

PATENTESQUE LAW GROUP, LLP

RECENT DEVELOPMENTS IN IP/TECH LICENSING: 2022 IN REVIEW

**Licensing Executives Society
Silicon Valley Chapter
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RECENT LEGAL DEVELOPMENTS AFFECTING IP/TECH LICENSING

- I. **IPR Ownership:** Lack of Employee IP Agreement
- II. **Opportunity to Enforce / License:** Copyrights (Infringing Act)
- III. **Opportunity to Enforce / License:** Trademarks (First Sale Defense)
- IV. **Opportunity to Enforce / License :** Standard-Essential Patents (Antitrust Defense)
- V. **Contract Formation:** Not Quite Clickwraps (1st Case)
- VI. **License Grant:** Irrevocability, Termination & Survival
- VII. **License Grant:** Trademarks (Right to Enforce)
- VIII. **Payments & Assignment:** Attempted Gaming (Avoidance) via M&A
- IX. **Other Terms:** Agreements To Agree / Negotiate
- X. **Disputes:** Forum Selection Clause & Non-Parties
- XI. **Loss of Rights:** Course of Conduct & Estoppel
- XII. **Summary**

I. **IPR OWNERSHIP: LACK OF EMPLOYEE IP AGREEMENT**

A. Facts:

1. **Chester worked** on **actuator** technology for a company, Koso
2. **No employee agreement**, so **no IPR assignment** or **confidentiality**
3. Years later, Chester made, patented **improved actuator** for **new employer**
4. Successor to original employer alleged (under Massachusetts law) that:
 - a. Breach of **implied-in-fact contract** to **assign patent**
 - b. Breach of implied-in-fact contract to **maintain confidentiality**
 - c. **Misappropriation** of **trade secrets**

B. Issues & Holding:

1. Was Chester obligated to assign the patent to the original employer's successor under a **common law "hired to invent"** doctrine?
 - a. "Hired to invent" **exists** under both Mass. and Federal common law (citing *Goodyear* (9th Cir. 1927))
 - b. Employer must "**specifically direct**" employee to create the invention
 - c. Court declined to hold that "hired to invent" rights can be assigned to successor under Massachusetts law (→ open issue)

2. Was there a **misappropriation** of a trade secret? **NO**
 - a. Plaintiff **failed** requirement to **identify** a trade secret with **specificity**
 - b. Not clear whether court found there was (or was not) a trade secret
 - i. But court noted no NDA, and not told to keep confidential
 - ii. Assuming a trade secret existed, it was **not misappropriated**
 - A. New actuator reflected **accumulated general skills** over 11 years between old / new jobs -- not taking docs, samples
3. If TS misappropriation, was there also **breach** of an implied duty of confidentiality? **NO**
 - a. Confidentiality claim was pleaded in dependence on TS misappropriation claim
 - b. In any event, **confidentiality breach** claim is **no different** than (and would be **subsumed into**) **trade secret** misappropriation claim

Rexa v. Chester (7th Cir. Jul. 2022)

C. Comment: Many courts are **unsympathetic** to **distinguishing** between **trade secrets** and confidential information

1. As is trade secret guru (and former PCT head) **Jim Pooley**

II. OPPORTUNITY TO ENFORCE / LICENSE: COPYRIGHTS (INFRINGING ACT)

A. Background & Facts:

1. McGucken took a photo and posted it on Instagram
2. Newsweek published an e-article, including embedding (a link to) McGucken's Instagram post
3. The photo is displayed (by Instagram) when clicking the embedded post
4. The photo is not stored on Newsweek's servers
5. McGucken sued Newsweek for copyright infringement
6. Newsweek argued the "server test" (*Perfect 10 v. Amazon*, 9th Cir. 2007) applies
 - a. Infringement requires the work to be stored on the accused's servers

B. Issue & Holding:

1. Is the "server test" the applicable standard for copyright infringement? NO
2. Can an embedded link infringe? YES, it's a form of displaying
 - a. The copyright owner has the right to control display of its work

McGucken v. Newsweek (S.D.N.Y. Mar. 2022)

C. Practice Tip: California lawyers / companies beware

III. OPPORTUNITY TO ENFORCE / LICENSE: TRADEMARKS (FIRST SALE DEFENSE)

A. Background & Facts:

1. **TM first sale doctrine:** When product is made under authorization of TM owner, resellers are protected against infringement liability
2. Bluetooth SIG owns and licenses Bluetooth TM
3. **FCA bought Bluetooth** infotainment systems **from licensed suppliers**
4. **FCA used Bluetooth logo** in car brochures **without** a TM license

B. Issue & Holding: Does **TM first sale doctrine protect** TM use in **downstream** product based on incorporation of TM-licensed component? **POSSIBLY**

1. Remand to trial court on fact-intensive issue
2. Must strike **balance** between **limiting TM power downstream** vs. **likelihood of confusion**
2. FSD applies if downstream **product seller** adequately **informs product end users** of **relationship** between **product** and the incorporated **component** that is **licensed** under the TM

Bluetooth SIG v. FCA (9th Cir. Apr. 2022)

C. Comment: Holding may cause **future confusion** because did **not address issue** of **software** (which is licensed, not sold, and usually excluded from FSD)

IV. OPPORTUNITY TO ENFORCE / LICENSE: STANDARD-ESSENTIAL PATENTS (ANTITRUST DEFENSE)

A. Facts:

1. Continental sought RAND license from Avanci
2. Avanci only licenses auto makers, not suppliers
3. Avanci members retain right to license suppliers (as well as auto makers)
4. Continental brought antitrust & breach of SSO contract actions against Avanci and lost
 - a. Dist. Ct. found no antitrust standing to sue
 - i. Wrong plaintiff – alleged harm (>RAND rates) would affect auto makers, not Continental
 - ii. Breach of contract = state law issue. No jurisdiction without federal (antitrust) issue
5. Continental appealed to 5th Cir.

B. Initial opinion: Focused on threshold issue of Continental's standing to sue under Art. III (case & controversy), which requires a real injury to Continental.

Continental v. Avanci (5th Cir. Feb. 2022)

C. Withdrawal of Initial Opinion (Jun. 2022):

1. Continental petitioned for rehearing *en banc*
2. Panel treated as petition for panel rehearing
3. Withdrew initial opinion & said reissue forthcoming

D. Reissued Opinion (Jun. 2022):

1. Affirmed dist. court ruling that Continental failed to state a claim under Sherman Act 1, 2
2. Bare (& *per curiam*) ruling – no explanation at all

E. Comments:

1. Deadline for filing S/Ct certiorari petition has now passed
2. No surprise that 5th Cir. unreceptive to antitrust arguments
3. Similar to *FTC v. Qualcomm* (9th Cir. 2020), bringing (and losing) antitrust arguments led to loss of (important) contract arguments – major open question awaiting ruling by U.S. circuit courts
4. Apple-Ericsson SEP settlement (Dec. 2022) also eliminated opportunity for trial court (E.D.Tx.) guidance on contract (and related SSPPU-based royalty) question.

