

## INTELLECTUAL PROPERTY UPDATE

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Squire, Sanders & Dempsey L.L.P.

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### Editor's Corner

Warning! Discontinued use of a trademark could raise a presumption of abandonment. In this economy, it is quite understandable to reconsider one's IP portfolio and possibly discontinue using those marks deemed less important. However, before discontinuing the use of a trademark, carefully consider whether the products and services represented by such mark will not be part of your long term business goals. In this issue we discuss when a trademark is considered abandoned, the circumstances that may raise a presumption of abandonment, and the burden of proof that must be met to overcome such presumption. We also suggest some factors to keep in mind when reviewing your trademark inventory.

We explore the legal issues arising from the use of trademarks in online simulated environments known as virtual worlds. We discuss two characteristics shared by these virtual worlds: the persistent use of virtual items created by virtual world users and the economic environment in the virtual worlds. And we suggest alternatives that trademark owners may wish to implement to stop infringers of trademarks in the virtual world.

We also discuss a recent *en banc* decision, *Ariad Pharmaceuticals Inc. v. MIT*, which highlights the importance of disclosing specific examples and multiple embodiments, particularly where the intended scope of the claims is quite large. Even very important research may not be patentable unless the patent application is sufficiently detailed to establish that the inventor actually invented the claimed invention. We consider aspects that need to be kept in mind when seeking patent protection on inventions arising, in particular, in unpredictable arts such as chemistry.

Lastly, in an inducement patent claim, the accused inducer must specifically intend to induce another's infringement. We include an article addressing the scope of the knowledge requirement that may be shown to prove that an accused individual or entity induced patent infringement.

**Alicia M. Choi**, editor

## Trademark Abandonment Is No Joke



One of the most visited websites on the Internet is Google. On April 1, 2010 anyone visiting that site was immediately met with a new name and mark – Topeka. Seemingly,

Google had adopted a new name. Eric Schmidt, CEO of Google, elaborated:

“We didn’t reach this decision lightly, after all we had a fair amount of brand equity tied up in our old name... But the more we surfed around (the former) Topeka’s municipal website, the more kinship we felt with this fine city at the edge of the Great Plains. In fact, Topeka Google Mayor Bill Bunten expressed it best: ‘Don’t be fooled. Even Google recognizes that all the roads lead to Kansas, not just yellow brick ones.’”

Alas, the name change was nothing more than one of Google’s infamous April Fools’ Day jokes. But do not throw caution to the wind – such public statements under ordinary circumstances may serve as evidence of abandonment of a trademark.

In this time of economic constraint, budgets are being cut, funds are being conserved and brand owners are taking stock of their inventory of marks. In some cases companies are focusing on their core brands and deciding to let go of other secondary marks. In other cases companies are reaching back into their historical inventory to re-introduce marks and their corresponding products and services into the marketplace, all the while attempting to rely on the already established brand equity instead of spending money in creating that brand equity. Some of these marks have been out of use for many years. Notwithstanding periods of nonuse, companies expect to retain their ownership rights of these marks. This idea is misconceived. The US trademark system is based on use, defined as a “bona fide use in the ordinary course of trade, and not made merely to service a right in the mark.” Therefore, a trademark owner’s rights in a mark can be abandoned if there has been no continued use of that

mark. In fact, a trademark owner’s rights in any given mark are only as good as the use the owner makes of that mark. In some instances, companies have not used these marks for their goods and/or services for significant periods of time and these marks may be considered abandoned.

Under 15 USC §1127, a trademark is abandoned “[w]hen its use has been discontinued with intent not to resume such use.” There is a presumption of abandonment where there has been nonuse for three consecutive years. “Once the presumption is triggered, the legal owner of the mark has the burden of producing evidence of either actual use during the relevant period or intent to resume use.”<sup>1</sup> However, an intent to resume use must be made in the reasonably foreseeable future.<sup>2</sup> According to the Court of Appeals for the Second Circuit, in order to defeat an abandonment charge, a mark holder must have formulated an intent to resume use of its mark during the three-year period of nonuse that triggers the statutory presumption of abandonment.<sup>3</sup> Self-serving and conclusory statements of an intent to resume use or possible use in the future are given little weight.<sup>4</sup> Furthermore, sporadic or token use of a mark is not sufficient to overcome a showing of abandonment.<sup>5</sup> Changes in the form of the mark also can constitute abandonment of the former mark.<sup>6</sup> And finally, statements of a name change and an intent not to resume use as a result of that change may establish abandonment of a mark.

