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**MASTER DIALOGUE**

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**Master Dialogue on Intellectual Property Adjudication**

**– Judicial Perspectives**

organized by  
the World Intellectual Property Organization (WIPO)

and hosted at  
the United States Court of Appeals for the Federal Circuit (CAFC)

**Washington, D.C., September 16 to 19, 2019**

PROGRAM

*prepared by the International Bureau of WIPO*

Monday, September 16, 2019

Venue: United States Court of Appeals for the Federal Circuit  
Dolley Madison House  
1520 H Street NW, Washington, D.C.

18.00 – 20.00 Reception hosted by WIPO

Tuesday, September 17, 2019

Venue: United States Court of Appeals for the Federal Circuit  
717 Madison PI NW, Washington, D.C.

9.00 – 9.15 **Welcome and Opening Addresses**

Kimberly A. Moore, Judge, U.S. Court of Appeals for the  
Federal Circuit (CAFC)

Eun-Joo Min, Director, WIPO Judicial Institute, Office of the  
Legal Counsel, World Intellectual Property Organization  
(WIPO)

9.15 – 9.30 Introduction of participants

9.30 – 10.15 **Session 1: Judicial Dialogue Across National Systems**

- Engagement with foreign judgments as exchange
- International intellectual property (IP) instruments and national legislation
- International judicial cooperation and assistance

Klaus Bacher, Judge, Federal Court of Justice, Karlsruhe,  
Germany

Annabelle Bennett, Former Judge, Federal Court of Australia,  
Sydney, Australia

Barbara Lynn, Chief Judge, U.S. District Court for the  
Northern District of Texas, Dallas, United States of America

10.15 – 10.30 Coffee Break

10.30 – 12.00 **Session 2: Current Issues in Patents**

**Patentability**

How have courts treated the patentability of new technologies involving:

- Automated or computer implemented processes (e.g. *Alice v. CLS Bank*)?
- Biotechnological inventions (e.g. *Association for Molecular Pathology v. Myriad Genetics*)?

**Infringement Issues**

- Doctrine of equivalents (e.g. *Actavis v. Eli Lilly*)
- Biosimilars; second medical use patents

### **Interface with Competition/Anti-trust Law**

- *FTC v. Qualcomm*

*Overview (20 minutes)*

Paul Michel, Former Chief Judge, Court of Appeals for the Federal Circuit, Washington, D.C., United States of America

*Break-out discussion in groups (50 minutes)*

*Reporting and summarizing analysis (20 minutes)*

Klaus Bacher, Judge, Federal Court of Justice, Karlsruhe, Germany

12.00 – 13.30 Lunch

### **13.30 – 14.55 Session 3: Standard Essential Patents (SEP) and Fair, Reasonable, and Non-Discriminatory (FRAND) Terms**

- What does a FRAND license mean and how is it characterized?
- Are injunctions available when a SEP is infringed? Does this answer vary when the infringing element is part of a multi-component product?
- What other remedies are available?
- What are the extraterritorial implications of FRAND determinations?
- How does the licensing of SEPs interplay with competition/antitrust law? When is a SEP holder considered to be abusing its dominant position?

*Overview (20 minutes)*

Annabelle Bennett, Former Judge, Federal Court of Australia, Sydney, Australia

*Break-out discussion in groups (45 minutes)*

*Reporting and summarizing analysis (20 minutes)*

Du Weike, Judge, Supreme People's Court, Beijing, China

14.55 – 15.50 **Debate (I): Applicability of Competition Law to Regulate Patent Owners and the Public Interest**

Statement: The obligation of SEP owners to license their technology on FRAND terms is a contractual question and should not be regulated by competition law

*Introduction (20 minutes)*

James Robart, Judge, U.S. District Court for the Western District of Washington, Seattle, United States of America

*Group preparation (35 minutes)*

15.50 – 16.05 Coffee Break

16.05 – 17:30 **Session 4: Approaches to Injunctive Relief**

- Are injunctions automatic or conditional? (e.g. *eBay v. MercExchange*)
- Injunctions and compulsory licenses
- Proportionality in injunctions
- Issues in the extraterritorial implications of injunctions

*Overview (30 minutes total)*

Klaus Bacher, Judge, Federal Court of Justice, Karlsruhe, Germany (20 minutes)