V. **CONTRACT FORMATION: NOT QUITE CLICKWRAPS (1ST CASE)**

A. Background & Facts:

1. **Spectrum** of e-agreements
 - a. Generally **enforceable**: **Clickwrap** (display terms + **click to agree**)
 - b. Often **unenforceable**: **Browsewrap** (hyperlinked terms + user supposedly **agrees by** affirmatively **using** the offering)
2. This case involved a so-called “**Sign-in Wrap Agreement**”
 - a. “*By **clicking continue**, I acknowledge that I have read and **understood**”*
 - b. Did **not require** user to **agree**, but stated “*IF YOU DO **NOT AGREE**, YOU MAY NOT INSTALL OR OTHERWISE ACCESS ...*”
 - c. **Highlighted** dispute resolution: “*THE SECTION **BELOW TITLED DISPUTE RESOLUTION** CONTAINS A **BINDING ARBITRATION AGREEMENT AND CLASS ACTION WAIVER**. THEY AFFECT YOUR LEGAL RIGHTS. **PLEASE READ THEM.**”*
 - i. Actual dispute resolution terms were **hyperlinked**, **not displayed**

B. Issue & Holding: Were arbitration and class action waiver **enforceable**? **YES**

1. Analysis depends on context
2. Typically **more enforceable** in an **ongoing relationship** where a user would **expect** to be bound by **contract**, in contrast to free offers, trials, etc.

B.D. v. Blizzard (Cal. 4th Mar. 2022) (California law)

V. **CONTRACT FORMATION: NOT QUITE CLICKWRAPS (2ND CASE)**

A. Background & Facts:

1. **Small gray hyperlink to agmt terms** + large, colored “continue” button
2. **Non-hyperlink elements** (e.g., button) were larger, more colorful

B. Issue & Holding: Were agreement terms (esp. arbitration of class actions) **enforceable? NO**

1. Terms must be “**reasonably conspicuous**”
 - a. **Not** if **rest of webpage attracts more user attention** than hyperlink
 - b. Better: Same or **larger size** + **different color (blue)** + **ALL CAPS**
2. User clicking must **manifest assent** to terms
 - a. Not if just click to “continue”
 - b. Better: “***By clicking here, you agree to the terms***”

Berman v. Freedom Financial (9th Cir. Apr. 2022) (Either **Calif.** or **NY law** – undetermined – because court stated outcome would be same in either case)

C. Practice Tip: If not displaying terms, provide a prominent link + get assent

VI. LICENSE GRANT: IRREVOCABILITY, TERMINATION & SURVIVAL

A. Background & Facts:

1. **PLA:** Uniloc granted “*irrevocable license*” to Fortress
2. **PLA:** Survival of terms “*which by their nature survive*”
3. **Termination Agreement:** Terminated the PLA
4. **Dist. Ct.:** Under NY law, irrevocable license cannot be terminated

B. Issues & Holding:

1. What does **irrevocable** license **mean**? **Cannot be** terminated **by** the **grantor**. Can be terminated by **mutual agreement**.
2. Does survival of “*terms which by their nature survive*” cover an irrevocable license? **NO**, especially when license **has not been used**.
 - a. Dicta: **Past usage** and/or **reliance** could cause a different result, but not ruling on that (→ open issue)
 - b. Dicta: Such terms would include **remedies** for acts occurring during the term, **dispute resolution**, **forum** selection

Uniloc v. Google (Fed. Cir. Nov. 2022)

- ### C. Practice Tips: **Be precise**. Original: Do **not** use “*terms by which their nature survive*.” Termination: Affirmatively **keep** or **kill** the **survival clause**.

VII. LICENSE GRANT: TRADEMARKS (RIGHT TO ENFORCE)

A. Facts:

1. Pace has **nonexclusive TM license** from Overhead Door Corp. (ODC)
2. Overhead Door Group (ODG) used the same / similar marks
3. Consumers were confused
4. Pace sued ODG for (common law) **TM infringement**, (Federal & common law) **unfair competition**, and (state law) deceptive trade practices

B. Issues & Holding:

1. Does a **nonexclusive TM licensee** have **standing to sue** under Federal **unfair competition** statute (Lanham Act §43)?
 - a. **YES**, based on its “**developed reputation** and accumulated **goodwill**.”
[CONTRADICTS BELOW AND CUSTOMARY DRAFTING]
2. Does a nonexclusive TM licensee have the (legal) **right to sue** for **unfair competition** or deceptive trade practices?
 - a. **NO**, because a **licensee's rights** are **derivative of** (and **merged into** / accrue to) rights of the mark **owner** [CONTRADICTS ABOVE?]
3. Does a nonexclusive TM licensee have the **right to sue** for **TM infringement**?

- a. NO, citing *Quabaug v. Fabiano* (1st Cir. 1977) (only **owner** and **exclusive licensee** of **federal** mark can sue; only **owner** of **common law** mark can sue) and *Kroma v. Boldface* (11th Cir. 2019) (right to sue **must be granted** in license agreement)
 - i. **Goodwill** accrues to **owner**/licensor [CUSTOMARY DRAFTING, BUT INCONSISTENT WITH ABOVE]

Pace v. OGD (N.D.Ga. Mar. 2022)

C. Comments:

1. Cases on suits by TM licensees are (relatively) **rare**
2. Irony: The opinion itself **causes confusion!**
 - a. Why standing to sue when no right to sue?
 - b. Goodwill to licensee for standing, but to owner otherwise
 - b. Distinctions (e.g., between federal and common law / state causes of action) not as clear as could be
 - c. But **useful citations** of **circuit-level cases** on suits by TM licensees

VIII. PAYMENTS & ASSIGNMENT: ATTEMPTED GAMING (AVOIDANCE) VIA M&A

A. Facts:

1. Inventor developed & patented a pin used in sockets
2. Licensed to company w/ royalty on pins (\$) and sockets with pins (\$\$)
3. Company wanted to avoid royalties on sockets with pins (\$\$ > \$)
4. Company created subsidiary to reduce royalties, via divisive merger under Texas merger statute
5. Company (parent) assigned royalty liability to subsidiary
6. Subsidiary made & sold pins to parent
7. Parent made & sold sockets with pins without paying royalty (\$\$)

B. Issue & Holding: Was assignment effective to avoid the royalties? NO

1. Under common law, an assignment cannot disadvantage the non-assigning party. *Rest.2d Contracts §317(2)*.
2. The Texas divisive merger statute did not override the common law rule
 - a. Expressly states “does not abridge any right ... of any creditor”
 - b. Merger did not relieve company assignor of preexisting obligations

Plastronics v. Hwang (Fed. Cir. Jan. 2022) (non-precedential)

