

Complexity and Excellence in the Circuit Community Virtual Conference June 16-19, 2020

*To join the panels, please use the zoom link, meeting ID, and password listed by each below. If you would like to only join via phone line, please use one of the following numbers along with the meeting ID and password for the specific panel. (for higher quality, dial a number based on your current location): +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799 or +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799

CLE materials and PPT's which are understood to be used in various panels are located at <http://fedcirbar.org/2020BBMaterials>. Attendees are encouraged to consult those PPT's during the panel presentations.

Tuesday, June 16, 2020 – Pre-Conference Special Event

12:00 pm – 12:45 pm (<https://zoom.us/join> - Meeting ID: 853 5033 9598 – Password: **06160**)
Empowering Women in the Law Summit, Dialogue with the Bench

Moderator:

Jamie Underwood, President, Federal Circuit Bar Association®

Panelists:

The Honorable Sharon Prost, Chief Judge,
United States Court of Appeals for the Federal Circuit
The Honorable Kara Stoll, Circuit Judge,
United States Court of Appeals for the Federal Circuit
The Honorable Cathy Ann Bencivengo, District Judge,
United States District Court for the Southern District of California
The Honorable Virginia Kendall, District Judge,
United States District Court for the Northern District of Illinois

12:45 pm – 1:30 pm

Empowering Women in the Law Summit, Dialogue with Thought Leaders from Business, Government, and Private Practice - An open forum to discuss the challenges faced by female professionals and how those challenges shape the organizations in which they work.

Moderator:

Jamie Underwood, President, Federal Circuit Bar Association®

Panelists:

The Honorable Cheryl Mason, Chairman, Board of Veterans' Appeals, United States Department of Veterans Affairs
Laura Peter, Deputy Under Secretary of Commerce for IP and Deputy Director, United States Patent and Trademark Office
Danielle Coleman, Senior Litigation Counsel, VMware
Laura Sheridan, Senior Patent Counsel, Google Inc.
Gael Tisack, Global Head of Litigation, Olympus Corporation
Kathi Vidal, Managing Partner (Silicon Valley Office), Winston & Strawn LLP
Jennifer Yokoyama, Deputy General Counsel, IP Group, Microsoft Corporation
Karen Robinson, Vice President of IP and Litigation, Adobe

Tuesday, June 16, 2020 – 2020 Bench & Bar® Virtual Conference

1:30 pm – 1:45 pm (<https://zoom.us/join> - Meeting ID: 862 1288 8931 – Password: **06161**)

****This session will encompass both the remarks and the Magistrate panel****

****It will open at 1:30 and begin at 1:40pm****

President's Welcome – Jamie Underwood, President, Federal Circuit Bar Association®

1:45 pm – 2:00 pm

Executive Directors' Remarks

Jim Brookshire, Executive Director, Federal Circuit Bar Association®

Deborah Miron, Executive Director Designate, Federal Circuit Bar Association®

**Complexity and Excellence in the Circuit Community
Virtual Conference
June 16-19, 2020**

2:00 pm – 3:00 pm

Magistrate Practice – Magistrate Judges are a necessary and critical part of the Federal Judiciary. Federal courts utilize Magistrate Judges differently, depending on the needs of the court and the needs of a particular case. This panel of Magistrate Judges compares the different roles that Magistrate Judges play and the hats that they wear, critical in litigating complex civil cases such as IP disputes. The panel explores procedural distinctions when litigating in front of a Magistrate Judge, how to approach dispositive or discovery motion practice in front of Magistrate Judges, when to consent to trial before a Magistrate Judge, and the dynamics between the Magistrate Judge and the referring Article III Judge.

Moderator:

Rachel C. Hughey, Partner, Merchant & Gould P.C.

Panelists:

The Honorable Hildy Bowbeer, Magistrate Judge, United States District Court for the District of Minnesota

The Honorable Jennifer L. Hall, Magistrate Judge, United States District Court for the District of Delaware

The Honorable Kimberly Priest Johnson, Magistrate Judge, United States District Court for the Eastern District of Texas

3:00 pm – 3:15 pm **Break**

3:15 pm – 4:15 pm (<https://zoom.us/join> - Meeting ID: 863 3825 4969– Password: **06162**)

Trade Secrets: Defense of Trade Secrets Act – In an array of tools, innovation and enterprise turn not just to patents but, increasingly, to trade secrets as well. Indeed, in many instances, the protective tools augment each other in differing components of an innovation portfolio. This panel will explore the enterprise and tactical considerations affecting a blended protection.

