



CALENDAR

February 10, 2015

**Supreme Court 2015:
It's All About the Facts**

State Bar of Georgia
noon–2pm

click [here](#) for more info

February 11, 2015

**Georgia Lawyers for the Arts
pro bono event**

GLA King Plow Arts Center
1:30pm–5:30pm

email Copyright Chair
[Katie Bates](#) to sign up

February 17, 2015

**Georgia PATENTS Pro Bono
Project Opening Ceremony**

Alston & Bird
5pm–8pm

click [here](#) and [here](#) for info

followed by

YLD Mardi Gras Happy Hour
(more info to come)

March 13–14, 2015

**AIPLA Giles S. Rich Memorial Moot
Court Competition
SE Regional Competition**

Northern District of GA Courthouse

email SE Regional Director
[Alexis Simpson](#) for info
and to volunteer

March 26, 2015

**Third Annual IP Gala and Judges'
Dinner**

Atlanta's High Museum of Art
4pm–10pm

click [here](#) for info/registration

to reserve tables and sponsorships,
please email [Virginia Carron](#)



Message from the Chair

At the beginning of the 2014-15 Bar Year, State Bar President Patrise Perkins-Hooker challenged all of the bar sections to do more to promote pro bono activities and professional networking and participation in Bar activities. Looking back over the first half of the bar year, our IP Section has certainly risen to that challenge.

On the pro bono front, I'm pleased to report that our IP Section was a Founding Partner of the Georgia PATENTS (Pro Bono Assistance & Training for Entrepreneurs and New, Talented, Solo inventors) program (<http://gapatents.org/>). This program is being administered through Georgia Lawyers for the Arts, in coordination with the U.S. Patent and Trademark Office under the directives of the America Invents Act. I hope our section membership will now rise to the challenge and also support this program by contributing the pro bono hours necessary to make it a success. To learn more, please plan to attend the Opening Ceremony and reception on February 17. For further details, please see the IP Section calendar at (<http://georgiaiap.org/events/>).

Our IP Section has also done a lot to promote professional networking and participation in Bar activities. As usual, our holiday party in December was fantastic and very well attended. Our trademark and



domain name program at the State Bar Midyear Meeting brought together many members of our IP Section and non-IP practitioners for great CLE and networking. And our IP Institute, socials, lunch & learns and other section programs have been exceptional.

Looking forward, the second half of the Bar year promises to be even better!

Our 3rd Annual IP Gala and Judges Dinner will be Thursday, March 26 at the High Museum. This event brings together the IP Sections of the State Bar and the Atlanta Bar, and the Atlanta IP Inn of Court to celebrate the growth and success of the IP community in Georgia, and to recognize our honored guests from the Federal Circuit Court of Appeals, the 11th Circuit, and the Northern District of Georgia. The CLE program this year will

See *Message*, Page 2

Message, continued from Page 1

be something entirely different from the mock oral arguments we've done previously, and promises to be informative and entertaining. A networking reception, seated gourmet dinner, award of the annual IP Section scholarship, and entertainment by world-renowned singer/songwriter Callaghan (<http://www.callaghansongs.com/>) will complete this spectacular evening. Registration information will be coming soon (if not already in your email inbox).

Our IP Section has also recently launched a new Annual Sponsor program for 2015. This program helps support our section activities, and provides visibility, access and marketing opportunities for our sponsors at IP Section events for all of 2015 – including the Gala in March, the IP Institute in September, and social, networking and CLE programs throughout the entire year. Contact IP Section Chair-Elect Lauren Fernandez (laurenfernandez@gmail.com) for more information.

All of this would not be possible without the hard work and dedication of our IP Section Executive Committee, so please join me in thanking them. It's an honor to work with such a great group, and to serve as your IP Section Chair!

