



IP

The Tennessee Bar Association's newsletter for the
Intellectual Property Section
April 2017 · Volume 8 · No. 1

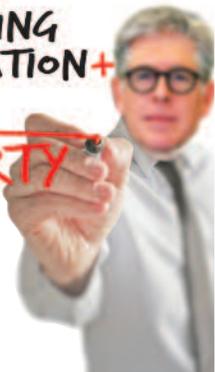
Inventors' Legal and Business Boot Camp

By J. Scott "Skip" Rudsenske

Because intellectual property (IP) owned by individual inventors and small businesses is a key component and contributor to the Tennessee and U.S. economy, the Tennessee Bar Association (TBA) will conduct a free two-hour Inventor's Legal and Business Boot Camp in cities across Tennessee to educate inventors, or future inventors, about protecting, developing and licensing IP rights associated with an invention. The program structure will consist of a moderated panel of attorneys from the community where the program is held. These attorneys will provide information on the legal and business aspects of IP, including understanding its value, how to protect it, ways to monetize it, and the steps needed to set up a business organization to support the sale or licensing of the IP. The panel will also address crowdfunding options, including ways to use crowdfunding to finance a prototype, mass produce, and/or market an invention. Written materials will be provided.

The Boot Camps are organized and administered by the TBA as part of its patent pro bono program Legal Assistance Volunteers for Patent Applicants (LAVPA). LAVPA matches patent attorneys with under-resourced inventors and small businesses. Attorneys will provide certain pro bono legal services, including the filing of patent applications. The

COPYRIGHT+LICENSING+
IDEA+CREATION+GUIDANCE
+PATENTS+BRANDS+COUNSELING
+INVENTION+NOVELTY+INNOVATION+
+AUTHORSHIP+TRADEMARKS
INTELLECTUAL PROPERTY



will practice trademark and copyright law as it relates to the use of copyright and trademark associated with a patented product or system. An outline with written material will be provided to the IP attorney with basic topics to cover. This will relieve the volunteer of having to create the curriculum for the panel. But an attorney will be free to add to the curriculum based on their own knowledge and experience.

SEEKING PARTNERS

The TBA would like to partner with other organizations, business groups or educational facilities to bring the Boot Camps to any city in Tennessee. The TBA would welcome the opportunity to partner to educate high school or college students interested in the STEM career field. The TBA will provide the attorneys and resource materials for the program and will assist with promoting the event. The Boot Camp's partnering host would provide the space for the event and pay a small fee to cover the costs of written materials, travel for the panelists and administering the event.

For more information, organizers are invited to contact J. Scott "Skip" Rudsenske. **IP**

Intellectual Property: CLE Bytes
April 5, from 8:30 a.m. to 4:45 p.m.
See page 2.

Boot Camps will also inform inventors about how they can apply for the patent pro bono program.

SEEKING VOLUNTEERS

Currently the TBA needs IP attorneys to volunteer to participate as a panelist in a city near where the volunteer lives. One IP panelist will practice patent law and a different panelist



J. SCOTT "SKIP" RUDSENSKE is the Tennessee Bar Association's LAVPA Coordinator. He can be reached at srudsenske@tnbar.org or (615) 277-3207. LAVPA's mission is to educate inventors about the patent process, provide economic development resources and match under-resourced inventors and small businesses with attorneys to secure patent protection for their inventions for free.

Mark Your Calendar

INTELLECTUAL PROPERTY: CLE BYTES APRIL 5 8:30 A.M. TO 4:45 P.M.

This year, the IP Section's annual IP forum features a different format. As usual, practitioners can choose to attend the entire day's worth of CLE, racking up a good chunk of their mandatory requirements by attending presentations on patent, trademark, copyright, and trade secrets issues and receiving **1 dual and 6 general CLE hours**. Or, for practitioners who regrettably don't have time to attend the entire day's program, they can attend the presentations that most interest them — or fit their schedules. Morning sessions will cover topics in trademark and copyright law. Afternoon sessions will look at intellectual property proceedings, patents and trade secrets.

DUAL CREDITS

Worried about getting ethics hours? The program will include an ethics-eligible presentation on evolving legal markets as well as a short lunch-hour short presentation on the TBA's new Legal Assistance Volunteers for Patent Applicants ("LAVPA"). Program materials will be made available online.