Moderator:

Darin Snyder, Partner, Partner O'Melveny Myers

Panelists:

David Eberhart, Partner, Partner O'Melveny Myers

Steven D. Maslowski, Partner, Akin Gump Strauss Hauer & Feld LLP

Krista Vink Venegas, Partner, Morgan, Lewis & Bockius LLP

4:15 pm – 4:30 pm **Break**

4:30 pm – 5:30 pm (<https://zoom.us/join> - Meeting ID: 860 9103 9007– Password: **06163**)

Litigation Funding and Investor's Rights – In recent years, the proliferation and increased sophistication of third-party litigation funding has drawn attention from both Bench and Bar. Its impact on patent litigation has expanded. This panel examines how third-party litigation funding works, how it impacts litigation on a practical level, and ethical and privilege issues associated with seeking and obtaining third-party funding for litigation. A balanced panel presents both sides of the debate on this growing phenomenon in U.S. litigation.

Moderator:

Steven D. Moore, Partner, Kilpatrick Townsend & Stockton LLP

Panelists:

Michael Vladescu, President & Chief Executive Officer, WiLAN Inc.

Sarah Tsou, Investment Manager Legal Counsel, IMF Bentham

**Complexity and Excellence in the Circuit Community
Virtual Conference
June 16-19, 2020**

Wednesday, June 17, 2020

11:15 am – 12:00 pm (<https://zoom.us/join> - Meeting ID: 822 3004 2754– Password: **06170**)
Business Meeting/Presentation of Awards

12:00 pm – 1:00 pm (<https://zoom.us/join> - Meeting ID: 872 0547 8161– Password: **06171**)
Federal Circuit Perspectives – In this core discussion group, the judges of the United States Court of Appeals for the Federal Circuit address topics of common interest to the Bench and Bar. In addition, the Bench offers its insights on effective appellate advocacy as well as concerns important to the continued administration of justice in the Circuit community.

Moderator:

Sonal Mehta, Partner, WilmerHale

Panelists:

The Honorable Sharon Prost, Chief Judge,
United States Court of Appeals for the Federal Circuit
The Honorable Timothy B. Dyk, Circuit Judge,
United States Court of Appeals for the Federal Circuit
The Honorable Kimberly A. Moore, Circuit Judge,
United States Court of Appeals for the Federal Circuit
The Honorable Raymond Chen, Circuit Judge,
United States Court of Appeals for the Federal Circuit
The Honorable Kara F. Stoll, Circuit Judge,
United States Court of Appeals for the Federal Circuit

1:00 pm – 1:15 pm

State of the Court – Remarks from the Honorable Sharon Prost, Chief Judge,
United States Court of Appeals for the Federal Circuit

1:15 pm – 2:15 pm

Lunch

2:15 pm – 3:15 pm (<https://zoom.us/join> - Meeting ID: 841 6689 7211– Password: **06172**)

Enforcement by CBP: Exclusion Orders, Counterfeiting, and Trademark –
U.S. Customs and Border Protection (CBP) enforces ITC exclusion orders and acts against counterfeiting, administering more than 300 United States ports of entry where exclusion determinations may be made. This panel explores how the working parts of CBP – including the IPR Branch, the Centers of Excellence and Expertise (CEEs) and the import specialists and port inspectors – carry out their charges and the ways in which patent owners and importers can engage with CBP on enforcement issues. The panel also explores interplay with ITC enforcement proceedings, including modification and rescission. The panel will also discuss the use and conduct of *inter partes* 19 C.F.R. § 177 proceedings to obtain CBP rulings on redesigns and the challenge of CBP protest decisions before the U.S. Court of International Trade under 28 U.S.C. § 1581.

Moderator:

Michael P. Sandonato, Partner, Venable LLP

Panelists:

Jessica Wu, Attorney Advisor, Intellectual Property Rights Branch, Regulations and Rulings, Office of International Trade, United States Customs and Border Protection
Dominic L. Bianchi, General Counsel, United States International Trade Commission
Sean Trainor, Partner, O'Melveny & Myers LLP
Dora Penagaricano, Capital Member, McConnell Valdes, LLC

**Complexity and Excellence in the Circuit Community
Virtual Conference
June 16-19, 2020**

3:30 pm – 4:30 pm (<https://zoom.us/join> - Meeting ID: 884 0530 3852– Password: **06173**)

Practical and Complex Representation Considerations (Ethics) – What do you do when zealous representation of your client runs up against conflicting considerations? This panel explores ethical issues that arise over the course of litigation, from issues arising from litigation funding, to positional conflicts during joint representation, to positions taken in different cases in different jurisdictions, to settlements requiring court action such as vacatur of prior orders.

