Community trade mark renewal fees will be cut; measures to combat goods in transit will be strengthened; and some registration procedures will be harmonized following a deal struck by EU institutions on April 21.

Meeting in Brussels, the European Parliament, Council and Commission reached a provisional agreement on reform of the EU Trade Marks Directive, CTM Regulation and allocation of OHIM’s accumulated surplus.

The full details of the agreement, including the wording of the legal revisions, are expected to be published shortly. INTA has weighed in on the provisional agreement on the INTA Blog (INTA.org/INTABlog) and will provide additional coverage in the May 15 issue of the INTA Bulletin.

INTA has been closely involved in the discussions regarding the reform, alongside other trademark users’ groups, and senior INTA staff were in Brussels ahead of the April 21 meeting to speak to officials and the media.

Writing on the INTA Blog, President J Scott Evans said he welcomed a number of aspects of the agreement. He said the planned 36% reduction in CTM renewal fees, which will bring the cost down to €850 for one class (e-filing) was “excellent news for brand owners and something that INTA has been advocating for since 2007.”

He added that the reforms would also provide “stronger ways to combat counterfeit goods in transit” and adapt the classification system to comply with the IP Translator case and the Nice system, while providing a fair temporary exception for trademarks filed when the classification rules were different.

The agreement also deals with OHIM’s accumulated surplus, which stands at more than €300 million, by establishing a mechanism to “offset” 5% of OHIM’s revenue to national offices for CTM-related activities and procedures. This proportion can be increased to 10% if OHIM continues to accumulate a surplus.

INTA Chief Executive Officer Etienne Sanz de Acedo said INTA would closely monitor how the money from OHIM’s surplus is distributed and spent: “INTA members’ perspective is simple: We are talking about fees not taxes, and these have been over market price. Instead of diverting those to general budgets, we should look at how to invest that money in improving the performance and efficiency of the trademark system.”

The reform is also expected to require national IP offices in the EU to ensure they provide administrative cancellation proceedings, though the harmonization does not go as far as many trademark users hoped. “INTA would have appreciated the inclusion of bad faith as a relative ground for refusal as well as immediate implementation of opposition and cancellation administrative procedures at the national level in all member states (as opposed to the seven year transition period the provisional agreement mandates),” said Evans.

The provisional agreement, which will also see OHIM renamed the EU IP Office, must now be endorsed by the European Council and the Legal Affairs Committee of the European Parliament before a full vote in the European Parliament. This could happen in September this year.
IP attachés from the U.S. and the U.K. explained yesterday how they help brand owners deal with intellectual property issues abroad.

The six panelists in a session entitled Utilizing Regional IP Attachés as Resources and Allies all serve as attachés around the world. They are responsible for addressing policy issues in countries in their region, conducting outreach and training for IP enforcement officers in their host countries, and lending support to brand owners.

The IP attachés work in concert with other delegations for promoting trade. In particular, the USPTO is part of the U.S. Department of Commerce, so the attachés are often located with the Department of Commerce’s regional trade mission, such as the Foreign Commercial Service. Similarly, the UK IPO is part of the UK’s Department for Business Innovation & Skills.

One important advantage that IP attachés have is their in-depth knowledge of the workings of regional governments. For example, Albert Keyack, USPTO IP Attaché for South America, explained that even though some brand owners have sophisticated outside counsel, they often still may not have the same level of knowledge about the host government, or access to it, as attachés.

“Sometimes, like the blind man and the elephant, you still don’t know what all the parts of a government looks like,” he explained. “And we do, because we train border guards, we train the police who do seizures, we train municipal police, we train judges.”

“So we know everybody in the enforcement food chain ... and in several instances we have been able to direct people to the exact right people.”

Keyack gave an example of the rights holder for STRAWBERRY SHORTCAKE, who had detailed information of a shipment of counterfeits entering Brazil but did not know how to use this information. His office was able to direct them to the exact officials at the Port of Santos to stop the shipment.

The attachés’ understanding of the practices of these foreign governments also help brand owners be more effective when raising their concerns. One thing that they stressed is that the best approach is different in each country.

For example, Donald Townsend, USPTO IP Attaché based in Russia and covering other countries in the region, pointed out that he works in some countries where it may not be advantageous to engage the U.S. government too early in the process. Instead, in many countries, he stressed that it is best for the company to go through local channels first to raise their complaint or bring up their issue, and then request support from the attaché at a later stage.

Aisha Salem, U.S. IP Attaché for the Middle East and North Africa, said that the first question she asks companies seeking assistance is what steps they have taken. She pointed out that one thing that the IP attachés can help with is figuring out what steps the rights holders should take, and the best way to proceed.

Michael Lewis, the attaché to Mexico, pointed out that the Mexican government is very keen to engage with international companies and would encourage brand owners to reach out. This, he notes, is different from some of the countries in Townsend’s region and illustrates the importance of knowing the nuances in each country.

Both the USPTO and the UK IPO have websites for their programs, with contact information for each attaché.
Running a law firm is a stressful endeavor. It throws up issues such as balancing pricing pressure from clients with the need to maintain profitability; dealing with administrative and marketing responsibilities; facilitating more knowledge sharing within a firm; utilizing technology to make the firm more efficient; and handling staff and paralegals to provide more value to a firm.

Registrants were given many useful tips for dealing with these issues in the session entitled An Insider’s View of the Challenges of Law Firm Management yesterday morning. The session was moderated by Mark Kachigian of Johnson & Kachigian. One particular point of interest was the question of whether responding to a request for proposal (RFP) is worth the time.

“The answer in our firm is always yes,” said Rose Auslander of Carter Ledyard & Milburn in the United States. “It’s a competitive world out there. You may be busy now, but you may not be busy tomorrow.”

Marcus Gallie of Ridout & Maybee in Canada noted some reasons not to respond, however. These included the RFP not fitting into the firm’s image, conflicts, the stretch on resources, and not being given enough time to respond.

“I’ve handled two RFPs in the past six months—one was probably the worst one ever, and one was probably the best,” said Gallie.

He said the first one was vague about how many law firms were being asked, and involved lots of demands for data and hypothetical questions that made his colleagues at the firm feel they were being asked for free legal advice.

“The result was 30 hours of staff time, it took three days to get confirmation back, and in the end we had back a response just saying ‘thank you very much, dear sir’ and we aren’t going to use you.”

In contrast: “The other RFP said we were one of five, they asked us to run a conflict check, they were very upfront, and are now a good client,” said Gallie.

He advised registrants not to be bullied during the process and to be assertive. “And if it doesn’t work, ring them up and ask why you didn’t get the job,” he said.

Another tricky question handled by the panelists was best practices for dealing with collections to reduce accounts receivable (AR).

“Everything starts with the pre-nuptial,” said Anthony Tong of Robin Bridge & John Liu in Hong Kong. “Steps must be taken to deal with non-payment or delay of payment. But pursue legal proceedings as a last resort, since that means the end of the relationship.”

Gallie said Ridout & Maybee had reorganized its credit and collections department and had learned a number of useful lessons in the process.

“The first was we weren’t making sure that banking information was on invoices. Clients want to pay you—don’t make it hard,” he said. “The second was to include the AR reminder on new invoices, so they know what the AR is when they get the invoice. The third is that there are payment portals you can use. Our role is to make it as easy as possible for the client to pay.”

“It’s a competitive world out there. You may be busy now, but you may not be busy tomorrow.”
INTA expands Washington, D.C. team

INTA has recently hired two senior staff members in its Washington, D.C. office. Deborah Cohn, formerly Commissioner for Trademarks at the USPTO, has joined as Senior Director of Government Relations while Lori Schulman, most recently General Counsel for the Association for Supervision and Curriculum Development (ASCD), became Senior Director of Internet Policy.

Cohn has worked closely with INTA and trademark practitioners for the past 10 years. In her new role, one of her focuses will be the new Congressional Trademark Caucus, established at the end of last year, which aims to advance the education of the U.S. Congress on trademark issues and the importance of trademarks.

Schulman has worked in trademarks since the late 1980s. Her first job was as a trademark examiner at the USPTO and she subsequently worked at Texaco, March of Dimes, AOL and the Water Environment Research Foundation before joining ASCD. In recent years, she had become closely involved in the work of ICANN. She was also on the advisory board for the .org domain.

Schulman has been a member of INTA for 18 years. She was a Board member and helped to establish the non-profit category of membership, and also hosted the Leadership Meeting in Miami in 2013. She told the INTA Bulletin last month: “One of my first orders of business is to gather a group of concerned members to think about what a strategy will look like in the short and long term for INTA with respect to Internet issues.”

Cohn said: “I have worked closely with INTA throughout the last 10 years, so I know a number of INTA members. I’m really looking forward to working closely with everybody. I’ve been completely impressed by INTA members’ enthusiasm in helping governments, particularly the USPTO, with a number of projects to increase quality and to help foster a better examination system in the United States.”

