

IPQ

THE MARYLAND IP LAW QUARTERLY

Summer 2010



THE DOG DAYS OF SUMMER

While the Baltimore-Washington, DC metropolitan area typically waits until August for heat indexes of greater than 105°F, 2010 is proving to be exceptional year. With the warmest June on record following the snowiest December ever, whatever your weather preference, you have lived it this year. And for those who, at 5:04 a.m. ET on July 16, 2010, also survived the strongest earthquake (magnitude 3.6) ever recorded in this region, you should be contemplating whether your emergency preparedness plan should now include locust swarms just to be safe.

This summer edition of the IPQ is devoted to the MIPLRC (the law school's IP Clinic), which under the direction of Professor Patricia Campbell, has helped distinguish the IP Program nationally.

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THE MARYLAND INTELLECTUAL PROPERTY LEGAL RESOURCE CENTER

The Maryland Intellectual Property Legal Resource Center (MIPLRC or "the Center") was established in 2002 as a joint initiative of the University of Maryland School of Law and the Montgomery County Department of Economic Development. The MIPLRC provides free legal assistance on intellectual property matters to emerging technology companies and also trains law students to serve the needs of early-stage high technology companies. The Center was initially created in response to growing demand for increased access to legal services by Maryland's emerging high tech and biotech companies. Many startup companies, otherwise unable to afford legal services, face challenges in protecting their intellectual property rights. The Center was the first law school program of its kind in the United States to be situated in technology incubators.

In September 2009, the MIPLRC opened an office on the campus of the University of Maryland at College Park, where it is housed in the Technology Advancement Program (TAP) Incubator operated by the Maryland Technology Enterprise Institute (MTECH), a division of the A. James Clark School of Engineering. From its locations in College Park and the School of Law in Baltimore, the Center provides legal services to early-stage technology companies throughout Maryland. The Center performs an important role in the state's effort to promote technology entrepreneurship and to nurture emerging companies, resulting in economic growth and the creation of valuable jobs.

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INFORMATION PLEASE

In addition to the IPQ, the IP Program publishes information through various recognized social media outlets (click to join):

- [Facebook](#)
- [Twitter](#)
- [LinkedIn](#)

Plus, relevant law school webpage links include:

IP Program

<http://www.law.umaryland.edu/IPLaw>

Maryland Intellectual Property Students Association (MIPSA)

<http://www.law.umaryland.edu/mipsa>

Journal of Business and Technology Law

<http://www.law.umaryland.edu/jbtl>

RESOURCE SPOTLIGHT

Patricia Campbell, M.A., J.D., LL.M.

Patricia Campbell is a Law School Associate Professor at the University of Maryland School of Law in Baltimore, and she is the Director of the Maryland Intellectual Property Legal Resource Center, located in College Park, Maryland. Prior to joining the law school faculty in 2007, Professor Campbell was a litigator and transactional attorney in the Fish & Neave IP Group at Ropes & Gray in Palo Alto, California, and Washington, DC. Professor Campbell has also worked at law firms in Pittsburgh and Philadelphia, and she served as Associate General Counsel to a telecommunications start-up in Bethesda, Maryland.



Professor Campbell is a graduate of Carnegie Mellon University in Pittsburgh, Pennsylvania, and she received a master's degree and her law degree from the University of Pittsburgh. In 2004, she earned an LLM in intellectual property law from the Santa Clara University School of Law in Santa Clara, California. Professor Campbell is admitted to practice in Maryland, the District of Columbia, Pennsylvania and California.

MIPLRC *cont'd*

The Center delivers legal services primarily through law students, who practice under the supervision of experienced faculty members. Second- and third-year law students interested in participating in the Center's mission may enroll in the Intellectual Property Law Clinic, a five- or seven-credit clinical course offered in the fall, spring, and summer semesters. The legal services provided by student attorneys have included preparation of draft patent applications, assistance with filing trademark applications and copyright registrations, drafting of licenses and confidentiality agreements, performance of preliminary prior art searches, and provision of counseling on the development of an IP portfolio. By interacting continually with technology entrepreneurs and working in their midst, law students develop sensitivity to, and expertise in, dealing with the unique challenges faced by their clients. Since July 2002, approximately 300 clients have received legal services provided by nearly 100 student attorneys.