Moderator:

Jennifer H. Wu, Partner, Paul, Weiss, Rifkind, Wharton & Garrison LLP

Panelists:

Dan L. Bagatell, Partner, Perkins Coie LLP

Mareesa A. Frederick, Partner, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP

Michael J. Sacksteder, Partner, Fenwick & West LLP

Jennifer L. Swize, Partner, Jones Day

Andrew Trask, Counsel, Williams & Connolly LLP

4:30 pm – 4:45 pm **Break**

4:45 pm – 5:45 pm (<https://zoom.us/join> - Meeting ID: 890 0582 2686– Password: **06174**)

Practice Excellence – Panelists address various best practices for attorneys appearing before district courts, agency adjudicators, and appellate tribunals. Areas of focus are case management, including processes for narrowing issues, managing discovery disputes, and applicable court rules (including standing orders and local patent rules). In addition, the panel addresses practical approaches for addressing trade secrets and other confidential information in filings and at related hearings. The panel also assesses strategies for preserving issues for appeal.

Moderator:

Diane Luo, Counsel, Walmart Legal

Panelists:

Jared Bobrow, Partner, Orrick, Herrington & Sutcliffe LLP

Lauren A. Degnan, Principal, Fish & Richardson P.C.

Michael Joffre, Director, Sterne, Kessler, Goldstein & Fox P.L.L.C.

Elizabeth A. Speck, Senior Trial Counsel, Commercial Litigation Branch, Civil Division,
United States Department of Justice

**Complexity and Excellence in the Circuit Community
Virtual Conference
June 16-19, 2020**

Thursday, June 18, 2020

11:00 am – 12:00 pm (<https://zoom.us/join> - Meeting ID: 824 1595 9151– Password: **06181**)
101 Practices and Policy – Over the last year, section 101 patent eligibility considerations grew to span both broad subject matter (from life sciences to computer networking to financial technology) and the various stages of litigation (from pleadings to summary judgment and verdict). This panel examines the most recent developments. On the administrative side, the panel assesses the impact of the PTO's section 101 guidelines. In the courts, it looks at how 101 is being addressed at different stages, including the impact of jury trials that include 101 as an issue for the verdict. The panel also considers innovative application drafting and claiming strategies by practitioners, taking into account the PTO, the courts, and the possibilities for Congressional revisions changing the landscape.

Moderator:

Sarah Guske, Partner, Baker Botts L.L.P.

Panelists:

Gabriel K. Bell, Partner, Latham & Watkins LLP
Cara Coburn, Associate General Counsel, Genentech, Inc.
Kim Moore, Vice President of Litigation, Guardant Health

12:00 pm – 12:15 pm **Break**

12:15 pm – 1:15 pm (<https://zoom.us/join> - Meeting ID: 818 7807 4584– Password: **06182**)
Reviewed Adjudicators – In the time and resource constrained crucibles of the district courts, tribunals face the challenges of change as they meld facts and law, fashioning the justice of the case. These challenges can include both legal framework and local docket needs, gaps in the legal standards and new guidance from appellate tribunals. Panelists share their views on key challenges and effective responses to them.

Moderator:

Kelly E. Farnan, Director, Richards Layton & Finger, P.A.

Panelists:

The Honorable Rodney Gilstrap, Chief District Judge, United States District Court for the Eastern District of Texas
The Honorable Leonard P. Stark, Chief Judge, United States District Court for the District of Delaware
The Honorable Timothy Stanceu, Chief Judge, United States Court of International Trade

1:15 pm – 2:15 pm
Lunch

2:15 pm – 3:15 pm (<https://zoom.us/join> - Meeting ID: 871 3346 7183– Password: **06183**)
When Worlds Collide – Intellectual Property and Government Contracts – Companies struggle to protect intellectual property, particularly contractors facing a host of regulations triggered when dealing with the Federal government. The focus on contractor intellectual property has become more prominent as the Federal government has increased its push to have contractors develop innovations in, for example, the areas of AI, cyber-attack prevention, and drone technology. This panel explores how government contractors can proactively strive to protect their intellectual property when engaging with the Government and how to manage various forms of IP litigation that may arise out of government contracts, including, for example, prime-sub contractor infringement suits in Federal district court and Section 1498 and other government-centric litigation before the Court of Federal Claims.

