

INTELLECTUAL PROPERTY AND TECHNOLOGY NEWS

Perspectives • Analysis • Visionary Ideas

RADIO SPECTRUM

Surging Demand, Coming Regulations

WOMEN IN IP

GLOBAL RESOURCES
FOR YOUR EXPANDING
BUSINESS

BEST PRACTICES
IN DEFENDING
PATENT LITIGATION

SUPREME COURT CORNER

**PATENT PROSECUTION
PARTNER LARISSA PARK JOINS
DLA PIPER IN BOSTON**

DLA Piper's growing IPT group in Boston recently welcomed patent prosecution partner Larissa Park. Larissa has developed patent portfolios for a wide array of clients, from startups to publicly traded companies, with a focus on medical devices, solid state devices, semiconductor devices and processing, telecommunications, Internet-based software technologies, and artificial intelligence.

Larissa also has litigated patents in US district courts and the Federal Circuit, and has counseled on dozens of petitions for Inter Partes Review before the United States Patent and Trademark Office.

She is involved in a number of local organizations and events serving entrepreneurs, including MassChallenge, the Harvard Business School Business Plan Competition, Harvard Business School's New York Start-up Studio, and the Harvard Business School's Rock Center for Entrepreneurship, where she is a Lawyer-in-Residence.

Larissa received her J.D., *cum laude*, from the University of Pittsburgh School of Law, and her B.A. in Physics from Cornell University.

Learn more about [Larissa Park](#).



Larissa Park
Partner

Q4 EDITOR'S COLUMN



Dr. Erica Pascal
Partner
Intellectual Property
and Technology

Welcome to the final 2016 issue of DLA Piper's *IPT News* (North America). It's hard to believe the year has gone by – but I suspect I am not alone in experiencing that feeling when we reach December. The end of the year is often when we take stock of the past months and wonder what the future year will bring.

In 2016, we've seen a fair bit of change impacting a broad span of technologies. Some of these are high-level structural changes – for example, Brexit and the loss of Justice Antonin Scalia from the US Supreme Court. Others are shifts in the law, such as new obligations for digital service providers, cybersecurity concerns, patent eligibility requirements, EU trademark reform and new regulatory approaches to native advertising.

I hope that this publication, along with DLA Piper's client alerts, webinars and website, has helped you recognize and prepare for the present and future impacts of these shifts in our ever-evolving world of technology. We close out the year with an examination of in-house counsel views on patent litigation practices, an overview of regulations on telecoms, and recent cases at the Supreme Court addressing patent and copyright-related issues.

Best wishes for the remainder of 2016 and the new year.

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DLA PIPER CANADA EXPANDS ITS IPT PRACTICE, ADDING 16 LAWYERS IN TORONTO

A combination agreement between DLA Piper (Canada) LLP and renowned intellectual property law firm Dimock Stratton LLP has added seven IPT partners and nine associates to the DLA Piper office in Toronto.

The Dimock Stratton group focuses on intellectual property litigation and the acquisition, licensing and portfolio management of patents, trademarks, and copyrights, as well as trade secret protection. As one of Canada's preeminent IP firms, it represented some of the globe's biggest brands, among them BMW, Cisco Systems, A&W Food Services and Magna. Over the last 25 years, its lawyers have been involved in one out of every five patent trials in Canada and have been counsel in the Supreme Court of Canada on leading cases in patent, trademark and copyright litigation. Among numerous industry recognitions, it has consistently been named one of Canada's top 10 IP boutique firms by *Canadian Lawyer* magazine.

This combination, which became effective November 1, further strengthens DLA Piper's global leadership in the fast-growing area of IPT and offers deep experience in this strategic market.

Partner Bruce Stratton will serve as Co-Chair of IPT, Canada, alongside Chris Bennett (Vancouver).



Michael D. Crinson



Geoffrey P. Mowatt



Ron Dimock



Sangeetha Punniyamoorthy



Angela M. Furlanetto



Bruce W. Stratton



Alan Macek

IN BRAZIL



Paula Mena Barreto joined Campos Mello Advogados* in September as a partner in the Intellectual Property area. DLA Piper's cooperation agreement with Campos Mello allows us to collaboratively advise international companies doing business in Brazil as well as domestic companies that are expanding or doing business abroad. Paula advises clients on IP related issues, including IP transactions (drafting, negotiating and registering agreements involving intellectual property, transfer of technology and franchising) and legal due diligence for evaluation of IP assets. She further advises clients on strategies for IP protection, with extensive experience in trademarks, copyrights and software. Paula is also highly experienced in media rights, privacy, data protection and advertising law.