Brad Groff, IP Section Chair
Gardner Groff Greenwald &
Villanueva, PC
bgroff@gardnergroff.com
770-984-2300

Committee News

SPECIAL EVENTS COMMITTEE

The Special Events Committee reminds you to save the date for the IP Section's Annual Gala at Atlanta's High Museum on March 26, 2015. We are pleased to announce that judges from the Court of Appeals for the Federal Circuit are planning to join us for this year's Gala, which will include a reception, dinner, and one hour trial CLE. Click [here](#) for more details regarding this popular event!

COPYRIGHT COMMITTEE

Join fellow members of the State Bar IP Section for a fun, simple, and non-continuing-obligations pro bono opportunity this February 11 at the Georgia Lawyers for the Arts legal clinic for low-income artists. You can give from 30 minutes to four hours, at your choice, and you will be able to review materials in advance of the meeting.

This clinic is limited to copyright and trademark issues and will be held at GLA's King Plow Arts Center office from 1:30–5:30pm, in 30 minute sessions. You can volunteer for one 30-minute counseling session or stay for the

whole afternoon. GLA artist-member clients are scheduled by the GLA office. GLA will provide a detailed description of each client's legal issue in the days preceding the clinic. (Note you will not have to draft any contracts or trademark or copyright registrations.) This will be a quick, easy, and gratifying way to satisfy some pro bono hours! You are not committed to any follow-up after the clinic.

We encourage you to bring along your mentor or mentee for a collaborative pro bono afternoon!

Please email Katie Bates at dsearcy@kslaw.com (subject line: February 11) to volunteer and let us know the amount of time you can give (and specific time-slots, if necessary). Once we have volunteers and GLA coordinates artist-attendees, we will assign cases to each individual or group of lawyers.

In order to assist in the scheduling, we ask that you let us know ASAP if you want to participate in this fabulous opportunity.

(Note that if you are an in-house attorney, GLA's malpractice insurance

covers you for purposes of participation in this legal clinic.)

PRO BONO COMMITTEE

Georgia Lawyers for the Arts and the Intellectual Property Sections of the State Bar of Georgia and the Atlanta Bar Association have collaborated with the U.S. Patent and Trademark Office to establish the Georgia Patent Pro Bono Project, an innovative program to assist solo inventors, non-profits and qualifying small businesses in need of patent counsel.

In recognition of this exciting development, we invite you to join us for the Opening Ceremony for Georgia's Patent Pro Bono Project, which will be hosted by Alston & Bird on Tuesday, February 17, beginning at 5pm. [Click here](#) for further details and to RSVP. For more information regarding the Patent Pro Bono Project, including how to volunteer, visit www.gapatents.org.

See *Committee News*, Page 3

Committee News, from Page 2

**IN-HOUSE / LICENSING
COMMITTEE
&
TRADEMARK COMMITTEE**

The Georgia Bar IP Trademark and In-House Counsel Licensing Committees are planning to host a CLE covering False Advertising, with cocktail reception to follow, in April of 2015. If you would like to assist in preparing for this event, please contact Alison Danaceau (adanaceau@brawwlaw.com), Joe Staley (joe.staley@kidsii.com), or Matt Smith (matthew.smith@innovolt.com).

Alison Danaceau
404-564-7497

TRADEMARK COMMITTEE

Please join us on February 10 for a program titled “Supreme Court 2015: It’s All About the Facts,” to be held in the Bar Center auditorium from noon until 2pm. We are excited to have as speakers William B. Dyer III and Cortney Alexander, partners at Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, who will provide an overview of the Supreme Court’s recent decisions in Teva Pharm. USA v. Sandoz and Hana

Financial v. Hana Bank, and how these decisions may affect IP practice. Cost will be \$25 for members who pre-register and \$30 for nonmembers and guests. On-site registration will be \$30 for members and \$35 at the door. Lunch and 1 hour of CLE will be included. [Click here for more information and registration.](#)

PATENT COMMITTEE

We are working to schedule an early Spring CLE event focusing on patentable subject matter under 35 U.S.C. § 101 for inventions in the life sciences, electrical engineering, and computer software fields. Please stay tuned for more details, and feel free to reach out to the committee’s co-chairs if you are interested in participating in this or future events.