B. Comments & Practice Tips:

1. “**No disadvantage**” rule is a **little known** rule, and can help a non-assigning party
2. But must **check state merger statute** to confirm not overridden
3. **What happens** if the agreement **expressly allows assignments**? Does that **override / waive** the **common law rule**?
4. Transactional lawyers should **worry about gaming** (and **unintended consequences**) through M&A (and otherwise) – more **thoughtful drafting** might have avoided this situation. Consider:
 - a. “*may freely **assign without limitation***” vs.
 - b. “*may **assign provided** that doing so **does not disadvantage** the *non-assigning party*”*

IX. OTHER TERMS: AGREEMENTS TO AGREE / NEGOTIATE

A. Background & Facts:

1. Sprint and Cox sued each other for patent infringement
2. Settlement agreement required Cox to buy cellular services from Sprint, but terms were to be agreed:

“Before Cox or one of its Affiliates (the “Cox Wireless Affiliate”), begins providing Wireless Mobile Service (as defined below), the Cox Wireless Affiliate will enter into a definitive MVNO agreement with a Sprint Affiliate (the “Sprint MVNO Affiliate”) identifying the Sprint MVNO Affiliate as a “Preferred Provider” of the Wireless Mobile Service for the Cox Wireless Affiliate, on terms to be mutually agreed upon between the parties for an initial period of 36 months (the “Initial Term”).

3. Cox solicited bids from T-Mobile (new owner of Sprint) and Verizon
4. Cox rejected T-Mobile’s offer as too expensive
5. T-Mobile sued Cox for breach

B. Issues:

1. What was the nature of the promise?
2. What obligation was created?

C. Holdings:

1. There are **3 categories** of **promises** (Del. adopting NY law terminology):
 - a. “**Type I**” promise – **all critical terms** that would have required negotiation are **specified**
Result: **Binding, enforceable agreement**
 - b. “**Type II**” promise – **some** (not all) **critical terms** are **specified**
Result: Parties **must negotiate in good faith**, but are **not required to reach agreement**
 - c. “**Agreement to agree**” (presumably with no critical term specified)
Result: **Unenforceable**
2. This was a “**Type II**” promise, which **Cox fulfilled by negotiating**, even though agreement was not reached.
 - a. **2 specified critical terms:** **36 months** and **preferred provider** status
 - b. **Other critical terms missing:** **price**, etc.
3. **Might have been enforceable** if written in 2 parts:
 - a. Cox will **not offer** cellular **before executing agreement** with Sprint
 - b. Terms: **36 months + preferred provider + other terms to be agreed**

Cox v. T-Mobile (Del. 2022)

D. Comments and Practice Tips:

1. If want **enforceable agreement**, then must **specify all critical terms**
2. If **want non-enforceable**, then **specify little** (→ only required to negotiate) or **nothing** (→ not required to do anything)
3. **Small differences in sentence structure** (and **wording**) can **matter greatly**
4. Even (seemingly) clear business promises **need careful legal review** using **sophisticated counsel**
5. Courts can award large damages for breach. See, e.g., *Siga v. PharmAthene* (Del. 2013) (**expectation damages >\$200,000,000** for breach of Type II promise in non-binding termsheet)

X. **DISPUTES: FORUM SELECTION CLAUSE & NON-PARTIES**

A. Background & Facts:

1. **Rule of thumb** is that **non-parties** to an agreement are **not bound** by it
2. **Amy & Craig Wells formed BACE** to become franchisee under **Franlin**.
 - a. Amy, Craig & BACE **all signed** contract
 - b. Bound by **forum selection** (Texas venue + pers. jx.) and other clauses
4. Contract **dispute** and termination
5. **Amy & Craig** formed **competing company, PayDay**, and began soliciting BACE customers
6. Amy & Craig's **son (Morton)**, a former employee of BACE, formed another **competing company (JTL)** and began soliciting BACE customers
7. **Franlink sued** signatories (Amy, Craig) & **non-signatories** (Payday, Morton & JTL) in Texas

B. Issue & Holding: Were the **non-signatory defendants** (Payday, Morton, JTL) **subject to the forum selection** clause? **YES**

1. Non-signatories to a contract may be bound by the contract's forum selection clause if they are "**closely related**" to the signatory (newly following the 2nd, 3rd, 6th, 7th, 8th, 9th. 11th circuits)

2. The test is **context-specific** but **not rigid**
3. The non-signatory must be “closely related” to the signatory (or dispute?) such that its **being bound is foreseeable**
4. **Factors:**
 - a. **Common ownership** between signatory and non-signatories
 - b. **Contract** itself provides a **direct benefit** to the non-signatory
 - c. **Non-signatory** has **knowledge** of the **contract** generally
 - d. **Non-signatory** has **knowledge** of the **forum selection clause**
5. All satisfied for Payday because wholly owned by signatories Amy & Craig (i.e., court apparently treated entity as alter ego of individuals)
6. **None satisfied** for **Morton** (son / employee) & **JTL** (his company)

Franlink v. Bace (7th Cir. Sep. 2022)

C. Comments & Practice Tip:

1. **Little known** doctrine is **exception to rule of thumb** that only signatories to a contract can be bound
 - a. Especially **absent piercing** of the **corporate veil**
2. Tip for individual owners of an entity: Do not sign. Disclaim being bound.

XI. **LOSS OF RIGHTS**: COURSE OF CONDUCT & EQUITABLE ESTOPPEL

A. Background & Facts:

1. License Agreement drafted with **Internal inconsistencies**
 - a. Boor (licensor) granted Wildhawk (licensee) an **exclusive license covering all** composite shingles, **including future improvements**
 - b. Inconsistency: **Draft** also contained **ROFR** for **license to future designs**. **Removed** prior to signature. **But parties agreed** on ROFR **orally** separately from and upon signing.
 - c. Later, Boor **offered to sell new design** to Wildhawk **under ROFR**
 - d. Wildhawk (**exclusive licensee**) **went along** so as to not antagonize licensor (Boor)
 - i. Executed **NDA acknowledging ROFR**
 - ii. **Negotiated price to purchase** new design
 - iii. But **no deal** was reached
 - e. **Boor** formed **new company** (Paragon) & began producing **new design**
 - f. Wildhawk (**exclusive licensee**) **sued** Boor for **breach** of **exclusivity**
 - g. Dist. ct. granted injunction barring Boor / Paragon from manufacturing

- B. Issues & Holdings: What effect of licensee's **course of conduct**?
1. What impact of the **NDA's acknowledgement** of **ROFR**?
 - a. Evidence of **oral agreement contemporaneous** with license agmt
 - b. But **excluded** as evidence under parol evidence rule
 - c. Dist. court correct that **license exclusivity covered new design**
 - d. **Licensee** had "**full ownership**" of new design [MISSTATEMENT]
 2. What impact of Wildhawk's (licensee's) **behavior** as if **ROFR** existed?
 - a. Satisfies **equitable estoppel** elements (Iowa law):
 - i. Party to be estopped makes **false representation** (or a concealment)
 - ii. Intending to **induce** other party to act on it
 - iii. Other party has **no knowledge** of **true facts** [QUESTIONABLE]
 - iv. Other party **relies** on the false representation (or concealment)
 - b. **Licensee equitably estopped** from **asserting** its **exclusive rights** as to the new design under the license agreement

