



STATE BAR OF MICHIGAN

Michigan IT Lawyer

A Publication of the State Bar of Michigan Information Technology Law Section

<http://www.michbar.org/computer>

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Michigan IT Lawyer is published every other month. Previously published issues of the *Michigan IT Lawyer*, and its predecessor the *Michigan Computer Lawyer*, are available at <http://www.michbar.org/computer/newsletters.cfm>. If you have an article you would like considered for publication, send a copy to:

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Bits and Bytes from the Chair

By Charlie Bieneman, Rader, Fishman & Grauer PLLC

I would like to begin my inaugural message as Section Chair by reflecting on who we are, and what we do. We are the section formerly known as the “Computer Law Section,” having voted a few years ago to change our name to “Information Technology Law Section.” “Computer Law,” so the thinking went, was a moniker at once too narrow and too vague to describe what the Section did. And so it probably was. “Information Technology Law” seems to have a broader compass, and, I believe, is more amenable to popular understanding. Nonetheless, if you tell other lawyers, much less your friends and family, that you are an “information technology lawyer,” what will they think you do?

In fact, one of the great things about our Section is that information technology law represents the intersection of a number of practice areas. For example, a number of our members spend most or all of their time on information technology transactions, such as software licenses, outsourcing agreements, and the like. Others focus on intellectual property related to information technology, such as patent and copyright protection for software, trademarks of the Internet, and so forth. I could go on; healthcare law, employment law, and many other practice areas have significant intersections with information technology. And some of us may be computer geeks who also happen to be lawyers. I’m sure you get the point -- the Information Technology Law Section is a great place to meet other lawyers with similar interests, whose diverse backgrounds are sure to nicely complement your own.

Perhaps the best manifestation of our Section’s strength and diversity lies in our annual seminar, produced in conjunction with the Institute for Continuing Legal Education (ICLE). This year’s seminar, held September 20, 2011, at the St. John’s Inn in Plymouth, featured an array of speakers talking on a range of topics including technology licensing, trademarks on the Internet, software copyright, and social media. We received great feedback on our

Continued on next page



2011-2012

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speakers, and had a great turnout (both live in Plymouth and via webcast). I want to extend a warm thanks to everyone who attended.

I hope you will plan on attending next year's seminar. (Although a precise date and occasion have not been set, is a fairly safe bet that we will again hold seminar at the St. John's in September.) We are always looking for topics that will be of interest to our members, and are always interested in suggestions for speakers who are members would find engaging and interesting. If you have any ideas, please let any of the Section officers know.

Beyond the annual seminar, we're looking forward to a great year with other exciting events. Dates for upcoming winter and spring meetings will be announced soon, including a date for our annual Spring Networking event, which we are once again tentatively planning to hold in conjunction with the Detroitnet.org IT networking group. Again, if you have any ideas for upcoming meetings, your input would be most welcome.

I look forward to seeing all of you at a meeting soon.



2012 Edward F. Langs Writing Award

Essay Competition Rules

1. Awards will be given to up to three student essays, which in the opinion of the judges make the most significant contribution to the knowledge and understanding of information technology law. Factors to be taken into consideration include: originality; timeliness of the subject; depth of research; accuracy; readability; and the potential for impact on the law.
2. Essay must be original, deemed to be of publishing quality, and must not have been submitted to any other contest within the previous 12 months.
3. Essay must be typed, double spaced, at least ten pages in length, must contain proper citations listed as either endnotes or footnotes, and must have left, right, top, and bottom margins of one inch.
4. Essay must include the submitter's name, email address, mailing address, telephone number, and school attended.
5. A total of \$1,500 in US dollars shall be divided between the award winning essays, and all rights to award winning essays shall become the property of the State Bar of Michigan.
6. The Information Technology Section of the State Bar of Michigan reserves the right to make editorial changes, and to publish award winning essays in the Section's newsletter, the *Michigan IT Lawyer*.
7. Essay must be submitted as a Microsoft Word document, postmarked by June 30, 2012, and emailed to dsyrowik@brookskushman.com. ■

The Leahy-Smith America Invents Act - The Most Sweeping Overhaul of the Patent Act Since 1952

By the Proprietary Rights Committee of the Information Technology Law Section, State Bar of Michigan.

Chairperson: David R. Syrowik, Brooks Kushman P.C.

Committee Members: Mitchell A. Goodkin, James N. Kallis, Ronald M. Nabozny and Andrew B. Turner

Introduction

On September 16, 2011, President Obama signed the Leahy-Smith America Invents Act (AIA) (H.R. 1249). The AIA is the most sweeping modification of the Patent Act since 1952. Among the various objects of the AIA is to “reform” the patent law to provide greater certainty to inventors and to promote greater international patent harmonization.

While the AIA does not alter the fundamental requirements of patentability and infringement, the AIA moves the United States from a first-to-invent system to a first-inventor-to-file (FITF) system like the rest of the world. The AIA also limits the one-year “grace period” for pre-filing disclosures to disclosures derived from the inventor that is applying for a patent.

The AIA further modifies and creates procedures for examining patentability issues of both issued patents and patent applications at the U.S. Patent and Trademark Office (PTO), potentially avoiding litigation on patents at the federal courts. Multiple sections of the AIA are directed towards this end including the creation of a new PTO-based, decision-making body called the Patent Trial and Appeal Board.

The AIA also adds statutory provisions specific to individual industries or technologies. Business method patent owners in the financial service industry who bring infringement claims in court are likely to see their litigation stayed while the PTO reexamines patent validity. Tax strategy patents are essentially nullified.

From a practical perspective, PTO Director David J. Kappos states that implementation of the many provisions in the AIA will change examination and opposition procedures in the PTO and that the PTO will need to conduct a massive hiring of examiners and administrative law judges and establish three or more new satellite offices within three (3) years. Kappos announced that the PTO’s staffing needs – so as to meet aggressive timetables for implementation of the AIA – include hiring 1,500 to 2,000 examiners and 100 to 150 administrative law judges.

Part I of this report looks at the sections of the AIA which most directly affect a patent applicant prior to filing a patent application. Many of these sections are important on an ongoing basis (*i.e.* while a patent application is pending in the PTO and after the patent ultimately issues). As in the other parts of this report, the particular section of the AIA and effective date of the section are given.

Part II of this report reviews those sections of the AIA which affect both the patent applicant and a patent applicant challenger while a patent application is pending.

Part III of this report discusses the sections of the AIA which affect patent owners and patent challengers after a patent issues both at the PTO and during litigation in the federal courts.

