lawyers; and how young lawyers can seek out more courtroom experience. The panel will also discuss how a judge sitting alone decides a case and how advocacy can affect the decision-making process.

The Honorable Jennifer L. Frisch, *Minnesota Judicial Branch*, Minneapolis, MN

The Honorable Roger T. Hughes (Ret.), *Federal Court of Canada*, New York, NY

Corey Willard, *Gowling WLG*, Ottawa, ON

3:00 p.m. **Objections: Why, When, and How**

During the course of litigation—whether at depositions, cross-examinations, or at trial—counsel may be called upon to object to what is taking place or is about to take place in proceedings. The decision to express opposition involves a keen sense of trial tactics and judgment, substantive knowledge of legal principles, and the ability to act in a timely and an effective manner. Qualities such as the abilities to anticipate what is likely to take place, listen intently at all times, and assess what must be put forward are essential skills to develop. This session will discuss the art and science of objections, including the considerations that may have to be addressed by counsel.

Thomas R. (Tom) Pack, *Maslon LLP*, Minneapolis, MN

Bevin Shores, *Agro Zaffiro LLP*, Hamilton, ON

3:45 p.m. **Turning the Table: Defeating Anchoring of Damages**

This session will demonstrate creative techniques and strategies for dealing with commonly encountered juror and witness hostilities in highly emotional and sympathetic cases. The panel members will both lecture and present vignettes to discuss and illustrate techniques to defuse the adverse effect of the anchoring of damages in voir dire and throughout trial.

Kevin T. McCarthy, *Larson King LLP*, Saint Paul, MN

Mark A. Solheim, *Larson King LLP*, Saint Paul, MN

4:30 p.m. **Handling Experts at Trial: Opening, Cross-Examination, and Closing**

Expert opinion evidence is key in many civil cases. Because of its significance—whether related to issues of liability or damages—effective preparation and direct examination of your expert witness, as well as a strong cross-examination of the plaintiff's expert witness, are often essential to succeed in any case. The discussion will address best practices involved in each step, from retaining your expert to conducting the direct examination and cross-examination. Finally, there will be a review of key tools that counsel must ensure that his or her experts possess at trial, in both the jury and non-jury context.

Corey Willard, *Gowling WLG*, Ottawa, ON

5:15 p.m. **Adjourn**

6:00 p.m. **Registration**

6:00 p.m. **Networking Reception**

7:30 p.m. **Young Lawyers Dinner** | *Open only to young lawyers.* Please contact Kevin McCarthy for details at kmccarthy@larsonking.com.

THURSDAY, MAY 147:00 a.m. **Registration**7:00 a.m. **Continental Breakfast**
**■ Joint Session with
Business Litigation Super Conference**
8:10 a.m. **Welcome and Introductions**

Charles T. Frazier, Jr., *Alexander Dubose & Jefferson LLP*, Dallas, TX

Peter J. Henein, *Cassels Brock & Blackwell LLP*, Toronto, ON

 8:15 a.m. **The Next Generation of Data Breaches:
Lessons from the Trenches**

This panel will discuss the lessons we can learn from the latest data breaches, recent regulatory changes to data security by the FTC, and what is next. Using real-life scenarios involving inadvertent disclosures, data theft or loss, compromised systems, and more, the panelists will provide insight on what we can all do to protect ourselves, learn from each other how to minimize these risks, and handle matters in “full crisis mode,” including protecting privileges, training on smart communications, dealing with law enforcement, coordinating the various stakeholders, managing the various claimants, and working with the card brands’ payment card industry forensic investigators.

David F. McDowell, *Morrison & Foerster LLP*, Los Angeles, CA


 **Mark A. Sadler**, *Great American Insurance Group*, Cincinnati, OH

 9:15 a.m. **Crowdsourcing: What Is It, How Does It Work, and What Are the Risks?**

Crowdsourcing is a general term referring to outsourcing a task to a large group of people, which includes crowd voting, crowd creation, crowd wisdom, and crowd funding. Although crowdsourcing has been around for decades, the internet has caused an explosion in the use of crowdsourcing for solving problems, financing projects, and influencing company policies and product offerings, as well as for online reviews that can be cheap marketing dollars or the company’s worst nightmare. On the one hand, it allows a company to capitalize on

a diverse network of information, but on the other hand, there are risks. If a solution involves creativity or generates valuable IP, who owns it? If the project is financed by thousands of people, who owns the end result? Is it legal to use online reviews to market your company without disclosing the affiliation of the reviewer? If a disgruntled customer writes a disparaging online review, is there any recourse? This session will explain how crowdsourcing can be used to a company’s benefit, explore the risks associated with it, and provide best practices to minimize the risks.

