



# BOSTON PATENT LAW ASSOCIATION NEWSLETTER

Serving the  
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June 2006

EDUCATION, SERVICE, COMMUNITY

Volume 37, Issue 2

## BPLA Annual Judges Dinner and Dinner Dance a Smashing Success *A President's Message by Ingrid Beattie*

After a week of heavy rains and the worst flooding in 70 years, the skies cleared for the 82<sup>nd</sup> Boston Patent Law Association's Annual Judges Dinner. The dinner dance event was held on the evening of May 19, 2006 at the John Joseph Moakley Federal Courthouse. The dinner dance concept was a departure from at least a decade of Judges Dinners. However, I was reminded by more than a few members that a formal dinner with dancing thereafter was the ticket long before I joined up with the BPLA. I too love to dance but due to a bicycle accident on my morning commute to work on a sunny April morning, my dancing on May 19 was not to be. I was so pleased to see couples out on the dance floor enjoying the band!

We were pleased to enjoy the company of a number of judges at that night. Among the honored guests were the following judges: Honorable John M. Greaney, Honorable Nathaniel M. Gorton, Honorable Edward F. Harrington, Honorable Marianne B. Bowler, Honorable Reginald C. Lindsay, Honorable Kenneth P. Neiman, Honorable Rya W. Zobel, and Honorable George A. O'Toole, Jr. Also in attendance were several Past Presidents of the BPLA: David Conlin ('81-'82), Steven Henry ('85-'86), George Neuner ('88-'89), Greg Williams ('95-'96), Tim French

('97-'98), Walter Dawson ('98-'99), Tom Engellener ('00-'01), Bill Gosz ('01-'02), and Doreen Hogle ('04-'05). I want to extend a special thanks to Tim French who was instrumental in getting me involved with BPLA Board of Governors nearly ten years ago. The 170 guests were treated to a spectacular view of the city, an exquisite dinner, an entertaining and provocative address by keynote speaker Dr Alan Lightman, and dancing to the White Heat Swing Orchestra. I also wish to thank all those who made the Judges Dinner an incredible success, including Paula Bramwell, Raquel Gomez, and Tiffany Brown, as well as my daughter and mother who offered gracious greetings to guests.

The evening's keynote speaker, Dr.

Alan Lightman, is an accomplished physicist, educator, novelist, and poet. Dr. Lightman spoke about the nature of creativity and walking the line between science and art in his talk entitled "*The Physicist as Novelist*". I first became acquainted with the work of Alan Lightman through his most recent book, *The Discoveries: Great Breakthroughs in 20<sup>th</sup> Century Science* (Nov. 2005), a nonfiction account of inventions that changed our world. Not only is Dr. Lightman a prolific writer of books on science, he is also known for his many works of fiction, such as the critically acclaimed *Einstein's Dreams*.

The first half of this year's BPLA calendar has been filled with numerous educational events presented both by



*Ingrid Beattie, BPLA President  
Alan Lightman, Invited Speaker  
Lee Bromberg, BPLA President-Elect*

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**Presidents Message**

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standing committees and as collaborative efforts with other legal organizations. The Committee on Contested Matters, co-chaired by Donna Meuth, Susan Glovsky, and Mike McGurk, has been very active, kicking off the year on January 25 with a panel discussion entitled "Unlocking The Mysteries of Interference Law and Practice" and presenting a second program entitled "The Insider's View from the Trial Division at the Board of Patent Appeals and Interferences" on June 7. Other programs on this year's agenda have included the Giles Rich Moot Court 2006 Competition on March 10-12, a patent valuation seminar hosted by the Computer Law Committee on March 16, a program titled "Patent Appeals and Petition Practice" hosted by the Patent Office Practice Committee on April 7, a review of recent CAFC decisions on damages hosted by the Licensing Committee on April 18, a tutorial on claims drafting and construction hosted by the Young Lawyers and

Law Students Committee on April 21, and a seminar entitled "Patent Trolls – Fairy Tale or Real Danger?" co-sponsored by the BPLA and the Boston Bar Association on April 24. On May 6, BPLA board member Stephana Patton, acting on behalf of our Boston Patent Law Foundation subsidiary, presented an award to two outstanding high school science students at the Massachusetts State Science Fair held at MIT.