Part IV of this report reviews some of the more miscellaneous, yet important, sections of the AIA.

I. Pre-Patent-Filing Considerations for the Patent Applicant

First Inventor to File (*i.e.* FITF) (§ 3, effective 3/16/13)

The most significant feature of the AIA moves the United States patent system from a “first-to-invent” to a “first-inventor-to-file” (FITF) system like the rest of the world. Under the former patent system, U.S. patents were awarded on the basis of who was the “first to invent.” In situations where it was unclear which of two or more inventors was the first to invent, an Interference Proceeding was declared within the PTO to make the determination of who was the first inventor. In order to win the Interference Proceeding and be awarded the patent, each inventor sought to prove that they were the first to conceive of the invention and that they worked diligently to reduce the invention to practice. Interference Proceedings are a lengthy, complicated, and expensive procedure.

Under the AIA, U.S. patents will now be awarded to the inventor who first files a patent application in the PTO, rather

than on the basis of which inventor was the first to invent. The questions of which inventor conceived of and reduced the invention to practice will no longer be relevant. However, the practice of awarding U.S. patents only to true inventor(s) remains in place as evidenced by the new Derivation Proceedings provided by § 3 of the AIA.

Scope of “Prior Art” Available Under 35 U.S.C. § 102 (§ 3, effective 3/16/13)

Old 35 U.S.C. § 102 defined “prior art” for a patent application of an invention as: publications published anywhere in the world before the date of the invention (§ 102(a)); publications published anywhere in the world, public uses, sales, and offers for sale of the invention in the U.S. more than one year prior to the filing date of the application (§ 102(b)); and publicly available U.S. patent documents (*i.e.*, patents and published patent applications) of others filed in the U.S. before the date of the invention (§ 102(e)).

New 35 U.S.C. § 102 simplifies the definition of “prior art” for a patent application of an invention as: public disclosures anywhere in the world prior to the filing date of the application (§ 102(a)(1)); and publicly available U.S. patent documents of others filed anywhere in the world prior to the filing date of the application (§ 102(a)(2)).

New § 102(a)(1) inquires as to whether a disclosure of the invention was publicly accessible prior to the filing date of the application. As such, new § 102(a)(1) requires public accessibility (*i.e.*, recites “or otherwise available to the public” to emphasize this requirement), relates to the filing date of the application as opposed to the date of the invention, and does not have any geographic limitations. New § 102(a)(1) specifically recites that public accessibility of the invention includes patents, printed publications, public uses, and sale activity prior to the filing date of the application.

New § 102(a)(2) inquires as to whether the invention was described in a later published U.S. patent document of an-

other inventor filed prior to the filing date of the application. New § 102(a)(2) also relates to the filing date of the application as opposed to the date of the invention.

New 35 U.S.C. § 102 provides exceptions to prior art. New § 102(b)(1) preserves the one-year grace period of old § 102 by exempting from prior art under new § 102(a)(1): the public disclosure of the invention by the inventor, and any disclosure made by any party after the public disclosure of the invention by the inventor, during the year prior to the filing date of the application. New § 102(b)(2) preserves the current requirement that a U.S. patent document has to be of another inventor and belong to a different assignee than the owner of the application in order to be prior art under new § 102(a)(2).

Inventor’s Oath or Declaration (§ 4, effective 9/16/12)

Unlike the old Patent Act, the AIA allows the assignee of a patent application to file the application when the inventor is unable or refuses to sign the inventor’s oath or declaration. The legislation also removes the requirement for statements in the oath or declaration of “lack of deceptive intent.”

The AIA eliminates findings of deceptive intent in multiple locations of the code. This change shifts U.S. patent law to a new objective evidence based system which should simplify litigation by reducing discovery.

Best Mode Requirement (§ 15, effective immediately)

Contrary to what some may think, this section does not eliminate the need to disclose the best mode of carrying out the invention in a patent application. In a requirement unique to U.S. patent law, a patent applicant is required to disclose the best mode of practicing the invention known to the applicant at the time of filing the application. Failure to disclose the best mode can subject the application to a rejection by the Patent Examiner, although best mode rejections in the PTO are rare.

Mission Statement Information Technology Law Section, State Bar of Michigan

The purposes of the Section are to review, comment upon, and appraise members of the State Bar of Michigan and others of developments in the law relating to information technology, including:

- (a) the protection of intellectual and other proprietary rights;
- (b) sale, leasing, distribution, provision, and use of, hardware, software, services, and technology, including computer and data processing equipment, computer software and

services, games and gaming, information processing, programming, and computer networks;

- (c) electronic commerce
- (d) electronic implementation of governmental and other non-commercial functions;
- (e) the Internet and other networks; and
- (f) associated contract and tort liabilities, and related civil and criminal legal consequences.

However, as discussed in Part III of this report, failure to disclose the best mode of the invention in the application will not subject the patent stemming from the application to an invalidity challenge on that basis.

Tax Strategies Inventions Not Patentable (§ 14, effective immediately)

Under the old law, the patentability of tax strategy inventions was more carefully scrutinized by the PTO and the Courts, but generally judged by the same new, useful, and non-obvious standards applied to any other inventions.

However, under the AIA, any strategy for reducing, avoiding, or deferring tax liability (other than certain types of tax-return filing software) is insufficient to differentiate a tax strategy invention from the prior art and, hence, is not patentable. The AIA does not apply to a method, apparatus, technology, computer program product, or system used solely for preparing a tax or information return or other tax filing. Also, the AIA does not apply to a product “used solely for financial management, to the extent that it is severable from any tax strategy or does not limit the use of any tax strategy by any taxpayer or tax advisor.”

Fee Setting Authority and Fees for Patent Services (§§ 10 and 11, respectively, with different effective dates)

Section 10 of the AIA authorizes the Director of the PTO to set or adjust PTO fees without congressional approval. Effective immediately, the AIA also creates a new class of entities, called “micro entities.” The new “micro entity” status is entitled to a 75% discount on fees. A micro entity is an applicant that:

1. qualifies as a “small entity”;
2. has not been named as an inventor on more than four previously filed patent applications (however, prior employment applications do not count);
3. does not have a gross income exceeding a certain limit; and
4. has not transferred ownership interest in the application to another entity exceeding the income limit.

The AIA also reduces certain fees for qualified small entities and micro entities, including the fee for prioritized examination of applications. The AIA also requires a \$400 surcharge for patent applications that are not filed electronically (effective 11/15/11).