LITIGATION COMMITTEE

On January 9, the Litigation Committee of the IP Section hosted a three-hour CLE at the Georgia Bar Association’s Mid-Year meeting. Jim Johnson of Sutherland spoke on selecting and registering trademarks, David Lilienfeld of Lilienfeld PC spoke on likelihood of confusion and Doug

Isenberg of The GigaLaw Firm spoke on domain name disputes and generic top-level domains. More than thirty lawyers attended the event and participated in a lively discussion. The Litigation Committee also met on January 20 for lunch to discuss topics for future programs.

YLD COMMITTEE

Please Save the Dates for the following Spring YLD IP Committee Events:

Mardi Gras Happy Hour

Tues., February 17 at 7pm
(following the Georgia Patent Pro Bono Project event at Alston & Bird)

War Stories of an IP Associate

Thur., April 23

Specific details regarding these Spring events will be forthcoming. And to keep up with the latest info on upcoming YLD events, we invite you to join the YLD IP Committee listserve by contacting YLD liasons Tiffany Logan (tlogan@parks-wood.com) and/or Sonia Lakhany (slakhany@brawwlaw.com). We look forward to seeing you soon!



YLD Pro Bono Service Event

On December 6, 2014 the YLD IP Committee participated in the [Saturday Lawyers Program](#) hosted by the Atlanta Volunteer Lawyers Foundation. Members interviewed potential AVLF clients regarding a variety of claims, including landlord-tenant disputes and debt-related issues. Please join us in thanking our Section members for generously donating their time!

From left—Allen Chang, Aamir Kazi, Kevin Patrick, Couri Wolfe, and Koji Noguchi.

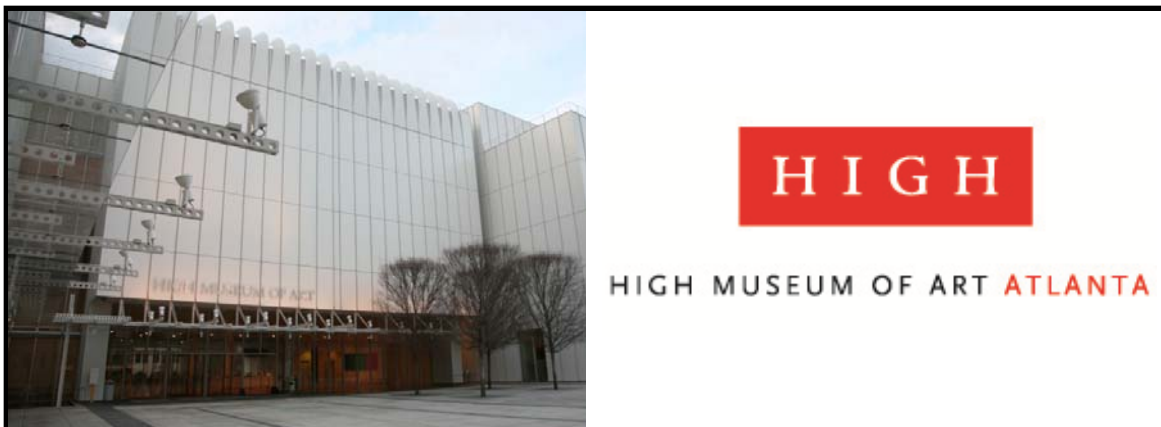
Please join us for the
3rd Annual
IP Gala and Judges Dinner



The Intellectual Property Law Section of the State Bar of Georgia, in partnership with the Atlanta IP Inn of Court, and The Intellectual Property Law Section of the Atlanta Bar Association, cordially invites you to attend the Third Annual IP Gala and Judges' Dinner on March 26, 2015, at the High Museum of Art in Atlanta Georgia.

