

PROGRAMME AT A GLANCE		
PATENTS	GENERAL	TRADEMARKS
1. Expert Witnesses – the do’s and don’ts		
2. Arbitration and Mediation as True Alternatives to Litigation – The Much Less Formal Resolution		
3.1 “The same invention or not the same invention”: That is the question. But what is the answer?	3.2/3 Mediation Workshop	
4.1 “Da mihi factum, dabo tibi ius”: Give me the facts, I’ll give you the law! But how?	4.2 Arbitration Workshop	4.3 Virtual Design Theft – Can It Be Stopped?
5.1 “The Language of Claims”: the secrets and shallows of claim interpretation	5.2 Mentoring - What exactly is it and how does one go about doing it?	5.3 Review of European Trade Mark System
6.1 “Bilski and the Brimelow questions”: What is patentable?	6.2 Engagement Letters and Effective Communication	6.3 New Marks – Old Laws
7.1/2 Infringement of Claims - doctrine of equivalents and related issues		7.3 TLDs - enforcement of rights
8. Recent Developments with the USPTO and EPO – Where are we going?		

THE PROGRAMME IN DETAIL

THURSDAY 9 SEPTEMBER	
SESSION 1 (PLENARY)	
09:00-10:30	<p>1. Expert witnesses – the do’s and don’ts</p> <p>Expert witness testimony has undergone increasing scrutiny by the courts, and with the rapid up-scaling of high technological inventions, is something that the judiciary is relying upon increasingly. We also see the requirement for experts entering the realm of trademarks with the treatment and interpretation of survey evidence. Once the domain of the lawyers, patent and trademark attorneys are now having to understand and elevate standards in adducing expert evidence in proceedings before the patent and trademark offices around the world. What are important things to be aware of and traps to avoid when dealing with expert witnesses?</p>
	<p>Moderator: Danny Huntington (US) Presenters: Greg Chambers (AU), Doug Deeth (CA)</p>
10:30-11:00	Coffee break
SESSION 2 (PLENARY)	
11:00-12:30	<p>2. Arbitration and Mediation as True Alternatives to Litigation – The Much Less Formal Resolution</p> <p>Over the past five to ten years we have seen an explosion in cost and executive/employee time to support and defend patent litigation, and, to a lesser but still substantial degree, trademark and copyright disputes. There seems to be no bound to the cost of attorneys' fees. Some cases have gone as high as 40 to 60 million dollars (US) in attorneys' fees and seven to twelve years to finally determine the outcome. This is unacceptable for business. ADR (Alternative Dispute Resolution) in the form of arbitration and/or mediation has begun to provide an important link to maintaining the sanity of business relationships. At a multiple of orders of magnitude in greater efficiency and lesser cost, with the right qualified personnel and the proper presentations, the air will most certainly clear in the foreseeable future. FICPI believes in promoting these alternatives and in the following sessions will be presenting information in advanced form for those persons willing to join this revolution. It is a revolution whose time has come.</p> <p>The plenary session will provide its audience with a substantial understanding of the intricacies of each of the two processes. They are very different.</p>
	<p>Moderator: Maxim Waldbaum (US) Presenters: Markus Hössle (DE), Irena Vanenkova (IMI The Hague), Paul Lurie (US)</p>
12:30-14:00	Lunch

	SESSION 3
14:00-15:30	<p>3.1 “The same invention or not the same invention”: That is the question. But what is the answer?</p> <p>The concept of “the same invention” is central to patent practice: Does this concept differ when questions of novelty, claiming of priority, selection invention, admissible amendments, sufficiency of disclosure and - most recently - questions of double protection are at stake? How is this concept addressed by the patent offices and how does this reflect on the practice at the courts? Does this practice of the patent offices require the patent applicant to include passages of text that are technically unnecessary in order to formally meet the criteria for sufficiency of disclosure but have enough options to amend if necessary (bearing in mind the narrow view taken by some patent offices and courts in interpreting these issues)? How can these issues be handled in practice BEFORE the application is filed, during prosecution and in the course of patent enforcement?</p> <p>One of the most central questions of daily patent practice (as indicated in the title of this session, an almost “Shakespearian question”) is critically discussed by our presenters.</p>
	<p>Moderator: Daniel Alge (AT) Presenters: Thorsten Bausch (DE), Ingwer Koch (EPO)</p>
14:00-15:30	<p>3.2/3.3 Mediation workshop</p> <p>This workshop expands upon the issues discussed in the plenary session with respect to the "mediation" arena of ADR and is intended to have the audience participate in substantial question and answer exploration and exposure of the application of mediation to patent, trademark and design disputes and what they must do for successful outcomes.</p>
	<p>Presenters: Maxim Waldbaum (US), Erik Wilbers (WIPO), Harry Reinhardt (DE), Irena Vanenkova (IMI-The Hague), Miguel O'Farrell (AR)</p>
15:30-16:00	Coffee break