Key U.S. IP Associations Discuss Possibilities for Cooperation

On April 24, 2015, INTA joined with three other IP user associations in Washington D.C. to launch a new initiative to coordinate advocacy efforts in the United States on behalf of brand owners. Members of INTA, the American Intellectual Property Law Association (AIPLA), the Intellectual Property Owners Association (IPO) and the American Bar Association - Section of IP Law (ABA/PL) discussed how the key U.S. IP associations dealing with trademarks can create the strongest voice possible on behalf of trademark owners and practitioners. Possible areas for cooperation include coordinating comments to the USPTO, working with the Congressional Trademark Caucus—which was launched in September 2014—to educate the public and sharing results of international meetings. The next such meeting is scheduled to take place later this year during the TMS summit in Washington D.C.

Full List of Attendees

International Trademark Association (INTA)
Etienne Sanz de Acedo, Chief Executive Officer
Deborah S. Cohn, Senior Director, Government Relations
Bruce MacPherson, Chief Policy Officer
Lori Schulman, Senior Director, Internet Policy
Jon Kent, Kent & O'Connor, Inc.

American Bar Association–Section of Intellectual Property Law (ABA/PL)
Lisa A. Dunner, Chair
Theodore H. Davis, Jr., Chair-Elect
Hayden W. Gregory, Legislative Consultant
Jonathan Hudis, CLE Officer

Intellectual Property Owners Association (IPO)
Herbert C. Wamsley, Executive Director
Samantha Aguayo, IP and Government Relations Counsel

American Intellectual Property Law Association (AIPLA)
Sharon A. Israel, President
Lisa K. Jorgenson, Executive Director
Jody H. Drake, Board Member and Liaison to Trademark Committees
Nancy J. Mertzel, Board Member
Jessie N. Roberts, Chair, Trademark-Related Issues
Albert Tramposch, Deputy Executive Director for International Affairs
The so-called crisis in American law schools has changed how lawyers of all stripes are taught, and today’s session on developments in legal education will discuss how some of these changes may help to make new trademark lawyers more prepared than ever before.

The panel will feature law professors from around the U.S. as well as Puerto Rico to discuss how legal education is changing and why private practice lawyers are needed more than ever.

The trademark profession wants YOU!

Peter Leung previews today’s session on developments in education and teaching in the U.S.

The times they are a-changin’: Developments in Education and Teaching will take place at 11:30 am today.

As a result, law schools have adapted. According to panel moderator Megan Carpenter of the Texas A&M School of Law, one of these changes is the growing popularity of clinical legal education. “Clinical programs are increasingly important and they really strive to educate the students in a way that goes beyond the traditional legal education model,” she explains. “Now law students are not just lectured on doctrinal material, but are actually engaging in the practice of law.”

“And particularly in IP, there are a lot of opportunities for students to learn in a clinical setting.”

For example, the USPTO has its Law School Clinic Certification Programs which partners with law schools to allow law students to represent clients on a pro bono basis in matters before the USPTO. The student advocates represent their clients, who are mostly individuals and small businesses that meet certain financial criteria, on a range of matters, including registration, clearance, office actions and general trademark law and registration strategy.

Clinical programs

The USPTO has both trademark and patent student clinical programs, and several schools, including Texas A&M, have both.

Carpenter points out that as clinical programs become increasingly popular, law schools are beginning to adapt their staffing strategies. For example, she says that in the last five to 10 years, it is more common for schools to have a full-time clinical professor whose job is to manage and guide the students in the clinics. In the past, law schools usually did not have faculty dedicated solely to the clinical programs.

Despite the increasing attention to clinical programs, Carpenter says that their success relies on practicing attorneys who can help manage and direct the students. Even with a full-time professor running the clinics, she points out that the adjuncts’ real world experience is something that most professors cannot replicate, and that this experience is invaluable to the development of future trademark lawyers. And of course, more adjunct professors also means additional capacity to take on extra students.

“These programs make legal education relevant, and gives the students a chance to apply their learning in real ways,” she explains. “And this is why I want to reach out to the bar, because these attorneys can provide something that we as professors cannot provide.”

“Professors and attorneys working together—that’s a potent combination.”
The INTA Board of Directors yesterday approved a policy resolution from the Limits on Trademark Use Subcommittee of the Emerging Issues Committee. The resolution sets forth INTA’s position regarding restrictions on trademark use through plain and standardized product packaging.

INTA’s concern is with various governments enacting or considering enacting plain packaging legislation. The resolution says such legislation is detrimental to consumers, trademark owners and competition. INTA’s position is that:

1) Plain and highly standardized packaging measures being considered or imposed by governments should be rejected or repealed since they violate various international treaties and national laws on trademark protection including provisions of the Paris Convention, the Technical Barriers to Trade Agreement, and TRIPS.

2) Governments should use less drastic alternatives to address health and safety goals, such as public educational campaigns which do not violate international and national law and expropriate valuable trademark rights.

INTA submitted an amicus brief in the cases pending at the World Trade Organization (WTO) over Australia’s plain packaging legislation. So far, most of the debate around plain packaging has focused on tobacco but there are concerns the focus will be widened.

“The issue is not about specific products,” INTA CEO Etienne Sanz de Acedo told the INTA Daily News. “What is a concern is: where are we going? Today it is tobacco. Tomorrow it could be alcoholic beverages or confectionery. Any legislation should be in agreement with international treaties and should recognize the right of property in trademarks. Moreover, removing the branding could make counterfeiting easier.”

The INTA Board also approved another policy resolution yesterday—“A ‘Material Differences’ Standard for International Exhaustion on Trademark Rights.”

The resolution provides that:

1) National exhaustion of trademark rights in relation to the parallel importation of goods should be applied; and

2) In those countries that currently follow international exhaustion, and in which political or other conditions make it highly improbable that national exhaustion would be implemented, a “material differences” standard should be adopted in order to exclude parallel imports that are materially different from those products authorized for sale by the trademark owner in the domestic market.

The two resolutions were passed during the Board’s second quarterly meeting, in which it heard reports from various Board committees, including the Audit, Finance, Compensation & Benefits, Nominating and Planning Committees.
“Blackhorse is in many ways the mother of all pro bono cases,” Wilson Brown of Drinker Biddle & Reath declared in yesterday’s session, Taking the Ball and Running with a Pro Bono Case Like the Redskins Trademark Cancellation Action.

The case has shown that law firms have to be prepared to take on pro bono cases for the long haul. Drinker first got involved in the issue being contested in the Blackhorse case in 1992.

“The reality is that once you are in for a penny, you are in for a pound,” said Brown. “That has proved to be the case with Blackhorse.”

In 1992 Drinker took on a pro bono case on behalf of Suzan Harjo, a Native American who filed a petition before the TTAB challenging the trademark registrations of NFL team Washington Redskins. The TTAB ruled in favor of Harjo in 1999, only for a district court to grant summary judgment to Pro Football in 2002. A Washington, D.C. court affirmed this on the basis of laches.

In 2006, Amanda Blackhorse and other younger Native Americans initiated a complaint. In June last year, this led to the TTAB cancelling six trademark registrations of the Redskins. Pro Football filed a civil action naming Blackhorse as a defendant. Summary judgment in the case is set for June and a trial set for July.

Brown said that Drinker has a written policy about whether to take on pro bono cases or not.

“Pro bono cases are those that we can take for those that are indigent or unable to afford it,” he said. “There are not too many hard calls. The Harjo and Blackhorse ones show some of the interesting aspects of our policy. These people were not able to afford the services. So it was easy to say, ‘If we are going to do it, then we have to do it pro bono.’”

The law firm takes into account the significance to the community at large.

“The firm will not refuse to assist public interest matters because they are controversial,” said Brown. “They are not subject to an ideological screen. So we could find ourselves on two sides of an issue in two different pro bono cases.”
“We are no longer trademark attorneys”

Ahead of this year’s Annual Meeting, Michael Loney met J. Scott Evans in New York to discuss brands, bylaws and the Internet.

“...am not your typical lawyer,” says J. Scott Evans, President of INTA for this year.

For a start, he was a stage actor from the age of six to 28. “So I bring a different background,” he says. “I am very comfortable talking to people and I am very passionate when I talk.”

Evans is also different from previous Presidents because of his Internet background. He is Associate General Counsel—Trademark, Copyright, Unfair Competition and Internet Law at Adobe, a role he has held since October 2013. He previously worked for Yahoo! for six years.

Two goals
Evans set out two goals for the year when he took over the INTA presidency. The first was to assist and train INTA’s volunteer leaders to help grow the Association. The second was to broaden the scope of discussions around trademarks to encompass brands.

On the first goal, Evans comments: “Many people come into this organization as practitioners with a lot of energy and want to get involved. But we have 30,000 members and only 3,000 slots so it is difficult. I think there is a lot of misunderstanding about how that process works. So we are going to open it up and explain it more, and give better tools to applicants so they can self-identify their skills and interests.”