Wildhawk v. Brava (8th Cir. Feb. 2022)

C. Comments & Practice Tips:

1. **Course of conduct** can lead to **loss of** rights
 - a. **Equitable estoppel** (here)
 - b. **Waiver** (another possible argument)
 - c. **Amendment** (another possible argument)
2. Seems like **nobody** in the case deeply **understood IP transactions**
 - a. Both licensor and licensee contemplated **ROFR inconsistent with exclusivity**
 - i. **Unless** ROFR was **for purchasing** IP rights, **but** deleted clause referred to obtaining a **license**
 - b. **Court also did not understand** IP licensing – referred to the **licensee** having “**full ownership**”
3. Mess could have been avoided by **competent counseling**

XII. SUMMARY

A. Developments Favorable to IP Owners / Licensors:

1. “Hired to invent” can protect employer when employee specifically directed to invent (*Rexa v. Chester*)
2. Linking to (without storing) a copyrighted work is a copyright infringement (*McGucken v. Newsweek*)
3. No liability for standard-essential patent owners that only license downstream (*Continental v. Avanci*)
4. Assignment should not disadvantage the non-assigning party (*Plastronics v. Hwang*)

B. Neutral Developments:

1. Electronic contracts with embedded hyperlinks (instead of actual text) can be enforceable (*B.D. v. Blizzard*)
2. Electronic contracts with embedded hyperlinks (instead of actual text) can be enforceable (*Berman v. Freedom Financial*)
3. Irrevocable license can be revoked by mutual agreement (*Uniloc v. Google*)

4. Examples of “terms which by their nature survive” (*Uniloc v. Google*)
5. Some agreements to agree can be enforceable (*Cox v. T-Mobile*)
6. Forum selection clause can bind closely related non-signatories (*Franlink v. Bace*)
7. Course of conduct can lead to loss of rights through estoppel (*Wildhawk v. Brava*)

C. Developments Unfavorable to IP Owners / Licensors:

1. Trademark first sale defense can protect downstream users (*Bluetooth SIG v. FCA*)
2. Nonexclusive trademark licensee has no right to enforce (*Pace v. OGD*)

D. Final Thoughts:

1. Year was slightly favorable to IP owners / licensors)
2. Rules of thumb may have exceptions
3. Common law doctrines may apply
4. Lack of “licensing law” knowledge / imprecise drafting leads to litigation

SPEAKER BIOGRAPHY -- JOSEPH YANG

Joe Yang is a partner at *PatentEsque Law Group, LLP*, and a Lecturer at *Stanford Law School*. He is also an expert witness for high stakes IP & licensing disputes.

Joe specializes in patent deals (e.g., licensing, monetization and standard bodies), tech transactions (e.g., licensing, JVs, IoT, big data & SaaS) and IP strategy. He has led hundreds of deals worth billions of dollars in (and across) the computer, electronics, semiconductor, consumer, entertainment, materials, manufacturing, energy & health fields. He has been an arbitrator, overseen patent litigation & developed corporate patent portfolios.

Previously, Joe he was VP & General Counsel of *Cryptography Research, Inc.*, whose licensees make 10+ billion devices/year under the company's patent and technology licenses. Before that, he co-founded & later led the IP Strategy & Transactions practice of *Skadden, Arps* (Palo Alto).

Joe co-chairs the nationwide “Advanced Licensing,” “Advanced Patent Licensing” & “Understanding the IP License” courses -- attended by thousands of lawyers annually -- at the *Practising Law Institute*. He has written for journals & books, and been cited by courts & treatises. Joe teaches “*Patent & Technology Licensing*” at *Stanford Law School* & has taught “Patent Law & Policy” at *U.C. Berkeley School of Law*.

Joe is listed in Intellectual Asset Management's guides to the *World's Leading IP Strategists*, *World's Leading Patent Professionals* & *World's Leading Patent & Technology Licensing Lawyers*; in Marquis' *Who's Who in American Law* & *Who's Who in America*; and in the Northern California *Superlawyers* guide.

Originally, Joe was a research engineer in aerospace & energy. Joe has a J.D. from Stanford and a Ph.D. (engineering) from the *California Institute of Technology*, where he has served on the boards of the Caltech Alumni Association, and the Caltech Associates.



BUNSOW DE MORY_{LLP}

Licensing Executives Society
IP Year in Review
January 18, 2023

Denise M. De Mory

Patent Litigation

2022 Patent Litigation Statistics

- 3,824 patent cases filed
 - 2,327 remain open (61%)
 - 1,497 terminated (39%)
- Venues:
 - W.D. Tex. - 866 cases (23%)
 - D. Del. - 668 cases (17%)
 - E.D. Tex. - 472 cases (12%)
 - C.D. Cal. - 232 cases (6%)
 - N.D. Ill. - 211 cases (6%)
 - Others - 1,384 cases (36%)
- Judges:
 - Albright - 678 cases (18%)
 - Gilstrap - 366 cases (10%)
 - Andrews - 181 cases (5%)
 - Connolly - 164 cases (4%)
 - Noreika - 150 cases (4%)

Source: Lex Machina

Western District of Texas Changes

- 23% of patent cases were filed in W.D. Tex.; 18% assigned to Judge Albright.
- July 2022: Random assignment of cases filed in Waco.
- It appears that Judge Albright is assigned new cases that are related to other cases already on his docket.
- Otherwise, new cases are randomly assigned.
- W.D. Tex. remains a popular venue for new patent cases.

Judge Connolly's Disclosure Requirements

- Delaware Chief Judge Connolly issued new standing orders on April 18, 2022.
- One order requires litigants to disclose information regarding any third-party funders of the litigation.
- The other order requires litigants that are nongovernmental joint ventures, limited liability corporations, partnerships and limited liability partnerships to disclose information about their ownership.

Judge Connolly's Disclosure Requirements

- Aftermath:
 - In *VLSI Technology LLC v. Intel Corp.*, Intel asked Judge Connolly to dismiss the suit due to VLSI's failure to disclose its owners. On December 27, 2022, VLSI dismissed the case with prejudice.
 - Nimitz Technologies LLC petitioned the Federal Circuit for a writ of mandamus directing Judge Connolly to vacate an order directing Nimitz to turn over certain documents in an effort to determine whether Nimitz had violated the court's standing orders. The Federal Circuit denied the petition.
 - Creekview IP LLC and Waverly Licensing LLC filed mandamus petitions on the grounds that (1) Judge Connolly did not have authority to enter the standing orders and (2) he lacked the power to enforce the orders because the parties had dismissed the actions. The Federal Circuit denied the petitions.

