

INTELLECTUAL PROPERTY LAW SECTION
Meeting Minutes
September 4, 2003

Present: David Kelley, Catherine Collins, Craig Baldwin, Lisa Smith, Charles Ashbrook, Laura Slenzak, Catherine Brown, Laura Hargitt, James Drake, Beverly Bunting, Brian Pickell, Denise Glassmeyer.

Guests: Janet Welch, State Bar of Michigan General Counsel
Richard Grauer (by telephone)

Mr. Kelley called the meeting to order at approximately 9:30.

1. Secretary/Treasurer Report

Mr. Baldwin circulated the August, 2003 meeting minutes by email prior to the September meeting. The Council passed a motion to approve the August minutes.

Mr. Baldwin reported that the Section account balance was \$55,581.06. The ICLE bill for its services from the Spring Seminar for \$3,185.13 was received in August and will be paid.

2. Spring Seminar

Mr. Ashbrook sent a letter to the PTO requesting a speaker for the spring seminar. Ms. Collins also make contact with a potential speaker regarding the Madrid Protocol.

The Council discussed additional topics for the spring seminar. The list of potential topics discussed included:

- Due diligence – Mr. Ashbrook will explore possible speakers from Pfizer
- IP mediation;
- Trade secret enforcement/auditing
- Economic espionage – suggested speakers were Mike Cox, Michigan Attorney General, or Jeffrey Collins, Michigan's U.S. Attorney.
- Brief discussion of status of current Michigan TM law, followed by roundtable discussion of Model TM Law.
- 102(e) – further discussion from a practical perspective
- Exceptions to confidentiality agreements – such as residual knowledge
- Dealing with industry consortiums while avoiding antitrust issues

The Council discussed whether to invite speakers from outside the State of Michigan (other than the patent/trademark speakers from the government). It was not ruled out.

The Council discussed having two tracks as in prior years. This issue is still open. There may not be a separate morning trademark track but may be two tracks in the afternoon. Mr. Baldwin agreed to contact Kelly Miller at ICLE to see if it was possible to reserve the breakout room at the Kellogg Center for the afternoon.

Mr. Ashbrook said he will map out a proposed schedule based upon the current topic list.

3. Section Advocacy

Ms. Janet Welch, General Counsel from the State Bar of Michigan, attended the meeting to speak on the rules concerning section advocacy. The following describes the substance of her comments.

The U.S. Supreme Court, in its Keller decision, stated that mandatory bar association dues may not be used to advocate certain types of ideological policy issues. Issues relating more strictly to the regulation of attorneys could be advocated, such as ethics, regulation of the profession, lawyer trust accounts, and improvements in the efficiency and operation of the justice system.

Old State Bar of Michigan rules made it difficult for sections to take positions on pending legislation and other current issues. Old rules required publication of such positions in the Bar Journal, limiting the ability to take quick action on issues. New rule: we are no longer required to publicize initiatives on public policy matters in the Bar Journal. Electronic publication is an acceptable substitute.

The current rule is that the sections cannot take positions contrary to the stated position of the Bar. This has been impractical for a variety of reasons. The Bar is trying to improve this by consolidating positions on the web for publication. The Bar bought a software package and started a web-based public resource policy center with links to Michigan bills of interest on public policy matters. The Bar has also come out with a public policy newsletter to keep its members updated on legislation and court rule changes.

The Bar is trying to enable electronic publication of section positions also to allow review by the Bar and by other sections to identify potential conflicts. Ms. Welch recommends that each section select one person to be the focal point for receiving, filtering, and reporting updates on bills, etc. to the section and its council.

Ms. Welch stated that the sections can file amicus briefs without permission from the Bar but she said that if we take a position we must be clear whom we are speaking on behalf of. (E.g., speaking on behalf of the IP Section of the State Bar of Michigan, which has # members, and the position was approved by a vote of its members or by a vote of its council, etc.) Because our section is funded by voluntary dues we are relatively free to take positions as long as it is clear that we are not speaking on behalf of the Bar as a whole.

The Council asked Ms. Welch how we could push legislation such as the State Model Trademark Law. She said if we want the Bar to be behind it, we need to find a hook under Keller to allow/invoke Bar involvement. Keller said that the Bar can provide neutral assistance to legislators. If we can pick a legislator to sponsor the bill and get him to ask the Bar for advice, the Bar can work with him.

Mr. Kelley suggested that we review the Section bylaws to see if we can appoint a committee of some non-council members to push the legislation to ensure continuity on the effort in spite of changes in the council membership.

4. IP Mediation

Richard Grauer called in to propose that we include an IP ADR topic for an upcoming seminar. He suggested the seminar could identify various ADR procedures and how they are being used in various courts, such as the Western District of Michigan, and could identify who can provide this service. He suggested having a panel of 3 or 4 speakers with a 90-120 minute session on the topic. He proposed having Judge McKeague and an in-house corporate counsel on the panel. He thought that a shorter presentation would be possible, such as 60 minutes.

The Council then had an open discussion about whether to have this type of topic at the summer or spring seminar. The general consensus was that this would be better at the spring seminar. One suggestion was to have a short presentation on ADR lead into lunch, and then have Judge McKeague talk about ADR as the luncheon speaker.

5. Summer Institute

The following items were discussed concerning the Summer Institute:

- Ms. Collins shared the proposed summer schedule. She has asked INTA for speakers on the Madrid Protocol and on one other topic.
- The Council agreed to attempt to find a new trademark speaker to replace Ken Germain.
- Robert Gurwin will be contacted/investigated as a potential speaker for the Internet Law update.
- On the Ethics topic, one suggestion was to discuss representing multiple defendants in a common defense. John Allen is acceptable to everyone as the speaker.
- Joseph Yang will be invited back to speak.
- TTAB practice tips was seen as a good topic by the Council.
- An ITC topic was seen as a good idea.
- A discussion of preparing your U.S. application for filing in the EPC was seen as a good topic. Philip Coyle was approved as the speaker.
- A suggested topic was differences in the IP laws in other countries.
- Mary Beth Peters was suggested as a speaker on general updates from the Copyright Office.
- Joe Lavelle was suggested as the speaker for the antitrust topic.

- A bio-tech topic was suggested for the final slot.
- It was suggested that the Internet topic be more focused on domain name disputes and procedures.

6. PCT Seminar

Ms. Collins reported that the seminar is all set. We have Carol Bidwell and Louis Maassel lined up to speak. Ms. Collins will contact ICLE to see if they can help, or want to help, with mailing the flyers for the seminar. Ms. Bunting will handle the seminar details for the Troy location and will handle the registration separately from that for the Grand Rapids location. Ms. Collins will handle the registration of attendees and organization of the Grand Rapids seminar.

7. Proceedings

Ms. Brown passed out a draft of the Proceedings and asked for any comments/corrections by Monday September 8.

8. Old Business

The Council briefly discussed having a possible southwest Michigan IP seminar. Mr. Ashbrook will make some contacts in this regard.

The Council discussed whether to co-sponsor the business law section's IP seminar. The consensus was that the Council would co-sponsor only if it could provide input on the speakers, set-up, and other matters but would not endorse the program as-is.

Regarding the ICLE relationship clarification, Mr. Kelley promised to follow up with Lynn Chard.

Regarding the Model State Trademark Law, Ms. Smith said she wants to contact a legislator to find a sponsor. Further discussion was tabled.

9. New Business

Further discussion of new items was tabled for the next meeting.

The meeting was adjourned at 12:40.