However, abandonment essentially is considered a forfeiture of rights and must be proved by clear and convincing evidence. Even when a brand owner no longer uses a mark, that mark is not necessarily abandoned through that nonuse. There must be a corresponding intent not to resume use of a mark. Moreover, abandonment has not been found where there remains public recognition of a mark.<sup>7</sup> Even nonuse may be justified or considered excusable in certain situations. Examples of justified nonuse can stem from nonuse beyond a brand owner’s control and caused by outside forces, such as government action, intervention or labor strikes. Excusable nonuse also can be found when bankruptcy proceedings have been

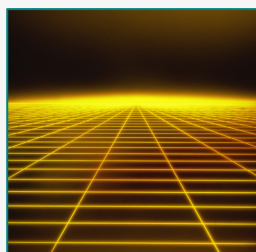
instituted, financial difficulty arises or where there has been a temporary unprofitability of sales.

In sum, when brand owners are reviewing their inventory of marks and considering whether or not to continue using a mark or resuming the use of a mark not currently in use, they should consider whether those marks are at risk of abandonment. Before resuming use of a mark, consider the length of time that mark has been out of use and investigate whether there has been any intervening, new use of that mark by a third party. Before discontinuing any use of a mark, assess the current and prospective value that mark has to a company. If a mark has continued value, trademark owners are advised to continue using that mark and avoiding statements that they no longer will use such a mark. Unlike Google, such statements, besides perhaps those made on April Fools' Day, could provide evidence to support a claim of abandonment. And finally with all of your marks, remember the old adage: use it or lose it!

*Alisa C. Key, of counsel, Tysons Corner*

1. *Emergency One, Inc. v. American FireEagle Ltd.*, 228 F.3d 531, 536 (4th Cir. 2000).
2. *See id.*; *see also, Roulo v. Russ Berrie & Co.*, 886 F.2d 931, 12 U.S.P.Q.2d 1423 (7th Cir. 1989); *Silverman v. CBS, Inc.*, 870 F.2d 40, 9 U.S.P.Q.2d 1778 (2d Cir. 1989).
3. *ITC Ltd. v. Punchgini, Inc.*, 482 F.3d 135, 149 n.9, 82 U.S.P.Q.2d 1414 (2d Cir. 2007).
4. *Rivard v. Linville*, 133 F.3d 1446, 1449 (Fed. Cir. 1998); *Silverman v. CBS*, 870 F.2d 40, 47 (2d Cir. 1989).
5. *See Pilates, Inc. v. Current Concepts, Inc.*, 120 F. Supp.2d 286, 307-10 (S.D.N.Y. 2000) (finding that two to three sales, a single brochure and limited advertising over a three-year period were insufficient to overcome *prima facie* evidence of abandonment).
6. *See MLB Properties, Inc. v. Sed Non Olet Denarius, Ltd.*, 817 F. Supp. 1103 (S.D.N.Y. 1993) (change in mark from BROOKLYN DODGERS to LOS ANGELES DODGERS was more than a minor change and nonuse of BROOKLYN DODGERS resulted in abandonment).
7. *See Ferrari S.p.A. Esercizio Fabbriche Automobili Corse v. McBurnie*, 11 U.S.P.Q.2d 1843 (S.D. Cal. 1989) (residual goodwill found where DAYTONA SPYDER was so strongly associated with Ferrari notwithstanding fact that Ferrari no longer produced automobiles); *see also, Marshak v. Treadwell*, 240 F.3d 184, 198-99, 57 U.S.P.Q.2d 1764 (3d Cir. 2001) (although musical group had disbanded, the DRIFTERS mark continued to be commercially exploited where recordings were being sold and band members were receiving royalties); *EH Yacht, LLC v. Egg Harbor, LLC*, 2000 U.S. Dist. LEXIS 156 (D.N.J. 2000) (continued sales of products under discontinued mark meant that mark was still in use and "continued to enjoy considerable goodwill in the marketplace even after [the mark owner] closed its doors").