Furthering our collaboration with the Suffolk University Law School, the BPLA co-sponsored a stimulating interdisciplinary program entitled "Stem Cells – Science, Law, and Business". The day-long event began with a science primer on stem cells from Dr. William Lensch of Children's Hospital, followed by a "point/counter-point" perspective from a patent attorney and a supervisory patent examiner, and a view of the university technology transfer offices of MIT and Harvard. A moving luncheon address was given by Gareth Cook, science writer for The Boston Globe and 2005 Pulitzer Prize Winner for his coverage of

the Stem Cell Debate. The program concluded with a comparison of the states' views on stem cell research, that are proponents of research and those who ban research. Following the survey of state positions, a view from the business and venture capital community regarding investing in stem cell technology was given. The program was informative, enlightening, and timely, given the recent announcement by Children's Hospital and Harvard University to go forward with their stem cell research initiative.

As we ease into summer, the BPLA will also collaborate with the American Bar Association to co-sponsor the ABA Intellectual Property Law 2006 Summer Conference to be held here in Boston on June 21-24.

On a final note, the members of the Board and the Website Committee, co-chaired by Neil Ferraro and Joe Maraia, have been working tirelessly to implement a system by which members can pay for events online by credit card. Stay tuned for the roll-out this summer!



**Attendees at Judges Dinner**

*Top Row: (l) Tom Saunders, Cheryl Lindsay, & Hon. Reginald C. Lindsay; (r) Tom Engellenner & Greg Williams*

*Bottom Row: (l) Paul Hayes, Greg Madera, Audrey Madera, & Ingrid Beattie; (r) Dancers to the White Heat Swing Orchestra*





*Pictures by FayFoto*

**Annual Judges' Dinner Attendees**

**Top Row:**

*(l) Amy Turley, Kyle Turley, & Thomas Arria  
(r) Lesley Hamlin & Grant Huston*

**Second Row:**

*(l) Jan D. Neiman, Hon. Kenneth Neiman, & Sibley Reppert  
(r) Brian Hazzard, Lisa Swiszc Hazzard, Peter Manus, & Kathryn Piffat*

**Third Row:**

*(l) Ann Lamport Hammitte, & Emily Berger  
(r) Stephana Patton, Mark Solomon, Deirdre Sanders*

**Bottom Row:** *Doreen Hogle, Sandy Brockman-Lee, Mary Dawson*



**Visiting Russian Judges Question Public Interest in US Patent Law**  
*By Keith Toms, Bromberg & Sunstein LLP*

During the week of May 15, the Boston legal community played host to a group of judges and legal scholars from Russia. These Russian legal professionals made the trip to Boston as part of a program sponsored by the U.S. State Department, the John W. McCormack Graduate School of Policy Studies at U. Mass. Boston, and the Massachusetts Judges Conference. While here, they met with area judges, lawyers, and legal scholars to discuss western approaches to topics such as intellectual property rights, judicial independence, and the role of alternative dispute resolution.

The Russian group attended a workshop on U.S. intellectual property law presented by Lee Bromberg, Lisa Tittlemore, and Keith Toms of Bromberg & Sunstein LLP. Jerry Cohen of Burns & Levinson LLP also participated. A lively discussion of the IP rights recognized by the American legal system and the administrative framework that supports it was punctuated by frequent questions and critical comments by our Russian visitors. A detailed discussion of the legality of user-created cell phone ring tones, which is currently a hot issue in Russia, formed part of an extensive exploration of copyright law issues.

During the presentation, our Russian visitors showed particular interest in the recent deluge of patent cases that the Supreme Court has taken up. The central theme of their questions, however, focused on the role of the public interest in the patent system.

In a civil law legal system, such as the Russian judicial system, past precedents are accorded little weight. Thus, to the visiting legal professionals, it seemed odd that the highest court in the land would delve into a private dispute (such as that between eBay and MercExchange) over a technology that does not directly impact the public interest. Conversely, they also found it odd that the patent law did not have an explicit blanket exception for the public interest and the interests of justice, as in their civil code, to account for cases in which the patented technology does directly impact the public interest.

In the conversation that followed, an interesting difference emerged between the American and Russian way of thinking about the relationship between the public interest and the patent system. In the American system, the general public interest in a patent system trumps the public's interest in specific technologies. That is, the public interest in individual patent cases is generally subsumed by the overriding policy that the public is best served by securing the inventor's exclusive right to his invention. The Russian approach, however, as presented by our Russian visitors, is less committed to the general principle that patents are in the public interest and thus is more willing to ask whether the public has an interest in the technology at issue in individual cases. Their concern about the absence of an explicit public interest factor to consider in every case was not allayed by American assurances that principles used to decide disputes between private parties became legal guideposts for relationships between thousands of others. The clash between the common law system and the civil code system made for stimulating discussion, with breathless assistance from simultaneous translators provided by the State Department.