*Campos Mello Advogados is an independent law firm in Brazil with offices in Rio de Janeiro and São Paulo.

THE SPIRIT OF KAIZEN

There is a Japanese word, *kaizen*, which describes how I view our patent practice. The best English translation for *kaizen* is "constant never-ending self-improvement."

Kaizen embodies the spirit of DLA Piper's approach to patent litigation.

Eleven years ago, when DLA Piper was formed, our US patent litigation practice was ranked approximately 25th in the US by most of the organizations that do such rankings. Outside of the US, we were unranked. In my view, we lacked significant resources in key areas like Chicago, New York, Boston, Delaware, Paris, Germany, Italy and China.

Our goal over the last decade was to become the number one global patent practice, which meant we needed to have top-quality people in every significant region. We committed to this goal by applying the spirit of *kaizen* – working one step at a time, constantly aiming to improve our practice through internal promotion and development as well as lateral growth.

Now we have skilled practitioners in every significant region. Some of them have found their way into various rankings, such as the 33 who are featured in *IAM Patent 1000*, shown on page 9. We will keep applying the spirit of *kaizen* to our IP litigation practice by continuing to grow and add experienced attorneys to our practice group.

Keep your eyes open; more improvement is coming. Constantly. And without end.

john.allcock@dlapiper.com



John Allcock
Partner
Global Co-Chair and
US Co-Chair, Intellectual
Property and Technology



SUPREME COURT CORNER | CASES WE ARE WATCHING

LENZ v. UNIVERSAL MUSIC CORP.

COPYRIGHT – Cert. Pending

Issue: Whether, in sending a takedown notice under the DMCA, the copyright holder's "good faith belief" of copyright infringement may be purely subjective.

The Digital Millennium Copyright Act (DMCA) protects web-based multimedia-sharing services, such as YouTube, from copyright infringement liability if a user unlawfully posts copyrighted material. Under the DMCA, service providers can avoid infringement by "act[ing] expeditiously to remove, or disable access to, the material" upon receiving a takedown notice from the copyright holder. 17 U.S.C. § 512(c).

Respondent Lenz uploaded to YouTube a 29-second home video of children dancing to Prince's "Let's Go Crazy." YouTube received a takedown notice from Universal, removed the video, and notified Lenz. After Lenz sent two counter-notifications, YouTube reinstated Lenz's video. Lenz then filed a district court complaint alleging Universal was liable under 17 U.S.C. § 512(f) for misrepresenting to YouTube that the video was infringing. When the case reached appeal, the Ninth Circuit held that prior to sending the takedown letter, Universal was required to consider whether Lenz's work was "fair use" under copyright law and would have had to subjectively believe that it was not.** After the Ninth Circuit denied rehearing *en banc*, the parties filed cross-petitions for writ of *certiorari*. Universal's petition was denied, and Lenz's petition remains pending.

In her appeal, Lenz argues the Ninth Circuit erred by finding that the copyright holder, in sending the takedown notice, can merely *subjectively* believe the material is infringing. See 17 U.S.C. 512(c)(3)(A)(v) (requiring the copyright holder to certify its 'good faith belief' of infringement). Lenz argues the copyright holder must have an objectively reasonable belief. Universal argues the Ninth Circuit is correct because the statutory phrase "good faith belief" is necessarily subjective.

*For a more detailed history of this case, see "Supreme Court Corner" in our Q1 2016 IPT News, [here](#).

**For more on the underlying Ninth Circuit's decision in *Lenz v. Universal Music Corp.*, see "Supreme Court Corner" in our Q4 2015 IPT News, [here](#).

Partner Stan Panikowski, based in San Diego, focuses on IP, antitrust, appeals and other areas of business litigation. Reach him at stanley.panikowski@dlapiper.com.

Associate Brian Biggs, based in Wilmington, Delaware, represents clients across many technical fields in patent litigation. Reach him at brian.biggs@dlapiper.com.