This will help the Nominating Committee allocate volunteers to where their skill sets suggest they are best suited. Evans says change is inevitable.

“The things that have gotten INTA to where it is today are not the same skills and abilities that are going to get INTA to where it wants to be in its strategic plan,” he says. “If you are a leader in an organization you need skills to help manage that change.”

Evans says he would like more focus on practical issues such as how to run a meeting, how to set an agenda, how a conference call is different from an in-person meeting, how to deal with different languages and so on. He says this method of training is also a value add for leaders’ day jobs.

On the second goal, Evans says trademarks have long served as the tool for companies to identify their brands. But the concept of brands has expanded to include all sorts of emotional and social elements.

“I think that we are no longer trademark attorneys,” says Evans. “A trademark defines a set of rights and responsibilities you have as the owner of that trademark. But a trademark is only one thing that makes up a brand. I think we are brand attorneys now.”

Brand protectors
Social media has given consumers a lot more power to compliment or criticize brands. As a result, Evans says how you engage in protecting your brand is something to which you need to give a great deal of thought.

He adds that INTA’s Brands and Innovation Task Force is being made into a full committee. This reflects how much the world has changed over the past decade.

“The Internet, globalization, and the homogenization in some instances and cultures have made us very different now,” he says. “Brand owners are realizing that our traditional allies aren’t necessarily the people we need to be aligning with. We got knocked pretty hard when the Anti-Counterfeiting Trade Agreement wasn’t signed into law, and the reality was there was nothing controversial in it. All the provisions in ACTA were in the national laws already. But it was a spillover from some of the heartburn about copyright.

“The story we need to tell policymakers and consumer groups is that sometimes trademark owners have a very different view on some of the more traditional IP issues. While I have all the respect in the world for copyright owners and patent owners, I think we have gotten derailed sometimes because people lump us in there and don’t realize the purpose of a trademark is very different and is much more aligned with some of these consumer groups than they believe. Trademarks are more about protecting consumers, and giving consumers the tools to be economically efficient and make good choices.”

Evans has also instituted a Presidential Task Force to review INTA’s bylaws and governance structure.

“I don’t think we have done that for about 10 or 15 years,” says Evans. “INTA needs to take a holistic look at whether we are in compliance with all the laws and regulations that apply to this type of organization. What can we do to make ourselves more nimble? I would like us to have a structure where the bylaws are very light and then there is a policy manual or book that is not a bylaw that can be amended as we grow and as things change. So it will be easier to grow and change.”

Pressing issues
Evans sees a number of pressing trademark issues around the world. An important one is integrating companies from China, India and Latin America further into the international trademark community. He says INTA has a role to play here by making these companies more engaged.

Another big issue is the transition of ICANN. Evans says there is some discomfort with the role it is playing.

“The U.S. Government had very light oversight, but they did have the golden egg, which was the IANA contract. When you take away that oversight, if ICANN makes a mistake nobody can tell you who you go to in order to rectify that and then it looks like, talked about and fixed. That’s nerve racking,” he says.

He adds: “If I walked into a boardroom and said they were expanding the power grid of your own company, would you want that? A lot of executives are so focused on running their business that this is ubiquitous to them. It’s like air so they never think about how it works. So trying to get them to focus on it and get them to realize it’s important and they should be engaged is a challenge.”

Trademark practitioners have a challenge getting this message across.

“Trying to get people to pay attention to what is going on can be difficult,” says Evans. “It is a challenge to get the message across that the trademark lawyer knows more about it, but you should know about it too.”
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Protecting online content and domain names in Mexico

Attorneys from Basham Ringe y Correa explain the issues facing IP rights holders when taking action against potential infringement online.

What action can trademark and copyright owners take if their IP rights are being infringed on a website based in Mexico?

Eduardo Casaheda: The kinds of actions that can be taken are copyright infringement, trademark infringement, or both at the same time. You can also initiate criminal actions. This sometimes is a much quicker action against potential infringers because a standard infringement action to the Mexican Institute of Industrial Property [Instituto Mexicano De La Propiedad Industrial] takes longer. The results might be enforceable but may take a long time, so by pursuing criminal actions you may have better results.

Once you have your final and conclusive decision that infringement has occurred you would have to pursue a separate action. This sometimes is a much quicker action against potential infringers because a standard infringement action to the Mexican Institute of Industrial Property takes longer. The results might be enforceable but may take a long time, so by pursuing criminal actions you may have better results.

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Here in Mexico the competent authority for solving most trademark and copyright infringement matters is an administrative authority. In order to pursue damages regarding trademark infringement, the trademark owners have to prove that they used certain legends that are regulated in the Mexican industrial property law. These are the MR, which stands for registered trademark, or the R within a circle. If the term is not accompanied by these legends it will not be possible to pursue damages. It is interesting to see some clients are reluctant to use these legends because of image or marketing issues when legally it is a highly recommendable action.

Are there any recent cases of interest?

Eduardo Kleinberg: There are infringement actions being initiated all the time, either because there is infringement in standard commerce or on a website.

One of the cases that is very interesting, and was handled by our law firm, was the conflict for the domain name Netflix.com.mx. NETFLIX intended to do business in Mexico but it was not possible to change the domain name because another company had registered the domain name before. We were able to create a way for the client to avoid the UDRP and WIPO, which takes a bit too long, and were able to obtain the completion of the domain name without this type of proceeding and NETFLIX obtained the domain name for Netflix.com.mx. It took one month when normally the UDRP proceeding takes between three to five months.

There are a couple of other cases to do with domain names that we found interesting where the main issue was the use of a trademark that was already registered. For example, there was a dispute regarding a domain name trabajo.com.mx, which translated in Spanish is “work”. The trademark was registered by another entity that tried to obtain the transfer of this domain name. Despite the fact that TRABAJO was a registered trade- mark, the panelist determined that the word was descriptive and refused to register the domain name. So the pan- elist had this kind of trademark office-like faculty to determine if a registered domain name was descriptive and in the end he did.

Is this becoming more of an issue?

Santiago Zubikarai: The number of MX domain names continues to grow. Mexico has struggles with the unauthorized use of trademarks in many fields, both in the “real world” and also in the “virtual world”. So people who act illegitimately tend to use cyber squatting and use the internet more and more to place merchandise that can be sold under trademark of another party. So, yes, the use of the internet has increased for the unauthorized use of trademarks, both in domains names and in concerning the sale of counterfeit products.

What is the law on the liability of the internet service providers?

Juan Carlos Hernandez: The quick answer would be there is none. We do have the telecommunications law that applies to the ISPs. However in reality they do not have any liabilities in case there is infringing works or infringing websites running through the systems.

But Mexico is a member of the TTP that is now being discussed. Among the topics there is one specifically for IP and within that specific chapter there is discussion about ISPs and the liability that they may incur in their daily work. So if this is signed Mexico would have to internally modify its internal regulations to put more responsibilities and liabilities to ISPs, and of course they are not happy about this.

This is interesting because they are the same companies that operate in other countries with more liabilities but they happily operate here in Mexico without any real responsibility. In some countries there are very effi- cient systems such as takedown notices, but Mexico has none. If you want to take down or shut down a work that is being infringed you have to go through different channels that are more complicated. It takes longer as opposed to the very efficient system that works in other countries.

What practical steps can rights owners take?

Eduardo Kleinberg: The first step will be to actually con- firm that a potential plaintiff has the intellectual property rights that they are seeking to protect. Intellectual prop- erty rights in Mexico are territorial. We have had cases where clients have asked whether they can enforce a trade- mark that is registered in their own country when it is not Mexico, and the answer is no.

So the first thing potential plaintiffs have to do is con- firm that they actually have a right that will serve as a basis for possible infringement action. If they are willing and they have confirmed they do have the right, it is important to gather the evidence that will be used later on in the proceeding.

One thing that is important to take into account is that the particularities of the internet and this virtual world make us think differently as lawyers when we are deter- mining a strategy for our clients. Sometimes trademark owners don’t like to see any mention of their trademark on the internet. But such usages be covered by some type of fair use or freedom of expression. So another important step that you must take before seeking an infringement action is to determine if there is actually an infringement because a simple mention or even some type of critique may not amount to an infringement.

Another practical question that you have to take into account before moving forward with an infringement action is the actual impact of the infringement. Even if there is infringement maybe it is so small that actually moving forward and going with litigation can be counterproductive because either it is more expensive than the damage the actual infringement created or it can even create a bad image for the client if they decide to move forward. People on the internet tend to be capri- cious, so you have to be careful not only with the legal technical aspects but also with the possible impact that moving forward with an infringement action could have on the image of your client.

Once you decide to move forward with infringement, there are some steps you should be careful with. In order to demonstrate an infringement for a trademark or a copy- right you are going to have the burden of proof that you have to demonstrate an infringement actually occurred. Therefore before moving forward with an infringement action and attempting to contact the potential infringers with a cease and desist letter, it is important to gather evi- dence to demonstrate that infringement has actually occurred.