Thomas J. (T.J.) Mihill, *Owen Gleaton Egan Jones & Sweeney LLP*, Atlanta, GA

 **Sandra K. Nowak**, *3M Company*, Saint Paul, MN

Sandra J. (Sandy) Wunderlich, *Tucker Ellis LLP*, Saint Louis, MO

10:30 a.m. **Refreshment Break**11:00 a.m. **A Discussion with the Honorable Alan Page**

Justice Alan Page (Ret.), former justice of the Supreme Court of Minnesota, member of the NFL Hall of Fame, and founder and president of the Page Education Foundation, will discuss ways to eliminate racial disparities and bias in the justice system.

The Honorable Alan C. Page (Ret.), *Page Education Foundation*, Minneapolis, MN

12:00 p.m. **Lunch (on your own)**1:30 p.m. **Announcements**

Peter J. Henein, *Cassels Brock & Blackwell LLP*, Toronto, ON

 1:35 p.m. **In-House Views on Managing
Parallel Patent Proceedings**

Patent litigation increasingly requires clients and outside counsel to manage parallel proceedings across many forums: ITC, PTAB, district court, and the federal court of appeals. The different burdens, standards, and procedural frameworks create case management challenges for both outside counsel and their clients. Hear from two in-house IP litigation attorneys on the challenges of managing par-

allel proceedings from an in-house perspective, including whether to hire multiple firms, how to coordinate among firms, how to establish budgets and fee agreements as cases develop, and the particular challenges of communicating risks to the businesses at issue.

♦♦ **Eileen M. Hunter, PhD**, *Boston Scientific Corporation*, Saint Paul, MN

➔ **Eva Mendelsohn**, *3M Company*, Saint Paul, MN

2:30 p.m. **The “Joyful Noise” of a “Dark Horse”:
Marcus Gray v. Katy Perry (Copyright)**

Counsel for Marcus Gray joins us to share insights on Gray’s successful copyright infringement claim against Katy Perry for her use of elements of Gray’s “Joyful Noise” in Perry’s song “Dark Horse.”

John Dackson, *Womble Bond Dickinson (US) LLP*, Winston Salem, NC

Michael A. Kahn, *Capes Sokol Goodman & Sarachan PC*, Saint Louis, MO

3:20 p.m. **Refreshment Break**
SPONSORED BY **Miller & Martin PLLC**

■ **Joint Presentation with Business Litigation Super Conference, Cybersecurity Breakout Session**

3:40 p.m. **The Future Is Now: “Reasonable Measures” to Protect Trade Secrets, and the Technical Tools that You Need to Know About**

The DRI Intellectual Property Litigation and Cybersecurity and Data Privacy Committees join together to examine what constitutes reasonable measures to protect trade secrets and the technological tools that can be used to prevent the theft of those trade secrets. We will learn about the steps that you can take to protect your client’s sensitive information, and to detect when it is being accessed, and by whom, to prevent its theft.

Rachael L. Rodman, *Ulmer & Berne LLP*, Columbus, OH

Steven T. Snyder, *Bradley Arant Boult Cummings LLP*, Charlotte, NC

4:30 p.m. **Adjourn**

4:45 p.m. **DRI Intellectual Property Committee Meeting**
(open to all)

5:30 pm. **Diversity Reception**

6:00 p.m. **Networking Reception**
SPONSORED BY **MDD Forensic Accountants**
Tucker Ellis LLP

7:00 p.m. **Dine-Arounds** | Join colleagues and friends at selected restaurants for dinner (on your own). More details on-site.

FRIDAY, MAY 15

7:30 a.m. **Registration**

7:30 a.m. **Continental Breakfast**

8:30 a.m. **Announcements**
G. Warren Bleeker, *Lewis Roca Rothgerber Christie LLP*, Glendale, CA

8:35 a.m. **New Strategies for Avoiding and Defending Patent Infringement Lawsuits**

Patent law continues to morph according to both legal and market changes. This presentation will delve into both the challenges and the opportunities in this arena. Professor Crouch will focus on (1) litigation before the PTAB; (2) failure to state a claim in patent cases; (3) trade secrets and prior user rights; and (4) competing without infringing.