Associate Andrew Stein, based in Washington, DC, focuses on patent litigation in federal district courts and §337 investigations. Reach him at andrew.stein@dlapiper.com.

Stephen Gombita, an associate and based in Washington, DC, focuses on patent infringement cases involving a variety of technologies. Reach him at stephen.gombita@dlapiper.com.

SCA HYGIENE PRODUCTS AKTIEBOLAG v. FIRST QUALITY BABY PRODUCTS, LLC*

PATENT – Argument: Nov. 1, 2016

Issue: Whether laches is available as a defense under the Patent Act to bar damages for patent infringement within the six-year recovery period.

The Supreme Court's recent decision in *Petrella*, in which the Court limited the availability of laches in copyright actions, has raised the question of the availability of laches in patent cases. In *SCA*, the district court found that laches barred SCA from recovering pre-suit patent infringement damages, and the Federal Circuit affirmed, finding laches remained a viable defense in patent cases despite *Petrella*.

The SCA case has now reached the Supreme Court; oral arguments occurred on November 1. The Court wrestled with whether Congress intended to incorporate laches as an available defense in the face of the statutory six-year patent damages limitation. Early in the argument, the justices probed whether 35 U.S.C. § 282, which authorizes an "unenforceability" defense, codifies laches. Justice Ruth Bader Ginsburg asked whether laches could be included in this section even though laches does not make the patent unenforceable. Chief Justice John Roberts questioned whether the respondents' position that laches was codified in the 1952 Patent Act could rely on prior equity cases, characterizing this reliance as "where your mountain becomes a mole hill." Justice Ginsburg further asked whether Section 286 supported "a time limitation" at all, and whether laches was available in the face of a statute of limitations. Justice Stephen Breyer, who authored a dissent in *Petrella*, repeatedly expressed concerns over abolishing laches because of the negative economic impact on companies that invest in product development and marketing while the patentee sits on its rights.

MYLAN PHARMACEUTICALS INC v. ACORDA THERAPEUTICS INC.

PATENT – Cert. Pending

Issue: Whether the filing of an abbreviated new drug application by a generic pharmaceutical manufacturer is sufficient to subject the manufacturer to specific personal jurisdiction in any state where it might someday market the drug.

Mylan filed abbreviated new drug applications (ANDA) seeking approval to market generic versions of two brand-name drugs. Mylan prepared the ANDAs in West Virginia and filed them with the Food and Drug Administration in Maryland. Both respondents sued Mylan for patent infringement in the District of Delaware in separate actions.

Mylan moved to dismiss the actions for lack of personal jurisdiction (general or specific). Both Delaware district court judges denied Mylan's motions, agreeing Delaware could exercise specific jurisdiction over Mylan, but differing over whether Delaware could exercise general jurisdiction in light of *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014). In *Daimler*, the Supreme Court held that a court can exercise general personal jurisdiction over a defendant (i.e., personal jurisdiction for acts unrelated to the specific lawsuit) when the defendant is "at home" in the forum state. In the *Mylan* cases, the Federal Circuit affirmed, reasoning that Mylan was subject to specific personal jurisdiction in Delaware by virtue of filing ANDAs, through which Mylan would engage in future activities purposefully directed at Delaware. The court did not address general jurisdiction, but Judge Kathleen O'Malley's concurring opinion found general jurisdiction under *Daimler*.

In its cert petition, Mylan argues that the Federal Circuit's decision expands specific jurisdiction to any state, but Supreme Court precedent restricts specific jurisdiction to either West Virginia (where the ANDAs were prepared) or Maryland (where the ANDAs were filed). AstraZeneca and Acorda both argue the Delaware court can exercise specific personal jurisdiction in Delaware because Mylan's ANDA is necessarily directed at Delaware, which is consistent with due process and "common sense." Mylan, respondents argue, has never disputed that it intends to market the generic drugs at issue to Delaware.

NEW TELECOMS GROUP JOINS IN WASHINGTON, DC

DLA Piper has added a prominent group of telecommunications and technology practitioners in the firm's Washington, DC office. Co-chaired by Mike Senkowski and Nancy Victory, the team also includes partner Eric DeSilva and engineers Tom Dombrowsky and Michael Lewis.

