

THE ANNUAL MEETING OF THE IP LAW SECTION

Intellectual Property Institute



State of the Art

Creativity and Innovation in the Arts and Sciences

NOVEMBER 7-9, 2018 | FAIRMONT SAN JOSE

170 S MARKET ST, SAN JOSE, CA 95113

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Includes Legal Ethics, Competency Issues,
& Elimination of Bias

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LETTER FROM THE CHAIR

THE ANNUAL MEETING OF THE IP LAW SECTION

Intellectual Property Institute



Welcome to the 43rd IP Institute and Annual Meeting, State of the Art – Creativity and Innovation in the Arts and Sciences, in the City of San Jose, the capital of Silicon Valley! This year's multi-day IP Institute celebrates the diversity of IP in our lives and culture by offering outstanding educational programming as well as multiple fun networking events.

You are invited to the iconic Fairmont Hotel in downtown San José on Wednesday evening for an enjoyable welcome and network reception with fellow attendees, speakers, Vanguard Award winners, and members of the California Lawyers Association IP Law Section

Executive Committee, with food and refreshments catered by the Fairmont Hotel's exceptional kitchen.

Thursday begins our in-depth two-day educational program, with two tracks of focused topics and broader general sessions that will appeal to all attendees. This year's Institute provides a wide range of speakers and presentations on patent, copyright, trademark, trade secret, internet and privacy, cybercrime, technology transfer, licensing, music and entertainment, IP specific ethics, and more. Our speakers are experienced practitioners and thought leaders from leading law firms, law schools, and corporations who will share their insights and practical guidance that will help you in your own practice. Of note, we are once again offering CLE credit in the two difficult to obtain categories of Competence Issues and Recognition and Elimination of Bias.

We are also honored to have Andrei Iancu, Under Secretary of Commerce for Intellectual Property and Director of the USPTO; Karyn A. Temple, Acting Register of Copyrights and Director of the U.S. Copyright Office; Courtney H. Bailey, NASA Associate General Counsel for Commercial and Intellectual Property Law; Brian L. Levine, Department of Justice Computer Crime and Intellectual Property Section; and Judge Richard G. Taranto, U.S. Court of Appeals for the Federal Circuit.

On Thursday afternoon you are invited to join the IP Law Section as we celebrate this year's 10th Annual Vanguard Awards with a light-hearted and entertaining lunch honoring the accomplishments of our four honorees in the categories of academic, in-house counsel, judicial, and private practice. On Thursday evening there will be additional networking opportunities at our Casino Night, a free event open to all attendees where you are invited to try your luck and have your chance to win an array of fabulous prizes.

While you are here, feel free to explore some of the many other fun and engaging things to do and see in San Jose, such as the The Tech Museum of Innovation, directly across from the hotel, and the San Jose Museum of Art, right next to the hotel.

Come and experience the State of the Art in San Jose. I'm looking forward to seeing you!

Thomas Hassing
Immersion Corporation, San Jose, California
Chair, 2018 IP Institute



43rd Annual Intellectual Property Institute

PROGRAMS AT A GLANCE

Wednesday, November 7, 2018

5:00 pm – 7:00 pm

Welcome Reception

Thursday, November 8, 2018 (CLE = 5.0)

8:00 am – 9:00 am

Breakfast

8:00 am – 5:00 pm

Registration and Exhibitors

8:00 am – 12:00 pm

Interest Group Booths

8:45 am – 9:00 am

Welcome and Opening Remarks

9:00 am – 10:00 am

General Program – Unconscious Bias and the Legal Profession (1.0 Hour Elimination of Bias)

10:05 am – 11:05 am

Track I

GDPR: Lessons Learned From the Front Line

Track II

Modernizing Copyright: The Past, Present, and Future of the U.S. Copyright Office