***Judges Dinner  
Attendees***

*Top Row:*

*(L) David Brook &  
Steve Henry  
(R) Hon. John Greaney  
& Susan Greaney*

*Bottom row:*

*(L) Hon. Rya Zobel,  
Mark Freeman, Sarah  
Chopin Columbia, &  
James Finke*

*(R) Lee Bromberg &  
Hon. Marianne Bowler*





## A VIEW FROM THE TRIAL DIVISION

By Donna M. Meuth, WilmerHale

The Contested Matters Committee held a meeting on June 7, 2006, at The Wine Cellar of the XV Beacon Hotel, Boston. The featured speaker for the meeting was Administrative Patent Judge Richard Torczon, a member of the Trial Division of the Board of Patent Appeals and Interferences. Judge Torczon's talk addressed two topics, The Evolution of the Trial Division and Contested Cases.

Judge Torczon provided an overview of the Board structure. The Board is divided into two sections – the ex parte appeals group and the Trial Division. The ex parte appeals group is divided by technology into biotech, chemical, electrical and mechanical/business methods divisions. The Trial Division is divided into two sections, the Merits Section and the Procedures Section. The Trial Division is responsible for all contested cases, including interferences and Government ownership, as well as appeals for reissue applications, reexaminations (ex parte and inter partes) and applications with interference related issues (e.g., §135(b) bars, estoppels). It is anticipated that the Trial Division will also handle Post Grant Review, should that come into existence. Judge Torczon made the first public announcement of the Trial Divisions new telephone number – (571) 272-INTF – and also provided helpful lists of Who's Who at the Board.

Significant changes were made to create the Interference Division of the Board in 1985. This group was reformed to create the Trial Section in 1998. The Trial Section was created to address the substantial backlog in both appeals and interferences pending before the Board. This backlog was eliminated by 2005. In response to the elimination of the backlog and the proposals of a Post Grant Review, the Board evaluated itself once again and created the Trial Division. One focus of the Trial Division is considering how it will address Post Grant Review, should it be enacted.

Judge Torczon then addressed the topic of Contested Cases, focusing on Interferences. The structure of an Interference was first provided, which includes (1) Declaration; (2) Motions Practice; (3) Priority Contest; and (4) Judgment. Judge Torczon described the importance of the Declaration in shaping the remainder of the case, including certain rebuttable presumptions and burdens of proof. The Declaration establishes the presumption of who will win. For example, the Senior Party is presumed to win on priority. In fact, the Senior Party does win about 70% of the cases in which a priority case is made (though only 13% of cases actually address priority on the merits). One of the key features of the Declaration is what is the Count. The Count will determine the scope of admissible evidence, whether benefit of an earlier application will be given and what the claims at issue will be. In general, the Board is declaring interferences with more narrow Counts, and allowing parties to file motions showing that a broader Count is more appropriate.

Judge Torczon provided very helpful advice for applicants seeking to provoke an interference. First, clean up the application, e.g., file any disclaimers, correct inventorship, divide out separately patentable claims and file certified translations. It is much easier to make these changes during ex parte prosecution than when the other party to the interference is opposing any action. Second, the applicant should assist the Examiner in setting up the interference. Because the initial structure of interference establishes certain presumptions and burdens of proof, it is a tremendous advantage to set up the interference with the requestor as the Senior Party. Judge Torczon also advised a simplistic approach of using an application with a single claim to provoke the interference. That claim should be one the clearly interferes and for which the application provides enablement and written description support. For the interference to be declared, examination must otherwise be complete except for the existence of interfering subject matter. This is much easier to do for a single claim than for many claims.

The next phase of the interference is Motions Phase. Each party is given the opportunity to attack the presumptions created by the Declaration of the interference. For example, whether an interference-in-fact exists may be attacked. Whether the claims of the opposing party are patentable may also be attacked. The scope of the Count, entitlement to benefit of an earlier application and claim correspondence are also grounds for attack. According to Judge Torczon, the Motions Phase is the opportunity for each party to set up the Priority Phase to their benefit. One of the primary mistakes he sees in cases is that a party does not think ahead and use the Motions Phase to set up the Priority Phase.

The Priority Phase changed greatly when the Rules were rewritten in September of 2004. Priority is now presented by motion. Contrary to past practices of putting in an enormous volume of evidence and not having to explain the evidence until much later in the case, motions are now be filed early in the Priority Phase to explain the evidence and why a party is entitled to priority based upon that evidence. This is seen to be a much more efficient and fair presentation of the evidence. A priority motion is limited to thirty pages, with additional appendices such as diligence charts allowed.