Santiago Zubikarai: In these cases what we would usu- ally do is hire a notary and have him give faith of the con- tent of the website. Notaries in Mexico have registrar fac- ilities. They can attest to any fact that they witness. These statements such facts have value as evidence in litigation. Therefore if the notary states that he accessed a website and upon accessing such website he saw certain content, then that fact would be
Trademark owners should try to be careful in what type of trademark protection they obtain. Demonstrated in litigation, it is essential to hire a notary and have him visit the website before attempting any contact whatsoever with a potential infringer or before filing the infringement action.

Also, it is recommendable to conduct an investigation of the location of the infringer. Usually, we recommend conducting this kind of investigation to know if this type of infringement is taking place in Mexico or another place so that we are able to recommend which would be the best legal strategy to stop the entirety of infringement.

What other advice do you have for trademark owners?

Eduardo Castañeda: I would add that trademark owners should try to be careful in what type of trademark protection they obtain. For example, they could have a trademark registered in one class of classification but perhaps their operations in Mexico are actually covered in another class, such as a service class. This could have an impact when they try to bring an infringement action.

Eduardo Kleinberg: In addition, even when we are talking about the electronic means and digital world in Mexico, in order to enforce your rights and have good protection you need to have your trademark registered in Mexico. If you don’t have a trademark registered in Mexico, then the action you may take will not be as enforceable or as strong as they can be in other jurisdictions. In Mexico, that is a must.
Get up to date with the Madrid System

WIPO will host a meeting for users of the Madrid System today. James Nurton asked David Muls, Senior Director of the Madrid Registry, what they should expect.

Last year it was about Latin America. This year the focus is on Africa. And next year, if all goes to plan, it will be south-east Asia. As David Muls, the new senior director of the Madrid Registry at WIPO in Geneva, says: “The Madrid System is shifting away from being EU-centric. This will be reinforced in the next five to 10 years.”

The System has now expanded to have 95 contracting parties, covering 111 countries, with several more expected to join later this year (see box). But the move towards being a truly global system is not just about the geographical coverage but also the nature of the users. In this respect, says Muls, it is notable that last year the United States was the biggest single user, ahead of Germany, France and Switzerland. That may be partly driven by the opportunities to protect international marks in Mexico and Colombia.

Expansion and improvements

With further geographical expansion, that globalizing trend is likely to continue. In particular, says Muls: “When the ASEAN countries have joined, it will be much more interesting for Asian countries to use the System.” Looking further afield, Canada is also expected to progress towards joining Madrid this year, following the passage of its new Trademarks Act.

The most recent parties to join Madrid will all be represented at today’s meeting. Zimbabwe and Organisation Africaine de la Propriété Intellectuelle (OAPI) both joined last December, while Cambodia followed them in March this year.

The accession of OAPI in particular expands coverage of the system in Africa, adding 17 mainly French-speaking countries. However, practitioners in the region have raised questions about the constitutionality of the accession and whether international registrations will be recognized in all the OAPI countries. The Office has responded, publishing a statement rebutting those questions. “We cannot intervene. It is a constitutional question for OAPI,” says Muls, who adds that OAPI’s Director General Paulin Edou Edou will be available to answer questions today.

There have also been questions raised about the accession of Zimbabwe and eight other member states in Africa. In this respect, said Muls, it is notable that Ghana has recently adopted Madrid-compatible legislation: “The office is now working with the International Bureau to improve the operational process.” Zimbabwe’s Controller of Patents, Trademarks and Industrial Designs, Fidelis Maredza, will provide further information today. Malawi and Gambia may be the next African countries to join Madrid.

Cambodia’s membership of Madrid is the first of what is expected to be a rush of accessions from the ASEAN member states, all of whom are committed to joining the System if they have not done so already. By the end of this year, all of them are expected to have done so, with the possible exceptions of Thailand and Myanmar. Sim Sokheng, Director of the Department of Intellectual Property Rights in Cambodia’s Ministry of Commerce, will be attending the meeting today.

Looking further afield, Canada is also expected to progress towards joining Madrid this year, following the passage of its new Trademarks Act.
further ahead, he hopes further growth will come in Latin America as well as Canada and the Gulf states, which at present are noticeably absent from the Madrid System.

In the meantime, Muls is focusing on improving the pendency rate for Madrid transactions at the International Bureau, which has been criticized by some users. Acknowledging that there have been criticisms here, he says “We need to do better on this.” In a new initiative, WIPO will start to disclose the pendency rate for all major Madrid transactions: applications, renewals, subsequent designations, modifications, decisions and corrections. These will be revealed for the first time this afternoon and will then be included as an annex to the program and budget for 2016-17, meaning they will be officially disclosed and members will be able to monitor them. “We have historical data since 2008. Since last year we are also able to zoom in on a monthly basis.” During today’s meeting, Muls will be able to answer questions about pendency and will also provide more information about WIPO’s targets and a new measurable category for customer enquiries.

Further reforms are coming in the shape of new IT functionality. Muls says a new, “much better”, e-renewal system is being launched, and “good progress” is being made on e-filing. The Benelux and Australia offices already support this, and more offices of origin are expected to follow them, including OHIM. “In the next few years we are going to push e-filing with several offices of origin and the goal is to get as many as possible to take this up,” he says.

Other IT improvements will include seven new e-forms, for tasks such as change of address and subsequent designations. These are being tested with examiners and some users. There is also a new ROMARIN system and new rules on continued processing, which effectively provide a grace period if certain deadlines are missed.

That’s quite a lot of changes, and WIPO staff will be available to answer questions from users today. Muls, who joined the Madrid Registry from the Patent Cooperation Treaty division at WIPO in 2013, says that continued reform is necessary to make sure Madrid remains relevant and efficient for users, as the System continues to grow: “It’s a complete system to manage the whole life cycle of the trademark. The system becomes more powerful as you can cover more countries centrally.”

The Madrid System Users Meeting takes place from 11:00 am to 1:00 pm today. For more on Madrid, visit INTA’s Practitioner’s Guide to the Madrid Agreement and Madrid Protocol at www.inta.org/madridprotocol.
Best practices for dealing with piracy and counterfeiting in India

Pravin Anand and Binny Kalra of Anand and Anand in New Delhi discuss how to approach counterfeiting problems in India and the advantages and disadvantages of criminal and civil enforcement

How does a company know that its brand is being pirated or infringed?

Pravin Anand (PA): There are two concepts here. The first can be termed as “lead generation” while the second is “investigation”. Invariably, the staff or marketing department of a company will spot infringing goods and report it to top management or to the appropriate department. This would typically constitute a lead. Sometimes, companies have investigators or their attorneys who look out for leads and this function is a “spOTTIng” function.

Thereafter, you need to have adequate information to bring an action such as the source of the goods, which includes finding out things such as the location of factories and warehouses and of course the persons responsible for the wrong. In a relatively simple case this may involve searches at the office of the Registrar of Companies or some trademark searches to locate the details of partners or the proprietor or looking at websites.

However, in a complex case, a deeper investigation may be required involving tax documents, bank accounts and other such information. The investigator may also need to discover the entire chain of distribution, from the manufacturer to the assembler to the packaging and printing providers, wholesaler details and finally the retailers. Different players may perform these service functions and it may be important to hit each one in the distribution chain or else, like a blood vessel, stopping an element at one end would simply divert the other elements in the chain or else, like a blood vessel, stopping an element at one end would simply divert the other elements in the chain to alternate sources.

A good investigation, kept confidential until actual seizure of goods, is at the heart of a successful anti-counterfeiting campaign.

What other information must the investigator find?

Binny Kalra (BK): The investigator must acquire samples of the infringing products and additionally must try and find out the assets of the infringer so that damages can be recovered. Finding out the assets of the infringer is an important element in the profile of the opposite party, which helps in determining the strategy for enforcement.

It is also important to have specific information on where the goods are stored so that an Anton Piller Order (an order to search a location and seize evidence where the goods are stored so that an Anton Piller Order, an order to search a location and seize evidence where the goods are stored so that an Anton Piller Order, an order to search a location and seize evidence) can be successfully executed.

Similarly, other information can be very important, including but not limited to:

- The days of the week when the market is closed,
- The political links of the owner of the infringing entity, if any,
- Associations that are active in the market concerned that might raise a protest,
- Other law suits that the infringer is involved in and a history of the kind of defenses raised in those law suits,
- Exports and e-commerce related information,
- Details of bank accounts to try and freeze through a Marie Antoinette order.

These are just some of the information that an investigator should try to obtain. As said earlier, a good investigation can make or break an action.

Does India have good investigators and are they allowed to go the whole hog such as with surveillance and tapping of phones?

PA: This is a delicate issue as investigators have to be carefully selected not only based on their competence but also on ethical considerations. They must have an impeccable ethical record as they may be required to give affidavits in Court and may even be subjected to cross-examination.