Dennis D. Crouch, *University of Missouri Law School*, Columbia, MO

9:20 a.m. **The View from the Bench: Tips from Magistrate Judges on Effective Pretrial Practice**

Three experienced magistrate judges—all former IP litigators themselves—will offer their insights on how IP litigators can optimize their effectiveness in the pretrial stages of the case. Their presentation will address how to work with the judge to set and stick to a meaningful schedule for discovery and disclosures, how civility and transparency with opposing counsel and the court serve your client’s interests, effective handling of discovery and discovery disputes, tips for how to present (and how not to present) your client’s position to the court,

and how to get the most out of court-ordered settlement conferences in IP cases.

The Honorable Hildy Bowbeer, *US District Court for District of Minnesota*, Saint Paul, MN

The Honorable Becky R. Thorson,
Michigan District Court, Detroit, MI

The Honorable Elizabeth Cowan Wright,
US District Court for District of Minnesota,
Saint Paul, MN

10:20 a.m. **Patent Cases and the America Invents Act**

The wave of America Invents Act (AIA) patents is only now breaking onto the shores of district court patent cases. Since the AIA changed the U.S. patent system from a first-to-invent to a first-inventor-to-file system in 2013, there have been only about a hundred reported district court decisions involving AIA patents. Many of those reported decisions incorrectly cited the AIA prior art statutory provisions (35 U.S.C. 102(a)(1) and 102(a)(2)) for patents that actually were pre-AIA patents. Given that most litigated patents are invalidated based on older prior art relative to the priority date of the patent, the changes to what is and is not prior art after the AIA likely will affect only a small percentage of patent cases. But, if your case involves prior art that is relatively close in time to that priority date of the patent you are challenging, understanding the key differences between what prior art for AIA patents versus pre-AIA patents is will be critical to whether you are successful in invalidating an AIA patent. This presentation will provide you with a set of simple flow charts to help you through the analysis of what is prior art after the AIA and

will highlight important considerations to keep in mind when the defense of your case turns on invalidating an AIA patent.

Brad D. Pedersen, *Patterson Thuenete Pedersen PA*, Saint Paul, MN

11:10 a.m. **Refreshment break**

SPONSORED BY **Marks Gray PA**

11:30 a.m. **Culture and Copyright: Musical Challenges to Judicial Reasoning**

Copyright law reflects cultural biases about appropriate forms of music production and reuse and the role of notation. Professor Arewa looks at the history of musical notation (or lack thereof) relating to rhythm and timbre and how cultural bias has affected the development of copyright jurisprudence as it relates to African-American music.

Olufunmilayo Arewa, *Temple University, Beasley School of Law*, Philadelphia, PA

12:30 p.m. **Why Your Trademark Survey Is Almost Always Wrong**

General wisdom demands survey evidence in trademark infringement cases. But how reliable is your survey? Bill Miller from General Mills will discuss the pitfalls of trademark surveys and why they so rarely provide an accurate reflection of consumer impressions.



William (Bill) Miller, *General Mills Inc*,
Minneapolis, MN

1:30 p.m. **Adjourn | Post-Conference Lunches**
(on your own)

2:30 p.m. **Service Project** (TBD)

GENERAL INFORMATION

In-House Counsel

In-house counsel are eligible for free registration to DRI seminars. In-house counsel are defined as licensed attorneys who are employed exclusively by a corporation or other private sector organization for the purpose of providing legal representation and counsel only to that corporation, its affiliates, or its subsidiaries. To qualify for free registration, in-house counsel must be a DRI member and a member of the DRI Corporate Counsel Committee *or* be sponsored by a DRI member who is both registered and has paid for the seminar.

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CLE/Claims Adjusters Accreditation

This seminar has been approved for MCLE credit by the State Bar of California for up to **13.25** hours, including **1** hour of ethics credit. Accreditation has been requested from every state with mandatory continuing legal education (CLE) requirements. Certificates of attendance will be provided to each attendee. Attendees are responsible for obtaining CLE credits from their respective states. Credit availability and requirements vary from state to state; please [check the DRI website at **dri.org**](#) for the latest information for your state.