## Real-life Trademarks in Virtual Worlds



### Virtual Worlds

Along with the recent proliferation of social networking websites such as Facebook, MySpace and Twitter comes the growing popularity of "virtual worlds." Generally, virtual worlds

are online simulated environments designed to be populated by "avatars." Avatars are visual representations of the virtual world users that interact with other virtual world users either through text or voice command. Virtual worlds are often either general interest or social in nature, such as Linden Lab's *Second Life* or Electronic Arts Inc.'s (EA) *The Sims Online*, or are designed for multiplayer online gaming, such as Blizzard Entertainment's *World of Warcraft*, EA's *Ultima Online* or Sony Online Entertainment's *EverQuest II*.

Some, but not all, virtual worlds share two additional characteristics that can raise interesting legal issues. First, many provide for persistence of user-created content. In other words, when a user creates a virtual item in the virtual world, that item will remain in the virtual world for others to interact with and experience even after the user logs off. For example, a *Second Life* user may create virtual clothing items that can be worn by avatars, which will remain in the virtual world for other avatars to interact with and use even after the user logs off *Second Life*.

Ownership of such user-created content is determined by the content creators' Terms of Service or End User License Agreement (EULA). For example, through its EULA Blizzard Entertainment retains "[a]ll title, ownership rights and intellectual property rights in and to the Game and all copies thereof." In contrast, Linden Lab provides in its Terms of Service that users "retain any and all Intellectual Property Rights [the user] already hold[s] under applicable law in Content [the user] upload[s], publish[es], and submit[s] to or through the Servers, Websites, and other areas of the Service." Thus, in the example above,

the *Second Life* user would own the intellectual property rights in and to the virtual clothing items he or she originally created, to the extent such items are protected under various intellectual property laws.

***Trademark owners are legally required to actively police against unauthorized or improper use of their marks – failure to do so might result in dilution of the mark and possibly a loss of trademark rights.***

Second, many virtual worlds have their own economic environments in which real-life currency can be traded for virtual goods. For example, the “LindeX,” *Second Life*’s official currency exchange, allows residents to purchase “Linden Dollars” with US dollars (and vice-versa). Linden Dollars is the virtual currency used in *Second Life* to purchase virtual goods. Using the example above, users, through their avatars, could purchase the virtual clothing items created by the *Second Life* user with their Linden Dollars. The creator of the virtual clothing items could subsequently convert earned Linden Dollars back into US dollars via the LindeX.

Although relatively new, virtual worlds are gaining popularity not only for social or gaming purposes, but also for real-life business purposes. For example, US\$31 million worth of Linden Dollars were exchanged on LindeX during the first quarter of 2010. Also in the first quarter of 2010, the sum of all Linden Dollar-denominated transactions between *Second Life* users equaled a total value of US\$160 million, which was a 30 percent increase from the same period of time just one year ago.

Small businesses and even individual users may succeed in virtual worlds by selling or renting “virtual real estate,” selling user-created content or selling “in-world” services. In fact, in November 2006 one virtual world user announced that her avatar was the first to have a net worth of more than US\$1 million made entirely within the virtual world, mainly through transactions in virtual real estate and other user-created content. Larger real world businesses

may establish presences in virtual worlds to sell virtual versions of their products or simply to increase brand recognition among virtual world users.

### **Trademark Issues**

As may be expected, the unique combination of persistence of user-created content and an economic environment involving real currency could lead to real world legal issues, particularly in the area of trademark law. Again using the above example, unique trademark issues are raised when the creator of the virtual clothing items reproduces, without permission, a registered trademark on the virtual items and trades on the goodwill of the real-life trademark owner to sell the virtual items for real currency. This practice is becoming increasingly rampant, due to user demand for realism in virtual worlds, the ease of creating virtual replicas and the relative lack of enforcement in virtual worlds. Indeed, an avatar strolling in a virtual shopping mall will likely encounter numerous virtual stores carrying knock-off virtual goods.