It is important to find out the operatives that are employed by the investigative agency, as the owner may not be himself involved in the investigation and may delegate the investigation to operators who may not himself be able to match the same high level of the owner. It is also quite common for operators to leave one investigative agency and join hands with competitor agencies, which could spell disaster particularly if a campaign is ongoing. To overcome this difficulty, an interview with the operators and a look at their contracts will provide a reasonable level of comfort and at least to an extent ensure that the action of some operators does not tarnish the reputation of the proprietor.

Once you have leads and therefore a target or a person who is infringing the company’s brands and you have investigated the person reasonably well, what’s next?

BK: You must then decide whether you wish to take legal action. This is a particularly important decision point in a campaign.

It may be that a simple cease and desist letter could take care of the problem as the wrongdoer may be a small party indulging in infringement on a very small scale.

On the other hand, it may be possible to bring a civil action or file a criminal complaint or, in the case of import of goods, approach the Customs for the seizure of goods.

Cease and desist letters may appear very attractive to companies looking for low-cost solutions. However, they may result in a loss of surprise, which is the soul of anti-counterfeiting activities. If you caution the opponent, he may file a caveat, which is a petition to the Court preventing the plaintiff from seeking an ex parte order. He may also file a counter suit for groundless threats in his own jurisdiction, thereby depriving the plaintiff from instituting the action in the plaintiff’s preferred jurisdiction. In some cases, he may backdate documents or at least claim prior use of the marks. Even if he is not able to prove this later, these claims may prevent ex parte orders against him. Further, he may hide goods so that an Anton Piller Order, when executed, will not result in positive recovery. Thus, a cease and desist letter may also do a lot of harm.

When do you file a criminal action as opposed to a civil action?

BK: There are advantages and disadvantages to both the criminal and the civil route and this must be carefully weighed considering the facts of a particular case. Thus, where the counterfeiting is of such a nature that a distinction between the original and the counterfeit is difficult to establish, a criminal action can be the right action as the machinery of the State is particularly effective in locating sources from which the goods originate.

In a civil action, the defendant may simply deny having indulged in the activity. And, in case there was no recovery upon the execution of an Anton Piller Order, the action might fail for want of evidence linking the goods with the infringer. The other advantage of criminal actions is the high degree of deterrence which is generated when a uniformed officer like a policeman visits the premises of the infringer; it has a bone chilling effect.

So when is a civil action the preferred response?

PA: Where the defendant’s name is either disclosed on the goods or on a website or advertisement and it is clear from the surrounding circumstances that the goods do originate from the defendant, the civil action may be a preferred route. A few reasons for this are:

- Unlike the criminal action, there is no independent agency like the police involved and the chances of corruption or influence of some other kind are therefore minimal;
- In a civil action, you can get an injunction and also compensatory and punitive damages, while neither of these are possible in a criminal action.
- If settled, the exit in a civil case is easy. Since a criminal action is a case brought by the State, settlement between the affected parties may still not result in the termination of the action;
- Civil actions can also be filed at the High Court level. There are five High Courts in India that have original jurisdiction, including the Delhi High Court which has a very large portion of IP cases (nearly 70%). In a civil case, a High Court order is very valuable, while in a criminal matter which is heard by a magistrate, the order is not so valuable. The High Court process is wholly transparent because the order is reported, put on the internet for the public to view and for bloggers and other media personnel to comment on; and
- In a civil action, you will invariably terminate the proceedings with a decree of permanent injunction and/or damages while in a criminal action, the rate of conviction is so low that the action often fails or terminates with plea bargaining.

Can the civil action really be the sole basis for fighting counterfeiting?

PA: If you follow the 80:20 rule, then most of the actions, about 80%, would be civil in nature and filed at a centralized court against defendants all over the country to form a kind of hub and spoke arrangement. There would be some criminal actions and some Customs and domain name cases that will fill up the remaining 20%.

How soon must you approach the Court after identifying a target?

BK: Speed is a very important element in ensuring success in an infringement action. Companies must try and approach the Court within a few weeks of obtaining the information about the infringement. Speed helps in two ways: first, delays in approaching the Court sometimes reduce the chances of obtaining an ex-parte injunction. Second, if the information about the infringer obtained through the investigation is old, it is possible that by the time the Court passes an order, the infringer has changed his location or supplier and thus a raid action may not be successful.
How do you ensure that you get deterrence through your actions?

PA: This is an extremely important aspect of enforcement. Not only must you stop the wrong but you must also create enough tremors in the trade to scare other potential infringers. This fear can either be through the arrest of persons in a criminal action or through immediate raids in a civil action in what are popularly known as Anton Piller orders.

Under these orders, Court appointed commissioner enters the premises of the defendant on day one and takes custody of the infringing goods, packs them and leaves them on trust with the defendant. This means that the goods cannot be released into the commercial stream and would continue to block the defendant’s valuable business premises. In addition, there would be an injunction restraining the defendants from manufacturing and selling infringing goods.

While the Anton Piller Order is definitely a source of fear, it can be made even stronger by having a police officer present along with the commissioner appointed by the Court when entering the premises. In this way, you get best of both the worlds- the flexibility of a civil action with the uniformed police officer and the fear that is generated in a criminal action. At the next level, you have the ability to expedite a trial and move it along quickly, perhaps in six months to one year. If the defendant fails to appear, the matter would proceed ex parte while if he appears, evidence can be concluded before a retired judge in a very short time.

The next level of “pain” for the defendant will be a decree with an award of damages which the defendant will have to shell out.

So the Anton Piller Order and the expedited trial and the award of damages create fear but how real is this?

BK: There are over 200 cases ever since 2005 where the Delhi High Court alone has awarded damages. The range is Rs. 100,000 to Rs. 5,000,000 ($1,600 to $79,300) while the average is Rs. 500,000. If the plaintiff makes the effort to prove damages then the award will of course be higher but if he does not file an affidavit of damages, Courts have the tendency to grand damages between Rs. 300,000 to Rs. 500,000.

What ensures that the defendants comply with these orders of the Court?

PA: India has a very strong contempt law. If someone violates the order of injunction, he may be sentenced to civil imprisonment up to six months and his property can be attached to ensure compliance. Recently, in the Foundry case, the Delhi High Court, in a contempt case where the defendant had obstructed the process of a court commission, passed an order by which the business premises of the defendant were sealed after throwing out their 450 employees. Furthermore, the Court refused to set aside the order until the defendant had settled the case with the plaintiff. This is the extent to which Courts are willing to go for compliance of their orders.

Pravin Anand

Anand and Anand

Managing Partner

Practice area/industry focus: Intellectual Property, Litigation and Dispute Resolution

Career highlights: Pravin Anand, managing partner of the Firm, completed his law studies in New Delhi in 1979 and since then has been practicing as an Intellectual Property Lawyer.

He has been a counsel in several landmark IP cases involving the first Anton Piller Order (HMV cases); the first Mareva Injunction Order (Philips case); the first Norwich Pharmacal Order (Hollywood Cigarettes case); Moral rights of Artists (Amarnath Sehgal case); Recognition for Pro-Bono work for rural innovators at the grass root level’ (National Innovation Foundation Award - Govt. of India); First order under the HagueConvention (Astra Zeneca case) and several significant cases for pharma clients such as Novartis, Pfizer and Roche.

He is a co-author of the two volumes of Halsbury’s Laws of India on Intellectual Property and serves on the editorial board of several international IP journals. Author of India chapter in Copyright Throughout the World- WEST (Thomson Reuters). He is also on the editorial board of many leading journals on IP jurisprudence, International legal magazines such as CTLR, PLC – Life sciences, Asia IP, IBLJ, The Patent Lawyer, WIPR, Who’s Who Legal – Patents, Lexis Nexis Asia IP Guide, ACCJ.

He has spoken extensively as a thought leader at various forums including WIPPO, AJIPPI, INTA, LES, IBA, LAW ASIA and the UN Conference on LDCs in the Digital World.

The prominent awards and accolades accorded to Mr. Anand recently include:

• Best of the Best - Patents (Expert Guide 2015)
• Who’s Who Legal Patent Litigation Featured Lawyer 2015
• IAM Patents1000 Gold (2014) Category Lawyer
• WTR 1000 Gold (2015) Category Lawyer
• “Highly Recommended Leading Lawyer” in Intellectual Property – Chambers and Partners (2015)
• “Leading Individual” for intellectual property – Legal 500 (2016)
• Features as a recognized lawyer for IP Litigation in the Asialaw Leading Lawyers 2015
• Nominated as the Managing Intellectual Property IP Star for the year 2014 for IP Litigation
• The First Indian Legal Practitioner to receive the ‘AIIP Award of Merit’

Anand and Anand

Senior Partner and Head of Department (Litigation)

Practice area/industry focus: Intellectual property and related laws (IP counselling, IP Risk Assessment, Risk Mitigation, IP Pre-litigation advice and Litigation life-cycle management, Dispute Resolution and Settlement negotiation)

Career highlights: Ms. Kalra completed her LLB from the Campus Law Centre, Delhi University, in 1990 and was admitted to the Bar Council of India the same year. She has been with Anand and Anand since 1990 and became a Partner in the firm in 2001. Her in-depth experience of intellectual property comes from first hand involvement in a large number of cases litigated in the Courts, notable among these being the Amarnath Sehgal case on moral rights of the artist in a sculpture, the Swayamvar case on confidential information in a TV reality show, the Glenfiddich case on trade dress and copyright in artistic works, the Yahoo! case on domain names, the HBO / Time Warner Entertainment Co. case on misappropriation of well-known trademark, etc. She appreciates clients’ business needs and specializes in advising customized strategies for protection, maximization and enforcement of IP rights to suit a client’s requirement.