Moderator:

Scott A. Felder, Partner, Wiley Rein LLP

**Complexity and Excellence in the Circuit Community
Virtual Conference
June 16-19, 2020**

Panelists:

Gary Hausken, Director, Intellectual Property Staff, Civil Division, United States
Department of Justice

Justin Hendrix, Associate Director, Intellectual Property, Collins Aerospace
Locke Bell, Associate, Morrison & Foerster LLP

3:15 pm – 3:30 pm **Break**

3:30 pm – 4:30 pm (<https://zoom.us/join> - Meeting ID: 833 6933 8665– Password: **06184**)

Predictability, Rule of Law, and Economic Vitality – From small business to complex business structures, innovation and the economic vitality to sustain it rely on predictability in the law. This panel will explore both financial and legal components, including implications for encouraging inventive societies.

Moderator:

Sandra Kuzmich, Managing Partner, Haug Partners LLP

Panelists:

Thomas G. Hungar, Partner, Gibson, Dunn & Crutcher LLP

Francisco Santiago, Executive Director, Colegio de Abogados de Puerto Rico

Jose J. Villami, Chairman, Estudios Tecnicos

4:30 pm – 4:45 pm **Break**

4:45 pm – 5:45 pm (<https://zoom.us/join> - Meeting ID: 839 8555 7733– Password: **06185**)

Blue Water Veterans – This panel explores the journey of *Procopio v. Wilkie*, No. 2017-1821 (Fed. Cir. Jan. 29, 2019) through the courts. The discussion includes pro bono counsel for Mr. Procopio who argued this appeal. The panel examines legislation that would codify the Federal Circuit's decision and will also provide practical advice for those representing Blue Water Veterans following this change in precedent.

Moderator:

Robbie Manhas, Managing Associate, Orrick, Herrington & Sutcliffe LLP

Panelists:

David J. Barrans, Chief Counsel, Benefits Law, Office of General Counsel, United States
Department of Veterans Affairs

Eric Bruskin, Senior Trial Counsel, Civil Division, United States
Department of Justice

Kenneth Carpenter, Chief Executive Officer, Carpenter Chartered

**Complexity and Excellence in the Circuit Community
Virtual Conference
June 16-19, 2020**

Friday, June 19, 2020

11:00 am – 12:00 pm (<https://zoom.us/join> - Meeting ID: 860 6601 8740– Password: **06191**)

The Latest on SEP/FRAND: Managing IP in Standardized Technologies – The explosion of standardized technologies – such as telecommunications, consumer electronics, and autonomous vehicles – has led to a corresponding increase in the number of standard-essential patents (SEPs) covering those technologies. The importance of SEPs cannot be overstated, as SEP holders both possess the keys to implementing the standards and retain the obligation to license their SEPs on fair, reasonable, and nondiscriminatory (FRAND) terms to implementers. This Town Hall dives into SEP/FRAND issues from the perspectives of both SEP holders and implementers. Topics include the standard setting process, the scope of the FRAND obligation, the application of competition law to FRAND, and methods to create more efficient resolutions to FRAND/SEP disputes.

Moderator:

James Duncan, Associate General Counsel, HID Global

Panelists:

David Djavaherian, PacTech Law, P.C.
Kurt M. Kjelland, Vice President & Legal Counsel, Qualcomm Inc.
Mark McCarty, Alston & Bird LLP
Eugene M. Paige, Partner, Kecker, Van Nest & Peters LLP
Mark Selwyn, Partner, WilmerHale

12:00 pm – 12:15 pm **Break**

12:15 pm – 1:15 pm (<https://zoom.us/join> - Meeting ID: 813 4058 2837– Password: **06192**)

Latest Developments in International Trade and IP, including The ITC and Life Science – Life Sciences investigations have become an increasingly important part of the ITC's Section 337 docket. Indeed, in FY 2018 15% of the docket involved pharmaceuticals or medical devices. The assertions against a wide range of products span the gamut of unfair acts that may be alleged at the ITC, including false advertising, trade secret misappropriation, trademark infringement and patent infringement. Companies such as KV Pharmaceutical Company, Bausch Health Companies Inc. (formerly Valeant Pharmaceuticals) have tested the limits of the ITC's Section 337 jurisdiction.