Paul Michel, Former Chief Judge, Court of Appeals for the Federal Circuit, Washington, D.C., United States of America (10 minutes)

*Break-out discussion in groups (40 minutes)*

*Reporting and summarizing analysis (15 minutes)*

Virginia Kendall, Judge, U.S. District Court for the Northern District of Illinois, Chicago, United States of America

17.30 – 19.00 Reception hosted by the Federal Circuit Bar Association

Wednesday, September 18, 2019

9.15 – 9.30 **WIPO's Work in the Judicial Administration of IP**

Nahal Zebarjadi, Legal Officer, WIPO Judicial Institute

9.30 – 10.15 **Session 5: Hot Topics in Copyright in the U.S. and E.U.**

*Overview – United States (15 minutes)*

Karyn Temple, Register of Copyrights and Director, United States Copyright Office, Washington, D.C., United States of America

*Overview – European Union (10 minutes)*

Elise Mellier, Judge, Tribunal de Grande Instance, Paris, France

*Questions and discussion (20 minutes)*

10.15 – 11.20 **Session 6: Infringement, Liability and Remedies in the Digital Era**

**Jurisdictional Issues of Online Infringement**

- How is the location where communication to the public takes place determined and how does the determination influence the jurisdiction of the court?

**Remedies for Online Infringement**

- What preventive measures are available?
- What tools are available to courts to tailor remedies? Live site blocking orders; filtering; destruction of webpage contents; suspension or seizure of domain names
- How to rule for damages in online infringement, global or territorial? How to address the possible (extra-) territorial reach of remedies?

*Overview (30 minutes total)*

Du Weike, Judge, Supreme People's Court, Beijing, China  
(15 minutes)

Jeremy Fogel, Executive Director, Berkeley Judicial Institute, Berkeley, United States of America (15 minutes)

*Plenary Dialogue (35 minutes)*

11.20 – 12.30 **Session 7: Fair Use / Limits to Copyright Protection in Comparative Perspective**

*Overview – U.S. Conception of Fair Use (20 minutes)*

Pierre N. Leval, Senior Judge, U.S. Court of Appeals for the Second Circuit, New York City, United States of America

*Break-out discussion in groups (30 minutes)*

*Reporting and summarizing analysis (20 minutes)*

Pierre N. Leval, Senior Judge, U.S. Court of Appeals for the Second Circuit, New York City, United States of America

- 12.30 – 14.00 Luncheon with CAFC Judges
- 14.15 – 15.00 Transfer to the Supreme Court of the United States  
1 First Street NE, Washington, D.C.
- 15.00 – 17.00 **Visit to the Supreme Court of the United States**

Thursday, September 19, 2019

- 9.30 – 10.00 **Address by Mr. Andrei Iancu, Director, United States Patent and Trademark Office (USPTO)**
- 10.00 – 11.00 **Debate (II): Applicability of Competition Law to Regulate Patent Owners and the Public Interest**
- Statement: The obligation of SEP owners to license their technology on FRAND terms is a contractual question and should not be regulated by competition law
- Introduction (5 minutes)*
- James Robart, Judge, U.S. District Court for the Western District of Washington, Seattle, United States of America
- Group preparation (5 minutes)*
- Presentation by Affirmative side (15 minutes)*
- Presentation by Negative side (15 minutes)*
- Discussion (20 minutes)*
- 11.00 – 11.15 Coffee Break
- 11.15 – 12.30 **Session 8: The Judicial Role in Confronting the Increasing Interface of IP with other Law**
- Privacy, data protection and copyright in the digital world
  - Freedom of expression and other fundamental rights
  - Trade secrets
- Klaus Bacher, Judge, Federal Court of Justice, Karlsruhe, Germany
- Annabelle Bennett, Former Judge, Federal Court of Australia, Sydney, Australia
- Du Weike, Judge, Supreme People's Court, Beijing, China
- Jimmie V. Reyna, Judge, U.S. Court of Appeals for the Federal Circuit, Washington, D.C., United States of America

12.30 **Closing**

Pauline Newman, Judge, U.S. Court of Appeals for the  
Federal Circuit

Annabelle Bennett, Former Judge, Federal Court of Australia;  
Chair of the WIPO Advisory Group of Judges

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