Together, they bring extensive knowledge and experience advising and representing a broad cross-section of telecommunications and technology sector clients on a variety of regulatory and business issues, with a focus on spectrum and emerging technology matters.

They also are highly familiar with the rapidly evolving regulatory developments and emerging issues around connected cars, the Internet of Things and unmanned aerial systems (also known as drones). The team adds significant depth in all of these areas, further strengthening our leading global platform.

The Washington-based team provides the following services:

- TRANSACTIONS – due diligence and regulatory approvals
- NON-US ENTRY – FCC, Team Telecom/CFIUS and regulatory
- SPECTRUM – all things relating to finding, using and keeping
- INTERNET/EDGE PROVIDERS – understanding and avoiding regulation
- ENFORCEMENT – investigations and defense
- COMPLIANCE – developing programs and best practices to ensure compliance with rules and maintain validity of licenses/authorizations
- STARTUPS – changing rules to permit new services
- DEPLOYMENT – federal assistance for state and local restrictions



Mike Senkowski, a former FCC Chief of Staff, has more than 30 years of experience advising entrepreneurs and technology industry leaders in significant telecoms matters. Mike was recently appointed to the FAA's Drone Advisory Subcommittee. Along with Federal Law and Policy Co-Chair Steve Phillips, he was recently named Co-Chair of the firm's new Unmanned Aerial Systems (UAS) group. Reach him at michael.senkowski@dlapiper.com.



Nancy Victory is a well-respected former head of the National Telecommunications and Information Administration and telecommunications policy advisor to the President. She is particularly well known for her work on FCC enforcement matters as well as all forms of transactions requiring FCC approval. Nancy was recently reappointed to the Department of State's Advisory Committee on International Communications and Information Policy. Reach her at nancy.victory@dlapiper.com.



Eric DeSilva focuses his practice on wireless telecommunications issues and regulations, with extensive knowledge of wireless policy and spectrum auctions. Reach him at eric.desilva@dlapiper.com.

Engineer **Tom Dombrowsky** has extensive experience in spectrum engineering, particularly with respect to spectrum allocation, interference issues and licensing of new technologies. Reach him at thomas.dombrowsky@dlapiper.com.

Engineer **Michael A. Lewis** advises equipment manufacturers and new technology innovators on how to get radio-based products access to spectrum and approved for use in the US. Reach him at michael.a.lewis@dlapiper.com.

RADIO SPECTRUM

Surging demand for radio spectrum drives the need to understand regulation

BY MIKE SENKOWSKI, NANCY VICTORY AND MICHAEL LEWIS

The pace of innovation for wireless products and services over the past decade or so has been breathtaking. Since the introduction of the iPhone – less than 10 years ago – near-ubiquitous mobile networks have developed to provide instant broadband access to the Internet for streaming news, sports, and entertainment. But the ability to stay in constant contact with friends or check the latest sports scores from just about anywhere is only one part of the wireless revolution. A vast number of applications and services have developed that use wireless technologies to make us smarter, more efficient, safer and healthier. Medical implant devices now monitor and regulate internal organ activity; some, using wireless technology, immediately notify doctors of critical health changes. Smart sensors and switches execute real-time network adjustments to address unusual demands on power grids and help avoid outages. Collision-avoidance radar technologies help direct vehicles both on the ground and in the air to steer clear of hazards. Crowdsourcing applications warn us of traffic congestion and provide dynamic route adjustments to help save fuel and lower stress.

A NATURAL RESOURCE

Enabling each of these applications is radio spectrum, the precious natural resource that serves as the invisible conduit for the transmission of data in many varied forms. The value of spectrum is quantifiable – in 2015, the US Federal Communications Commission completed an auction of spectrum licenses suitable for providing wireless broadband services and received more than \$41 billion in net bids. One year later, the FCC is now in the process of auctioning additional licenses that will likely raise an additional \$30 - \$35 billion for the US Treasury.

While auction-generated revenue is no doubt impressive, there are other less tangible benefits of spectrum use. First responders rely on private two-way radio networks to help save lives and protect property. Air traffic control services rely on radio frequencies to manage air traffic and ensure safe skies. The Wi-Fi and non-licensed spectrum ecosystem, which relies on shared spectrum that is not auctioned, is estimated to have contributed \$222 billion to the US economy.¹ These and other less visible radio-based services are ever-present factors influencing nearly every aspect of our daily lives.