Registration Policy

Save \$100 when you register by April 14, 2020. (See the registration form for pricing.) The registration fee includes course materials, continental breakfasts, refreshment breaks, networking receptions, and access to the DRI App. If you wish to have your name appear on the registration list distributed at the conference and receive the course

materials in advance, DRI must receive your registration by **April 21, 2020** (*please allow 10 days for processing*). Registrations received after **April 21, 2020**, will be processed on-site.

Refund Policy

The registration fee is fully refundable for cancellations received on or before **April 21, 2020**. Cancellations received after **April 21** and on or before **April 27, 2020**, will receive a refund, less a \$100 processing fee. Cancellations made after **April 27** will not receive a refund, but a \$100 certificate good for any DRI seminar within the next 12 months will be issued. All cancellations and requests for refunds must be made in writing. Fax (312.795.0747) or email (seminars@dri.org) to DRI's Accounting Department. Processing of refunds will occur within four weeks after the date of the seminar. All refunds will be processed in the same method that the payment was received. Substitutions may be made at any time without charge and must be submitted in writing.

Discounts

Group Discount The first and second registrations from the same firm or company are subject to the fees outlined previously. The registration fee for additional registrants from the same firm or company is **\$775**, regardless of membership status if received on or before **April 14, 2020**. After **April 14**, the group rate is **\$875**. All registrations must be received at the same time to receive the discount.

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- A small portion of your room rate offsets the costs of the seminar.
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The hotel block is limited and rooms and rates are available on a first-come, first-served basis. You must make reservations by **April 14, 2020**, to be eligible for the group rate. Requests for reservations made after **April 14** are subject to room and rate availability.

FACULTY *Click on any name to view bio.*

Olufunmilayo Arewa, Temple University, Beasley School of Law, Philadelphia, PA

G. Warren Bleeker, Lewis Roca Rothgerber Christie LLP, Glendale, CA

Lisa L. Boswell, Early Sullivan Wright Gizer McRae LLP, Los Angeles, CA

The Honorable Hildy Bowbeer, US District Court for District of Minnesota, Saint Paul, MN

Dennis D. Crouch, University of Missouri Law School, Columbia, MO

John Dackson, Womble Bond Dickinson (US) LLP, Winston Salem, NC

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Peter J. Henein, Cassels Brock & Blackwell LLP, Toronto, ON

The Honorable Roger T. Hughes (Ret.), Federal Court of Canada, New York, NY

♦♦ **Eileen M. Hunter, PhD**, Boston Scientific Corporation, Saint Paul, MN

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The Honorable Becky R. Thorson, Michigan District Court, Detroit, MI

Corey Willard, Gowling WLG, Ottawa, ON

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Sandra J. (Sandy) Wunderlich, Tucker Ellis LLP, Saint Louis, MO

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Diversity and Inclusion in DRI: A Statement of Principle

DRI is the largest international membership organization of attorneys defending the interests of business and individuals in civil litigation.

Diversity is a core value at DRI. Indeed, diversity, which includes sexual orientation, is fundamental to the success of the organization, and we seek out and embrace the innumerable benefits and contributions that the perspectives,

backgrounds, cultures, and life experiences a diverse membership provides.

Inclusiveness is the chief means to increase the diversity of DRI's membership and leadership positions. DRI's members and potential leaders are often also members and leaders of other defense organizations. Accordingly, DRI encourages all national, state, and local defense organizations to promote diversity and inclusion in their membership and leadership.

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DRI is committed to the policy of equal opportunity regardless of race, color, religion, sex, sexual orientation, gender, national origin and disability in all of its programs and activities, as well as maintaining an environment in our programs and activities which is free from all forms of harassment or discrimination of any kind. Pursuant to this policy, if any person who attends our programs or activities experiences unlawful discrimination or harassment, this should be reported to the Executive Director so that appropriate action may be taken.

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Minneapolis, MN*

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Westin Michigan Avenue, Chicago, IL

June 25–26

Young Lawyers

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September 9–11

Fire Science Litigation

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September 10–11

Nursing Home/ALF Litigation

Omni Nashville Hotel, Nashville, TN

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December 3–4

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*As defined on page 6

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