The final step in the interference is that the Trial Division will issue a Judgment. The importance of the Judgment is that it determines who is entitled to a patent on the subject matter at issue. An adverse decision provides two effects. First, it provides the finality needed for judicial review of the Trial Division's decision. Second, it provides the scope of the estoppel against the losing party. Both substantive (e.g., what subject matter is patentable to a party) and procedural (e.g., what additional actions a party may take) estoppels are created.

Judge Torczon also highlighted that interferences do not run the same as ex parte prosecution and parties should not have the same expectations when in an interference. For example, the grant of extensions of time are extremely rare. The mandate of the Trial Division is to decide an interference within two years of its Declaration. This does not give much time to complete all the necessary steps. A conference call with the Administrative Patent Judge is scheduled shortly after Declaration. During the call, if a party knows of other commitments, such as a scheduled trial, these should be brought to the Judge's attention as early as possible and factored into the initial interference schedule. Interferences are also extremely rule specific. There is a limited opportunity to correct or amend papers to comply with the rules. Those rules should thus be studied and closely followed. It should also be kept in mind that the movant has the burden of proof. The default position is that the motion should be denied. A party thus must establish a basis for the motion to be granted. Meeting that burden often involves expert testimony as attorney argument will not be sufficient for many of the issues raised by motions. Finally, it is important to note that the Federal Rules of Evidence apply to interferences, as in district court litigation.

Judge Torczon further highlighted some important changes to the new Standing Order issued by the Board January 4, 2006. This Standing Order is a lengthy document that sets forth procedural requirements for interferences in addition to the rules. This Standing Order was made in part to follow more closely with the rules as amended in September 2004. As set forth in the Standing Order, electronic filing is now the default for all interferences. The pilot program of electronic filing was very successful and favored by the Bar. Currently, the Board is considering how to put those papers into a PAIR-type system, as exists for ex parte prosecution. Formatting and appendix requirements for motions are also described. The Standing Order can be found at <http://www.uspto.gov/web/offices/dcom/bpai/Standing Order.pdf>.

**TWO WAYS TO SHUT DOWN A CYBERSQUATTER**

*By John F. Ward, Bromberg & Sunstein LLP*

Disputes over the ownership and use of internet domain names are on the rise. According to the World Intellectual Property Organization, instances of domain name disputes increased 20% from 2004 to 2005 alone. It is common in such cases for someone – a Cybersquatter – to register a domain name containing another’s trademark and to operate a web site masquerading as the trademark owner. In the most extreme cases, the Cybersquatter’s site contains copyright protected photos and text lifted directly from a trademark owner’s site. This article touches on several points to consider when a trademark owner is confronted with such a situation.

Almost always, Cybersquatters are motivated by the possibility that people searching for the trademark owner’s site will land on the Cybersquatter’s counterfeit site. Once on that site, the misdirected web viewers can earn the Cybersquatter a “click through” fee by viewing the advertisement links invariably located on that site. As the Cybersquatter is enriched, the trademark owner is damaged when web traffic is wrongfully diverted to the copycat site.

Fortunately, a motivated trademark owner can often shut down a Cybersquatter’s infringing site and/or gain ownership of a wrongfully registered domain name. If the Cybersquatter’s website contains copyright protected materials lifted from the trademark owner’s website, which is often the case, the trademark owner can take advantage of the “take down” provision of the Digital Millennium Copyright Act (“DMCA”). Under the DMCA’s “take down” provision, the trademark owner can write to the Cybersquatter’s Service Provider, (the company that controls access to the Cybersquatter’s website), put it on notice of the infringing web site, and demand that the site come down.

If the Service Provider takes down the Cybersquatter’s site as a result of such a “take down letter,” it insulates itself from a charge of copyright infringement. Thus, Service Providers are generally willing to cooperate when they receive a DMCA take down letter. Indeed, a follow-up phone call can motivate a Service Provider to disable access to an infringing web site within hours. Events can move so swiftly that a trademark owner is wise to make an archive copy of the Cybersquatter’s website before sending the take down letter, while the site is still on the web.

While forcing a Cybersquatter’s website down is an important victory, the trademark owner should also consider filing proceedings under the arbitration process known as the Uniform Dispute Resolution Policy (“UDRP”) proceedings to gain ownership of the Cybersquatter’s domain name. Such proceedings

may be filed on-line with the World Intellectual Property Organization (“WIPO”), or another authorized arbitrator and are heard by a panel comprised of one to three members. If the trademark owner prevails in the UDRP proceeding, the panel will order the Cybersquatter’s domain name registrar (the company who maintains the Cybersquatter’s domain name) to transfer the infringing domain name to the trademark owner.