Section 11 of the AIA provides prioritized examination at a premium price. Surcharge fees will be credited to the PTO’s Appropriation Account and shall remain available until expended. This section also establishes a prioritized examination fee of \$4,800 (above usual fees) with 50% reduction for small entities (effective 9/26/11). Section 11 implements a 15% surcharge on all patent fees (effective 9/26/11). The reduced fee for micro entities has not been implemented at this time and no effective date is given. The PTO has indicated that it will be approximately at least until late 2012 before a “micro entity” can take advantage of the reduced fees.

II. Considerations While a Patent Application is Pending

For the Patent Applicant

Since a patent application challenger can now initiate different actions in the PTO at different time periods after a patent application is published as described immediately below, it may be desirable that the owner of a patent application prevent its publication. Under 35 U.S.C. § 122, such publication can be prevented if the patent owner states that the patent application is not going to be filed outside the United States.

For the Patent Applicant Challenger

Derivation Proceedings (§ 3, effective 3/16/13)

Under the AIA, if an inventor of a later-filed application believes the invention claimed in an earlier-filed application of another was derived from the inventor, the inventor can file a petition for a Derivation Proceeding to prove same within the PTO. This proceeding applies for patent applications, not issued patents. The petition must be filed within one (1) year from the date of the first publication of a claim to an invention that is the same or substantially the same as the earlier application’s claim to the invention. The AIA allows for arbitration of this PTO-based derivation dispute.

Third Party Pre-issuance Submissions of Prior Art (§ 8, effective 9/16/12)

The AIA allows third parties to submit prior art in the form of patent applications, patents, or other printed publications of potential relevance to the examination of a pending application. The submission must be either before the earlier of a notice of allowance or the later of either six (6) months after publication of the application or the date of first rejection. The submission requires a fee and a concise description of the asserted relevance of each submitted document.

III. Post Patent Grant Considerations

For the Patent Owner

Marking (§ 16, effective immediately)

The AIA permits virtual markings (*i.e.* markings that direct the public to a freely accessible website where a patented article is associated with a patent number) to provide public notice that an article is patented.

Also, only the federal government may sue for the penalty authorized by the false marking statute (*i.e.* 35 U.S.C. § 292). Civil suits for false marking are limited to persons who suffer a competitive injury and may recover damages adequate to compensate for the injury.

Exempt from false-marking liability are virtual markings with matter relating to a patent that covered the product but has expired.

Supplemental Examination at the Patent Office (§ 12, effective 9/16/12)

Under the AIA, after a patent has issued the patent owner may request supplemental examination “to consider, reconsider, and correct information” relevant to the patent. For example, after reviewing a patent involved in a business deal or potential litigation, the patent owner may have a piece of information that was not brought to the attention of the PTO during prosecution of the underlying application. If such information could be used to raise questions of inequitable conduct of the application in the PTO, this new procedure provides the patent owner to have the PTO perform a supplemental examination to “consider, reconsider, or correct” such information. The Director must order reexamination if a “substantial new question of patentability” is raised by at least one item of information in the request.

If the PTO does not find a “substantial new issue of patentability,” the patent cannot be held unenforceable in litigation on the basis of conduct relating to information considered in the supplemental examination if the examination is concluded before suit is filed.

The AIA requires the Director of the PTO to refer to the Attorney General any material fraud on the PTO that may have been committed in connection with a patent when the Director becomes aware of the fraud during a supplemental examination or reexamination proceeding.

Limited Joinder of Parties (§ 19, effective immediately)

There has been a trend in patent litigation for patent owners to join together large groups of unrelated defendants. For example, for one relatively low filing fee, a patent owner could sue dozens of unrelated defendants instead of filing suit and paying a filing fee for each defendant.

In a section which appears to be directed to “patent trolls”, new § 299 of the Patent Statute limits joinder of parties to “the same transaction, occurrence, or series of transactions or occurrences relating to the making, using, importing into the United States, offering for sale, or selling of the same accused product or process” and questions of fact common to all defendants will arise. The mere allegation that each defendant has infringed the same patent is now insufficient for joinder.

For the Patent Challenger

At the PTO

Post-Grant Review (§ 6, effective 9/16/12)

The AIA establishes a new “post-grant,” patent-opposition system to review validity of issued patents in the first nine (9) months after patent grant on any patentability issue (such as on-sale bars, earlier public use, etc.) except best mode. Some features of this new system include:

- Proceedings are conducted entirely by the new Patent Trial and Appeal Board – there is no appeal internal to the PTO;
- Review to be completed within one (1) year (with a possible extension of six (6) months for good cause);
- Not available if petitioner previously filed DJ action alleging invalidity;
- Provides for intervening rights for any new or amended claims;
- Threshold showing is “more likely than not” that at least one of the claims is not patentable; and
- Estoppel standard is “raised or reasonably could have been raised” before the PTO and the Courts.

Inter Partes Review (§ 6, effective 9/16/12)

The same section of the AIA also establishes “*inter partes* review” which may occur in a “second window” after the “post-grant” review nine (9) month window closes. This

review has the following features:

- Replaces “optional *inter partes* reexamination”;
- Review to be completed within one (1) year (with possible six (6) month extension for good cause);
- Available for life of patent after the later of nine (9) months from grant or termination of post-grant review;
- Not available if filed more than one (1) year after service of infringement complaint or if petitioner previously filed a DJ action alleging invalidity;
- Limited to patents or printed publications;
- Provides for intervening rights for any new or amended claims;
- Threshold showing is “reasonable likelihood” (presumably higher than the “more likely than not” showing of “post-grant” review) that the petitioner will prevail;
- Estoppel standard is “raised or reasonable could have been raised” before the PTO and the Courts; and
- The Director may limit the number of proceedings in first four (4) years.

With respect to both “post-grant” and “*inter partes*” reviews, the PTO is required to disclose the amount of time it takes to conduct such reviews. Also, settlement agreements are to be treated as “business confidential information” at the request of a party to the proceeding.

[Transitional Program for Covered Business Method Patents](#) (§ 18, effective 9/16/12)

The AIA requires that the Director establish an eight (8) year transitional program to review the validity of certain covered business method patents in light of the U.S. Supreme Court’s 2010 decision in *Bilski v. Kappos*. In *Bilski*, commodities-tracking, risk-hedging method patent claims were held to be directed to abstract ideas and thus were unpatentable. The transitional program will operate like the new “post-grant” review process except review is not limited to the nine (9) month window after patent issuance.

The AIA defines a “covered business method patent” as “a patent that claims a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service.” The term does not include “patents for technological inventions.”

