

**ABA Sections of Antitrust and Intellectual Property Law:
Strategic Choices, Evolving Standards, and Practical Solutions**

June 14-15, 2007

**The Ritz Carlton
San Francisco, CA**

[As Of 05.04.07]

Wednesday, June 13

4:30-6:00pm **Registration**

Thursday, June 14

8:00-8:30am **Registration**

8:30-8:45am **Welcome and Introduction**

Joseph Angland
Chair, ABA Section of Antitrust Law
Heller Ehrman LLP
New York, NY

8:45-9:00am **Conference Chair's Opening Remarks**

Mark S. Popofsky
Kaye Scholer LLP
Washington, DC

9:00-10:00am **Keynote Address**

Mark A. Lemley
Stanford Law School
Stanford, CA

10:00-10:15am **Break**

10:15am-noon **Patent Reform: Judicial, Legislative, and Administrative Responses
to Fundamental Questions**

The Federal Trade Commission's 2003 report, "To Promote Innovation:
The Proper Balance of Competition and Patent Law," made several
significant recommendations, stimulated extensive debate, and prompted

the introduction of major patent-reform legislation in the House and Senate. To date, legislative reform has been thwarted by deep rifts between information technology companies and the biotech and pharmaceutical industries. Meanwhile, the Supreme Court has issued several important patent decisions and the US PTO has proposed dramatic modifications to the processing of patent applications. This panel will explore the impact of actual and proposed changes to patent law and practice – including standards for patentability, availability of permanent injunctions, procedures for post-grant oppositions, narrowing of cognizable inequitable conduct, among others – and their impact on competition in various industries.

Moderator:

Robert Barr
University of California
Berkeley, CA

Panelists:

Susan A. Creighton
Wilson, Sonsini, Goodrich & Rosati PC
Washington, DC

Matthew D. Powers
Weil Gotshal & Manges LLP
Redwood Shores, CA

Michael Schallop
Latham & Watkins LLP
Menlo Park, CA

James Toupin
General Counsel
United States Patent and Trademark Office
Washington, DC

12:15-1:45pm **Luncheon and Remarks**

Pamela Jones Harbour
Commissioner
Federal Trade Commission
Washington, DC

2:00-3:30pm **“Strategic” Use and Protection of Intellectual Property**

The exploitation and assertion of valuable intellectual property can have strategic benefits for firms. However, this conduct also can pose significant risks, both from challenges to the intellectual property itself and from antitrust claims such conduct can attract. This panel will explore cutting-edge antitrust issues presented by the “strategic” assertion of intellectual property, including: strategic product redesign, bundling, strategic pricing, challenges to industry standards, and patent infringement litigation and settlements. Although the pharmaceutical and biotech industries are the scene of many developments in this area, this panel will also discuss how these important antitrust issues apply more generally in intellectual property-driven businesses.

Moderator:

Christopher J. Kelly
Mayer Brown Rowe & Maw LLP
Washington, DC

Panelists:

David A. Balto
Washington, DC

Sean A. Johnston
Vice President, Intellectual Property
Genentech
Cupertino, CA

Mark A. Lemley
Stanford Law School
Stanford, CA

Jerome A. Swindell
Senior Counsel
Johnson & Johnson
New Brunswick, NJ

3:30-3:45pm Break

3:45-5:15pm **Current Topics in Intellectual Property Licensing and Acquisition**

This panel will focus on critical issues relating to the antitrust analysis of IP-laden transactions, both in the United States and overseas, including (i) the analytical framework for evaluating intellectual property transactions, particularly market definition and competitive effects; (ii) selected vertical (*i.e.*, tying and exclusive dealing) and horizontal (*i.e.*,

pooling and grant backs) intellectual property-licensing issues; and (iii) mergers and acquisitions, including the analysis of pending intellectual property litigation between merging parties and licensing as a remedy for challenged transactions.

Moderator:

Arthur J. Burke
Davis Polk & Wardwell
Menlo Park, CA

Panelists:

Richard J. Gilbert
University of California
Berkeley CA

Gail Levine
Assistant General Counsel
Verizon Communications Inc.
Arlington, VA

Gil Ohana
WilmerHale LLP
Palo Alto, CA

Craig Waldman
Cooley Godward Kronish LLP
Palo Alto, CA

5:30 pm Reception
Sponsored by the Membership and Equal Opportunity Committee

Friday, June 15

8:45-9:00am Opening Remarks

9:00-10:30am **Standard-Setting: Patent Hold-Up, Disclosure, Ex Ante Licensing, and the Limits of Self Regulation**

The FTC's opinion in *Rambus*, significant court decisions in *Broadcom v. Qualcomm* and *Golden Bridge v. Nokia*, and the Department of Justice Business Review Letter regarding VITA illustrate some of the many antitrust developments that affect firms who engage in standard setting and those who counsel them. Standard setting also has prompted a

proliferation of antitrust litigation – despite the protection of the Standards Development Organization Advancement Act of 2004 which provides some protection to certain standards developers. This panel will address these developments and discuss the antitrust risks of *ex ante* disclosure and negotiation of licensing terms (including RAND commitments), intellectual property disclosure obligations of standard setting participants, and the benefits and pitfalls of consortia and joint ventures compared to formal standards development organizations.

Moderator:

M. Howard Morse
Drinker Biddle & Reath LLP
Washington, DC

Panelists:

Frances Marshall
Special Counsel for Intellectual Property
Antitrust Division
U.S. Department of Justice
Washington, DC

Ron Moore
Legal Standards Team
Microsoft Corporation
Redmond, WA

Carl Shapiro
University of California
Berkeley, CA

Willard K. Tom
Morgan Lewis & Bockius LLP
Washington, DC

10:30-10:45am Break

10:45-12:15pm **Litigation Strategy in Intellectual Property/Antitrust Cases**

This panel will review the latest procedural developments relating to the litigation of antitrust claims in the context of patent, copyright, and other intellectual property disputes, and the litigation strategy issues that flow from them. From filing to judgment, topics include (i) filing antitrust claims as preemptive strikes in light of *Holmes Group*; (ii) crafting well-pleaded *Walker Process* and sham litigation claims; (iii) working with

experts to develop and shape sound antitrust theories that survive summary judgment (*see Eastman Kodak*) and *Daubert* motions and find adequate factual support at trial (*see Unitherm Food Systems*); and (iv) preparing antitrust-based arguments for and against the award of injunctive relief under the four-part *eBay* test.

Moderator:

Henry C. Su
Howrey LLP
East Palo Alto, CA

Panelists:

Brian P. Brosnahan
Heller Ehrman LLP
San Francisco, CA

Karma M. Giulianelli
Bartlit Beck Herman Palenchar & Scott LLP
Denver, CO

Donn P. Pickett
Bingham McCutchen LLP
San Francisco, CA

Carole Handler
Foley & Lardner LLP
Los Angeles, CA

12:15pm

Adjourn