11:15 am – 12:15 pm

Track I

Cybercrime and Intellectual Property Crime: A Team Effort

Track II

Owning Innovation: Between Code and Contract

12:30 pm – 2:30 pm

Vanguard Award Luncheon – Ticketed

2:45 – 3:45 pm

Track I

Attorney-Client Privilege and Work Product Issues Facing In-House Counsel in U.S. and Other Jurisdictions (1.0 Hour Ethics)

Track II

Hot Topics in Trade Secret Litigation: the DTSA, Remedies, Anti-SLAPP, and Constitutional Issues

3:50 – 4:50 pm

Track I

Leveraging Innovation with NASA Spinoffs

Track II

The Communications Decency Act, Section 230 after FOSTA and *Hassel v Bird*

8:00 pm – 12:00 am

Casino Night & Strolling Dinner

Friday, November 9, 2018 (CLE = 4.00)

8:00 am – 9:00 am

Networking Breakfast

8:00 am – 3:00 pm

Registration and Exhibitors

8:00 am – 3:00 pm

Interest Group Booths

9:00 am – 10:00 am

General Program – The USPTO and American Innovation

10:05 am – 11:05 am

Track I

Online Brand Monitoring and Enforcement – Winning the Battle Without Losing the War

Track II

Legal Ways of Getting Paid for Music in The Digital Era

11:15 am – 12:15 pm

Track I

Perspectives on Recent Trends in Patent Law: Thoughts from the Federal Circuit

Track II

Ethical Considerations in the Startup Space (1.0 Hour Legal Ethics)

Interest Group Luncheons

12:30 pm – 1:00 pm International Entertainment & Sports Licensing Technology, Internet, & Privacy Copyright

1:05 pm – 1:35 pm Patent In-House Counsel Trademark Litigation Trade Secret

1:45 pm – 2:45 pm

General Program – Substance Abuse in the Legal Profession: Prevention, Detection, and Treatment (1.0 Hour Competency Issues)

2018 IP Vanguard Award Luncheon

THURSDAY, NOVEMBER 8, 12:30-2:30 PM

Congratulations to the Recipients of the 2018 IP Vanguard Awards!

The Executive Committee of the IP Law Section is pleased to honor outstanding legal professionals who are spearheading new developments in the world of intellectual property law.

IN-HOUSE COUNSEL



Mallun Yen
Co-founder & COO, SaaStr

PRIVATE PRACTICE



Kelly Klaus
Litigation Partner,
Munger, Tolles & Olson LLP

ACADEMIC



Peter Menell
Koret Professor of Law,
Berkeley Law
University of California

JUDICIAL



Hon. Pauline Newman
Circuit Judge of the
United States
Court of Appeals for the
Federal Circuit

PROGRAM SCHEDULE

Topics, speakers, and schedules are subject to change

Wednesday, November 7, 2018

5:00 pm – 7:00 pm

Welcome Reception

8:00 pm – 10:00 pm

Post-Reception Event

Thursday, November 8, 2018

8:00 am – 9:00 am

Breakfast

8:00 am – 5:00 pm

Registration and Exhibitors

8:00 am – 12:00 pm

Interest Group Booths

8:45 am – 9:00 am

Welcome and Opening Remarks

9:00 am – 10:00 am General Program

(1.0 Hour Elimination of Bias)

[1] Unconscious Bias and the Legal Profession

The objective of this program is to give attorneys the tools they need to ethically identify and eliminate bias in the legal profession. Unconscious bias plays a role in how we organize and interpret the world, but if left unchecked, such biases can—and do—have significant consequences in the practice of law. We must understand our biases, and the vulnerability we have to be influenced by cognitive biases, in order to minimize the harmful effects of biases. In this program, expert attorney and author Amy Oppenheimer will help attendees do just that, covering topics such as: the forms of unconscious bias; the impact bias can have on the legal profession, the Implicit Association Test (IAT) and what it can teach us about unconscious bias; and the risks of confirmation bias.