The trademark owner must establish three elements to prevail in a UDRP proceeding. First, it must establish that the Cybersquatter’s domain name is confusingly similar to the trademark owner’s more senior trademark. The Cybersquatter’s domain name will be found confusingly similar if it contains the trademark owner’s mark, or a close approximation. If the trademark is not registered, seniority and ownership are best established through a declaration from the trademark owner and specimens of use.

Second, the trademark owner must establish that the Cybersquatter has no legitimate interest in the domain name. This point may be established in a number of ways, including through a declaration from the trademark owner stating that the Cybersquatter has no authority to use the trademark in its domain name. In addition, it is well established that the use of a domain name to divert web traffic, as discussed above, does not give rise to a legitimate interest.

Finally, the trademark owner must establish that the Cybersquatter’s domain name was registered and is being used in bad faith. Establishing bad faith is commonly the most challenging part of a UDRP proceeding. Bad faith is readily apparent when a Cybersquatter operates a copycat site and the trademark owner is able to provide the UDRP Panel with a side-by-side comparison of the sites. Thus, obtaining an archive copy of the Cybersquatter’s website is a must.

In more difficult cases, bad faith can be established by other means. One way is to demonstrate that the Cybersquatter provided false contact information to its domain name registrar. The Cybersquatter’s contact information is readily available in the “WhoIs” listing publicly available on the website of the Cybersquatter’s domain name registrar. The accuracy of that information is easily tested by writing the Cybersquatter. Such letters are often returned as undeliverable, which is evidence that the Cybersquatter provided an alias to its registrar. A UDRP panel will likely consider the Cybersquatter’s use of false contact information as evidence of bad faith.

The recent sharp increase in domain name disputes is a reminder that Cybersquatters remain a problem for trademark owners and others who operate on the web. The “take down” provision of the Digital Millennium Copyright Act and the Uniform Dispute Resolution Policy, however, provide powerful tools to combat Cybersquatters.

**BPLA SUMMER OUTING AT FENWAY PARK**

***BOSTON RED SOX V. BALTIMORE ORIOLES***

Please join us at Fenway Park on Friday evening, August 11, 2006, for the BPLA’s annual summer outing. This year we have purchased a block of tickets to watch the Boston Red Sox play the Baltimore Orioles on Boston’s home turf. Tickets are available for \$23 (bleachers) or \$27 (outfield grandstand) plus shipping (\$20 per order), and can be requested by contacting: Paula J. Bramwell, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center | Boston, MA 02111, Phone: 617.348.4950 Fax: 617.542.2241 E-mail: [pjbramwell@mintz.com](mailto:pjbramwell@mintz.com).

**DODGING A BULLET – GETTING OUT FROM UNDER YOUR OWN ART IN AUSTRALIA**

*By Bill Bennett, Pizzey's Patent & Trademark Attorneys, Australia*

It is not unusual for an inventor to make an improvement or modification to an invention subsequent to the first publication of the invention, and it is often the case that the improvement or modification is of marginal patentability over the original or "main" invention.

The availability of a grace period under US law has meant that it may still be possible to pursue protection for the improvement or modification, provided that a US application directed to the improvement or modification is filed within 12 months of the publication of the main invention.

However, problems often arise when seeking corresponding protection for the improvement or modification in foreign jurisdictions. Specifically, it is not unusual in foreign jurisdictions to have a situation arise in which the main invention is cited as prior art against the improvement or modification. This article offers a solution that is available in Australia when such a situation arises.

Overcoming an Obviousness Rejection Based on Applicant's Own Publication

It is, of course, preferable to traverse the obviousness rejection if possible. However, assuming this is not possible the solution is to convert the later Australian application (which is directed to the improvement or modification) to be a "Patent of Addition" based on the earlier Australian application/patent (which is directed to the "main" invention).

The relevant provision<sup>1</sup> reads as follows:-

*Where:*

- (a) patent for an invention (in this Chapter called the main invention) has been applied for or granted; and*
  - (b) the applicant or patentee (or a person authorised by the applicant or patentee) applies for a further patent for an improvement in, or modification of, the main invention; and*
  - (c) the application for that further patent is made in accordance with the regulations;*
- the Commissioner may, subject to this Act and the regulations, grant a patent of addition for the improvement or modification.*

Importantly for the present scenario, it is further provided<sup>2</sup> that:-

*Objection cannot be taken...in respect of an application for a patent of addition, and a patent of addition is not invalid, merely because the invention, so far as claimed, does not involve an inventive step, having regard to the publication or use of the main invention during the prescribed period.*

"Prescribed period" is defined<sup>3</sup> as follows:-

*The prescribed period is the period that commences on the priority date of the claim of the specification of the main invention and ends immediately before the priority date of the relevant claim of the specification of the patent of addition.*

The result is that publication of the main invention in the window of time between the priority date of the main Australian application/patent and the priority date of the later Australian application is excluded from the prior art base for the purpose of assessing obviousness.