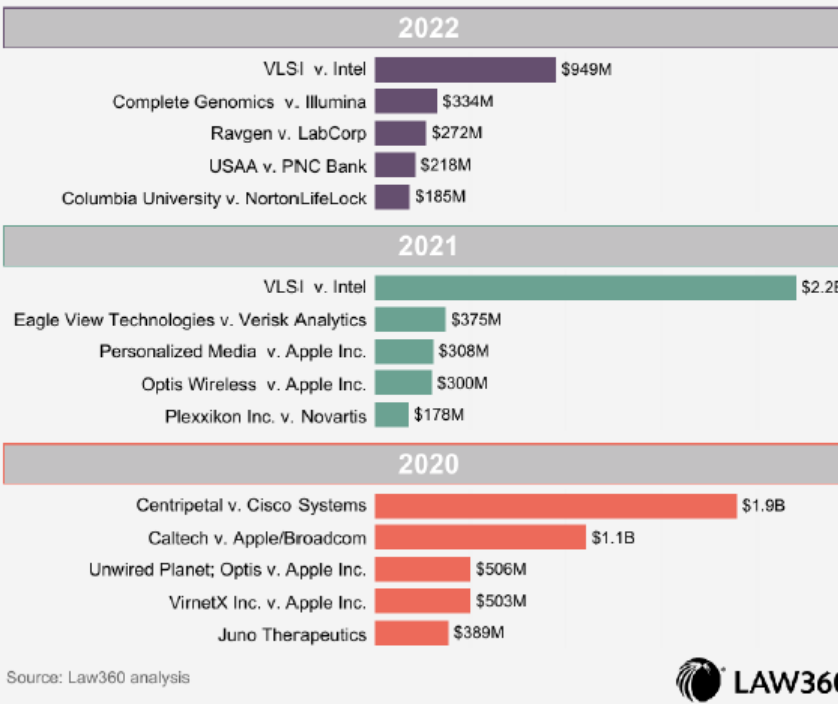
Top 2022 Patent Litigation Verdicts

- *VLSI Technology LLC v. Intel Corp.*
 - 1:19-cv-00977 (W.D. Tex.)
 - \$949 million
- *Complete Genomics Inc. v. Illumina Inc.*
 - 1:19-cv-00970 (D. Del.)
 - \$334 million
- *Ravgen Inc. v. Laboratory Corporation of America*
 - 6:20-cv-00969 (W.D. Tex.)
 - \$272 million
- *United Services Automobile Association v. PNC Bank*
 - 2:20-cv-00319 (E.D. Tex.)
 - \$218 million
- *Trustees of Columbia University v. NortonLifeLock*
 - 3:13-cv-00808 (E.D. Va.)
 - \$185 million

Source: Lex Machina, LAW360

How Top Patent Verdicts Stack Up

There were no billion-dollar verdicts in 2022, which saw more modest damages awards compared to the prior two years.



Source: Law360 analysis

BD Ordinary Skill Requirement: *Kyocera Senco Industrial Tools, Inc. v. ITC*, 22 F.4th 1369 (Fed. Cir. Jan. 21, 2022)
IP

- Background:
 - On appeal, the defendant challenged the partial admission of testimony from complainant’s technical expert because the expert did not meet the definition of a person of ordinary skill in the art adopted by the ALJ.

- Holding:
 - Admission of testimony was an abuse of discretion.
 - “To offer expert testimony from the perspective of a skilled artisan in a patent case ... a witness must at least have ordinary skill in the art.”

- Impact:
 - New focus on person of ordinary skill in the art in expert challenges.

BD AI Ineligible for Inventorship: *Thaler v. Vidal*, 43 F.4th 1207
IP (Fed. Cir. Aug. 5, 2022)

- Background:

- AI program as the sole inventor.
- PTO deemed the patent applications incomplete because they lacked a valid inventor, and the AI program did not qualify as an inventor.
- Eastern District of Virginia granted the PTO's motion for summary judgment concluding that an "inventor" must be a natural person.

- Holding:

- Affirmed.

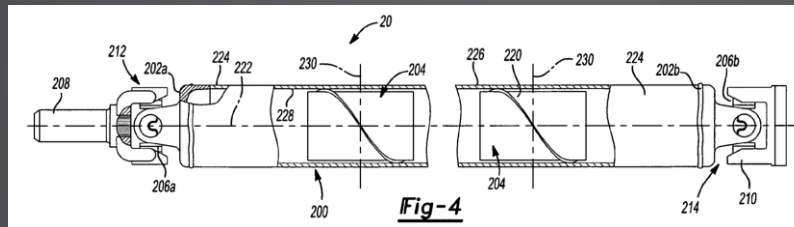
- Impact:

- Inventions assisted by AI?
- Disclosure requirements?



BD Supreme Court Denying Certiorari in *American Axle & Mfg. Inc. v. Neapco Holdings LLC*, No. 20-891 (June 30, 2022)

- Background:
 - Split panel affirmed finding that claims covering “a method of manufacturing a shaft assembly” were ineligible.
 - Opinion was revised but claims still found ineligible.
 - Denied *en banc* review in a 6-6 split.
 - Supreme Court denied certiorari on June 30, 2022.



- Impact:
 - Continued inconsistent holdings and lack of clarity re eligibility.
 - Need Congressional action or clarification from the Supreme Court: *Interactive Wearable LLC*.

BD IPR Estoppel: *California Institute of Technology v. Broadcom*
IP *Limited*, 25 F.4th 976 (Fed. Cir. Feb. 4, 2022)

- Background:
 - Cal Tech obtained a \$1.1 billion verdict against Apple.
 - Apple had filed an IPR, at which point it knew about the art underlying its obviousness defense.
 - Apple had been precluded from asserting invalidity defenses based on the IPR estoppel doctrine.
- Holding:
 - Original opinion said estoppel applied to “all claims and grounds.”
 - Revised to say all grounds for all challenged claims.
- Impact:
 - Claims not challenged are not subject to estoppel.
 - Estoppel does apply broadly to those that could have been brought.

BD Damages: *California Institute of Technology v. Broadcom*
IP *Limited*, 25 F.4th 976 (Fed. Cir. Feb. 4, 2022)

- Background:
 - District Court refused to instruct on presumption against extraterritoriality.
 - Design win theory to capture non-US sales.
 - Two-tier damages analysis:
 - Chip Supplier and Device Maker; excluded chips sold to Apple from Broadcom negotiation.

- Holding:
 - Refusal to instruct was not error. Instruction said US sales.
 - Design win theory not precluded.
 - No basis in fact for two-tier hypothetical negotiation.
 - But also asserts same damages should apply regardless of defendant (and a little exhaustion too).

BD Regular Place of Business: *In re: Volkswagen Group of America,*
IP *Inc.*, 28 F.4th 1203 (Fed. Cir. Mar. 9, 2022)

- Background:
 - Volkswagen and Hyundai petitioned for writs of mandamus directing the Western District of Texas to dismiss or transfer their cases to another district.
 - Disputed whether independently owned and operated car dealerships located within W.D. Texas constituted regular and established places of business.
- Holding:
 - Judge Albright abused discretion because it was undisputed that car manufacturers had no control once cars were sold to the dealership.
- Impact:
 - May protect franchisors.