The evening will kick off at 4pm with a CLE event, followed by a Reception at 5:30pm, and then Dinner, Presentations, and live Entertainment from 6:30 until 10pm, including the announcement of this year's \$5,000 IP Section law scholarship. We are excited that a number of federal judges are planning to attend this year's Gala, and are in the process of developing a revised CLE format that you won't want to miss! Click [here](#) for the latest information and to register, and stay tuned for further details.

Special thanks go out to our sponsors on the following page, whose generous assistance has made it possible to host this year's Gala. Remember: annual and event sponsorships are an excellent way to make a worthwhile and visible impact within the Atlanta IP community, and opportunities are still available for interested Members! For additional information, or to reserve a table for the Gala and Judge's Dinner, please contact Virginia Carron at virginia.carron@finnegan.com.



See *Gala Sponsors*, Page 5

*Member Case Note:***Deference to the District Courts:
Analyzing the Supreme Court's
decision in *Teva v. Sandoz***

BY CLARK A. D. WILSON



In patent claim construction involving extrinsic evidence, the Federal Circuit Court of Appeals must give deference to the district court and apply a “clear error,” not a *de novo*, standard of review. That is the rule now established by the U.S. Supreme Court in *Teva Pharmaceuticals v. Sandoz* (January 20, 2015). In this case, the basic dispute concerned the meaning of the words “molecular weight” in the patent claim. Specifically, the relevant patent claim describes a method of manufacturing the drug Copaxone, with an active ingredient copolymer-1 having “a molecular weight of 5 to 9 kilodaltons.” In its defense against Teva’s allegations of infringement, Sandoz argued that the patent claim was fatally indefinite because “in the context of this patent claim, the term ‘molecular weight’ might mean any one of three different things. Specifically, Sandoz argued that “molecular weight” might refer to molecular weight as calculated by: (1) the weight of the molecule that is most prevalent in the mix that makes up copolymer-1; (2) taking all the different-sized molecules in the mix that make up copolymer-1 and calculating the average weight; or (3) taking all the different sized molecules in the mix that makes up copolymer-1 and calculating their average weight while giving heavier molecules as weight-related bonus when doing so. As a reminder, 35 U.S.C. §112 Paragraph 2 requires that a patent claim particularly point out and distinctly claim

the subject matter which the applicant regards as his invention.”

The District Court, after taking evidence from experts, concluded that the patent claim was sufficiently definite. Among other things, it found that in context a skilled artisan would understand that the term “molecular weight” referred to molecular weight as calculated by the weight of the molecule that is most prevalent in the mix, option (1). On appeal, the Federal Circuit reversed, and found “molecular weight” to be indefinite. In reaching its conclusion, the Federal Circuit reviewed *de novo* (i.e., from the beginning) all aspects of the District Court’s claim construction. The Supreme Court was then asked to decide whether the Federal Circuit should defer to the patent claim construction of the District Court, or review every patent claim construction *de novo*. The Supreme Court began its discussion by explaining that Federal Rule of Civil Procedure 52(a)(6) states that a court of appeals must not set aside a district court’s findings of fact unless they are “clearly erroneous.” In fact, when reviewing the findings of a district court sitting without a jury, appellate courts must constantly have in mind that their function is not to decide factual issues *de novo*. And, as explained by the Supreme Court, their opinion in *Markman v. Westview Instruments*, 517 U.S. 370 (1996), did not create, or even argue for, an exception to

Rule 52(a)(6) in patent claim construction issues.