A petitioner seeking review must have been sued for, or charged with, infringement of the subject patent.

At the Courts

[Best Mode](#) (§ 15, effective immediately)

As previously mentioned, the AIA eliminates the best mode requirement challenge to the validity of a patent.

[Advice of Counsel](#) (§ 17, effective immediately)

The AIA bars use of an accused infringer’s “failure to obtain advice of counsel” to prove willful infringement or to prove that the accused infringer intended to induce infringement.

[Defense to Infringement Based on Prior Commercial Activities](#) (§ 5, effective 9/16/12)

The AIA expands this defense to all areas of technology (beyond the current restriction under 35 U.S.C. § 273 to business methods). The new law requires showing of both reduction to practice and commercial use in the U.S. at least one (1) year before the effective filing date of the patent at issue. However, the legislation provides exception for patents owned by universities or their technology transfer organizations.

[Derivative Action](#) (§ 3, effective 9/16/12)

As a by-product of the new first-inventor-to-file (FITF) system, the AIA creates a “derived patents” civil action by amending 35 U.S.C. § 291. This section thus conforms § 291 to what was previously known as “interfering patents” under circumstances in which one of the patents was derived from the “true inventor.” Requirements in such actions include:

- the invention claimed in another patent which has an earlier effective filing date must have been “derived” from the inventor of an issued patent who is seeking relief; and
- there is one (1) year to file suit from the date that the first derived patent issues. Consequently, it is recommended that one monitor U.S. patent document databases for any possibly derived patents.

IV. Miscellaneous Yet Important Sections of the New Legislation

[New Patent Trial and Appeal Board](#) (§ 7, effective 9/16/12)

This new Board replaces the Board of Patent Appeals and Interferences (BPAI). The new Board includes the

Director, the Deputy Director, the Commissioners for Patents and Trademarks, and the administrative patent judges. Appeals of adverse decisions by Examiners, derivation proceedings, post-grant reviews, and *inter partes* reviews will be heard by at least three (3) members of the Board. The AIA specifically allows direct appeals to the U.S. Court of Appeals for the Federal Circuit from certain Board decisions, including examinations, reexaminations, post-grant and *inter partes* reviews, and derivation proceedings.

**Venue for Suits Involving the PTO
(§ 9, effective 9/16/11)**

Changes venue in certain suits where the PTO is a party from the District of Columbia to the Eastern District of Virginia.

PTO Funding (§ 22, effective 10/1/11)

Facilitates the tracking of fee diversion from the PTO to the U.S. general treasury by keeping funds collected by the PTO in a “Reserve Fund” that only allows release of such funds to the PTO “[t]o the extent and in amounts provided in appropriations Acts.”

Satellite Offices (§§ 23 and 24, due 9/16/14)

Requires the Director of the PTO to establish three (3) PTO satellite offices, including a Detroit office. The Detroit office is to be named for Elijah J. McCoy, an African-American engineer and inventor who is the named inventor on numerous U.S. patents in the field of automatic lubrication for oiling steam engines. He was born free in Ontario, Canada in 1844 and lived in Detroit where he died in 1929.

**Priority Examination for Important Technologies
(§ 25, effective 9/16/12)**

Authorizes the Director to provide for prioritization of examination of patent applications for products, processes, or technologies that are important to the national economy or national competitiveness without recovering the aggregate extra cost of providing such prioritization.

**Patent Ombudsman Program for Small Business
Concerns (§ 28, due 9/16/12)**

Requires the Director of the PTO to establish a Patent Ombudsman Program to provide support and services to small businesses and independent inventors.

**Study on International Patent Protections for Small
Businesses (§ 31, due 4 months after 9/16/11)**

The Director, in consultation with the Secretary of Commerce and the SBA, shall study and report to Congress on ways Federal agencies can help small businesses with international patent protection.

Pro Bono Program (§ 32, effective immediately)

The Director is to work with IP law associations in the establishment of pro bono programs designed to assist financially under-resourced independent inventors and small businesses.

**Limitation on Issuance of “Human Organism”
Patents (§ 33, effective immediately)**

Prohibits issuing a patent on a claim “directed to or encompassing a human organism.”

Study of Patent Litigation (§ 34, due 9/16/12)

Requires U.S. Government Accountability Office (GAO) study and report to Congress on patent litigation by non-practicing entities or patent assertion entities.

Jurisdiction (§ 19, effective immediately)

Gives the Federal Circuit jurisdiction over appeals where a patent issue is raised in a compulsory counterclaim. ■

Meet a Section Member: Sandra J. Franklin



Sandra J. Franklin
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- **What is the name of your firm/corporation/employer?**
TechnologyADR.com
- **What is your area of practice?**
IP and ADR. I currently spend 75% of my time doing Arbitration, Mediation and Case Evaluation in Technology and Intellectual Property disputes. Part of my case load is deciding domain name disputes; I have written almost 900 decisions in that arena since 2000.
- **When did you first become involved with the Section?**
I joined the then Computer Law Section in 1987 when I returned to Michigan, after serving as a JAG Officer in the Army. I was at CECOM, the Army Communications and Electronics Command, where I handled large computer contracts and IP. I would say that Ed Langs and Dave Syrowik were my “mentors” in the Section. I have been involved with the Section ever since and particularly enjoyed being part of the Proprietary Rights Committee over the years. I was the Section Chair 2003-2004, which was also my first year in Traverse City. I have not been able to be as active from up here as I would like.
- **What do you enjoy most about your work?**
I feel very privileged to help people who are trying to commercialize new ideas. I really think that’s what makes the world go around and, not having the aptitude myself to be an engineer or scientist or inventor, I am very happy to do what I can to help them and business people make the most of their great ideas.
- **Where did you grow up?**
In the Troy/Birmingham area.
- **Where else have you lived?**
Ann Arbor (GO BLUE); Japan where I was an English teacher and worked for a law firm to make some money to pay for law school; New Jersey when I was at CECOM; and I currently live in Traverse City.
- **What are your hobbies, other interests?**
I enjoy sports, dance and travel. I officiate sports, particularly tennis. I am a volunteer for SCORE, counselling small businesses. I also serve on various Boards.
- **Favorite restaurant?**
Priya, an Indian restaurant in Clawson.
- **Last vacation?**
Hiking trip in Hawaii.
- **If you had to describe yourself using three words, they would be...**
Fair, passionate and energetic.
- **What one word would you put on your gravestone?**
RAH!
- **What email can Section members use to contact you?**
info@technologyADR.com
- **A short comment on why you became involved with the Information Law Technology Section:**
I have been in private practice most of career, and often with my own firm, so I have greatly appreciated the contact with other professionals with a passion for technology. I have learned a lot from my colleagues!