Ms. Kalra is the co-author of the Country Chapter on IP Litigation in “International Intellectual Property Litigation” (Sweet & Maxwell) and regularly contributes articles to various publications and leading law journals.

• Ms. Kalra features as leading lawyer in the Asia IP Expert Profiles 2014 Listing.
• Ranked as a Leading Lawyer for the year 2014 by Asia Law Leading Lawyers
“A dramatic year” for trademark cases in the U.S.

It’s been a busy year for U.S. trademark litigation. Michael Loney previews Wednesday’s Annual Review of federal case law and TTAB developments.

Brush up on your knowledge of recent U.S. litigation this week in the ever-popular Annual Review of U.S. Federal Case Law and TTAB Developments session. Ted Davis of Kilpatrick Townsend & Stockton will be analyzing recent big decisions in the U.S. courts and John Welch of Lando & Anastasi will be analyzing decisions from the Trademark Trial and Appeal Board (TTAB).

The speakers have a lot to pack in. “It really has been a very dramatic year in the case law,” Davis told the INTA Daily News.

Three Supreme Court decisions

Since last year’s INTA meeting the Supreme Court has released three decisions related to trademarks, two of which have come this term. These are POM Wonderful v. Coca Cola in June 2014, Hana Financial v. Hana Bank in January 2015 and B&B Hardware v. Hargis Industries in March 2015. Davis says this term is the first time since 1963 that there have been two cases related to trademark issues within the same term.

Hana was the “easiest opinion of the three,” says Davis. The Supreme Court held that the question of whether two trademarks may be tacked for purposes of determining priority is a question for the jury. Davis says this was “very much a sleeper issue” and not something many trademark lawyers were focused on before the Court took it on.

Davis describes the POM Wonderful opinion as the “next easiest.” The Supreme Court held that competitors may bring Lanham Act claims like POM’s challenging food and beverage labels regulated by the FDCA. This opinion was also narrow, and did not resolve what happens in other industries with labels that need to comply with regulations, such as pesticides, alcohol or pharmaceuticals.

There could be an impact within the food and beverage industry, though. “Not all courts were as receptive to that bar on false advertising suits as was the Ninth Circuit but I think it will lead to some additional litigation outside of the industry as plaintiffs try to figure out if it does extend beyond that limited context,” says Davis.

The “big one,” however, is the B&B Hardware opinion, says Davis. The Court held that so long as the other ordinary elements of issue preclusion are met, when the usages adjudicated by the TTAB are materially the same as those before a district court, issue preclusion should apply.

“It is an opinion that has caused a good deal of excitement,” says Davis, “and I am not sure why because the Court in this case merely adopted the rule that has been in place for over a decade in the Second Circuit, and for about eight years in the Third Circuit.”

The holding made clear that there are some circumstances in which a TTAB determination of the likelihood of confusion between two marks can have a preclusive effect on the later district court litigation.

“If you’ve been advising your clients that a Board opinion on that issue cannot have a preclusive effect, what you’ve been doing is gambling that your client would not get sued in the Southern District of New York, the Eastern District of New York, the District of Delaware, the Eastern District of Pennsylvania, among others, and those are pretty popular jurisdictions for lawsuits.”

“Mark your success!”

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The opinion does overturn the rule in the Fifth, Eleventh and DC Circuits, however.

TTAB news

The biggest news out of the TTAB in the past year was its cancellation of six federal trademarks that include the term REDSKINS. “It is still a hot topic,” Welch told the INTA Daily News.

Welch says the case and the recent Federal Circuit ruling that Asian American band THE SLANTS could not register a trademark for its name have brought the issue of what is disparaging or not to the fore.

The REDSKINS case is pending before the District court of Virginia. A trial is scheduled for June but both sides have filed for summary judgement. A problem for the Native American team has been the statute requires analysis of the mark on the day of registration in 1990, making it hard to prove.

“I think the Native Americans now have some evidence that covers that problem. So that will be interesting,” says Welch. “My prediction is that the Court of Appeals will find it disparaging and I think it is going to go to the Supreme Court. That one and/or THE SLANTS, or both, are going to go to the Supreme Court on the first amendment question, I think. It is teed up now.”

The Annual Review of U.S. Federal Case Law and TTAB Developments session takes place between 10.15am and 11.30am on Wednesday

INTA filed briefs in the B&B Hardware and Hana Financial cases. Both are available at www.inta.org/Advocacy/Pages/Amicus.aspx

San Diego Secrets

USS Midway was the longest-serving US Navy aircraft carrier of the 20th century, and until 1955 the largest ship in the world. Today you can walk on and inside the vessel, and see 60 exhibits (including the flight control and bridge) and 29 restored aircraft.

The USS Midway Museum is moored at 910 Harbor Dr, alongside Navy Pier in downtown San Diego. It is open from 10:00 am to 5:00 pm and admission, including a self-guided audio tour, is $18 if booked online.
How long have you been at the company and what is your background?
I have been at Qualcomm for almost five years. I lead the trademark and copyright legal team for Qualcomm and for our subsidiaries around the world. I have a team of two other lawyers and two paralegals.

Before I came to Qualcomm, I spent about a year at a big firm in the Los Angeles area, then 12 years in a really small IP boutique firm.

Before I came to Qualcomm, they didn’t have any in-house trademark or copyright attorneys. Before that, patent attorneys were handling the trademark and copyright matters. The five years feels like five days. It has gone really fast. We are so busy every day, but it has been crazy fun.

The one piece we don’t do on the copyright end is that we do have a separate open source team, but otherwise copyright and trademark issues go through my team. We don’t do our clearance in-house but we manage clearance, registration and prosecution. We use outside counsel to manage the portfolio and foreign counsel. We review marketing materials. We handle due diligence for acquisitions.

We handle licensing for trademarks and copyright issues. We work with our litigation team here on trademark disputes and domain name disputes. We spend a lot of time training and educating around the company.

It sounds like you had to define your role?
It was definitely challenging. Internally the big challenge was just making everyone aware that I am here as a resource and to come to me. During my first two years here, I spent a lot of time establishing trust internally.

When I came in five years ago and said no you can’t name your product XYZ, I spent a lot of time explaining my reasons why the name they wanted was a bad choice. The interactions have changed over five years by establishing trust that I know what I’m doing, that I have Qualcomm’s best interests at heart and that I am not just the person who comes in and says no to everything.

What are the company’s biggest challenges around trademarks?
The biggest challenge that Qualcomm faces has been when we are naming something it tends to be something that is new and innovative. We aren’t using descriptions in the ID manual because we are probably naming something that doesn’t exist yet. So we end up in a lot of back and forth trying to explain what our products are to the USPTO or trademark offices to get our applications and descriptions through.

It is about educating the trademark examiners around the world. We have to go back and forth with them to explain what the product really is. We’ll get a question from them saying: “This doesn’t seem to exist, it can’t be
what you meant.” It is a delicate balance for when we are ready to actually make that product public because when we file a new trademark application with a name for a new product that is a public document. We have to balance wanting to secure the rights with when we are ready to go out there and say: “This is the next product that we are making.”

Our portfolio includes about 3,000 active applications and registrations around the world at any given time in probably about 180 countries. We have become more consumer facing over the years, certainly the past five years. The company has also come to understand the importance of branding more over the past five to 10 years. The QUALCOMM name is really important to the company, as is our SNAPDRAGON brand, which is our flagship chip.

What do you use outside counsel for, and what qualities do you look for?
The trademark portfolio is managed by one lead firm and they do our clearance, manage our filings and maintain our docket. They manage our foreign counsel. I don’t talk to our foreign counsel on a daily basis unless there is a real problem. We don’t have the in-house bandwidth to do that.

I trust my U.S. counsel’s opinion quite a bit on what foreign counsel we use. When I inherited the portfolio our foreign counsel who were handling the patents were probably also handling the trademarks. Over time we have changed that quite a bit to make sure the trademarks are being handled by trademark attorneys instead of patent attorneys. Our foreign counsel have to also be sophisticated enough to understand our products because that can be quite challenging, especially if you are in a remote location, you don’t really know who Qualcomm is and what we make, and we are sending these descriptions that probably sound very strange. I need them to understand, so I am looking for someone who is invested in who we are as a company and what are objectives are in our filings.