The majority opinion concludes that patent claim construction is better matched to a judge’s skills, and not those of a jury. For this reason, patent claim construction has been properly treated as a question of law in the same way that written instrument (e.g., deeds, contracts, or tariffs) construction is treated. For example, when a written instrument uses technical words or phrases not commonly understood, those words may give rise to a factual dispute to be evaluated using subsidiary extrinsic evidence. Similarly, patent law is a field where so much depends upon familiarity with specific scientific problems and principles not usually contained in the general storehouse of knowledge and experience. So, a district court judge who has presided over, and listened to, the entirety of a patent claim construction proceeding has a comparatively greater opportunity to gain that familiarity than an appeals court judge who must read a written transcript or perhaps just those portions to which the parties have referred. Consequently, this factual determination must be reviewed for “clear error” by the Federal Circuit.

The Supreme Court did not stop there though. They also described how this rule must be applied when the

See *Case Note*, Page 6

Case Note, continued from Page 5

Federal Circuit reviews subsidiary fact finding in patent claim construction. All agreed that when the district court reviews only evidence extrinsic to the patent (i.e., claims, specification and prosecution history), the judge's determination will amount solely to a determination of law, and the Federal Circuit will review that construction *de novo*. Alternatively, when the district court is asked to look beyond the patent's intrinsic evidence, and to consult extrinsic evidence, the Federal Circuit must find that the judge, in respect to those factual findings, has made a clear error in order to overturn the judge's resolution. As a result, the Supreme Court ruled that the Federal Circuit should have accepted the District Court's findings unless they were "clearly erroneous," and failing to do so, the Federal Circuit was wrong.

Accordingly, the fact finder role of the District Court has become even more important in the context of patent claim construction involving extrinsic evidence. *Markman* hearings will undoubtedly become more carefully scrutinized now, knowing that there is a limited chance that the Federal Circuit will reverse the district court's claim construction. This will likely lead to more venue shopping into courts with significant patent experience, and away from those which traditionally just expect to be overturned by the Federal Circuit. For this reason, in order to avoid indefiniteness, patent applications need to be well crafted with extensive explanation of key terms.

Justices Thomas and Alito presented a dissenting opinion that was very philosophical, rather than practical. It is an interesting read if you like historical and interpretative context.



Clark A. D. Wilson is Senior Counsel at Merchant & Gould. His practice focuses exclusively on patent and trademark matters. Clark maintains a blog: MedicalDevicePatentCounsel.com, and can be reached at cwilson@merchantgould.com.

2015 AIPLA Moot Court Competition—Help Needed!

The American Intellectual Property Law Association (AIPLA) has created and launched a new Southeastern Regional Competition of its prestigious Giles S. Rich Memorial Moot Court Competition for law students. The Southeastern Regional Competition will be held in Atlanta on March 13–14, 2015, at the U.S. District Court for the Northern District of Georgia. The top two teams from each of the five regional competitions will advance to the national finals in Washington, D.C., where they will be judged by federal judges at the U.S. Court of Appeals for the Federal Circuit.

Alexis Simpson, an attorney with Troutman Sanders LLP, was instrumental in bringing the regional competition to Atlanta, and has been selected as the Southeastern Regional Director.

The success of this competition will depend upon the continued support of the Atlanta IP community, and there is a particular need for volunteers to serve as judges and brief graders. If you are interested in helping out, or if you have any questions, please contact Alexis Simpson (404-885-3098 or alexis.simpson@troutmansanders.com). We hope you will join us in spreading the word about this exciting event, and wish our local teams the best of success!

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Upcoming Events

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noon-2pm

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April, 2015

**False Advertising CLE &
Cocktail Reception**

2014-2015 IP Section Executive Committee



From left – Clark Wilson, Katie Bates, Chris Glass, Arvind Reddy, Alan White, Lauren Fernandez, Brad Groff, George Medlock, Jim Johnson, Virginia Carron, Rich Miller, and David Lilenfeld. *Not pictured* - Brent Bellows, Suzanne Werner, Alison Danaceau, Jonathan Olinger, Matt Smith, Joe Staley, Rivka Monheit, Sonia Lakhany, and Tiffany Logan.

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