If you would like to be featured in the ‘Meet a Section Member’ column, please contact michael@gallo.us.com.

Recent Developments in Information Technology Law

By David R. Syrowik, Brooks Kushman P.C.

PATENTS – Case Law – U.S. Courts of Appeal

As reported at 82 BNA's PTCJ 257, on June 15, 2011, the U.S. Court of Appeals for the Federal Circuit ruled on a patent involving computing functions. Reversing a summary judgment of invalidity for indefiniteness under 35 U.S.C. § 112, the Court determines that the patent challenger failed to show that the disputed terms were "so structurally devoid that we should rewrite them in means-plus-function format." *Inventio AG v. ThyssenKrupp Elevator Americas Corp.*

As reported at 99 USPQ2d 1936, an August 29, 2011, the U.S. Court of Appeals for the Federal Circuit ruled that claims in application for system and method for distribution chain management, which recite "reverse logistics means for generating transfer data," are unpatentable as indefinite under 35 U.S.C. § 112, since only portion of specification linked to recited function is flowchart in figure in application, and since figure provides high level process flow, but it fails to describe, even at high level, how computer could be programmed to produce structure that provides results described in flowchart. *In re Aoyama.*

As reported at 82 BNA's PTCJ 528, on August 16, 2011, the U.S. Court of Appeals for the Federal Circuit ruled that a method for detecting fraud in credit card transactions over the Internet is not patent-eligible subject matter. Affirming a lower court's judgment, which relied on the machine-or-transformation test used prior to the Supreme Court's decision in *Bilski v. Kappos*, the Court's analysis differs sharply from that of the only other panel to rule on patent eligibility under 35 U.S.C. § 101 since the *Bilski* ruling. The Court also reached this conclusion about the corresponding article of manufacture claim (*i.e.* Beauregard claim) because the steps of the method that would be carried out by the computer program are nothing more than an unpatentable method that can be performed entirely in the human mind or by a human using a pen and paper. *CyberSource Corp. v. Retail Decisions Inc.*

As reported at 82 BNA's PTCJ 729, on September 23, 2011, the U.S. Court of Appeals for the Federal Circuit held that online purchasing and order review patents, including U.S. Patent No. 6,088,717, are invalid and not infringed by Amazon.com. *Cordance Corp. v. Amazon.com Inc.*

As reported at 82 BNA's PTCJ 536, on August 10, 2011, the U.S. Court of Appeals for the Federal Circuit ruled that the asserted claim of a patent directed to method and system

for charging fees for sending "spam" e-mail is not invalid as indefinite, despite a drafting error in phrase "the computer being programmed to detect analyze the electronic mail communication sent by the sending party to determine whether or not the sending party is an authorized sending party or an unauthorized sending part." *CBT Flint Partners LLC v. Return Path Inc.*

As reported at 82 BNA's PTCJ 689, on September 15, 2011, the U.S. Court of Appeals for the Federal Circuit overturned a lower court decision by holding that claims in U.S. Patent No. 7,346,545 directed to a method of monetizing and distributing copyrighted products over the Internet are applications of the abstract idea that advertising can be monetized and so are patent eligible. *Ultramercial LLC v. Hulu LLC.*

COPYRIGHTS – Case Law – U.S. Courts of Appeal

As reported at 82 BNA's PTCJ 697, on September 14, 2011, the U.S. Court of Appeals for the First Circuit ruled that an infringement claim failed for absence of copy of registered source code to compare for similarity. *Airframe Systems Inc. v. L-3 Communications Corp.*

As reported at 82 BNA's PTCJ 253, on June 21, 2011, the U.S. Court of Appeals for the Second Circuit ruled that a claim of "hot news" misappropriation under New York law was preempted by federal copyright law in a dispute between financial institutions and an online financial news service. Reversing in part a judgment of infringement and misappropriation, the Court determines that the claim is preempted because under a test for exceptions to preemption, a website that is summarizing the investment recommendations of major investment banks is not a "free rider" and is reporting the news, something that the banks were not doing. *Barclays Capital Inc. v. Theflyonthewall.com Inc.*

As reported at 82 BNA's PTCJ 463, on July 26, 2011, the U.S. Court of Appeals for the Seventh Circuit ruled that the deposit requirement of the Copyright Act can be satisfied by "re-created" copies based on hard copies and restored computer files. *Nova Design Build Inc. v. Grace Hotels LLC.*

As reported at 82 BNA's PTCJ 526, on August 17, 2011, the U.S. Court of Appeals for the Second Circuit ruled that a 2005 class action settlement between freelance authors and

electronic publishers—which could have paid out up to \$18 million—is voided because the class should not have been certified. *In re Literary Works in Electronic Databases Copyright Litigation*.

As reported at 99 USPQ2d 1533, on August 3, 2011, the U.S. Court of Appeals for the Ninth Circuit ruled that the long-standing rule that irreparable harm is presumed in copyright infringement action if there has been showing of reasonable likelihood of success on merits is effectively overruled by *eBay Inc. v. MercExchange LLC*, 78 USPQ2d 1577; propriety of injunctions in copyright cases must be evaluated on case-by-case basis in accordance with traditional equitable principles and without aid of presumptions. *Perfect 10 Inc. v. Google Inc.*

As reported at 82 BNA's PTCJ 691, on September 16, 2011, the U.S. Court of Appeals for the First Circuit ruled that a federal district court that drastically reduced a damages award against Harvard student Joel Tenenbaum for online file sharing erred in making its decision based on the Fifth Amendment without addressing Tenenbaum's motion for remittitur under common law, reinstating the award but remanding the case to consider the remittitur. *Sony BMG Music Entertainment v. Tenenbaum*.

COPYRIGHTS/LICENSING – Case Law – U.S. Courts of Appeal

As reported at 82 BNA's PTCJ 695, on September 2, 2011, the U.S. Court of Appeals for the Seventh Circuit ruled Home Depot held valid license to use inventory database until it was terminated. *Edgenet Inc. v. Home Depot USA Inc.*

As reported at 82 BNA's PTCJ 770, on September 28, 2011, the U.S. Court of Appeals for the Ninth Circuit ruled that Apple's distribution of its Mac OS X software is under a license, rather than as a sale, and the company did not misuse its copyright when it prohibited the installation of licensed software on non-Apple computers. *Apple Inc. v. Psystar Corp.*

COPYRIGHTS/PERSONAL JURISDICTION – Case Law – U.S. Courts of Appeal

As reported at 99 USPQ2d 1562, on August 8, 2011, the U.S. Court of Appeals for the Ninth Circuit ruled that non-residents named as defendants in infringement action have purposefully directed their activities at forum state of California, since defendants committed "intentional act" by posting allegedly infringing photographs on their website, "expressly aimed" their intentional act at forum state, and have caused

harm that they know is likely to be suffered in forum state. *Mavrix Photo Inc. v. Brand Technologies*.

