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IP Buzz

THE LATEST INTELLECTUAL PROPERTY NEWS AND TIPS FROM VENABLE


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## IP LEGAL NEWS AND UPDATES

### Patent Reform: It's Alive!

Authors: [Jeffri A. Kaminski](#), [Christopher J. Kim](#) and [Kerri Patterson\\*](#)

When Senator Patrick Leahy (D-Vt.) announced on May 21, 2014 that he was pulling patent reform off the agenda of the Senate Judiciary Committee, commentators were quick to pass judgment: "Patent reform is dead." These reform efforts were meant to address the growing concern over patent assertion entities (PAEs) or non-practicing entities (NPEs), better known by the more pejorative nickname "patent trolls." However, some hope remains for the ongoing legislative effort to solve PAE litigation issues. Patent reform may have been tabled in the Senate Judiciary Committee, but two patent reform bills are still alive in Congress. Both bills aim to prevent abusive practices by targeting illegitimate patent demand letters.

[Click here](#) to learn more about the current state of patent reform.

*Kerri Patterson is a summer associate and not licensed to practice.*

### Nautilus: New Test, Same Application?

Authors: [Trent B. Ostler](#), [George L. Howarah](#) and [Robert Kinberg](#)

In anticipation of *Nautilus v. Biosig*, many expected that the Supreme Court would relax the Federal Circuit's so-called insolubly ambiguous test for determining definiteness. Under the Federal Circuit's test, patents had been notoriously difficult to invalidate as indefinite – even if the patent had ambiguous claims. The Supreme Court in *Nautilus* ultimately crafted a new definiteness test, which arguably will make it easier to invalidate patents. However, a closer look at the decision and oral argument shows that the Supreme Court's decision may have only relabeled the test while maintaining the application of the Federal Circuit's test.

[Click here](#) to read more about the "new definiteness test."

### Supreme Court Opens Door to Food and Beverage Label Challenges Under Lanham Act

Authors: [David D. Conway](#) and [Martin L. Saad](#)

The United States Supreme Court paved the way on June 12 for competitors to challenge FDA-regulated food and beverage labels under the Lanham Act. The Court's opinion in *POM Wonderful LLC v. The Coca-Cola Co.*, is the latest chapter in a long-running feud between POM Wonderful and Coca-Cola. The dispute arose in 2008 when POM accused Coke of mislabeling one of its fruit juice blend products with the prominent title "pomegranate blueberry," even though the product allegedly consisted mostly of less expensive apple and grape juices. Coke had successfully persuaded the Central District of California and the Ninth Circuit that POM's Lanham Act claims were precluded by the Federal Food, Drug, and Cosmetic Act and attendant FDA regulations addressing the labeling of fruit juice blends; the Supreme Court disagreed.

[Click here](#) to learn more about the effects on food and beverage labeling.

### Alice Corp. v. CLS Bank: Another Unpatentable Business Method Patent

Authors: [Michael A. Sartori](#) and [Trent B. Ostler](#)

On June 19, 2014, the Supreme Court unanimously decided *Alice Corp. v. CLS Bank Int'l.*, holding that the claimed computer-implemented business method did not recite patent-eligible subject matter. The *Alice* decision examines the subject matter eligibility of computer-related patents and is the latest since *Bilski v. Kappos* to review the abstract idea exception to patent subject matter eligibility. The decision applies a two-part test to determine whether a patent claim falls under the abstract idea exception.

[Click here](#) to read the details of this decision.



## **Supreme Court Aiding Fight against Patent Trolls: *Alice*, *Nautilus*, *Limelight*, *Octane Fitness* and *Highmark***

Authors: [Michael A. Sartori](#), [Adam R. Hess](#) and [Trent B. Ostler](#)

The Supreme Court decided five patent cases this term: *Alice Corp. v. CLS Bank Int'l*; *Biosig v. Nautilus*; *Akamai v. Limelight*; *Octane Fitness v. Icon Health*; and *Highmark v. Allcare*. While the Supreme Court's motivation for the upswing in patent activity is unclear, the Supreme Court unanimously decided all five patent cases, which appear to have a substantial impact on patent trolls. In particular, *Alice* limits subject matter eligibility; *Nautilus* limits indefiniteness; *Limelight* limits induced infringement; and *Octane Fitness* and *Highmark* expand a successful party's ability to collect attorney fees. As such, the Supreme Court appears to be signaling its willingness to help curtail patent troll litigation.

[Click here](#) to learn more about how these cases can affect future patent troll cases.

### **IP Buzz – Post Grant Practice Edition**

Earlier this month, Venable issued its monthly edition of *IP Buzz* focused on *inter partes* litigation.

[Click here](#) to view the latest issue.

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## **ANNOUNCEMENTS AND REMINDERS**

### **Venable Is Pleased to Welcome David M. Klecyngier to the Firm**

David joins us as a Patent Agent after just completing his MS in Patent Law from the University of Notre Dame. David's undergraduate degree is in Chemistry from Hiram College. He is conversant in German, French, and Polish.