For various reasons, trademark owners should consider monitoring virtual worlds for unauthorized use of their trademarks by third parties. As suggested above, such use can lead to substantial sales of counterfeit goods – profits that could otherwise flow to the rightful trademark owner. Additionally, trademark owners are legally required to actively police against unauthorized or improper use of their marks – failure to do so might result in dilution of the mark and possibly a loss of trademark rights. Finally, trademark owners may have a tough time establishing a presence in a virtual world that is already saturated with knock-off replicas of their goods.

### **Solutions**

Trademark owners wishing to enforce their rights in virtual worlds may find it difficult to identify an alleged infringer, other than by its avatar. Therefore, owners need to find creative ways to enforce their trademarks in this new media. For example, furniture designer Herman Miller offered any virtual user who had purchased a knock-off virtual “Herman Miller” chair a free copy of a licensed



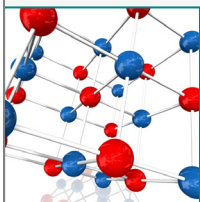
authentic virtual chair in exchange for a promise to destroy the knock-off item. Other trademark owners have established a presence in virtual worlds and approached the alleged infringers' avatars with their own avatars and simply asked them to stop. Still other trademark owners have invited the infringers' avatars to join their campaign and participate in a revenue-sharing program to sell the virtual goods officially.

Trademark owners may also wish to work with the content creators to stop the alleged infringers. For example, Linden Lab indicates on its website that it "responds to complaints that content infringes trademarked or celebrity material," and provides an address for submitting a notification of infringement. Finally, trademark owners may feel it necessary to resort to the legal system to try to procure the identity of the alleged infringer, and send a cease and desist letter or institute an infringement lawsuit (although there is a lack of existing published case law on this precise issue which may otherwise set a precedent on which trademark owners could rely).

The introduction of new media, such as virtual worlds, presents new and unique legal challenges. The use of trademark is just one of the many legal issues that can arise when navigating virtual worlds. It is important that companies become familiar with these issues in order to ensure that they protect and enforce their valuable intellectual property rights.

*Beth Seals, associate, San Francisco*

## Research Guidelines Are Helpful, But They're Not Inventions



The *en banc* Federal Circuit in *Ariad Pharmaceuticals et al. v. Eli Lilly and Co.* declared a patent invalid because the inventors' claims were not supported by a written description of invention.<sup>1</sup> The patent was not declared invalid because of an

ambiguity in the claims. The court appeared to have little trouble understanding what the inventors had claimed as their invention. Nor did the parties or court question whether the patent's specification provided sufficient guidance to enable one of ordinary skill in the art to practice the invention recited in the claims. Yet, the inventors' claims were held invalid because the patent's specification did not demonstrate that the inventors had invented what they claimed as their invention.

The issue of patent validity centered upon the proper meaning of 35 USC §112, first paragraph, of the Patent Statute. The court was asked to decide whether section 112 requires that a patent specification enable others to make and use the claimed invention (the "enablement" requirement) and describe the claimed invention (the "written description" requirement), or if a patent specification should only need to enable the invention claimed.

Affirming the existence of a written description requirement separate from an enablement requirement under section 112, the court construed the statutory language and analyzed several of its prior decisions and those of the US Supreme Court. But perhaps the best explanation for why the court affirmed a separate written description requirement for patents is gleaned through what the court infers as necessary to maintain a *quid pro quo* of a patent and the efficient administration of patents through the courts and the US Patent & Trademark Office (USPTO).

Patents serve as an incentive for inventors to disclose the fruits of their labor – the invention – so that the public may benefit from the inventor's discovery. When a patent's disclosure requirement is satisfied, the inventor is given a right to exclude others from making, using, offering for sale or selling the invention for a period of time. But when the inventor has not described an invention in a meaningful way, only claimed it or provided a roadmap on how to arrive at a result, the public has not received the benefit of the bargain. Hence, the *quid pro quo* of receiving a patent has not been satisfied. Moreover, when a patent does not describe an invention, courts struggle to understand

whether the patent document is in compliance with the law and the USPTO cannot effectively tap into its prior art resources to compare what is being claimed to what came before it.<sup>2</sup>

***A specification demonstrating that the inventor had not only identified a desired outcome, but also contributed a fair share of the labor needed to produce the claimed result responds appropriately to the written description requirement.***