A CRITICAL GOVERNMENT FUNCTION

The once arcane world of spectrum management has developed into a critical government function. And we have likely seen only the tip of the iceberg. By 2020, the Internet of Things (IoT), which promises a world in which every household device has

wireless communications capabilities, will likely increase network traffic six-fold through the anticipated introduction of some 50 billion wireless devices. This surge will not only require that more spectrum be made available, but also will demand that we be smarter about how spectrum is deployed and shared by competing users. Indeed, government decision makers are looking towards more sharing of the spectrum resource, rather than granting any user exclusive use for any particular system.

COMPETING FOR SPECTRUM

Developers of new spectrum-based technologies must aggressively compete for spectrum with other new technologies as well as with traditional telecom companies. Autonomous cars will require spectrum for control and two-way data communications; but other parties want to share such cars' proposed spectrum home for other uses. Medical devices are becoming more and more reliant on the use of the spectrum; but they will need to ensure their transmissions are reliable, secure and protective of the sensitive information involved. Unmanned aircraft systems (drones) need spectrum to control their flights and deliver data to the ground; but resolving spectrum usage will entail a lengthy regulatory process.

As demand continues to grow, all companies will need to become cognizant of the regulatory processes affecting the allocation and use of spectrum and will need to understand the sometimes arcane legal, technical, and policy decisions about spectrum that could directly affect their businesses.

¹ See <http://www.wiforward.org/wp-content/uploads/2014/01/Value-of-Unlicensed-Spectrum-to-the-US-Economy-Infographic.pdf>.

Mike Senkowski, a partner in the IPT practice and based in Washington, DC, is highly experienced in spectrum allocation and wireless policy issues for both service providers and manufacturers, as well as in the full range of advocacy venues important to telecom decision making. Reach Mike at michael.senkowski@dlapiper.com.

Nancy Victory, a partner in the IPT practice and based in Washington, DC, has extensive experience in communications policy, with particular experience in wireless and satellite issues, including spectrum allocation, licensing, compliance, and policy matters. Reach her at nancy.victory@dlapiper.com.

Michael Lewis, an engineer in the IPT practice and based in Washington, DC, has significant experience in spectrum policy and spectrum engineering issues, especially pertaining to private and public safety networks and new technologies, as well as in RF equipment certification matters. Reach him at michael.a.lewis@dlapiper.com.

Find out more about our telecoms team on page 5.

BEST PRACTICES IN DEFENDING PATENT LITIGATION

BY JEREMY T. ELMAN

What best practices have recently emerged for companies that engage in patent litigation? The latest trends in this area were the topic of a popular panel at DLA Piper's biannual Tech Summit, held in Silicon Valley in late September. Here are the key issues the panel examined.

Patentable subject matter: One of the first questions sophisticated patent defendants consider is whether, under the recent *Alice v. CLS Bank* framework, the asserted patent(s) are potentially invalid for a lack of patentable subject matter. Courts around the country have recently been quite willing to invalidate patents on this basis at an early stage. Companies may bring motions to dismiss or motions for judgment on the pleadings, both of which can be filed early in the case, potentially resolving a matter before heavy litigation fees are incurred. In-house counsel often take into consideration which court and which judge is handling the case in order to evaluate the effectiveness of such a challenge.

Post-grant review proceedings: The panel discussed the positives and negatives of covered business method petitions (CBMs) and inter partes reviews (IPRs), both of which enable a defendant to seek review of the asserted patents at the US Patent and Trademark Office. On the plus side, the panel viewed the Administrative Law Judges who handle such reviews as highly qualified, hard working and determined to reach the correct result. The perceived downside is that such petitions can extend the time to resolve a case and, if the patent survives such a challenge, the legal fees will only increase. Additionally, some panelists were concerned about the possibility that "what comes around, goes around"—such petitions might also become weapons against the

companies' own patents. In going down this path, companies should carefully weigh whether each asserted patent is a good candidate.

Willful infringement: The discussion moved on to the Supreme Court's recent decisions in *Stryker Corp. v. Zimmer, Inc.*, and *Halo Electronics, Inc. v. Pulse Electronics, Inc.* Panelists were eager to see whether companies will revert to the pre-*Seagate* view and receive an opinion of counsel to avoid the potential for willfulness allegations. The panel agreed that while it was too early to tell, conservative companies that worry about high damages exposures may want to take the proactive step now of obtaining such an opinion of counsel.