Speaker

Amy Oppenheimer, Workplace Investigations and Training

10:05 am – 11:05 am Concurrent Programs

[2] GDPR: Lessons Learned From the Front Line

The European Union General Data Protection Regulation (GDPR) remains one of the hottest topics in the legal field. Although May 25, 2018, was the deadline for enforcement, many companies are still working toward compliance and trying to figure out ways to operationalize the GDPR's principle-based requirements. This discussion-based panel will include the latest news on what the European Data Protection Board (EDPB) expects, lessons learned from companies that established compliance programs, and what law firms and companies can do right now even if they are not yet compliant.

Speakers

Darren Abernethy, Senior Global Privacy Manager, TrustArc

Francoise Gilbert, Shareholder, Greenberg Traurig, LLP

Amanda Katzenstein, Product and Privacy Counsel, Salesforce.org

Moderator

Emily Yu, Privacy Counsel, Global Privacy, Seagate Technology

[3] Modernizing Copyright: The Past, Present, and Future of the U.S. Copyright Office

The presentation will provide an overview of the Copyright Office's role in supporting creativity and innovation in the arts and sciences, current Office initiatives in operations as well as law and policy, and highlight some of the future goals of the Office.

Speaker

Karyn A. Temple, Acting Register of Copyrights and Director of the U.S. Copyright Office

11:05 am – 11:15 am

Break

The IP Institute may be recorded. By attending this event, you consent to be photographed, filmed, and/or otherwise recorded, and to any use, by the CLA, of your likeness, voice, and name in any and all media including social media. If you do not want your name or photo to be used, please let us know in advance. We cannot, however, honor requests to opt out of the use of your image or voice if you choose to ask a question during one of the event sessions.

11:15 am – 12:15 pm Concurrent Program

[4] Cybercrime and Intellectual Property Crime: A Team Effort

The presentation will address the current cybercrime and IP threat environment, the role of the Department of Justice in cybercrime and IP, developing relationships with law enforcement before an incident, the importance of involving law enforcement as soon as an incident occurs, and common concerns regarding involvement of law enforcement.

Speaker

Brian L. Levine, Senior Counsel in the Department of Justice's Computer Crime and Intellectual Property Section ("CCIPS")

[5] Owning Innovation: Between Code and Contract

Contemporary law has become grounded in the conviction that not only the outputs of innovation—artistic expressions, scientific methods, and technological advances—but also the inputs of innovation—skills, experience, know-how, professional relationships, creativity and entrepreneurial energies—are subject to control and proprietization. Ms. Lobel will discuss the growing field of human capital law, at the intersections of IP, contract, employment law, and antitrust law, and analyze the effects of these battles, using for example the *Mattel v. MGA Entertainment* cases, which are the subject of her new award winning book: *You Don't Own Me* (Norton) and the *Waymo v. Uber* case to illuminate the costs and benefits of redrawing intellectual ownership lines in contemporary markets.

Speaker

Orly Lobel, Don Weckstein Professor of Law, University of San Diego

12:30 pm – 2:30 pm

Vanguard Award Luncheon – Ticketed Separately

2:45 pm – 3:45 pm Concurrent Program

[6] Attorney-Client Privilege and Work Product Issues Facing In-House Counsel working with Business Clients in the U.S. and Other Jurisdictions (1.0 Hour Legal Ethics)

The panel will discuss attorney-client privilege and work-product issues facing in-house counsel, including developing trends in the United States and select ex-US jurisdictions. Topics will include the differing views across jurisdictions as to whether, and to what extent, communications with in-house counsel are privileged; privilege pitfalls for in-house counsel who serve in both a legal and a business role; and practical ways to best position yourself for defending a privilege challenge.