How long have you been going to the INTA Annual Meeting?
I started attending the Annual Meeting when I started at Qualcomm. I love it. Every year that it is in the United States we do a global foreign counsel meeting. It is a really great opportunity for us to get all of our foreign counsel in one room with us to make sure they understand what our objectives are for the year, what they can expect to see from us on the trademark end to the extent we know for the coming year, and what our expectations are. We try and demo a few of our products. It is such a good opportunity to meet with all our foreign counsel and make sure we are getting the best possible representation without having to travel to every country.

Are there any changes to the trademark system you would like to see?
There are issues with the Madrid System that make it difficult for a company to use. When I was in a small firm I used Madrid a lot more than I do now that I am in a big company. We have the ability to have a network of foreign counsel in a way that makes it easy enough to go directly to foreign counsel for individual filings. In a small firm that can be harder. So there are definitely changes that can be made there. We don’t file through Madrid very often because we know we are going to have a back and forth over the description.

There are changes that could be made that would make it more useful because I can see the value of having an international registration that is easier to manage but it doesn’t really work in our scenario yet. It’s particularly challenging when your home country is the U.S. that requires use.
USPTO looks to clear out the dead wood

The U.S. Patent and Trademark Office is looking to increase the accuracy of its registry by ensuring that actual use by brand owners line up with registrations, and Canada may have the answer. Peter Leung reports.

In a pilot program that concluded in February, the USPTO looked at 500 randomly selected registrations with Section 8 or Section 71 declarations and requested from each brand owner proof of use for two additional goods or services per class, in addition to the specimens provided in the maintenance filings.

If the trademark holder fails to provide the requested specimens or ignores the request, those uses are deleted from the registry. In some cases, the trademark holder requested the removal of certain classes.

According to Mary Denison, Commissioner for Trademarks, the concern is that there is too much “dead wood” on the registry that is not actually in use. These concerns turned out to be well founded. “The results were not good, but enlightening,” she says.

Among the registrations in the pilot, 27% of registrations based on Section 1(a) of the Lanham Act (direct filings) had at least one good or service deleted from the registry. Meanwhile, around 60% of Section 44(e) and 66(a) (registrations based on valid foreign registrations) registrations had at least one good or service deleted.

These numbers indicate that there is a large amount of registrations for unused classes. Though some brand owners characterize it as a problem with foreign rights holders, Denison points out that domestic registrants could improve as well.

Given the results of the pilot program, she says that the USPTO is looking at ways to address the problem. Some ideas being considered include requiring specimens for every class of goods, increasing the solemnity of the declarations of use and conducting more random audits of applications and extensions, essentially extending the pilot program.

Denison and her team are weighing the pros and cons of these suggestions. For example, she notes that it can be quite hard to get specimens for every use. Similarly, she sounds unsure that increasing the solemnity of the use declarations will be enough, as the language is quite stringent already.

The USPTO’s colleagues to the north may also have a solution. Canada’s Section 45 expungement proceedings allow for third parties to file to expunge a registration if it has not been used for three years without justification. Having similar proceedings would allow the USPTO to harness the efforts of interested parties to help clean out the registry.

“We have had some stakeholder roundtables and heard from some Canadian practitioners on this program,” Denison explains. There will be issues to consider such as whether the third parties would be allowed to initiate proceedings anonymously.

She also points out that the USPTO may choose to implement several of these plans, though some, such as implementing third party expungement proceedings, will require legislative action.

**Many other initiatives**

The USPTO also has several other initiatives designed to improve performance and address issues. For example, it has begun sending out email renewal notices directly to filers. This program was in response to the increasing number of unpresented filers (about 30% of all filers) who do not have docketing assistance.

Also earlier this year, the USPTO reduced the filing fees for TEAS Plus to $225 per class and introduced TEAS Reduced Fee ($275 per class), which is similar to TEAS Plus but has fewer requirements, such as not requiring the goods and services to be selected from the Office’s Trademark ID Manual. While the more expensive regular TEAS filings are still available, the reduced fees are designed to encourage more electronic communications (both TEAS Plus and TEAS RF have more stringent requirements for electronics communications).

The USPTO will have a presence at the Annual Meeting as well. On Monday, the USPTO along with the JPO, Korean IP Office, OHIM and China’s State Administration for Industry and Commerce will host the TM5 Users’ Meeting at 1:30 pm (see box). The speakers will field questions from bar associations, as well as provide updates on TM5 projects.

**TM5 Users Meeting tomorrow**

The Trademark 5 (TM5) is a forum comprising the five largest trademark offices in the world: the Japan Patent Office, the Korean Intellectual Property Office, the Office for Harmonization in the Internal Market of the European Union, the State Administration for Industry and Commerce of the People’s Republic of China, and United States Patent and Trademark Office. Through this framework, the TM5 partners exchange information on practices and conduct joint projects, which are aimed at harmonizing and improving trademark practices.

The TM5 partners will be conducting a User Session that will be open to INTA Annual Meeting registrants from 1:30 to 3:30 pm on Monday, May 4 in Room 1AB of the San Diego Convention Center. During this session, the TM5 partners will present updates from their respective offices. Additionally, the TM5 partners will discuss the progress they have made on their various joint projects. These projects include the following:

- the Image Search Project;
- the continuation/expansion of the Bad Faith Project;
- the Improve Convenience of the Madrid Protocol by Enriching Information Project;
- the TM5 Website Project;
- the Comparative Analysis on Examination Results Project;
- the Common Statistical Indicators Project;
- the Taxonomy and TMClass Link Project;
- the User-friendly Access to Trademark Information Project (otherwise known as TMView);
- the Common Status Descriptors Project;
- the ID List Project; and
- the Indexing of Non-Traditional Marks Project.

More information about the TM5 projects and the TM5 generally may be viewed on the TM5 website, tmfive.org.

The TM5 partners encourage all INTA Annual Meeting registrants to attend the TM5 user session tomorrow.

Source: USPTO

**U.S. new registrations by fiscal year**

<table>
<thead>
<tr>
<th>Year</th>
<th>Registrations</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>300,000</td>
</tr>
<tr>
<td>2013</td>
<td>250,000</td>
</tr>
<tr>
<td>2014</td>
<td>200,000</td>
</tr>
<tr>
<td>2015</td>
<td>150,000</td>
</tr>
</tbody>
</table>

**U.S. applications by fiscal year**

<table>
<thead>
<tr>
<th>Year</th>
<th>Applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>500,000</td>
</tr>
<tr>
<td>2013</td>
<td>450,000</td>
</tr>
<tr>
<td>2014</td>
<td>400,000</td>
</tr>
<tr>
<td>2015</td>
<td>350,000</td>
</tr>
</tbody>
</table>
How has the Annual Meeting changed since it was last in San Diego 10 years ago?

Michael J. Hynak, Hynak & Associates, Arlington, U.S. - Now there are so many more people from different countries. You can build friendships with people from all over the world. The whole flavor has really changed.

Zulema Dubra, ConsultoriaCollAreco, Buenos Aires, Argentina - There are many more people now attending from Asia. It is remarkable how the numbers have changed over the past four or five years. San Diego remains just as wonderful a city as it was 10 years ago.

Annick Mottet Haugaard, Lydian, Brussels, Belgium - The organization of the event has improved. You can now collect your badge on Saturday morning, which means everyone knows who everyone is much earlier, and the meeting app is very useful. But some things don’t change. It is still the best place to be sure of meeting everyone you need to see.

Nicolae Muresan, Andrea Musatescu Law & Industrial Property Offices, Bucharest, Romania - There’s now the Annual Meeting app. Changes to technology have made it much easier to arrange meetings.

Jürg M. Burger, Badertscher, Zug, Switzerland - I have got to know a lot more people who attend the Annual Meeting over the past decade. The sessions are more internationally focused now. Even though I don’t have time to attend as many of them now I still really enjoy coming.

Ellen B. Shankman, Ellen Shankman, Rehovot, Israel - The size and the international representation are dramatically different. The range of topics has improved enormously. They are more forward looking and there are more industry breakout sessions.

Jeannie Smith, Baker & McKenzie, Hong Kong - There is more involvement by members in the committees now. The growth and the internationalization of the Annual Meeting in recent years has been dramatic.

David Lawlor, Key-Systems USA, Leesburg, U.S. - There are so many more events taking place now than there used to be. It provides so many more opportunities for meeting people.

Carla J. Vrsansky, Buchanan Ingersoll & Rooney, Pittsburgh, U.S. - There are far more sessions over the weekend now. The Annual Meeting starts earlier and there are more opportunities to learn.

Cathy You, Sunshine Rich Investment, Shanghai, China - I think there are more table topic events. They are a great idea. Anyone can volunteer to host them and it gives people a chance to demonstrate their interests and expertise.