Your editor thinks it's a mistake to miss any of this great program — but if you can't attend the entire program, the silver lining in that dark cloud is that you pay only for the sessions you attend. Registration will be open all day to accommodate those poor souls who can't get there first thing. Sign up now so you don't go hungry over lunch. You can use any unpaid CLE credits that come with your TBA membership to save money on this course — which your editor reminds you is already a huge bargain at \$40 per hour for TBA Intellectual Property Section Members, \$50 per hour for TBA members, and \$60 per hour for non-members. Payment will be determined at checkout depending on the number of hours you attend.

The program will be held in Tennessee Bar Center, Nashville. Parking is available in the Commerce Street Garage (corner of 3rd Avenue/Commerce St.) — and TBA will validate your parking ticket if you bring it with you.

AGENDA

To help you plan, here is the agenda:

8 a.m. – 8:30 a.m.

Registration/Welcome

Breakfast provided

8:30 a.m. – 9:30 a.m.

Copyright Update

Joseph Fishman, *Vanderbilt University*

9:30 a.m. – 10:30 a.m.

Trademark and the First Amendment

Gary Pulsinelli, *University of Tennessee*

10:30 a.m. – 10:45 a.m.

Break

10:45 a.m. – 11:45 a.m.

Trademarking Animal Abuse

Esther Roberts, *Global IP Asset Mgmt*

11:45 a.m. – 12:30 p.m.

Networking Lunch & LAVPA Presentation

Skip Rudsenske, *TBA LAVPA Coordinator*

12:30 p.m. – 1:30 p.m.

TBA Special Committee on the Evolving Legal Market Report

A. J. Bahou, *Prism Technologies LLC*

1:30 p.m. – 2:30 p.m.

Trade Secrets

John Winemiller, *Merchant & Gould PC*

2:30 p.m. – 2:45 p.m.

Break

2:45 p.m. – 3:45 p.m.

Patent Damages

Glenn Perdue, *Kraft Analytics LLC*

3:45 p.m. – 4:45 p.m.

IPR Update

Ryan Levy, *Patterson Intellectual Property Law PC*

2

IP IN THIS ISSUE:

- 1 Inventors' Legal and Business Boot Camp
- 2 Mark Your Calendar
- 3 Alice Enters the Digital Age
- 4 News
- 5 International News/Treaty Watch

IP Editorial Board 2016-2017

Judy Winegar Goans, Editor-in-Chief

<http://www.tba.org/section/intellectual-property-section>

© 2017 Tennessee Bar Association

Alice Enters the Digital Age

By Judy Winegar Goans

In Alice's Adventures in Wonderland, Lewis Carroll introduced us to a strange world in which mad hatters join well-dressed animals for tea. At one of these parties, the March Hare tells Alice she should say what you mean. ... "I do," Alice hastily replied; "at least — at least I mean what I say — that's the same thing, you know."

"Not the same thing a bit!" said the Hatter. "You might just as well say that 'I see what I eat' is the same thing as 'I eat what I see!'"

"You might just as well say," added the March Hare, "that 'I like what I get' is the same thing as 'I get what I like!'"

"You might just as well say," added the Dormouse, who seemed to be talking in his sleep, "that 'I breathe when I sleep' is the same thing as 'I sleep when I breathe!'"

Alice apparently found this very confusing. Almost as confusing, perhaps, as reading Terms of Use for websites and digital applications. The problem must be even worse for children who spend time surfing the web.

Anne Longfield, who is Children's Commissioner for England, commissioned a year-long study, called Growing Up Digital² <http://www.childrenscommissioner.gov.uk/publications/growing-digital>, into how well children are prepared to engage with the Internet. Among her findings:

Children are left to learn about the internet on their own with parents vainly hoping that they will benefit from its opportunities while avoiding its pitfalls. ... The time children spend online is continuing to increase — 3-4 year olds' online use increased from 6 hours 48 minutes to 8 hours 18 minutes a week over the last year and 12-15 year olds spend over 20 hours a week online. ... [W]hen children use social media they sign up to impenetrable terms and conditions that they could never be expected to understand. These harbour hidden clauses which waive their right to privacy and allow the content they post to be sold.

The study tested the terms and conditions for the popular site Instagram, "used by 56% of 12-15 year olds and 43% of 8-11 year olds who have a social media account," with teenagers.

Younger ones were unable to read more than half of the 17-pages of text, which run to 5,000 words, and none understood fully what the terms and conditions committed them to. An expert in privacy law on the

Growing Up Digital panel simplified, demystified and condensed the terms and conditions so that they were comprehensible to teenagers, leaving many of them shocked by what they had unwittingly signed up to.

The re-write was carried out by privacy lawyer Jenny Afia, who retitled the terms and conditions, "Our rules if you want to use Instagram" and revised pages of text to short simple sentences, so that Instagram's text ...