COPYRIGHTS/DMCA – Case Law – U.S. Courts of Appeal

As reported at 82 BNA's PTCJ 255, on June 14, 2011, the U.S. Court of Appeals for the Third Circuit ruled that removal of a photographer's credit line from an image may be a violation of Section 1202 of the Digital Millennium Copyright Act of 1998, which prohibits the removal of copyright management information from creative works. Vacating an award of summary judgment favoring a radio station that copied an image from a magazine article and posted it on the Internet, the Court says that the plain text of Section 1202, as well as the purpose of the DMCA, supported the photographer's position. *Murphy v. Millennium Radio Group LLC*.

LANHAM ACT – Case Law – U.S. Courts of Appeal

As reported at 82 BNA's PTCJ 472, on July 28, 2011, the U.S. Court of Appeals for the Ninth Circuit ruled that injunction issued in action in which defendants were found to have actively fostered false belief among consumers that their "DMV.org" website is official state department of motor vehicles (i.e. DMV) website, or is affiliated with or endorsed by state DMV, impermissibly burdens protected speech by requiring defendants to display "splash screen" disclaimer on their website. *Traffic-School.com Inc. v. Edriver Inc.*

TRADEMARKS/COPYRIGHTS – Case Law – U.S. Courts of Appeal

As reported at 82 BNA's PTCJ 645, on September 12, 2011, the U.S. Court of Appeals for the Ninth Circuit upholds a jury's finding that a web hosting company and its manager were contributorily liable for permitting their customers to build websites that infringed Louis Vuitton trademarks and copyrights. *Louis Vuitton Malletier v. Akanoc Solutions Inc.*

PATENTS – Case Law – U.S. District Courts

As reported at 99 USPQ2d 1508, on October 5, 2010, the U.S. District Court for the Western District of Wisconsin ruled that infringement defendants have rebutted presumption of shared confidences under Seventh Circuit's standard for determining whether law firm should be disqualified based on its attorney's prior representation of opposing party, since, among other measure, law firm's screening procedures instructed litigation team members not to discuss case with

disqualified lawyer or in his presence, denied disqualified lawyer access to records in case, and protected electronic records by computer security protocol. *Silicon Graphics Inc. v. ATI Technologies Inc.*

PATENTS/BANKRUPTCY – Case Law – U.S. District Courts

As reported at 82 BNA's PTCJ 392, on July 11, 2011, the U.S. Bankruptcy Court for the District of Delaware issued an order approving the sale of \$4.5 billion of Nortel Networks Inc.'s IT patents and related assets to Apple Inc. and Rockstar Bidco LP. *In re Nortel Networks Inc.*

COPYRIGHTS – Case Law – U.S. District Courts

As reported at 82 BNA's PTCJ 603, on August 22, 2011, the U.S. District Court for the Northern District of California ruled that uploading infringing video from Canada to YouTube in the United States is not wholly extraterritorial and is, consequently, infringing. *Shropshire v. Canning.*

As reported at 82 BNA's PTCJ 565, on August 16, 2011, the U.S. District Court for the Northern District of Illinois ruled that file sharers' First Amendment protection does not cover copyright infringement. *First Time Videos LLC v. Does 1-76.*

As reported at 82 BNA's PTCJ 568, on August 16, 2011, the U.S. District Court for the Northern District of California denied a TRO motion filed by a maker of networking hardware and software because of lack of irreparable harm even though there was a likelihood of success on the merits. *Brocade Communications Systems Inc. v. A10 Networks Inc.*

As reported at 82 BNA's PTCJ 642, on September 12, 2011, in a complaint filed in the Southern District of New York, a global group of authors sued several prominent universities (including the University of Michigan) participating in the HathiTrust digital library through agreements with Google Inc. The complaint alleges that the universities have engaged in widespread digitization of copyrighted works, in blatant derogation of copyright owners' rights. *Authors Guild Inc. v. HathiTrust.*

As reported at 82 BNA's PTCJ 654, on September 1, 2011, the U.S. District Court for the Northern District of California dropped Oracle's \$1.3 billion copyright damages award for lack of factual support. *Oracle USA Inc. v. SAP AG.*

As reported at 82 BNA's PTCJ 267, on June 9, 2011, the U.S. District Court for the District of Massachusetts ruled that declaratory defendant's claim for unfair trade practices under Mass. Gen. Laws Ch. 93A, as pleaded, is not preempted by

federal copyright law, since defendant alleges that plaintiff circumvented password-protected area of defendant's website in order to view video tutorials for defendant's computer-aided design program, and if substantiated, this claim would include "extra element" of illegal "hacking" that makes it qualitatively different from copyright claim; however, defendant has not proved sufficient facts to establish plaintiff's liability under Chapter 93A. *Real View LLC v. 20-20 Technologies Inc.*

As reported at 82 BNA's PTCJ 359, on July 8, 2011, the U.S. District Court for the Southern District of Florida ruled that a digital "storage locker" website that generated unique URLs for user uploaded works and encouraged users to broadly distribute those links didn't commit a volitional act and was not liable as direct infringer. *Disney Enterprises Inc. v. Hotfile Corp.*

As reported at 82 BNA's PTCJ 395, on July 14, 2011, the U.S. District Court for the Southern District of New York ruled that thumbnail images lack detail for copyright shield; byline removal no basis for DMCA liability. *Alexander v. Murdock.*

As reported at 82 BNA's PTCJ 411, on July 22, 2011, the U.S. District Court for the District of Minnesota ruled that a jury award of \$1.5 million in statutory damages for willful copyright infringement arising from an individual's act of downloading 24 sound recordings for personal use is "appalling" and unconstitutional because it is too severe, oppressive, and disproportionate to the offense. After finding the jury's award of \$62,500 for each infringed recording to be unconstitutionally harsh, the Court reduces the damage award to \$2,250 per song—three times the minimum statutory penalty allowed for willful infringement under the Copyright Act. *Capitol Records Inc. v. Thomas-Rasset.*