Thus, in essence, the main invention ceases to be prior art, for obviousness, against the improvement or modification. The *quid pro quo* is that the term of the Patent of Addition is tied to the term of the main patent, and some patent term will be sacrificed in adopting this strategy.

Note that there is no restriction on when an application (or patent) may be converted from a normal application (or patent) to a Patent of Addition. Thus, the conversion may be made during the prosecution of the later application in response to a rejection based on the publication of the main invention. The only restriction on timing is that the initial or "main" application (or patent) must be in force at the time that the later application (or patent) is converted to be a Patent of Addition.

A small collateral benefit for the applicant resides in the fact that no maintenance fees are payable in relation to a Patent of Addition. The Patent of Addition is deemed to be maintained as long as the main Patent is maintained. In the event that the main patent is later abandoned or revoked, maintenance fees will again become payable in relation to the Patent of Addition. However, the term of the Patent of Addition remains linked to the term of the main patent and the forfeited term is not regained.

A Patent of Addition need not be more limited in scope than the main Patent. Put differently, the claims of the Patent of Addition need not be within the scope of the claims of the main Patent. Thus, a Patent of Addition may be used to broaden the scope of the main Patent. In a most extreme example, the Patent of Addition could be broader than the main Patent by complete omission of a claimed feature, with the omission constituting the improvement or modification. Having said that, it should be borne in mind that the improvement or modification will still need to be novel over the main invention, and it may be difficult to make an argument that the broader claim is not anticipated by the publication of the main invention.

Summary

Converting the later Australian application to be a Patent of Addition has the effect of disqualifying the publication of the main invention as prior art for the purposes of assessing the obviousness of the improvement or modification.

The *quid pro quo* is that there will be some loss of patent term.

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<sup>1</sup>Section 81

<sup>2</sup>Section 25

<sup>3</sup>Regulation 2.4

<sup>4</sup>see *Hughes Tool Company v Ingersoll-Rand Company Limited* [1977] FSR 406

**MEMBERS WHO HAVE NOT YET PAID 2006 DUES**

Pursuant to the BPLA By-Laws, notice is hereby given of the expiration of memberships granted to the following individuals for failure to pay year 2006 dues. Unless payments are received by the Treasurer before June 30, 2006, these individuals will be removed from the membership roster. The dues payment form can be found on the BPLA web site, [www.bpla.org](http://www.bpla.org).

Francis Agyare	Erika Cherko-Soykan	Thomas Grodt	Michael Leccese	Sam Pasternak
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Theodore Allen	Isabelle Clauss	Krish Gupta	William Lee	Edwin Paul
Robert Amici	Karen Coghlan	Joseph Haag	Kevin Lemack	Frank Perillo
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Andrew Beckerman-	Susan Dexter	Craig Jepson	James Maslow	Kermit Robinson
Rodau	Jeanne DiGiorgio	Marie Jepson	Leslie McDonell	Mona Robrish
James Behmke	Henry Dinger	Mary Jimenez	John McKenna	Rita Rooney
David Bernstein	Peter Dini	David Johanson	James McKenzie	Jamie Rose
Carlo Bessone	Marianne Downing	Christine Johnson	Brian McKnight	Scott Rothenberger
Kristina Bieker-Brady	Michael Doyle	Gerald Joyce, III	Jodi-Ann McLane	Kimberly Rozelle
Michele Bielunis	Regina Edwards	Robert Kajubi	Angelica McMahon	Hathaway Russell
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Maria Bjornholm	John Englander	Maggie Kanter	Rolando Medina	Ann Saitta
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Robert Blasi	J. Peter Fasse	Wayne Keown	David Mello	Richard Sampson
Dustan Bonnin	Patricia Fawcett	Kristin Ketelhut	Rebecca Menapace	Lakshmi Samudrala
Joseph Born	Li Feng	Chi Kim	William Meyer	Clayton Satow
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Kathleen Brock	Barbara Fiacco	Henry Knoblock	Mandi Milbank	Katie Schendel
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Michael Brodowski	Leanne Fitzgerald	Lawrence Kolodney	Jay Mitchell	Kerri Schray
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(Continued from Page 8)

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*Experience/Education Needed:* 1) A technical background in software and electronics, computers or physics. 2) JD and Patent Bar membership, in good standing, with a minimum of 4 years of legal experience either as in-house or outside counsel to the software industry. 3) At least 3 years experience with software patent preparation and prosecution. 4) Excellent analytical, communication, and writing skills and effective at multitasking. 5) Critical thinking and excellent oral and written communication skills.