	SESSION 4
16:00-17:30	<p>4.1 “Da mihi factum, dabo tibi ius”: Give me the facts, I'll give you the law! But how?</p> <p>In court proceedings, usually the party that wins is the one which is able to provide the best and convincing proof. To win or to lose in patent enforcement proceedings often depends on the ability to present the decisive proof. Often, however, finding and delivering this decisive proof is difficult, if not impossible. Some jurisdictions offer aggressive means for the plaintiff to gather such proofs even from the other party, for example in discovery or disclosure proceedings. In the EU, the IP-Enforcement Directive was introduced to bring a common standard to the possibilities for gaining evidence. What is the current state of the art in the various jurisdictions and what are the practical issues to be dealt with, especially also in the EU jurisdiction. What are the questions which have not yet been addressed, but can be expected to be addressed by the courts in the near future? Will the rights of defendants be more and more prejudiced in order to find out the truth?</p> <p>In this session, the present and future of the fundamental issue of gaining evidence in patent litigation proceedings is analysed and expanded upon by the presenters.</p>
	<p>Moderator: Werner Roshardt (CH) Presenters: Barry Graham (US), Olaf Giebe (DE), Judge Michael Fysh, SC, QC (GB)</p>
16:00-17:30	<p>4.2 Arbitration workshop</p> <p>This workshop expands upon the issues discussed in the plenary session with respect to the "arbitration" arena of ADR and is intended to have the audience participate in substantial question and answer exploration and exposure of arbitration techniques and what should be done to achieve a successful outcome.</p>
	<p>Presenters: Maxim Waldbaum (US), Erik Wilbers (WIPO), Paul Lurie (US), Michael Warnecke (US), Sumiko Kobayashi (JP)</p>
16:00-17:30	<p>4.3 Virtual Design Theft – Can It Be Stopped?</p> <p>Companies spend significant resources to create objects with unique designs and to market these objects consistent with branding strategies. Unbeknownst to many companies, unauthorized parties create and sell accurate digital CAD model files corresponding to these objects. There are many websites that are dedicated solely to the sale of these unauthorized CAD models. Purchasers of these CAD models are using them in video games, movies, and virtual worlds. Can the companies who create and sell the original designs stop the unauthorized sale and use of unauthorized CAD models under the rights afforded by design patent, trademark, or copyright laws? This session will explore what is happening in the virtual world and determine the effectiveness of existing IP laws in this domain. Is there a need for IP reform in this area?</p>
	<p>Moderator: Andrew Parkes (IE) Presenters: Robert Katz (US), David Musker (GB)</p>

FRIDAY 10 SEPTEMBER	SESSION 5
09:00-10:30	<p>5.1 “The Language of Claims”: the secrets and shallows of claim interpretation</p> <p>Not only Article 69 EPC and its Protocol require mandatory interpretation of the patent claims in view of the specification by the person skilled in the art. In the US, a special (pretrial) stage of proceedings, the “Markman” hearing, is reserved for claim interpretation and often this hearing is crucial to the final decision. In virtually any patent system, the translation of the claim from the “Patentish” language into the “Technish” language by the “person skilled in the art” is one of the most critical steps in infringement proceedings. This issue is also pertinent in day-to-day work, beginning with “Freedom-to-operate” analyses and leading to questions of prior use and equivalence. Often, another translation is necessary: from “Technical English” to “real English” or any other language concerned (e.g. the language of the court).</p> <p>The panel will shed light onto these - almost Babylonian-styled - secrets and shallows of claim interpretation, clarifying the standards and recommendations in this key issue for each practitioner. The session also highlights the practical differences and “Caveats” in the major jurisdictions and ways to proactively prevent pitfalls in multinational jurisdictions.</p>
	<p>Moderator: Eric le Forestier (FR) Presenters: Axel von Hellfeld (DE), Alain Aucoin (CA)</p>
09:00-10:30	<p>5.2 Mentoring - What exactly is it and how does one go about doing it?</p> <p>Mentoring is a proven, cost-effective process to train, motivate and retain professional talent. Firms with mentoring cultures attract the best talent. Mentors in those firms provide guidance, wisdom and inspiration that turn that talent into highly skilled and engaged professionals. In this session, you will learn how to use mentoring as a win-win strategy, to benefit both your firm and the IP professionals who work there.</p>
	<p>Moderator: Frank Barendregt (NL) Presenters: Ida Abbott (US), Alain Leclerc (CA)</p>
09:00-10:30	<p>5.3 “What is the optimum system?”: Review of European Trade Mark System</p> <p>The European Commission recently charged the Max Planck Institute with the task of exploring links between the Community Trade Mark system and the national trade mark systems in Europe. The Institute was also asked to analyse the functioning of the Community Trade Mark regime and the OHIM. The Max Planck Institute began by conducting a survey on the workings of OHIM and national offices. This session will comprise a consideration of the work, to date, of the Institute including the emerging themes tabled for further discussion. In particular, speakers will assess the merits of reopening debate surrounding substantive examination of prior trade mark rights before the grant of a new registration.</p>
	<p>Moderator: Elia Sugrañes (ES) Presenters: Annette Kur (Max-Planck-Institute), Peter Lawrence (OHIM), Gary Krugman (US)</p>
10:30-11:00	Coffee break