Safir Anand, Anand and Anand, New Delhi, India - The number of people attending has increased and INTA-related events seem to be taking place in far more venues across the city. People seem more relaxed. I think they have become more experienced about arranging meetings.

Guoping Liu, Runping & Partners, Beijing, China - There are more people and more events taking place. It is still a great place to meet people. It is so good that more and more patent attorneys are coming along.

Want to be more involved in INTA?

Join an INTA committee to make a difference! Applications are open from June 3, 2015 to June 30, 2015.

Mark your Calendar!

www.inta.org/committees
Korean IP Office seeks more efficiencies through IT

The Korean IP Office (KIPO) wants to slash pendency times and increase customer convenience through use of IT and mobile technology.

Gyuwan Choi, the Director General of the Trademark and Design Examination Bureau told the INTA Daily News that KIPO is prioritizing increasing efficiency and reducing pendency times. In 2014, the average time to first action was 6.4 months, down from 7.7 months in 2013. KIPO intends to reduce first action pendency further to three months by 2017.

KIPO has achieved these reductions even with trademark applications increasing every year this decade; for example, in 2014 it received approximately 200,000 applications, 10,000 more than 2013.

Choi explained that the planned reduction in first action pendency times will come from hiring more trademark examiners, promoting use of the expedited examination system as well as further outsourcing aspects of the examination procedure such as searches.

In addition to increasing the speed of procedures, Choi said that there are plans to further leverage Korea’s advanced IT infrastructure to make the system more user-friendly. Mobile is a big part of this plan. KIPO is developing a system to allow trademark filers to make payments with their smartphones. Similarly, it is building systems for filers to process things such as general powers of attorney by mobile.

KIPO’s mobile services for users is part of the related trend toward increasing use of backend IT technologies to help bolster efficiency, a development seen at many other IP offices. He noted that KIPO’s use of technology is what allows it to handle 200,000 applications a year, so it makes sense that these technologies can also make services more convenient for the public.

“We are using our IT capabilities to enhance customer satisfaction,” he explained.
Congratulations of 1/4 century excellence!

We would like to congratulate Managing IP on 25 years of success; we look forward to another 25 years of doing business together in the easygoing yet highly professional manner we have come to appreciate.

Happy Anniversary!

Congratulations on 25 years of unmatched IP support. We hope the future continues to bring you much success.

We extend our heartiest congratulations for completing 25 glorious years of success.

Congratulations on your first 25 years of success!!

Happy 25th Anniversary!

Thanks for your efforts and dedications during the past years.

Congratulations on your 25th anniversary! You have been for so many years the most influential IP magazine. Please keep on going for many more years!

Happy Anniversary.

Happy Anniversary, here’s to the next 25 years!

Congratulations on 25 years of unmatched IP support. We hope the future continues to bring you much success.

We extend our heartiest congratulations for completing 25 glorious years of success.

Congratulations on your first 25 years of success!!

Happy Anniversary.

Congratulations to everyone at Managing IP, a fantastic achievement and true industry leaders

Global Law Marketing

Happy Anniversary

Maiwald

Congratulations!

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acip 华进

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Today's Schedule | Sunday, May 3, 2015

All events take place at the San Diego Convention Center unless otherwise indicated. Consult the Final Program for times and locations of invitation-only events and Committee Meetings.

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>7:00 am – 8:00 am</td>
<td>Course on International Trademark Law and Practice Breakfast</td>
<td>5A</td>
</tr>
<tr>
<td>7:30 am – 7:00 pm</td>
<td>HOSPITALITY</td>
<td>Hall B</td>
</tr>
<tr>
<td>7:30 am – 7:00 pm</td>
<td>REGISTRATION</td>
<td>Hall A</td>
</tr>
<tr>
<td>7:30 am – 7:00 pm</td>
<td>HOUSING DESK</td>
<td>Hall A Lobby</td>
</tr>
<tr>
<td>7:30 am – 7:00 pm</td>
<td>INFORMATION/MEMBERSHIP DESK</td>
<td>Hall A Lobby</td>
</tr>
<tr>
<td>7:30 am – 7:00 pm</td>
<td>EXHIBITOR REGISTRATION DESK</td>
<td>Hall A Lobby</td>
</tr>
<tr>
<td>7:30 am – 7:00 pm</td>
<td>NETWORKING EXCURSION DESK</td>
<td>Hall A Lobby</td>
</tr>
<tr>
<td>8:00 am – 10:00 am</td>
<td>CONTINENTAL BREAKFAST</td>
<td>Hall B</td>
</tr>
<tr>
<td>8:00 am – 12:00 pm</td>
<td>Course on International Trademark Law and Practice -- Day 2</td>
<td>5B</td>
</tr>
<tr>
<td>8:00 am – 12:00 pm</td>
<td>Basic Mediation Training -- Day 3</td>
<td>1A</td>
</tr>
<tr>
<td>9:00 am – 11:00 am</td>
<td>BREAKFAST TABLE TOPICS</td>
<td>6A</td>
</tr>
<tr>
<td>9:30 am – 11:00 pm</td>
<td>Trademark and IP Issues in Latin America: Government Perspective</td>
<td>6E</td>
</tr>
<tr>
<td>10:00 am – 11:00 am</td>
<td>CSU01 Disorder in the Court: A Debate Between a Practitioner and a Professor Intermediate Level</td>
<td>6B</td>
</tr>
<tr>
<td>11:00 am – 1:30 pm</td>
<td>Madrid System Users’ Meeting (MDSUM) Organized by World Intellectual Property Organization (WIPO)</td>
<td>10</td>
</tr>
<tr>
<td>11:30 am – 12:45 pm</td>
<td>CSU02 Speak Your Mind: Public Speaking Gets Personal Beginner Level</td>
<td>6B</td>
</tr>
<tr>
<td>11:30 am – 1:30 pm</td>
<td>CSU03 The Times They Are A-Changin': Developments in Education and Teaching</td>
<td>6E</td>
</tr>
<tr>
<td>11:30 am – 1:30 pm</td>
<td>Trademark Administrators Brunch--Personal Branding and Marketing Yourself. You Deserve a Whole Lot More, and the World Deserves a Whole Lot More of You</td>
<td>6C</td>
</tr>
<tr>
<td>12:00 pm – 2:00 pm</td>
<td>LUNCHEON TABLE TOPICS</td>
<td>6A</td>
</tr>
<tr>
<td>12:00 pm – 4:00 pm</td>
<td>EXHIBITION HALL</td>
<td>Hall B</td>
</tr>
<tr>
<td>1:00 pm – 2:30 pm</td>
<td>Japan Patent Office User’s Meeting: Recent Activities and Examination Practices for Trademarks in Japan</td>
<td>2</td>
</tr>
<tr>
<td>1:00 pm – 2:15 pm</td>
<td>Course on International Trademark Law and Practice Lunch</td>
<td>5A</td>
</tr>
<tr>
<td>1:30 pm – 3:30 pm</td>
<td>CTM and RCD Users’ Meeting Organized by the Office for the Harmonization in the Internal Market (OHIM)</td>
<td>10</td>
</tr>
<tr>
<td>2:00 pm – 3:00 pm</td>
<td>SPEED NETWORKING</td>
<td>Hall B</td>
</tr>
<tr>
<td>2:00 pm – 3:15 pm</td>
<td>CSU50 INTA Committee Selection, Membership and Involvement: Behind the Curtain</td>
<td>6B</td>
</tr>
<tr>
<td>3:30 pm – 4:00 pm</td>
<td>The Disclaimers Band</td>
<td>Ballroom 20</td>
</tr>
<tr>
<td>4:00 pm – 5:15 pm</td>
<td>Opening Ceremony - Keynote Address by Walter E. Robb, Co-CEO of Whole Foods Market</td>
<td>Ballroom 20</td>
</tr>
<tr>
<td>5:30 pm – 7:30 pm</td>
<td>Welcome Reception - Glocal San Diego</td>
<td>Sails Pavilion</td>
</tr>
</tbody>
</table>

Learn about INTA’s new committee structure

By serving on an INTA committee, members can give back to the trademark community, advance the Association’s objectives, network with peers and learn more about trademark law and practice around the world.

Registrants who are interested in joining a committee, or existing committee members who want to find out how the Association has reorganized its committee structure, can attend a session today that will give them all the information they need.

Panelists at the session today, INTA Committee Selection, Membership and Involvement: Behind the Curtain, will explain why the number of committees has expanded from 29 to 37 (you can see more about the new structure in the chart on the right).

Susan Brady Blasco, Shwetasree Majumder and David H. McDonald will outline their involvement with INTA as committee members and Board members, Co-Chairs of the Committee Structure, Participation and Function Presidential Task Force, Janice Bereskin and Alicia Lloreda will then explain the changes to the structure, and what they mean for INTA volunteers.