6) Exposure to MATLAB and Simulink a significant plus.  
Please send resume to:  
jillian.franklin@mathworks.com  
Website: www.mathworks.com

**DANA-FARBER CANCER INSTITUTE**  
**Patent Coordinator**  
**Office of the General Counsel**

In this position you will support the Patent Counsel and the Senior Patent Manager. You will provide support for the patent activities associated with the Institute's technology transfer program, provide interface with outside law firms handling patent matters and have frequent interaction with Dana-Farber researchers. Triage incoming correspondence: Maintains patent docket for correspondence being directed for instruction. Review correspondence; extract relevant patent related data and route correspondence as appropriate. Update and maintain patent database. Maintain a daily folder to convey priority documents requiring a time sensitive response. Review legal invoices; verify all DFCI dockets numbers are correct and maintain billing docket. Address and resolve administrative issues with outside law firms. Manage the tracking, approval and payment instruction process for all maintenance and annuity fees related to DFCI patents. Maintain the related patent docket. Coordinate execution of patent documents. Responsible for obtaining inventors signatures on various legal documents (including Assignment, Declaration, and Power of Attorney documents), notarize signatures in capacity as Notary Public, submits executed documents and corresponds with outside law firms. Maintain paper patent filing systems. Interact with DFCI researchers and their administrative assistants, as well as external vendors, DFCI Purchasing and Finance offices, and outside legal counsel. Maintain Invention Agreement File. Maintain electronic dockets for legal invoices and consulting agreements. Provide full administrative support for an attorney and a senior patent manager. Schedule meetings. Maintain on-line shared department file system to store electronic department related information. Arrange seminar enrollments. Order office supplies and manage PeopleSoft requisition process. Track monthly budget and assist in annual budget process. REQUIREMENTS: BS/BA is required. Candidates will need to have 1-2 years of relevant experience. Resume to Elizabeth\_dean@dfci.harvard.edu

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**Mirick O'Connell**, a dynamic partnership backed by a tradition of personal client service, is seeking a patent associate. Candidates must be registered to practice before the U.S. Patent and Trademark Office, and have experience in patent prosecution and IP licensing. Undergraduate degree in electrical engineering/computer science preferred. Trademark prosecution experience a plus. Strong academic credentials, excellent research, writing and verbal skills, practical problem-solving ability and the ability to interact with clients are required. We provide a team-oriented working environment, excellent support, and competitive compensation and benefits. Principals only. Submit resumes in confidence to: Betsy R. Landry, SPHR Lawyer Recruiting Coordinator Mirick O'Connell, 100 Front Street Worcester, MA 01608-1477. An Equal Opportunity Employer. www.MirickOConnell.com.

**UPCOMING EVENTS**

- Wednesday-Saturday, June 21-24, 2006:** ABA Intellectual Property Law 2006 Summer Conference, Marriott Copley Place Hotel, Boston (co-sponsored by BPLA)
- Monday, July 31, 2006:** BPLA Writing Competition, 2006 submission deadline
- Friday, August 11, 2006:** 7:00 pm, BPLA Summer Outing, Boston Red Sox v. Baltimore Orioles at Fenway
- Wednesday & Thursday, November 29-30, 2006:** Advanced PCT Seminar, Holiday Inn, Cambridge St, Boston

**INTELLECTUAL PROPERTY COUNSEL**

DEPARTMENT: Legal

NEXT HIGHER MANAGER: Deputy General Counsel

TARGET START DATE: July 1, 2006

**Color Kinetics** Incorporated is the leader in intelligent LED Illumination technologies. The company designs, manufactures and markets an award-winning line of products that are currently used in a variety of commercial and consumer product applications. Our flagship line of technologies leverage a patented layer of digital intelligence, called Chromacore, to generate and control millions of colors and a variety of lighting effects. Through our pioneering use of LEDs as an illumination source, Color Kinetics offers a low power, ultra-long life, low heat and UV-free illumination solution, transcending the limits of traditional illumination methods to create an extremely energy efficient, cost-effective and versatile source of light. Color Kinetics is headquartered in Boston, Massachusetts, USA, has offices in the UK and China, and a joint venture in Japan.

**JOB FUNCTION/PURPOSE**

The IP Counsel will be responsible for Color Kinetics' worldwide patent and trademark portfolios including patent prosecution, product clearance needs, patent infringement analysis, assisting in the preparation of product literature, patent and trademark search reports, and trademark prosecution. The IP Counsel will oversee the invention disclosure process and assist outside counsel in preparing, filing and prosecuting US and foreign patent and trademark applications.