In addition to its clinical component, the Center also fulfills an academic function. All students enrolled in the Intellectual Property Law Clinic are required to attend a weekly class meeting, where they receive instruction on practical topics, such as how to prepare and prosecute a patent application and how to draft a nondisclosure agreement tailored to a client's specific needs. The MIPLRC is currently considering a plan to provide academic offerings for local attorneys, entrepreneurs, scientists, and researchers. In the future, the Center may also offer IP short courses for business and engineering students.

IP CLINIC SELECTED FOR USPTO TRADEMARK PILOT PROGRAM

The Intellectual Property Law Clinic at the University of Maryland School of Law has been selected to participate in the United States Patent and Trademark Office's expanded Trademark Law School Clinic Pilot Program. The initial Law School Clinical Certification Program was launched by the USPTO in 2008 with participation limited to only five schools nationwide. Recently, the USPTO announced that 20 law schools would be admitted to the expanded program this fall, and Maryland is honored to take part.

Beginning in the Fall Semester 2010, students enrolled in the Intellectual Property Law Clinic will have the opportunity to obtain limited recognition to practice before the agency in trademark application matters. Under the supervision of the faculty clinic supervisor, students will draft and file trademark applications, respond to office actions from the trademark examiners, and draft and file briefs in appeals to the Trademark Trial and Appeal Board. Participation in the program will significantly enhance the services that the clinic can offer to emerging high technology companies.

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COUNTERFEITING AND PIRACY WEBINAR

Counterfeiting and piracy cost the U.S. economy billions of dollars annually. Counterfeit products often present serious threats to human health and safety, and manufacturers and distributors may even face potential liability claims if they incorporate counterfeit components into their products. Pirated software poses security risks to consumers and businesses, and the entertainment industry complains that it is being crippled by unauthorized distribution of music and videos.

On March 3, 2010, Professor Campbell and Wayne B. Paugh, former U.S. Coordinator for Intellectual Property Enforcement, presented a webinar entitled "Counterfeiting and Piracy: Protecting and Enforcing Intellectual Property Rights." The webinar was sponsored by the Intellectual Property Section of the Maryland State Bar Association.

The webinar examined trademark and copyright laws that protect innovation by creating civil and criminal penalties for counterfeiting and piracy. Participants learned how brand owners can protect their trademarks from unauthorized use on counterfeit goods and how they can prevent fake products from entering the country. The webinar also explored ways in which copyright owners can address unauthorized copying of their materials, including illegal downloading via the Internet. The second part of the program discussed U.S. government resources available to trademark and copyright owners, as well as collaboration with industry and international cooperation with U.S. trading partners.

U.S. SUPREME COURT DECIDES *BILSKI V. KAPPOS* CONCERNING PATENT ELIGIBILITY

On June 28, 2010, the U.S. Supreme Court issued its decision in *Bilski v. Kappos*. The Court affirmed the Federal Circuit judgment that *Bilski's* business method was unpatentable under 35 U.S.C. §101 as an abstract idea, but held "[T]he machine-or-transformation test is a useful and important clue, an investigative tool, for determining whether some claimed inventions are processes under §101. The machine-or-transformation test is not the sole test for deciding whether an invention is a patent-eligible 'process.'" The Court eschewed a categorical rejection of business methods as patentable subject matter, but admonished that inventions that might have involved a useful, concrete, and tangible result under *State Street Bank v. Signature Financial*, 149 F.3d 1368 (Fed. Cir. 1998), may not be patent eligible now. The Court otherwise leaves to the Federal Circuit any refinements to the test for patent eligibility. In so doing, the Court has allayed many fears that patent rights for technologies such as software, advanced diagnostic medicine techniques, and inventions based on linear programming, data compression, and the manipulation of digital signals, would be greatly undermined or extinguished.

SAVE THE DATES! Fortnightly IP is Back

Last spring, the IP Program launched Fortnightly IP, a new speaker series hosted on campus roughly twice a month. This public forum for informal discussion, led by accomplished individuals who offer their experiences and insights on intellectual property-related issues, begins again in September on alternate Mondays from 4 – 5:30 p.m. Look for more info upcoming speakers and topics coming soon!

September 13, 2010

September 27, 2010

October 11, 2010

October 25, 2010

November 8, 2010

November 22, 2010

For more information visit

<http://www.law.umaryland.edu/programs/iplaw/events>

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