The patent in issue was invalid because it claimed a genus of invention as a property right but, in the opinion of the court, did not disclose a sufficient number of species of the genus to justify the claim. The claims were directed to a method for treating cellular disease by inhibiting the activity of a protein complex known as NF-[K]B. The inventors were the first to discover the mechanism by which NF-[K]B activates gene expression and the therapeutic benefits of inhibiting its activity in response to external stimuli.<sup>3</sup> In order to practice the methods, however, one needs to know the types of molecules that could inhibit NF-[K]B activity. In this respect the specification was deficient. The problem was not that one of ordinary skill in the art did not know how to make the class of molecules needed to practice the method. Rather, the court felt that the inventors left too much of this hard work to others. The patent identified and broadly claimed a desired outcome, but did not demonstrate possession of the wide variety of species for achieving that outcome, which was fatal. The public did not receive its fair share in exchange for the generic claims asserted by the inventors. Or, as the court put it, the patent was invalid because there was no written description disclosing a variety of species needed to support the generic claims.

Had the patent in issue not been in an emerging field involving chemistry, or a similar field where a successful conclusion to research is hard to predict, less would have been required to demonstrate that an inventor had in fact invented. In other predictable areas of science, a

statement of a problem and plan for arriving at a solution leaves less of a knowledge gap between a conception of an invention and what is actually needed to reduce that concept to practice. Others can, therefore, more readily put the invention to use without relying on the inventor.

This is not to say that the Federal Circuit's holding is limited to inventions arising in the unpredictable arts. Indeed, the court stresses that its holding does not carve out a distinction between an unpredictable art, like chemistry, and a predictable art.<sup>4</sup> But a closer look at the cases discussed in the court's opinion suggests there is a difference in how section 112 is applied. A failure to comply with the written description requirement for inventions residing in a predictable art is more often due to a failure of the inventor to express a purported invention in terms of claims appearing in the original application for patent, not a lack of disclosure of species supporting a generic claim.

As a general matter, for patent applications filed with claims that are not broadened during the course of prosecution, or application specifications that are not amended to add new matter, the written description requirement is usually a non-issue. Indeed, current USPTO policy concludes there is a strong presumption that original claims satisfy the written description requirement.<sup>5</sup> Still, one cannot preclude the possibility that USPTO policy, at least with respect to this presumption regarding original claims, will change in light of the court's holding.<sup>6</sup>

Patent applications directed to discoveries that are, in large part, based on preliminary research having a yet unclear potential for commercial exploitation should be scrutinized more to ensure that the claimed invention is adequately described through specific examples, to ensure that a genus of invention can be distinguished from a species. A specification containing specific examples of the tools, materials and methods used to arrive at different species helps to distinguish a research plan from an invention. A patent should be a reward for an invention not for a research plan. Thus, a specification demonstrating that the inventor had not only identified a desired outcome, but also

contributed a fair share of the labor needed to produce the claimed result responds appropriately to the written description requirement.

The Federal Circuit's decision in *Ariad* may be best summed up as an attempt by the court to preserve a proper balance between the contributions to a field of science by an inventor and the property rights granted to the inventor in a patent. The decision also serves as a reminder to disclose in the patent application as many of the details about the invention as possible, so as to fully describe an adequate number of species supporting a genus claim, or to ensure that a knowledge gap separating a concept of invention from an actual reduction to practice is not too great.

*James L. Reed, senior patent attorney, San Francisco*

1. 2010 U.S. App. LEXIS 5966 at 64 (Fed. Cir. 2010) (*Ariad*).
2. *Id.* at 23-24.
3. *Id.* at 8-9.
4. *Id.* at 43.
5. See *Guidelines for Examination of Patent Applications Under the 35 U.S.C. 112, 1, "Written Description" Requirement*, 66 Fed. Reg. 1099, 1105 (Jan. 5, 2001).
6. See e.g., *Ariad* at 36-37 (noting that original claims that use functional language can fail to satisfy the written description requirement).

