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CincyIP Newsletter

Volume 1, Issue 3 (October-December)

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NEWSLETTER COMMITTEE!

There is need for volunteers on the new CincyIP Newsletter Committee.

*Got Content?
Get Involved!*

If interested, please contact:

Thom Barnes
or Jennifer Miller, CincyIP

NKU's 2013 Security Symposium

Northern Kentucky University will present the 2013 NKU Security Symposium on October 18, 2013 at the METS Center in Erlanger, Kentucky. This annual symposium, hosted by the NKU Center for Applied Informatics, will focus on information security challenges, best practices, and professional discussions. Over 300 hundred information security professionals, academics, and attorneys are expected to convene to discuss current security issues of cutting edge security products. [CincyIP](#) is a proud sponsor of this 2013 symposium.

The Security Symposium is organized into the following five tracks:

Information Security Governance

This track focuses on the understanding and implementation of management policy, procedures, IT audits, continuity planning, and security awareness and training.

Software Security

This track provides information about how identity theft is being fought and information integrity is being secured by industry ingenuity.

Mobile & Computer Forensics

Learn about the latest methods and tools used to process and understand digital evidence.

Current Topics in Security

Explore issues of cloud computing, virtualization, mobile, and much more.

Legal Issues in Privacy and Security

This track enables security legal professionals to come together to discuss the legal and regulatory framework related to the implementation of software security.

The NKU Chase Law + Informatics Institute will host the Legal Track, featuring:

- "Avoiding Legal Detours When Going Mobile" by John C. Greiner, Graydon Head
- "A Perfect (Snow)storm: What the NSA Surveillance Scandal Teaches Companies About Managing the Human Element of Information Security" by Scot Ganow, Faruki Ireland & Cox P.L.L.
- "Attorneys and Other Contractors - HIPAA Business Associates in 2014 and Beyond" by Jennifer Mitchell, Partner, Dinsmore & Shohl LLP
- "Coming to a Town Near You: Federal Breach Notification Laws" by Michael Carr, JD, CISSP, CIPP, Chief Information Security Officer, University of Kentucky

Join us at the METS Center starting at 7:30 a.m. Reservations required. Tickets are complimentary. [Register Now](#). For more information,

SUGGESTIONS

CincyIP wants to hear
from you!

Please send all
suggestions, comments,
and feedback to:

Thom Barnes
or Jennifer Miller,
CincyIP Newsletter
Committee.

Quick Links

[CincyIP](#)

Lindsey L. Jaeger, J.D., S.S.B.B.
Director of Centers and Institutes Administration

Chisum Patent Academy Coming to Cincy

The Chisum Patent Academy is pleased to announce that our next Advanced Patent Law Seminar will be held March 5-7, 2014 at our newest seminar location, the spectacular 21C Museum Hotel in easily-accessible Cincinnati, Ohio.

Our three-day Advanced Patent Law Seminars run from 9 am to 12 noon and 1 pm to 4 pm each day, for a total of 18 seminar hours. All sessions are co-taught by Donald Chisum and Janice Mueller. Syllabi from all our past seminars are available [here](#). For reservations or any additional information please go to: [Chisum Patent Academy](#).

CincyIP "Observations" Series

Observations of the Lighting Ballast Arguments by Benjamin J. Christoff. University of Dayton, 2013.

Recently I watched the U.S. Court of Appeals for the Federal Circuit (CAFC) hear oral argument in *Lighting Ballast Control v. Phillips*. The main issue was whether the CAFC should overturn *Cybor* in favor of applying some deference to trial courts in claim construction. Universal Lighting Technologies (ULT) and the acting PTO Solicitor argued for a limited exception to *Cybor* that carves out Rule 52, while LBC argued for across-the-board deference to trial courts. Thus, both parties and the Solicitor argued for overturning *Cybor*. Below I will try to highlight what concerned the judges.

First, the judges tried mightily to discern which findings would receive deference. ULT posited that "historical facts" -- findings not based on a patent document -- should receive deference. Later the Solicitor proposed applying deference to findings characterized by a particular two-step inquiry, in which a trial court first determined that a disputed claim term had widely-accepted meaning in the relevant art and, only then, made a formal finding of that meaning. The CAFC did not attack this proposition. By contrast to these formulations, *Lighting Ballast Control* (LBC) argued for across-the-board deference on the basis that everything in a patent except the claim is merely documentary evidence, akin to parole evidence in contract interpretation. Judge Laurie, in my view, summed up the court's reaction: "That is an extraordinary statement."

Second, Judge Taranto repeatedly asked whether *stare decisis* permitted the court to overrule *Cybor*. He pointed out that neither Congress nor the Supreme Court had intervened in any way since *Cybor*, nor had the test proven unworkable. In response, ULT basically said that *Cybor* was not that bad after all and the CAFC might want to keep it. The question was otherwise unanswered.

Third, the judges asked what effect deference would have on uniformity in patent law, which was one of the central reasons Congress created the CAFC. Specifically, the CAFC was concerned about the possibility of having to affirm different constructions of the same claim. In response, ULT pointed out that the only known instance of non-uniformity occurred under the *Cybor* rule in a case where one CAFC panel reversed another panel's interpretation of the same claim. Later the PTO Solicitor persuasively argued that any lack of uniformity stemming from overturning *Cybor* would not raise a public policy concern. First, under collateral estoppel, "Once a claim is dead, it's dead." Second,

following a patentee's victory, subsequent defendants could have an opportunity to make new invalidity arguments. The result, then, could only be a "ratcheting-in" of the patent right against the public, not a surprise expansion.

In sum, it was evident that the en banc CAFC felt some discomfort about overruling Cybor. However, the judges seemed amenable to a deferential standard of review for a narrow set of trial court findings on the "pure fact" end of the spectrum, so long as a line could be drawn with some clarity. I suspect that the CAFC will adopt such a standard.

Do you or do you know someone in the Cincinnati, Northern Kentucky, or Dayton areas who enjoys writing short summaries of their observations of key court proceedings or decisions CincyIP is looking for submissions by these individuals in its upcoming newsletters! Please contact [Jennifer Miller](#) for more information.

Community Calendar

The NKU Chase Law + Informatics Institute presents "*Success Strategies for the Professional Artist in the Digital Age: Legal and Business Tactics*" Wednesday, November 6, 2013 from 4:30 pm - 8:30 pm at the NKU College of Informatics, Griffin Hall, Digitorium..

This program helps lawyers and their creative artist clients understand the modern business practices for digital exploitation of their work. The topics will include a range of business and legal practices. For more information, please view the [Event Schedule](#).

[Register online now](#). For those who cannot attend in person, a live webcast will be available at:

<http://webcast.themetscenter.com/NKUMETS/Catalog/catalogs/chase-informatics>

3.0 general KY & OH CLE hours have been approved; 3.0 general IN CLE hours are anticipated.

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