SESSION 6	
11:00-12:30	<p>6.1 “Bilski and the Brimelow questions”: What is patentable?</p> <p>On both sides of the Atlantic, ground-breaking decisions have been made by the leading courts responsible for questions of patentability. Both decisions - the Bilski case in the US and the G3/08 for the European system - deal with the patentability of business methods and computer programs. However, the questions analysed in these cases go much deeper: What is the nature of a patentable invention: does it have to be “technical” in the widest sense? Or is it necessary to expand the role of the patent system in order to fulfil its task to promote and reward innovation? What is the danger of enlarging the field of patentable inventions? Is there a danger at all? What will be the practical impact of these decisions on the day-to-day practice?</p> <p>In this session, not only the fundamental or even philosophical questions concerning the role of the patent system are illuminated, but also the consequences of these decisions for the practitioner on how the filing, prosecution and enforcement strategy for such inventions will or should change. The panel also deals with the question as to how other types of inventions than software or business methods are affected by these decisions.</p>
	<p>Moderator: Alexander Esslinger (DE) Presenters: Erika Arner (US), Stephen Krouzecky (AU)</p>
11:00-12:30	<p>6.2 “Are you engaging?”: Engagement Letters and Effective Communication</p> <p>Effective communication with clients and foreign associates is essential to a successful practice. Elements that should appear in an engagement letter and how to develop a successful relationship with a new client will be discussed, including how to assist clients in retaining counsel in other countries. For example, how do you address the provision in some letters asking for an advance waiver of conflicts? Clear and regular communication with clients and foreign associates is essential to continuing the relationship. Recommended letters that promote that communication will be offered.</p>
	<p>Moderator: Bill Schuurman (US) Presenters: Leo Jessen (NL), Christian Schieber (AU)</p>
11:00 - 12:30	<p>6.3 New Marks – Old Laws</p> <p>Successful branding is no longer limited to a word or design mark applied to the surface of products or packaging. This session will explore some aspects of non-traditional marks including product 3-D configuration as it relates to today’s popular consumer goods. During this multi-jurisdictional presentation, speakers will not only consider 3-D marks but motion marks, including moving icons, and other marks associated with consumer electronics. Speakers will consider what protection is available today and what we might expect to see in the future.</p>
	<p>Moderator: Coleen Morrison (CA) Presenters: Ho-Hyun Nahm (KR), Toni Ashton (CA)</p>
12:30-14:00	Lunch

	SESSION 7
14:00-16:00	<p>7.1/7.2 “Infringement of Claims”: the Doctrine of Equivalents and related issues</p> <p>With respect to the “Doctrine of Equivalents”, the US has moved from “Grover Tank” to “Hilton Davis” to finally face the dead end street of “Festo”. Even a “reverse doctrine of equivalents” has been invented by the US. The “Epilady” cases are usually cited to show the difficulties and legal diversity in questions of equivalents, especially in Europe where the European Patent System was expected to bring the systems into harmony with each other. In Japan, the “Ball Spline Bearing” case provided clear rules for applying equivalents questions. Despite these precedents, the question of equivalents is paramount (and in each case open) in a major number of patent infringement cases and therefore important as ever for the attorney dealing with patent infringement.</p> <p>In this session, top experts will analyse the legal and technical philosophy behind patent equivalents and explain the impact of this philosophy on patent litigation in general. The panel postulates whether there is indeed a “dead end street” for equivalents in the US after “Festo” and a chance of harmony with respect to equivalents not only in Europe, but world-wide.</p>
	<p>Moderator: Jürgen Schmidtchen (DE) Presenters: Judge Paul Michel (US), Chief Judge Tomokatsu Tsukahara (JP), Judge Prof. Peter Meier-Beck (DE)</p>
14:00-16:00	<p>7.3 TLDs - enforcement of rights</p> <p>The world of Internet domain names is about to expand dramatically. Today's 20 generic top level domains, such as .com, .net and .org will shortly be joined by perhaps more than 200 new ones. At the same time, it will be possible to register domain names in almost all local languages. Although this is an exciting time for Internet users and businesses all over the world, it also increases the risks for trademark owners and calls for new systems for enforcement.</p> <p>The panel will explain the present situation, what is going on in Cyberspace, with a view to advising on how one should re-organize domain name policies in preparation for the near future.</p>
	<p>Moderator: Petter Rindforth (SE) Presenters: Dawn Osborne (Palmer Biggs Legal, GB), Nick Wood (ComLaude, GB), Gabriel Leonardos (BR), Jonathan Cohen (CA)</p>
	SESSION 8 (PLENARY)
16:00-17:30	<p>8.1 Recent Developments: USPTO and EPO – Where are we going?</p> <p>Developments and initiatives at the USPTO and EPO were under the spotlight at the recent FICPI Colloquium in Edinburgh. Robert Stoll, Commissioner of Patents, USPTO and Benoît Battistelli, new President of the EPO will outline the situation in their respective offices and be available to answer your questions on where the USPTO and EPO are heading.</p>
	<p>Moderator: Peter Huntsman (AU) Presenters: Robert Stoll (USPTO), Benoît Battistelli (EPO)</p>