BD Fifth Circuit Mandamus On Venue: *In re Planned Parenthood* IP *Fed'n. of Am., Inc.*, 52 F.4th 625 (5th Cir. Oct. 31, 2022)

- Background:
 - District Court denied Planned Parenthood's request to transfer to Austin.
- Fifth Circuit denied Mandamus in a written order:
 - “We reiterate that district courts have broad discretion in deciding motions to transfer; they need only grant such a motion where the evidence demonstrates that the destination venue is “clearly more convenient” than the chosen venue. We review that decision “only for clear abuses of discretion that produce patently erroneous results.” The district court carefully considered each of the private and public interest factors, ultimately concluding that they do not weigh in favor of transfer. The standard for reversing that holding is high.”
 - Noted the following factors:
 - Legal expertise and experience of the court.
 - Electronic documents.
 - Cost of hotels.
 - Timing.

- Background:

- In 2014, GSK sued Teva over its generic version of GSK's heart drug Coreg. Teva argued FDA's "carve out." A jury found Teva infringed the patent and awarded GSK \$235 million.
- JMOL granted on "skinny label."
- Back and forth Fed. Cir. history but ultimately verdict reinstated because: Teva "failed to carve out all patented indications."
- Case now pending before the Supreme Court.

- Impact:

- ANDA applicants need to consider carefully whether information such as press releases, product catalogs, or a piecemeal interpretation of their skinny label could put them at risk for an infringement claim regardless of whether their labeling revisions may have been approved by FDA as part of a skinny label.

Patent Cases to Watch in 2023:

- ***Amgen Inc. v. Sanofi*** (U.S. No. 21-757):
 - “Whether enablement is governed by the statutory requirement that the specification teach those skilled in the art to ‘make and use’ the claimed invention, 35 U.S.C. § 112, or whether it must instead enable those skilled in the art ‘to reach the full scope of claimed embodiments’ without undue experimentation—*i.e.*, to cumulatively identify and make all or nearly all embodiments of the invention without substantial ‘time and effort.’”
- ***Interactive Wearables, LLC v. Polar Electro Oy*** (US No. 21-1281):
 - Supreme Court asked for SG’s views in October.
- ***Apple Inc. v. Cal. Institute of Tech.*** (US No. 22-203):
 - Supreme Court asked for SG’s view today on IPR estoppel issue.

Copyright Litigation

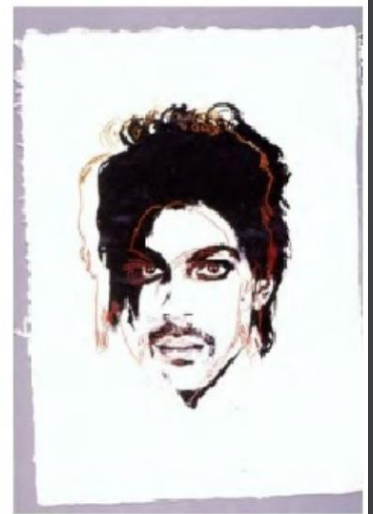
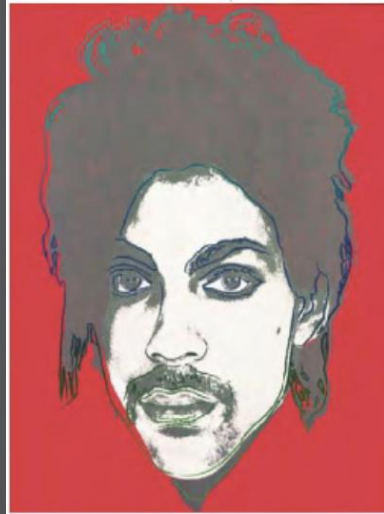
2022 Copyright Litigation Statistics

- 5,628 copyright cases filed
 - 2,653 remain open (47%)
 - 2,975 terminated (53%)
- Venue
 - C.D. Cal. - 765 cases (14%)
 - S.D.N.Y. - 514 cases (9%)
 - S.D. Fla. - 421 cases (7%)
 - E.D.N.Y. - 383 cases (7%)
 - N.D. Ill. - 363 cases (6%)
 - Others - 3,182 cases (57%)

Source: Lex Machina

- Launched by U.S. Copyright Office in June 2022
- Copyright small claims tribunal
- No attorney representation needed
- Limited scope
- Limited discovery
- Limited remedies
- Limited appeals
- Copyright registration or application pending to file
- Defendants can opt out
- Proceedings are electronic/remote

Fair use: What is “transformative” use? *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, No. 19-2420 (pending before Supreme Court)



Fair use: What is “transformative” use? *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, No. 19-2420 (pending before Supreme Court)

- Background:
 - Lynn Goldsmith alleged Andy Warhol’s works infringed her 1982 photo of Prince.
 - The Southern District of New York granted summary judgment in favor of Andy Warhol, finding fair use.
 - The Second Circuit reversed, finding that the works were not sufficiently transformative to constitute fair use.
 - “... [the secondary work must] comprise something more than the imposition of another artist’s style on the primary work ...”
 - Case is now pending before the Supreme Court. Oral arguments took place in October 2022.
- Impact:
 - The Supreme Court ruling will provide clarity on “transformative use” analysis under the fair use doctrine.

Fair use: What is “transformative” use? *McGucken v. Pub Ocean Ltd.*, 42 F.4th 1149 (9th Cir. Aug. 3, 2022)

- Background:
 - Photographer alleged infringement of his photos of lake when publisher used them in an article.
 - The Central District of California granted summary judgment for the defendant, finding fair use.
- Holding:
 - The Ninth Circuit reversed and remanded, finding no fair use.
 - Use was not transformative; article used the photos for the same purpose for which they were taken and embedding the photos within the text of the article did not transform them.
- Impact:
 - Including a photo with an article, where the article discusses the subject matter shown in the photo, is not fair use.

Copyright in tattoos: *Alexander v. Take-Two Interactive Software et al.*, No. 3:18-cv-00966 (S.D. Ill.)

- Background:
 - Tattoo artist sued video game maker for copyright infringement for portraying tattoos on professional wrestler in video game.
- Holding:
 - Southern District of Illinois jury found no fair use but awarded low damages (\$4,000), finding none of defendants' profits were attributable to use of tattoos.
 - Post-trial motions are pending.
- Impact:
 - Similar S.D.N.Y. case dismissed in 2020.
 - Even if tattoo case survives motion to dismiss, damages likely low.
 - May see cases brought before Copyright Claims Board because of low value.

- **Background:**
 - Plaintiff alleged infringement of his choreography he posted in YouTube dance video by virtual dance in Fortnite video game.
- **Holding:**
 - The Central District of California granted Epic’s motion to dismiss.
 - Plaintiff only entitled to thin protection, i.e., the way the dance steps were expressed.
 - Steps not protectable on their own.
 - Beyond similarity in the steps, plaintiff identified “no other similar creative elements” in the two works.
- **Impact:**
 - Copyright law does not protect social dances or simple dance routines in isolation.