As reported at 82 BNA's PTCJ 462, on July 27, 2011, the U.S. District Court for the Northern District of Illinois ruled that a web host failing to axe infringers cannot use the DMCA statute's safe harbor to avoid contributory liability. *Flava Works Inc. v. Gunter.*

As reported at 82 BNA's PTCJ 464, on July 25, 2011, the U.S. District Court for the Northern District of California ruled that an e-Bay vendor accused of unpacking and selling software from second-hand computers cannot pursue a counterclaim of copyright misuse duplicating a misuse defense. *Adobe Systems Inc. v. Kornrumpf.*

As reported at 82 BNA's PTCJ 540, on August 11, 2011, the U.S. District Court for the Northern District of California granted a temporary restraining order allowing a competitor to Zynga Inc.'s popular online games to ignore a Brazilian court's injunction for copyright infringement. *Zynga Inc. v. Vostu USA Inc.*

As reported at 82 BNA's PTCJ 517, on August 16, 2011, the U.S. District Court for the Eastern District of Michigan sentenced a woman from Ypsilanti, Michigan to two years in prison and ordered her to pay over \$440,000 in restitution for selling stolen computer software worth over \$2 million. *U.S. v. Jones*.

As reported at 99 USPQ2d 1620, on April 21, 2011, the U.S. District Court for Southern District of California ruled that infringement plaintiff seeking expedited discovery to identify defendants who allegedly reproduced and distributed plaintiff's copyrighted motion picture using "BiTorrent" file transfer protocol has made satisfactory showing that there are real persons or entities behind alleged infringing acts who would be amenable to suit, that plaintiff has made good-faith effort to comply with requirements of service of process, and that its infringement claim can withstand motion to dismiss. *Liberty Media Holdings LLC v. Swarm of November 16, 2010*.

As reported at 82 BNA's PTCJ 693, on September 15, 2011, the U.S. District Court for the Northern District of California ruled that application programming interfaces, or APIs, used by Google Inc. in its Android operating system are not necessarily "methods of operation" that would be exempt from copyright protection under 17 U.S.C. § 102(b). *Oracle America Inc. v. Google Inc.*

As reported at 82 BNA's PTCJ 694, on September 16, 2011, the U.S. District Court for the Southern District of New York allowed plaintiffs in a years-long lawsuit against Google Book Search to file a new amended complaint and class certification motion. *Authors Guild v. Google Inc.*

As reported at 99 USPQ 1954, on July 7, 2011, the U.S. District Court for the Northern District of California dismissed copyright misuse counterclaim alleging that defendant was entitled to resell plaintiff's software pursuant to first sale doctrine, since defendant was licensee, not owner, of plaintiff's copyrighted software. *Adobe Systems Inc. v. Norwood*.

COPYRIGHTS/CRIMINAL – Case Law – U.S. District Courts

As reported at 82 BNA's PTCJ 695, on September 14, 2011, the U.S. District Court for the Northern District of California fined a defunct SAP subsidiary \$20M for criminal infringement of Oracle software. *United States v. Tomorrow Now Inc.*

COPYRIGHTS/DMCA – Case Law – U.S. District Courts

As reported at 82 BNA's PTCJ 559, on August 22, 2011, the U.S. District Court for the Southern District of New York ruled that an online music locker service must delete from its users' accounts unauthorized copies of works identified in takedown notices sent pursuant to the Digital Millennium Copyright Act. The Court, however, applies the DMCA's safe harbor to other allegedly infringing copies, which the copyright owners had not identified. *Capitol Records Inc. v. MP3tunes LLC*.

COPYRIGHTS/STANDING – Case Law – U.S. District Courts

As reported at 82 BNA's PTCJ 264, 266, on June 20, 2011 and June 14, 2011, respectively, the U.S. District Court for the District of Nevada twice determines that the copyright litigation firm Righthaven LLC lacked standing to sue for infringement over newspaper articles posted online. *Righthaven LLC v. Hoehn*; *Righthaven LLC v. Democratic Underground LLC*.

TRADE SECRETS – Case Law – U.S. District Courts

As reported at 82 BNA's PTCJ 604, on August 23, 2011, the U.S. District Court for the District of Virginia granted a bank a preliminary injunction against ex-employee fired for misuse of e-mail. *Wells Fargo Bank N.A. v. Clark*.

As reported at 82 BNA's PTCJ 702, on September 13, 2011, the U.S. District Court for the Eastern District of California ruled that insights about software function and workflow shared during partnership are not trade secrets. *Agency Solutions.com LLC v. Trizetto Group Inc.*

TRADEMARKS – Case Law – U.S. District Courts

As reported at 99 USPQ2d 1300, on June 17, 2011, the U.S. District Court for the Northern District of California ruled that plaintiff alleging infringement of its "Facebook" mark by unidentified website operators has failed to demonstrate good cause for taking expedited discovery from named defendants in order to identify as-yet unnamed defendants, and to facilitate plaintiff's submission of motion for preliminary injunction, since plaintiff can obtain discovery to identify unnamed defendants during normal course of discovery, and

has not argued that relevant information may be in danger of destruction, and since nothing has prevented plaintiff from filing motion for preliminary injunction that it could later amend once identities of unnamed defendants are known. *Facebook Inc. v. Various Inc.*

As reported at 99 USPQ2d 1384, on March 15, 2011, the U.S. District Court for the Northern District of Illinois ruled that plaintiff professional interior designer has sufficiently alleged Lanham Act claim for false endorsement in action brought against defendant competitors, since plaintiff alleges that she created popular personal following on social networking websites, that her posts to websites relate to her work in commercial context, and that she was engaged in commercial marketing of her skills when defendants wrongfully used her name and likeness by writing posts under her name. *Maremont v. Susan Fredman Design Group Ltd.*

As reported at 99 USPQ2d 1367, on February 15, 2011, the U.S. District Court for the Eastern District of California ruled that a claim for false designation of origin under 15 U.S.C. § 1125(a)(1)(A) does not require defendant to be “direct competitor” of plaintiff; defendant Internet search engine provider’s motion to dismiss false-designation claim, based on defendant’s use of plaintiff’s “Styrotrim” mark as keyword that plaintiff’s competitors may bid on to secure “sponsored link” that appears on search results page when users search for “Styrotrim,” is denied. *Jurin v. Google Inc.*