## Inducing Infringement: Federal Circuit Allows Indirect Evidence to Satisfy Knowledge Requirement



The Patent Act provides that "whoever actively induces infringement of a patent shall be liable as an infringer."<sup>1</sup>

As we explained in our Spring 2007 Intellectual Property Update,<sup>2</sup> the Federal Circuit established, in its 2006 decision in *DSU Med. Corp. v. JMS Co., Ltd.*,<sup>3</sup> that an accused inducer must specifically intend to induce another's infringement.<sup>4</sup> Thus, the patentee must show that

the accused inducer "knew or should have known that his actions would induce [direct] infringements."<sup>5</sup> As a necessary corollary, the accused inducer must actually know of the patent.<sup>6</sup> The court did not, however, address the scope of this knowledge requirement at that time.

The Federal Circuit did not have an opportunity to further consider the knowledge requirement until nearly four years later, when it decided *SEB S.A. v. Montgomery Ward & Co., Inc.*<sup>7</sup> While reaffirming its commitment to the knowledge requirement, the Federal Circuit held that a patentee may succeed on an inducement claim where it produces only indirect evidence that the accused infringer actually knew of the patent-in-suit.<sup>8</sup>

The dispute involved two manufacturers of deep fryers. The accused inducer, Pentalpha, developed its fryers by copying the design of French-based SEB's "cool touch" fryers.<sup>9</sup> Pentalpha thereafter obtained a "right-to-use" study from a New York patent attorney, but did not tell the patent attorney that it copied SEB's deep fryer.<sup>10</sup> Later, Pentalpha began selling the copied fryers to retailers.<sup>11</sup> SEB, the owner of US Patent No. 4,995,312, (the '312 patent), which covered its fryer and Pentalpha's copy, sued Pentalpha for inducing infringement.<sup>12</sup> Seven years later, a jury found that Pentalpha willfully induced infringement of the '312 patent, and Pentalpha appealed on a series of issues related to that verdict.<sup>13</sup>

At the onset of its analysis, the Federal Circuit explained that an inducement claim's requirement of specific intent does not allow an accused infringer to actively disregard a known risk that it infringes a patent.<sup>14</sup> The court reasoned that deliberate indifference to a known risk implies actual knowledge.<sup>15</sup> A plaintiff may, therefore, satisfy the knowledge requirement by demonstrating the accused infringer's deliberate indifference.<sup>16</sup> Moreover, the court suggested that other forms of indirect proof, such as constructive knowledge, might also satisfy the knowledge test.<sup>17</sup> It cautioned, however, that the test is subjective, and an accused infringer may defeat a charge of deliberate indifference by showing it was genuinely unaware of the patent.<sup>18</sup>

*SEB* is a good example of an accused infringer that deliberately ignored a risk that it was infringing a patent. As mentioned above, when Pentalpha engaged a patent attorney to conduct a right-to-use study on its deep fryer, it omitted the critical fact that it had copied *SEB*'s fryer. The Federal Circuit found this to be highly suggestive that Pentalpha deliberately ignored a risk that a patent existed covering the copied device.<sup>19</sup> Tellingly, Pentalpha did not produce any exculpatory evidence that it or its employees actually believed a *SEB* patent did not exist.<sup>20</sup>

The real import of *SEB* is that, after raising the bar in *DSU Medical*, the Federal Circuit has made it easier for a patentee to prove inducing infringement. Patentees are now armed with the ability to use deliberate indifference evidence to infer that an accused inducer knew about the patent at issue. And, because the Federal Circuit's opinion "does not purport to establish the outer limits" of the knowledge requirement,<sup>21</sup> we can expect future cases to identify other types of indirect evidence available to patentees.

The Federal Circuit did not leave defendants accused of inducing infringement completely in the lurch. It confirmed that an accused infringer may rebut indirect evidence of knowledge by showing it actually believed no patent existed. Thus, a reliable patent counsel opinion continues to be an important defense against an inducement charge.

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13. *Id.* at 1-2.
14. *Id.* at 33.
15. *Id.* at 34.
16. *Id.*
17. *Id.* at 38.
18. *Id.* at 34.
19. *Id.* at 36-38.
20. *Id.*
21. *Id.* at 38.