Practical considerations for structuring litigation: The panel discussed a number of factors that influence the course of litigation. Venue can inform how a case is handled internally. For example, the plaintiff's selection of a home jurisdiction can signify a more credible case; a plaintiff who is forum shopping may not have as strong a case. Litigation budgets are important to in-house counsel. Favored factors include budget predictability, as well as alternative fee arrangements and innovative strategies to address litigation involving a multitude of similarly situated companies. The panel also noted there is no current software solution that really allows in-house counsel to manage patent litigation and asked the tech-savvy crowd to work on that.

Key takeaways from this session: company counsel are closely watching trends in patent litigation; meanwhile, they are thinking critically about how these trends affect their litigation strategies and the company's bottom line.

The panel was moderated by Mark Fowler (Global Co-Chair, Patents, and US Chair, Patent Litigation, DLA Piper), joined by Brian Fogarty (Senior Director, Global Intellectual Property Litigation, Nike), Julie Han (Senior Litigation Counsel, Samsung) and Peter O'Rourke (Managing Counsel, Oracle).

Based in Silicon Valley and South Florida, Partner Jeremy Elman maintains a wide-ranging practice focusing on high-stakes patent infringement matters. Reach him at jeremy.elman@dlapiper.com.

33 DLA PIPER LAWYERS RANKED AS WORLD'S LEADING PATENT PRACTITIONERS

IAM Patent 1000: The World's Leading Patent Professionals 2016 has named 33 DLA Piper lawyers to its 2016 list. IAM interviewed lawyers and clients around the world to determine who companies turn to for their patent matters. Their directory includes "only those individuals identified by market sources for their exceptional skill sets and profound insights into patent matters."



John Allcock
US – California



John M. Guaragna
US – Texas



Robynne Sanders
Australia



Justyna Wilczynska-Baraniak
Poland



Lisa A. Haile
US – California



Matthew Satchwell
US – Illinois



T. Daniel Christenbury
US – Pennsylvania



James Heintz
US – Nationwide
US – DC Metro Area



Paul R. Steadman
US – Illinois



Adam Cooke
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Denise Seastone Kraft
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Nicholas Tyacke
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George Godar
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Mark F. Radcliffe
US – California



Roberto Valenti
Italy



Kathryn Riley Grasso
US – California
US – DC Metro Area



Paul Reeskamp
Netherlands



Yan Zhao
China – foreign



Licia Vaughn (San Diego) and panelists Rena Mears (San Francisco), Jennifer Chaloemtiarana (General Counsel, Castlight Health), Erin Gibson (San Diego), Katie Nolan-Stevaux (Senior Technology and Litigation Counsel, Genentech), and Dr. Erica Pascal (San Francisco)



Heather Dunn (San Francisco) enjoys a moment with attendees



Licia Vaughn (San Diego) welcomes attendees to the 10th Annual Women in IP Law CLE Program

DLA PIPER IPT GROUP HOSTS TENTH ANNUAL WOMEN IN IP LAW CLE PROGRAM

In September, DLA Piper hosted its tenth annual Women in IP Law CLE program at the Four Seasons Silicon Valley. Over 100 attendees enjoyed a celebratory cocktail reception and networking opportunity following a panel discussion about cutting-edge issues in the IPT space.

This year's topics were "Divided Infringement and Section 101: A Potential Collision Course?" and "Cybersecurity: Managing Cyber-risk and Enterprise Governance." The event was co-sponsored by our long-time partners for this program, ACC-SFBA and Leading Women in Technology (LWT).

Speakers were Jennifer Chaloemtiarana (General Counsel, Castlight Health), Katie Nolan-Stevaux (Senior Technology and Litigation Counsel, Genentech), **Erin Gibson (San Diego)**, **Rena Mears (San Francisco)**, and **Dr. Erica Pascal (San Francisco)**. **Licia Vaughn (San Diego)** directed the program.

Many attendees were IP counsel for Bay Area companies, such as Box, Cisco Systems, Gilead Sciences, Juniper Networks, NetApp, Qualcomm Technologies, Samsung, Symantec, Varian Medical Systems and VISA International.