"You must not defame, stalk, bully, abuse, harass, threaten, impersonate or intimidate people or entities and you must not post private or confidential information via the Service, including, without limitation, your or any other person's credit card information, social security or alternate national identity numbers, non-public phone numbers or non-public email addresses."

... became Afia's concise explanation

"Don't bully anyone or post anything horrible about people," she wrote. "Don't post other peoples' private or personal information."

Even more disturbing is the report's findings that children do not know how to report online illegal activities and are not able to achieve satisfactory results. In addition to the investigation carried out by the office of the Children's Commissioner, "Growing Up Digital" cites findings of other studies, including a "study showing that almost a third of 15 year olds admit to having sent a naked photo of themselves at least once, and over a third of 12-15s having seen hateful content directed at a particular group of people in the last year."

The study by the Children's Commissioner also took note of EU studies, including one that asked children what bothered them online.

The top two complaints were pornography, followed by "[v]iolent, aggressive, cruel or gory content," with children seeing video-sharing websites as being related to those issues, boys expressing "more concern about violence ... [and] girls ... about contact risks." The words of the children themselves are more horrifying. Among the things that

bother them online, children reported "seeing a starving African child who was going to die and a condor waiting to eat him"; "people having sex or naked people"; receiving

(continued on page 4)



Tea Party. Illustration by John Tenniel for *Alice's Adventures in Wonderland*, courtesy of Alice-in-Wonderland.net

Alice Enters the Digital Age

(continued from page 3)

messages from strangers with “sex sites that open without me clicking on them”; “[a]nimal cruelty, adults hitting kids”; and “things that show other people’s suffering or torment as a funny thing”; and “a mate showed me once a video about an execution.” All these are in addition to online solicitations to meet strangers.

I strongly recommend that practitioners read “Growing Up Digital” to be aware of the issues it raises and the recommendations it makes. Intellectual property practitioners frequently are called on to assist clients with materials they place online. Being aware of the issues — and fact — will better equip us to understand the practical

impact of our advice and its ethical implications. And if for no other reason than to improve our legal drafting skills, we should all read pages 8-11 as good models of how to put technical legal requirements into plain English that teenagers can understand. **P**



JUDY WINEGAR GOANS is an attorney with more than thirty-five years of experience in intellectual property and international law. She can be reached at jgoans@att.net.

News

NEW FEES IN 2017

The U. S. Patent and Trademark Office (USPTO) has put a new fee schedule into place as of January 14, 2017. Trademark fees have remained remarkably stable, with an application fee ranging from \$225 to \$400 per class, depending on the method of filing.

Patent fees continue to change, however. The basic patent filing fee is now \$280 and as little as \$70 for electronic filing by a small or micro entity. This latter fee is very close to the filing fee charged in the 1970s. Small entity filing fees for designs and plant patents are set at \$90.

Costs are shifted into other fees. These include a surcharge of \$420 for each independent claim in excess of three; a \$780 fee for each multiple dependent claim; a Utility Application Size Fee of \$400 for each additional 50 sheets over the first 100 sheets in an application; a \$600 Utility Search Fee; and a Utility Examination Fee of \$720, among others. An extension of time to file within the third month now costs \$1,400; some of us remember when that was considered timely and required no extension fee. The utility issue fee is set at \$960. Maintenance fees begin at \$1,600, with a final fee of \$7,400 to maintain a patent in effect for the full term. Fees are half these amounts for small entities and a fourth the amounts for micro entities.

Fees to obtain a patent add up to a minimum of \$640 for a microenterprise that files its response within the first month — unlikely — and requires no appeals or petitions. Keeping the patent in effect for its full term adds a minimum of \$3,150 over the next 11.5 years.

This most recent fee structure provides an interesting approach to the problem of covering costs while keeping the patent system affordable. Whether it accomplishes the latter is the reader’s to judge. The task of answering simple

questions, like how much will a patent cost, is considerably more complicated than it used to be when the only fees were application fees and issue fees and the practitioner could quote an amount and add, unless there’s a problem.

For practitioners who merely want to know how much to pay in fees, the fee schedule can be found at <https://www.uspto.gov/learning-and-resources/fees-and-payment/uspto-fee-schedule>.

As for how to pay those fees, the USPTO is offering practitioners a free MyUSPTO page: [https://my.uspto.gov/?Et4FbBZLLD6eofc9W9RQGCfghVWBv18O#/.](https://my.uspto.gov/?Et4FbBZLLD6eofc9W9RQGCfghVWBv18O#/) With some customization, practitioners will be able to pay fees through their page.