Moderator:

Deanna Tanner Okun, Managing Partner, Adduci, Mastriani & Schaumberg LLP

Panelists:

Azra Hadzimehmedovic, Partner, Tensegrity Law Group LLP
Matt J. Rizzolo, Partner, Ropes Gray LLP
Jeff Telep, Partner, King & Spalding LLP
Gillian Thackray, Vice President and Chief Counsel, Thermo Fisher Scientific

1:15 pm – 2:15

Lunch

2:15 pm – 3:15 pm (<https://zoom.us/join> - Meeting ID: 885 9938 7949– Password: **06193**)

The Latest on IPR and PGR, including Estoppel in the District Courts and the ITC – Panelists discuss latest developments in IPRs and PGRs, including PTO rule and procedural changes, recent Federal Circuit and district court decisions, impacts those decisions have on post-grant proceedings, strategies for whether and when to pursue them, and statistics concerning trends for filing, timing, and outcomes. The panel examines AIA estoppel as between and among PTAB, the district courts, and the ITC. The panel investigates the bounds of that estoppel, how it is being applied in district court actions, and unanswered issues on the horizon. What is the scope of “raised or reasonably could have [been] raised” and does that cover non-petitioned grounds? Does estoppel preclude reliance on system/product prior art where a publication regarding the

**Complexity and Excellence in the Circuit Community
Virtual Conference
June 16-19, 2020**

system/product was raised in the petition? What about combinations that include art that was in the petition combined with system/product art? Will estoppel apply even where the petitioner was successful in the FWD? What if the petitioner is found to lack standing to appeal an unfavorable FWD?

Moderator:

Joseph A. Micallef, Partner, Sidley Austin LLP

Panelists:

Anish Desai, Partner, Weil, Gotshal & Manges LLP
Elisabeth H. Hunt, Ph.D., Shareholder, Wolf, Greenfield & Sacks, P.C.
Andrew M. Mason, Partner, Klarquist Sparkman, LLP

3:15 pm – 3:30 pm **Break**

3:30 pm – 4:30 pm (<https://zoom.us/join> - Meeting ID: 876 1909 9452– Password: **06194**)

Administrative Law in the Circuit Community – Administrative law issues arise in all of the Circuit’s jurisdictions, including government contracts, personnel, trademarks, and trade. This panel examines fundamental principles of administrative law, discusses how they are arising in the Federal Circuit’s decisions, and consider what the future may hold. In 1999, the Supreme Court reversed the Federal Circuit in *Zurko* and settled any doubt that the Patent Office is an administrative agency, subject to the requirements of the APA. Twenty years later, in part because of the AIA’s post-grant proceedings, administrative law rests at the heart of some of the most complex appeals at the Federal Circuit and has been a recent focus of the Supreme Court’s review. For instance, the Supreme Court’s closely followed 2019 *Kisor v. Wilkie* decision relating to agency deference involved an appeal from the Federal Circuit in the area of veteran’s law.

Moderator:

John F. Murphy, Partner, BakerHostetler

Panelists:

Tristan Leavitt, General Counsel and Acting Chief Executive, United States Merit Systems Protection Board
Farheena Rasheed, Deputy Solicitor, United States Patent and Trademark Office
Scott M. McCaleb, Partner, Wiley Rein LLP
Melissa Patterson, Assistant Director, Civil Appellate Staff, United States Department of Justice
Jennifer Yokoyama, Deputy General Counsel, IP Group, Microsoft Corporation

4:30 pm – 4:45 pm **Break**

4:45 pm – 5:45 pm (<https://zoom.us/join> - Meeting ID: 868 4656 9907– Password: **06195**)

Supreme Court Decisions – Jurisprudence in the Circuit community marshals national bodies of law and, in the area of patents, commands international respect. As that jurisprudence evolves in Supreme Court and Federal Circuit articulation, critical guidance and challenging ambiguity can arise. This panel of experienced Supreme Court advocates monitors the Supreme Court’s current session and reports to the Bench & Bar.

Moderator:

Sarah Harrington, Partner, Goldstein & Russell, P.C.

Panelists:

Ginger D. Anders, Partner, Munger, Tolles & Olson LLP
Ruthanne Deutsch, Partner, Deutsch Hunt PLLC
Mark C. Fleming, Partner, WilmerHale
Nicole A. Saharsky, Partner, Mayer Brown

5:45 pm – 6:00 pm

Closing Remarks – Sonal Mehta, Partner, WilmerHale