Copyright registration errors: *Unicolors Inc. v. H&M Hennes & Mauritz LP*, 142 S.Ct. 941 (Feb. 24, 2022)

■ Background:

- Unicolors alleged infringement of fabric design.
- H&M said Unicolors' copyright registration was invalid because it had errors regarding when the designs were published.
- Unicolors claimed no knowledge of the errors.
- Jury verdict for Unicolors in the Central District of California; Ninth Circuit vacated.

■ Holding:

- Supreme Court vacated and remanded: "Lack of knowledge of either fact or law can excuse an inaccuracy in a copyright registration."
- On remand, Ninth Circuit held registration is valid, affirmed judgment for Unicolors.

■ Impact:

- "Knowledge" means actual, subjective awareness of facts and law.
- Ruling protects non-lawyers who make legal mistakes on copyright application forms.
- Attorneys may be held to higher standard.

Trademark Litigation

2022 Trademark Litigation Statistics

- 4,233 trademark cases filed
 - 2,636 remain open (62%)
 - 1,597 terminated (38%)
- Venue
 - N.D. Ill. - 810 cases (19%)
 - C.D. Cal. - 550 cases (13%)
 - S.D. Fla. - 322 cases (8%)
 - S.D.N.Y. - 263 cases (6%)
 - M.D. Fla. - 244 cases (6%)
 - Others - 1,384 cases (48%)

Source: Lex Machina

B D First Amendment and humorous parodies: *VIP Products LLC v. Jack*
I P *Daniel's Properties Inc.*, No. 22-148 (pending before Supreme Court)



BD First Amendment and humorous parodies: *VIP Products LLC v. Jack*
IP *Daniel's Properties Inc.*, No. 22-148 (pending before Supreme Court)

- Background:
 - Jack Daniel's alleged trademark infringement and dilution by tarnishment by "Bad Spaniels" parody dog toy and won.
 - Ninth Circuit reversed.
 - No trademark infringement under *Rogers v. Grimaldi*; First Amendment protects use of trademarks in expressive works.
 - *Rogers* test: Lanham Act only applies to expressive works if defendant's use of the mark is either (1) not artistically relevant to the underlying work, or (2) explicitly misleads consumers as to the source or content of the work.
 - No dilution because use was "humorous" and thus "noncommercial."
 - Supreme Court declined to hear the case.
 - On remand, the district court granted summary judgment to VIP; Ninth Circuit affirmed.
 - Currently pending before the Supreme Court.

BD First Amendment and humorous parodies: *VIP Products LLC v. Jack Daniel's Properties Inc.*, No. 22-148 (pending before Supreme Court)
IP

- Impact:
 - Critics of the Ninth Circuit decision say it applies *Rogers* too broadly—to commercial products—when it should only apply to purely artistic and creative works. This is a broader application of *Rogers* than other circuits.
 - Supreme Court ruling will resolve this circuit split on *Rogers* and clarify trademark, dilution, and First Amendment law with respect to humorous parodies.
 - A Second Circuit case involving similar issues, *Vans, Inc. v. MSCHF Prod. Studio, Inc.*, is currently stayed pending Supreme Court's decision in *VIP*.

BD IP First Amendment and criticism of public figures: *In re: Elster*, 26 F.4th 1328 (Fed. Cir. Feb. 24, 2022)

■ Background:

- Applicant sought to register the trademark “Trump Too Small.”
- The Trademark Trial and Appeal Board rejected the application.
 - Cited portion of Lanham Act that bars registrations on a living person’s name without their consent.

■ Holding:

- Federal Circuit overturned the rejection.
 - Government’s interest in protecting privacy and publicity rights does not outweigh applicant’s “substantial” First Amendment right to criticize public figures.

■ Impact:

- Ruling continues a trend of decisions favoring First Amendment rights over federal trademark restrictions.
 - Supreme Court decisions *Matal v. Tam*. and *Iancu v. Brunetti* found provisions of Lanham Act barring disparaging, immoral and scandalous trademarks to be unconstitutional.

BD Extraterritoriality: *Meenaxi Enter., Inc. v. Coca-Cola Co.*, 38
IP F.4th 1067 (Fed. Cir. June 29, 2022)

- **Background:**
 - Coca-Cola sought to cancel Meenaxi's "THUMS UP" and "LIMCA" trademarks under Lanham Act for misrepresentation of source, alleging commercial injury in the U.S.
 - Coca-Cola sells Thums Up and Limca sodas in foreign markets, which are imported and re-sold by third parties in the U.S.
 - Meenaxi sells Thums Up and Limca sodas in the U.S.
 - The Trademark Trial and Appeal Board canceled the marks.
- **Holding:**
 - Federal Circuit reversed.
 - The question of the extent to which the Lanham Act applies to activities outside the U.S. was not implicated because Coca Cola's claim was based on alleged injury in the U.S.
 - Coca-Cola's evidence was insufficient to show lost sales or reputational injury in the U.S.
- **Impact:**
 - Unclear if ruling would have been different if Coca-Cola had provided better evidence.

BD Extraterritoriality: *Hetronic Int'l, Inc. v. Hetronic Germany*
IP *GmbH*, No. 20-6057 (pending before Supreme Court)

- **Background:**

- Hetronic sued foreign defendants for reverse engineering its products and selling the copycats in Europe under the Hetronic brand.
- \$115 million jury verdict for Hetronic and worldwide injunction in the Western District of Oklahoma.
- Tenth Circuit affirmed in part, reversed in part, remanded.
 - Extraterritorial application of the Lanham Act was proper because the defendant's activities had a substantial effect on U.S. commerce and enforcement would not create a conflict with any foreign trademark rights.
- Case is currently pending before the Supreme Court.
 - Question presented: Can the Lanham Act be applied extraterritorially to a foreign defendant's foreign sales, including purely foreign sales that never reach the U.S.?

- **Impact:**

- Supreme Court ruling will resolve circuit split as to how to determine when the Lanham Act applies to foreign conduct.

- *Hermes Int'l v. Rothschild*, No. 22-CV-384 (S.D.N.Y.)
 - Hermes alleged infringement by “MetaBirkins” NFTs.
 - Court denied defendant’s motion to dismiss.
 - Hermes sufficiently alleged actual confusion and that *Rogers v. Grimaldi* test did not apply.
 - Cross motions for summary judgment pending.
 - Key question is whether *Rogers v. Grimaldi* applies; are NFTs artistic works or commercial products?

- *Yuga Labs, Inc. v. Ryder Ripps*, No. 22-CV-4355 (C.D. Cal.)
 - Yuga Labs alleged infringement of its “Bored Apes” NFTs.
 - Anti-SLAPP motion and motion to dismiss from Ripps pending.
 - Argues fair use and First Amendment protection under *Rogers v. Grimaldi*.