1. 35 USC §292.
2. David S. Elkins, "Recent Significant Patent Law Decisions", Squire, Sanders & Dempsey L.L.P. Intellectual Property Update, Spring 2007, at 4.
3. 471 F.3d 1293 (Fed. Cir. 2006).
4. *Id.* at 1306.
5. *Id.* at 1304.
6. *Id.*
7. 2010 U.S. App. LEXIS 2454.
8. *Id.* at 36.
9. *Id.* at 4.
10. *Id.* at 5.
11. *Id.*
12. *Id.*



## Contributor Profiles

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**Alicia M. Choi** focuses her practice on the area of patent law. Her work includes preparing and prosecuting utility patent applications in the areas of electrical and computer engineering including information technology, software systems, wireless communication, medical diagnostic devices, semiconductors, analog and digital circuitry, and consumer electronics such as optical storage media and audio devices for US and international clients. Her experience also includes conducting novelty, patentability, invalidity and infringement analyses for various electrical devices and systems. Before entering the practice of law, Ms. Choi was a lead engineer for Rockwell Automation where she was involved in the integration of various programmable controllers and electronic operators.



**David S. Elkins** leads the firm's Intellectual Property Litigation Practice. His practice includes all areas of patent, trademark, copyright, trade secret litigation, anti-cybersquatting and complex technology litigation. His practice is nationwide in scope; he is representing or has represented clients in jurisdictions across the United States, including California, Delaware, Florida, Illinois, New Jersey, New York, Ohio, Oregon and Texas, and in federal and state courts of appeals. Mr. Elkins also has substantial international and domestic dispute resolution experience, having represented clients in proceedings before the ICC International Court of Arbitration (San Francisco and Geneva), the American Arbitration Association (US) and the Japan Commercial Arbitration Association (Tokyo).



**Alisa C. Key** focuses her practice on all areas of trademark law including trademark, copyright and domain name counseling as well as trademark prosecution and enforcement in US and non-US arenas. She assists clients in the clearance, acquisition and licensing of trademark, copyright and other IP rights, the management of worldwide trademark portfolios, due diligence in corporate transactions, and the design and implementation of policies and guidelines for the proper procurement, use, protection and enforcement of trademark rights. Ms. Key is experienced in actions involving trademark and trade dress infringement, rights of publicity, domain names, dilution, the seizure of counterfeit goods and unfair competition before federal and appellate courts, arbitration tribunals and the Trademark Trial and Appeal Board of the USPTO.



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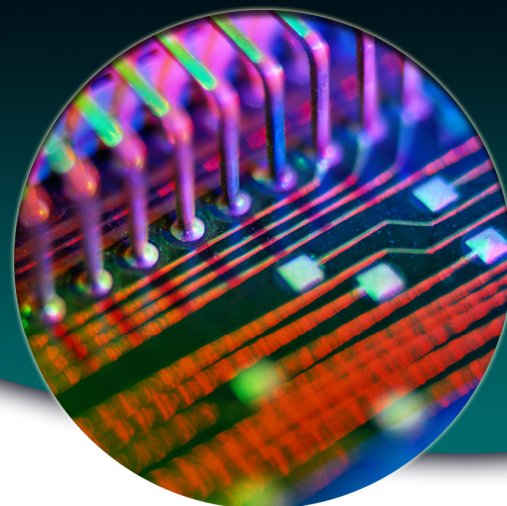
**James L. Reed** focuses his practice on intellectual property matters including patent prosecution, counseling, litigation and intellectual property transactions in the mechanical, electrical, database and information sharing, telecommunication and networking fields. Mr. Reed has prosecuted

hundreds of patent applications before the USPTO, including numerous appeals before the Board of Patent Appeals and Interferences, assisted clients with securing patents in foreign countries and managed international patent portfolios. He has also advised on the validity, enforceability and infringement of patents in order to assess risks to his clients, or evaluate assets for potential or planned mergers and acquisitions. Mr. Reed also has several years of patent litigation experience involving patents in the medical device, databases and software, LCD, golf club, RFID and children's products fields.



**Beth Seals** focuses her practice on life sciences and intellectual property matters. Ms. Seals has represented pharmaceutical, medical device and biotechnology companies in connection with the preparation and negotiation of US and international clinical trial agreements, consulting agreements,

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