### **Annette K. Kwok Named to the *Lawyers of Color* Second Annual Hot List 2014**

[Annette K. Kwok](#) was named to the *Lawyers of Color* Second Annual Hot List 2014. The list lauds early-to mid-career attorneys excelling in the legal field. Annette was selected, among many fine candidates nationwide, based on nominations submitted by mentors, peers, and colleagues. Nominees' achievements and participation in diversity initiatives also informed the decision-making process. *LOC* has been recognized by the American Bar Association, National Black Law Students Association, and National Association of Black Journalists and has a core readership of 35,000.

### ***World Trademark Review* Quotes Andrew D. Price on REDSKINS Trademark Case**

*World Trademark Review*, in a June 19, 2014 blog post, quoted Venable partner [Andrew D. Price](#) on the implications of the recent Trademark Trial and Appeal Board (TTAB) decision that six federal trademark registrations of the Washington Redskins NFL team must be cancelled for being "disparaging toward Native Americans."

Price said that if the TTAB decision is upheld on appeal, "this case could incentivize the use of trademark law to try to 'right' perceived social wrongs that are communicated through brands."

### **Eight Venable lawyers ranked as local and national IP Stars by prestigious *Managing Intellectual Property Magazine*; Four also ranked in the *WTR 1000*, The World's Leading Trademark Professionals, by *World Trademark Review (WTR)***

*Managing IP*, a leading source of news and analysis on all intellectual property developments worldwide, has ranked eight Venable Attorneys as IP Stars for 2014. All eight were ranked both as local and nationwide stars. Most of these are repeats from last year's nominations. Venable was also listed as a Recommended Firm in DC for Trademark Prosecution and Contentious Trademark, Highly Recommended in Maryland for IP, and ranked nationally for trademark prosecution. This last ranking was also included in the global edition of *IP Stars*. In the comments, *Managing IP* notes that "The firm is especially renowned for a stellar trademark prosecution practice."

The trademark practice has also been recognized yet again in the influential 2014 Edition of *WTR 1000*, The World's Leading Trademark Professionals. Venable was ranked in the Silver tier for Prosecution and Strategy and the Bronze tier for Enforcement and Litigation in the competitive Washington, DC Metro Area. *WTR* noted "Venable has an impressive bench of practitioners who execute trademark strategy flawlessly."

The individual Venable partners recognized are:

*Managing IP*

**Roger A. Colaizzi**  
**William D. Coston**  
**Jeffrey A. Dunn**  
**James E. Gray**  
**Mark B. Harrison**  
**David J. Heubeck**  
**Michael B. MacWilliams**  
**Janet F. Satterthwaite**

WTR

**Mark B. Harrison** (Silver, Prosecution and Strategy)  
**Justin E. Pierce** (Silver, Prosecution and Strategy; Bronze, Enforcement and Litigation)  
**Andrew D. Price** (Silver, Prosecution and Strategy)  
**Janet F. Satterthwaite** (Bronze, Prosecution and Strategy)

**Marcella Ballard Speaks on "Trademarks and Brand Protection Panel" at MasterCard Headquarters**

**Marcella Ballard** spoke on a panel titled "Trademarks and Brand Protection" for the Westchester/Southern Connecticut Chapter of the Association of Corporate Counsel (WESFACCA) event at MasterCard Headquarters on June 6, 2014. Topics covered included filing strategies and brand protection pointers for global programs, trends and best practices in brand protection, and trademark tips for filings in China.

**Lunch Panel on "Successfully Navigating AIA Trials"**

Monday, July 14, 2014 | 12:00 - 2:00 p.m. ET  
Venable LLP's Washington Office, Multipurpose Room

Venable, in partnership with the Bar Association of the District of Columbia, will present a lunch panel on practice tips for successfully using AIA trials. Panelists will include Administrative Patent Judge at the Patent Trial and Appeal Board Brian Murphy, Proctor & Gamble Senior Counsel of Intellectual Property Mark Charles, PTAB expert and consultant Oliver Ashe, and Venable partner **Adam R. Hess**.

[Click here](#) to register.

**Save-The-Date: Venable IP Symposium**

Wednesday, September 10, 2014 | 12:30 - 6:00 p.m. ET  
Venable LLP's Washington Office, Multipurpose Room

On September 10, Venable's Intellectual Property Division will hold its inaugural IP Symposium. Venable IP attorneys will be joined by distinguished guest speakers for a half-day event in our Washington, DC offices. We'll kick off with a keynote luncheon, followed by panel discussions on current trends in IP law and strategies for settling a case favorably, and we'll end the day with drinks on the rooftop. The IP Symposium is complimentary and CLE credit will be available. We hope you will join us!

[Click here](#) for early registration.

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