- *Nike, Inc. v. StockX LLC*, No. 22-CV-983 (S.D.N.Y.)
 - Nike sued StockX over its use of images of Nike shoes in its NFTs used to facilitate the re-sale of Nike shoes.
 - StockX raised defenses of nominative fair use and first sale doctrine.
 - Case is in discovery stage.

Trade Secrets Litigation

Notable trade secrets cases

- *Masimo Corp. v. True Wearable, Inc.*, 2022 WL 205485 (Fed. Cir. Jan. 24, 2022): “Secrecy” requirement; fact that trade secret has been published does not necessarily destroy its trade secret status with respect to a party in an entirely different field from the one to which the publication was addressed.
- *Turret Labs USA, Inc. v. CargoSprint, LLC*, 2022 WL 701161 (2d Cir. Mar. 9, 2022): Party did not make reasonable efforts to protect trade secrets licensed to third party where it did not require third party to take any particular measures to control access to the secrets.
- *TransPerfect Global Inc. v. Lionbridge Techn.*, No. 1:19-cv-03283 (S.D.N.Y. May 31, 2022): Declining to award attorneys’ fees; though plaintiff filed case without adequate support and continued litigating even after it became clear that it could not prove its case, this did not amount to “bad faith” under DTSA.
- *IDEXX Labs, Inc. v. Graham Bilbrough*, 2022 WL 3042966 (D. Me. Aug. 2, 2022): Rejecting inevitable disclosure doctrine as inconsistent with the DTSA.
- *Caudill Seed & Warehouse Co. v. Jarrow Formulas, Inc.*, 53 F.4th 368 (6th Cir. Nov. 10, 2022): Plaintiff awarded research and development costs even though trade secrets were not destroyed by defendant’s disclosure; damages represented value of the secrets to defendant.

UNITED STATES
PATENT AND TRADEMARK OFFICE



USPTO Updates

Licensing Executives Society – Silicon
Valley Chapter
Jan 18, 2023



UNITED STATES
PATENT AND TRADEMARK OFFICE ®

Fiscal Year 2022 in review:

Innovation expansion

Council for Inclusive Innovation (CI²) leadership



Innovation education partnerships

Work-based learning experience for high school students conducted in partnership with the **Urban Alliance**



EquiP HQ is your invention education headquarters for everything related to intellectual property.



Master Teacher of Invention Education Program (MTIP) is a train the trainer program supported by the USPTO and STEMisED.



References

Program	Website
Council for Inclusive Innovation (CI ²)	www.uspto.gov/expandinginnovation
Equip HQ	https://equiphq.org
Student programs	www.uspto.gov/jobs/student-programs/explore-our-student-programs
Master Teacher of Invention Education Program (MTIP)	www.uspto.gov/learning-and-resources/kids-educators/master-teacher-invention-education-program
National Summer Teacher Institute (NSTI)	www.uspto.gov/teacherinstitute
Kids, students, and educators resources	www.uspto.gov/learning-and-resources/kids-educators
National Medal of Technology and Innovation (NMTI)	www.uspto.gov/nmti
IP programs and awards	www.uspto.gov/learning-and-resources/ip-programs-and-awards
National Academy of Inventors (NAI)	https://academyofinventors.org/
National Inventors Hall of Fame (NIHF)	www.invent.org
U.S. Intellectual Property Alliance	www.usipalliance.org/



Fiscal Year 2022 in review:

Patent operations

Patents FY 2022 pendency goals

Patent term adjustment (PTA)

- Overall PTA compliance of mailed actions
 - FY 2022 target: 80%
 - FY 2022 result: 80%
- Overall PTA compliance of remaining inventory
 - FY 2022 target: 87%
 - FY 2022 result: 85%

Patents FY 2022 quality goals

- FY 2022 statutory compliance

	35 U.S.C. §101	35 U.S.C. §102	35 U.S.C. §103	35 U.S.C. §112
Target	> 94%	> 94%	> 91%	> 92%
Result	98.3%	95.3%	91.5%	94.6%

- FY 2022 customer experience
 - Target >50 net promotor score
 - Result 60 net promoter score

Fiscal Year 2022 in review

Patent Trial and Appeal Board

Motion to Amend (MTA) Pilot Program extension

- [MTA Pilot Program](#) extended until September 16, 2024
 - Provides a patent owner who files an MTA with options to request preliminary guidance from the PTAB on the MTA and to file a revised MTA; provides timelines for briefing to accommodate these options
 - Efficient and effective opportunity for patent owners to preserve their patent rights by providing feedback on their amended claims
- Intend to publish a Request for Comments seeking the public's input on the MTA Pilot Program and to explore making the program, or a revised version of the program, final through notice and comment rulemaking

Fast-Track Appeals Pilot Program extension

- Fast-Track Appeals Pilot Program extended through July 2, 2024
- Initiated on July 2, 2020, and previously extended on July 12, 2021
- Permits appellants with a docketed *ex parte* appeal to file a petition to expedite the review of the appeal
- Target of reaching decisions on appeals within six months from the date they enter the program
- www.uspto.gov/ptabfasttrack



Expanding opportunities to appear before the PTAB

- Published a [Request for Comments](#) on October 18, 2022
 - Seeking public input on the requirements to practice before the PTAB, to ensure quality representation in AIA proceedings without creating undue restrictions or barriers to entry for practitioners
 - Goal is to expand the admission criteria to practice before PTAB so more Americans, including those from traditionally under-represented and under-resourced communities, can participate, while maintaining the USPTO's high standards necessary for the issuance and maintenance of robust and reliable intellectual rights
- Comment period closes January 31, 2023



Director review, Precedential Opinion Panel review, and internal circulation and review of PTAB decisions

- The USPTO implemented a number of interim processes that promote accuracy, consistency, and integrity of PTAB decision-making AIA proceedings, including:
 - The current interim Director review process
 - The Precedential Opinion Panel (POP) process
 - The current interim process for PTAB decision circulation and internal PTAB review
- Plan to formalize those processes through notice and comment Rulemaking
- Published a Request for Comments seeking public input to inform rulemaking on July 20, 2022.
- Comment period closed October 19, 2022



Fiscal Year 2022 in review:

General updates

Misc. updates

- Legislative update:
 - Unleashing American Innovators Act of 2022
- Job opportunities with USPTO:
 - [Administrative Patent Judge](#), closes Jan. 31, 2023
 - [Silicon Valley Regional Director](#), closes Feb. 27, 2023
 - Patent Examiner:
 - [Design Patent Examiner](#), closes June 7, 2023
 - [Utility Patent Examiner](#), closes June 22, 2023

Requests for comment

- [Draft 2022-2026 Agency Strategic Plan](#), January 31, 2023
- [Expanding opportunities to appear before the PTAB](#), January 31, 2023
- [Expanding Admission Criteria for Registration to Practice in Patent Cases before the United States Patent and Trademark Office](#), January 31, 2023
- [Initiatives to Ensure the Robustness and Reliability of Patent Rights](#), February 1, 2023
- [Study on Non-fungible Tokens and Related Intellectual Property Law Issues](#), February 21, 2023