The candidate should be an electronics or computer technology specialist with at least 2-5 years of patent prosecution experience. The applicant must have a bachelor's degree in electrical engineering or physics (or a comparable degree), a law degree and be registered to practice before the U.S. Patent and Trademark Office.

To apply for this position, please fax or email your resume to:

Color Kinetics Incorporated  
10 Milk Street Suite 1100  
Boston, MA 02108 USA  
Fax: 617.423.9998

Email: [jobs@colorkinetics.com](mailto:jobs@colorkinetics.com)

**PATENT ATTORNEY**

**Archemix Corporation**

300 Third Street  
Cambridge, MA 02142

Legal/Licensing

**Job Code:**022106

**Description:** Archemix, a pre-IPO company located in a new state of the art facility in the heart of Cambridge, is seeking a three to five year attorney to prepare and prosecute patent applications relating to our therapeutic aptamer technology. The successful applicant will assist the Chief Patent and other IP Counsel with procurement and maintenance of the corporate patent portfolio, including: working closely with the scientific staff, obtaining invention disclosures, drafting/prosecuting patent applications, conducting prior art/freedom to operate studies, assisting with competitor surveillance and evaluation of competitor technology and assisting with the management of the worldwide IP portfolio. Essential duties and responsibilities encompass, but are not limited to: review of invention disclosure forms, assistance with review of new technology and developments for patent opportunities, work with foreign associates and outside law firms on various matters relating to patent procurement and enforcement.

Qualifications: J.D.; registered before PTO; licensed in at least one state (preferably MA); advanced degree in biological arts or chemistry; 3-5 years of legal experience in a law firm or pharmaceutical/medical company with patent prosecution is required. Additional experience in opinion work, due diligence and licensing are a plus, as are an ability to work independently and with non-lawyers and outside patent counsel.

Salary: Competitive salary + options  
We are committed to driving the science of making better medicines.

We are an equal opportunity employer  
Please refer to Job Code 022106 when corresponding about this position.

**Contact:** Joanne Cusato-May **Phone:** 617-475-2394 **Fax:** 617-621-7700 **E-mail:** [jcusatomay@archemix.com](mailto:jcusatomay@archemix.com) **Website:** [www.archemix.com](http://www.archemix.com)

**PATENT AGENT, MEDICAL DEVICES**

**IST (Innovative Spinal Technologies)**

is a well-funded, privately-held spine technology company committed to advancing patient treatment. We do this by developing the most innovative products and surgical protocols for minimally invasive spine (MIS) surgery and motion preservation. IST was founded in 2002 and is headquartered in Mansfield, Mass., near the intersection of Routes 95 and 495.

Through collaboration with clinicians, scientists, engineers and surgeon thought leaders throughout the world, our data-driven, scientific approach to addressing clinical needs has led to breakthrough solutions for the treatment of spine. IST operates with the highest level of integrity, both in its personnel and business actions, and in its development activities. To be considered, you must have a record of impeccable integrity and a strong value system. If you want to be part of a dynamic and growing organization which promotes teamwork and innovation, then consider joining the IST team.

**Patent Agent**

Here's an opportunity for someone with a degree in mechanical or biomedical engineering and an understanding of orthopedic devices, preferably spinal implants. In this new position, you'll help the IP department with prior art searches and invention disclosures, and you'll help prepare provisional patent applications. You may also help with intellectual property assessment and due diligence for licensing and new technologies.

**Qualifications**

To succeed, you should have a BS in biomedical, mechanical, or general engineering, with a few years' experience in the medical device field and a good knowledge of orthopedics. Familiarity with Delphion or other patent search databases required. IST offers top performers a generous compensation plan, including stock options.

Please e-mail your resume to [careers@ISTspine.com](mailto:careers@ISTspine.com). An Equal Opportunity Employer.  
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The **Boston Patent Law Association** (BPLA) is an association of intellectual property professionals, providing educational programs and a forum for the interchange of ideas and information concerning patent, trademark, and copyright laws. Through a volunteer Board of Governors and committees, it organizes and hosts educational seminars, social events, and conventions, and comments on rules, legislation, and judicial decisions impacting the profession. Visit the BPLA at [www.bpla.org](http://www.bpla.org).

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The BPLA Newsletter is published four times a year by the Boston Patent Law Association. Articles appearing in the newsletter represent the views of the authors and do not necessarily carry the endorsement of the BPLA.

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2005-2006

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