The **patent panel** kicked off the discussion by reviewing Section 101 and how recent Supreme Court and Federal Circuit cases have altered the landscape of subject matter eligibility. The discussion focused on the broad effects these changes have had on the validity of existing patent claims, the scope and breadth of patent claims that may now be obtained, and the value of patent rights for existing and future licenses.

To address subject matter eligibility concerns, patentees may seek to include additional steps in the claims. But this avenue, as the panel then discussed, can have ramifications down the road when pursuing patent infringement. When more than one entity is involved in carrying out the claims of a patent, direct infringement may be more difficult to prove. The panel noted that keeping in mind "who" carries out each of the claim steps can be key. "Who" may determine (1) the parties to be named in the suit; (2) the party to identify as the direct infringer to form the basis for direct and indirect infringement claims; (3) the scope of discovery needed to show direction and control by a single party, and (4) claim construction for terms that will be crucial to attributing each step to the identified direct infringer. For an in-depth analysis on this, please see Dr. Pascal's related article: www.dlapiper.com/life-sciences-patents-method-claims.

Next, the **cybersecurity risk management** panel opened with a brief overview of the current cyber landscape, reminding attendees that cybersecurity – at its heart – is risk management. To keep up with the threat landscape, panelists said, enterprise-wide governance is vital. Companies should consider appointing a cyber-risk management team encompassing stakeholder departments (not least, IT and Risk Management) and led by a recognized member of senior management. The cyber-risk team should establish cross-departmental ownership and review the development of incident response protocols. The team should meet regularly and report to the full board or a board committee. Its review should establish evaluation criteria and metrics for cyberthreat risk management efforts, threat landscape assessment

(including updates on threats and defenses at peer entities), and suspicious activity reporting. The operational cybersecurity team should routinely conduct vulnerability and penetration testing, adopt appropriate defensive and detective controls (e.g., white-listing, logging and monitoring), and effective incident response procedures. The cybersecurity program must emphasize cybersecurity preparedness, role-based training and periodic reviews and updating of evolving legal requirements reviews. Panelists stressed the importance of knowing the data and addressing third-party risk, such as supply chain and vendor risk management strategies. For more information, please see DLA Piper's Cyber-Incident/Data Breach Response Emergency Checklist.



Panelists listen intently as Rena Mears shares insights on cybersecurity



Attendees toast the further advancement of women in IP law



A lively Q&A session was held at the end of the program

ANNOUNCING GLOBAL RESOURCES FOR YOUR EXPANDING BUSINESS

NEW! TELECOMS LAWS OF THE WORLD

DLA Piper has launched a new online handbook, *Telecommunications Laws of the World*, covering nearly 30 countries. We designed this tool to provide multinationals with an overview and comparison of essential telecommunications laws and policies in key global jurisdictions.

Key features include:

- Telecommunications laws, regulations and policies
- Regulatory bodies and authorities
- Overview of consents, licenses and authorizations
- Regulatory taxes and fees
- Key sanctions and penalties



Access the *Telecommunications Laws of the World* handbook here: www.dlapiperintelligence.com/telecoms.

NEW! GLOBAL PATENT LAWS

Global Patent Laws is designed to provide you with an overview of the key patent laws and dispute resolution procedures that are relevant to businesses operating in key jurisdictions around the world. For each of these jurisdictions, the handbook covers such areas as:

- The acts that infringe a patent
- The availability of and approach to granting preliminary injunctions
- The ability to obtain evidence
- The approach to assessing validity
- Typical time to trial



For companies operating around the globe, managing the risk of – and successfully bringing or defending – patent proceedings can often depend on strategic exploitation of approaches available in different countries. Accordingly, our handbook allows you to compare the laws and procedures across jurisdictions to help formulate global patent strategies.

To access the handbook, visit this page: www.dlapiperintelligence.com/patent.



When you have a patent dispute that can only be solved in the courtroom, DLA Piper has the trial strength and technical depth to guide you. *Corporate Counsel's* Annual Patent Litigation Survey 2016 ranked DLA Piper among the top two most active defense firms in the US and among the top four most active firms overall, based on the number of new district court patent case filings.

We are honored that clients around the globe trust us with their patent matters.

www.dlapiper.com