ENHANCED PATENT QUALITY INITIATIVE

After years of focusing its attention on pendency (and being warned that hast can adversely impact quality), the USPTO has undertaken an initiative to improve the quality of issued patents. This is positive step toward reducing the number of patents found to be invalid. You can read about the initiative here: <https://www.uspto.gov/patent/initiatives/enhanced-patent-quality-initiative-0>.

ANONYMITY NOT ASSURED IN SOCIAL MEDIA

Attorneys who advise social media clients should be aware of a recent case in which a Los Angeles court ordered an attorney to disclose the name of his client after the client reportedly made false allegations of criminal action against a public figure and a defamation suit was filed. The story has been reported by the *ABA Journal* http://www.abajournal.com/news/article/criticized_by_individual_on_twitter_actor_james_woods_files_unusual_defamat and a number of other news outlets. **P**

International News

TREATY WATCH

The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled entered into force on September 30, 2016. The Republic of Panama ratified the Treaty on February 10, 2017. This will bring the total membership to twenty-six as of June 27, 2017, when the treaty enters into force for Panama.

Meanwhile, the Beijing Treaty on Audiovisual Performances remains at fifteen countries, half of the required thirty parties required for the treaty to take effect.

ACCESSIONS BY AFGHANISTAN

The Islamic Republic of Afghanistan acceded to the Paris Convention for the Protection of Industrial Property and also to the Singapore Treaty on the Law of Trademarks on February 14, 2017. The Paris Convention and the Singapore Treaty will each enter into force for Afghanistan on May 14, 2017.

NOTIFICATIONS

Brunei Darussalam acceded to the WIPO Copyright Treaty on February 2, 2017. The Treaty will enter into force, with respect to Brunei Darussalam, on May 2, 2017.

The Hashemite Kingdom of Jordan acceded to the Patent Cooperation Treaty (PCT) on March 9, 2017. The PCT will enter into force for Jordan on June 9, 2017.

On March 2, 2017, Tuvalu acceded to the Berne Convention for the Protection of Literary and Artistic Rights. Berne will enter into force for Tuvalu on June 2, 2017.

Attorneys who deal with plant variety protection should check the Budapest treaty notifications, here: <http://www.wipo.int/treaties/en/registration/budapest/>, as Spain, Italy and Switzerland have recently filed notifications about their depositaries. **P**

MARRAKESH VIP TREATY MEMBERSHIP	
Country	Ratification or Accession and Effective Date
India	Ratification: June 24, 2014
El Salvador	Ratification: October 1, 2014
United Arab Emirates	Accession: October 15, 2014
Uruguay	Ratification: December 1, 2014
Mali	Ratification: December 16, 2014
Paraguay	Ratification: January 20, 2015
Singapore	Accession: March 30, 2015
Argentina	Ratification: April 1, 2015
United Mexican States	Ratification: July 29, 2015
Mongolia	Ratification: September 23, 2015
Republic of Korea	Ratification: October 8, 2015
Australia	Ratification: December 10, 2015
Brazil	Ratification: December 11, 2015
Peru	Ratification: February 2, 2016
Democratic People's Republic of Korea	Ratification: February 19, 2016
Israel	Accession: March 21, 2016
Chile	Ratification: May 10, 2016
Ecuador	Ratification: June 29, 2016
Guatemala	Ratification: June 29, 2016
Canada	Accession: June 30, 2016
Saint Vincent and the Grenadines	Accession: September 5, 2016
Tunisia	Ratification: September 7, 2016
Sri Lanka	Accession: October 5, 2016
Botswana	Accession: October 5, 2016
Liberia	Accession: October 6, 2016
Panama	Ratification: February 10, 2017

BEIJING TREATY ON AUDIOVISUAL PERFORMANCES MEMBERSHIP	
Country	Ratification or Accession and Effective Date
Syrian Arab Republic	Ratification: March 18, 2013
Republic of Botswana	Ratification: November 20, 2013
Slovak Republic	Accession: May 22, 2014
Japan	Accession: June 10, 2014
People's Republic of China	Ratification: July 9, 2014
United Arab Emirates	Accession: October 15, 2014
Republic of Chile	Ratification: June 22, 2015
State of Qatar	Ratification: July 3, 2015
Republic of Moldova	Ratification: September 4, 2015
Russian Federation	Accession: October 19, 2015
Democratic People's Republic of Korea	Ratification: February 19, 2016
Tunisia	Ratification: July 21, 2016
Saint Vincent and the Grenadines	Accession: September 5, 2016
Gabon	Accession: September 21, 2016
El Salvador	Ratification: October 10, 2016