As reported at 82 BNA’s PTCJ 774, on September 26, 2011, the U.S. District Court for the Northern District of Illinois held that Facebook uses the suffix “book” to refer to its social networking services, and thus use of the same suffix may be trademark infringement. *Facebook Inc. v. Teachbook.com LLC.*

TRADEMARKS/PERSONAL JURISDICTION – Case Law – U.S. District Courts

As reported at 99 USPQ2d 1854, on April 21, 2011, the U.S. District Court for the District of Idaho ruled that defendant’s operation of “Cell Phone Junkie” website, which reviews cell phones and their accessories and provides related podcasts and free links to retailers of related podcasts and free links to retailers of related products, is insufficient for exercise of specific personal jurisdiction over defendant in Idaho action alleging infringement of plaintiff’s “Cell Junkie” mark, since defendant’s operation of blog accessible in Idaho does not constitute intentional act expressly aimed at Idaho. *Shymatta v. Papillon.*

TRADEMARKS/CLASS ACTIONS – Case Law – U.S. District Courts

As reported at 82 BNA’s PTCJ 852, on September 29, 2011, the U.S. District Court for the Eastern District of Texas ruled the Lanham Act’s initial interest confusion analysis is extremely fact-intensive, so class certification in a lawsuit alleging that Google infringed brands’ marks by selling them to competitors as invisible advertising triggers is inappropriate. Denying a group of plaintiffs’ motion for class certification, the court adopts a magistrate judge’s report in its entirety. *FPX LLC v. Google.*

LANHAM ACT – Case Law – U.S. District Courts

As reported at 99 USPQ2d 1040, on August 17, 2010, the U.S. District Court for the Southern District of Indiana granted summary judgment to plaintiff plastic surgeon on Lanham Act claim for false designation of origin, asserted against former patient who used Internet to disparage and divert trade from plaintiff, since defendant used plaintiff’s name, “Dr. Barry Eppley,” throughout her campaign of Internet disparagement, with conscious design of driving Internet traffic away from plaintiff’s authorized websites and toward her own sites. *Eppley v. Iacovelli.*

ANTI-CYBERSQUATTING CONSUMER PROTECTION (ACPA) – Case Law – U.S. District Courts

As reported at 98 USPQ2d 1997, on February 15, 2011, the U.S. District Court for the Western District of Pennsylvania ruled that defendants, in registering and using Internet domain name www.fagnelli.com, acted with bad faith intent to profit from use of plaintiff’s “Fagnelli” mark for plumbing, heating, and cooling business in Western Pennsylvania, since defendants have no intellectual property rights in domain name, they have not used name in non-commercial or fair-use manner, and their domain name is variation of plaintiff’s official www.fagnelli-plumbing.com website. *Fagnelli Plumbing Co. v. Gillece Plumbing and Heating Inc.*

TRADEMARKS – U.S. Patent and Trademark Office

As reported at 82 BNA’s PTCJ 860, on September 27, 2011, the Trademark Trial and Appeal Board held that “Person2Person payment” is a generic term referring to electronic transfers via electronic communications network from one party to another and, consequently, is not entitled to trademark protection. *In re ING Direct Bancorp.*

State Courts – Wisconsin

As reported at 82 BNA's PTCJ 223, on June 8, 2011, the Wisconsin Circuit Court for Milwaukee County ruled that a law firm's use of the names of two competing trial attorneys as keywords to trigger online advertising invaded privacy, but was not unreasonable. *Habush v. Cannon*.

Foreign Courts – United Kingdom

As reported at 82 BNA's PTCJ 460, on July 27, 2011, the England and Wales Court of Appeals ruled that a user's act of making an unauthorized copy of a news article that has been flagged by a web news media clipping service is an infringement of the news publisher's copyright. *Newspaper Licensing Agency Ltd. v. Meltwater Holdings Ltd.*

As reported at 82 BNA's PTCJ 479, on July 28, 2011, the England and Wales Court of Appeals ordered the biggest U.K. ISP to block all user access to an infringing website. *Twentieth Century Fox Film Corp. v. British Telecommunications PLC.*

Foreign Courts – Europe

As reported at 82 BNA's PTCJ 737, on September 22, 2011, the European Court of Justice ruled that a mark as an AdWord may be infringing, but diversion, comparison won't tip scales. *Interflora Inc. v. Marks & Spencer PLC.*

UNITED STATES/PATENT - Legislation

As reported at 82 BNA's PTCJ 681, on September 16, 2011, President Barack Obama signed the Leahy-Smith America Invents Act (AIA). The AIA presents the first significant revision to the U.S. patent system since 1952. The AIA will have far-reaching effects in both patent prosecution and litigation. Some aspects of the law will take effect immediately, although many of the primary features will be implemented one year or 18 months after enactment.

The new law is broad and complex, but two of the more significant provisions include the following:

- **“First-to-file” replaces “first-to-invent.”** Patent priority will be determined based on a “first-inventor-to-file” (FITF) approach, rather than the “first-to-invent” system previously in place. Prior to the AIA, priority went to the first inventor to conceive of the invention and diligently reduce it to practice, but the new law encourages prompt filing, since an inventor may lose his or her rights if a subsequent inventor files with the Patent Office first.

- **Review proceedings for certain business method patents.** The Patent Office is implementing an 8-year transitional program to allow for the review of certain already-granted business process patents, including those involving data processing operations used in connection with financial products and services. While business process patents have been the subject of controversy for years, this provision opens up another line of attack for parties accused of infringing them. ■

Publicly Available Websites for IT Lawyers

Following are some publicly available websites relating to varying aspects of information technology law practice. Some of these websites may require payment for certain services. Neither the State Bar of Michigan nor the IT Law Section endorses these websites, the providers of the website, or the goods or services offered in connection therewith. Rather these websites are provided for information purposes only and as possible useful tools for your law practice.

Please provide any feedback or recommendations for additional websites to michael@gallo.us.com.

Legal Blogs

- <http://www.scotusblog.com> - One-stop shop for news and expert analysis of all things U.S. Supreme Court.
- <http://www.geeklawblog.com> - Research nerdery, and industry criticism, written by some of the best and brightest in law firm business development, knowledge management, research, libraries and records.
- <http://www.legalpracticepro.com> - An engaging, enjoyable advice blog aimed largely at law practice management and lawyers' use of technology. But it often delves into deeper topics, including personal responsibility and civility.
- <http://abovethelaw.com> - Unapologetically irreverent coverage of lawyers and the business of law.
- http://lawprofessors.typepad.com/trusts_estates_prof - Substantive discussions on wills, trusts and estates law that link doctrine and rules to what happens in the real world. ■