Speakers

Shanee Nelson, Head of Litigation, Synopsys

Jason Winchester, Jones Day

Moderator

Sanjesh Sharma, IP Counsel, Johnson & Johnson Vision

[7] Hot Topics in Trade Secret Litigation: the DTSA, Remedies, Anti-SLAPP, and Constitutional issues

The significance of trade secret protection has continued to grow exponentially in the last few years. This program will take on some of the most intriguing (and vexing) topics in trade secret litigation and provide you and your clients valuable insights from the trenches. The panel will address a broad range of issues, including the Defend Trade Secrets Act (DTSA); trade secret misappropriation as the predicate act of a RICO claim; damages and entitlement of alternative monetary relief; and anti-SLAPP issues. The panel also will discuss constitutional issues, such as the First Amendment (right to free speech), the Fifth Amendment (right against self-incrimination), and the Seventh Amendment (right to a jury trial). Finally, these experienced litigators will tackle some of the recent headline-making trade secrets cases that we all can't stop reading about.

Speakers

Rebecca Edelson, Partner, Sheppard Mullin Richter & Hampton LLP

Robert B. Milligan, Partner, Seyfarth Shaw

Randall E. Kay, Partner, Jones Day

Moderator

Angelique Kaounis, Of Counsel, Gibson Dunn

3:50 pm – 4:50 pm Concurrent Program

[8] Leveraging Innovation with NASA Spinoffs

When most people consider NASA's achievements, they think of destinations like the moon, mars, or the most distant galaxies in the universe. But you don't have to look that far to appreciate the benefits of space exploration: commercialized NASA technology—known as NASA spinoffs—can be found in your phone, furniture, and car. They have improved nearly every semi-trailer truck on the road, airplane in the sky, and tractor working the fields. There's more space in your life than you think.

Speaker

Courtney H. Bailey - Associate General Counsel for the Commercial and Intellectual Property Practice Group, National Aeronautics and Space Administration

[9] The Communications Decency Act, Section 230 after FOSTA and *Hassel v Bird*

The Communications Decency Act, Section 230 (CDA230), has been a hot issue this year with the passage of the "Allow States and Victims to Fight Online Sex Trafficking Act of 2017" (FOSTA) and the California Supreme Court decision in *Hassell v Bird*. The panel will discuss these developments and the state of CDA230 today.

Speakers

Eric Goldman, Professor of Law and Co-Director of the High Tech Law Institute, Santa Clara University School of Law

Sophia Cope, Senior Staff Attorney, Electronic Frontier Foundation

Moderator

Bennet Kelley, Internet Law Center

8:00 pm – 12:00 am

Casino Night & Strolling Dinner

8:00 am – 3:00 pm

Registration and Exhibitors

8:00 am – 3:00 pm

Interest Group Booths

8:00 am – 9:00 am

Networking Breakfast

9:00 am – 10:00 am General Program

[10] The USPTO and American Innovation

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (USPTO) Andrei Iancu will provide an update on USPTO initiatives and priorities. He will also share his insights on the role of patents in a technology-driven economy and highlight programs advanced by the USPTO to streamline the examination process and foster entrepreneurial activity.

Speaker

Andrei Iancu, Under Secretary of Commerce and USPTO Director

10:05 am – 11:05 am Concurrent Program

[11] Online Brand Monitoring and Enforcement – Winning the Battle Without Losing the War

Our speakers will discuss the legal and practical challenges faced by practitioners as they assist their clients in dealing with unauthorized usage of their marks in online marketplaces and social media sites, and offer practical assessments of the available options.

Speaker

Bob Burlingame, Founder, Amplitude IP

Deborah E. Greaves, Partner, Brutzkus Gubner Rozansky Seror Weber LLP

[12] Legal Ways of Getting Paid for Music in The Digital Era

Musicians and artists are taking more control over the production, distribution, performance, and publishing of music, and California IP lawyers are on the leading edge of helping them do so. Bill Colitre and Hannibal Travis will survey the sources and structures of revenue in the digital music business and provide their insights on the future direction of the business for artists and music lovers alike.

Speakers

William Colitre, Music Reports

Hannibal Travis, Professor of Law, Florida International University College of Law

11:05 am – 11:15 am

Break

11:15 am – 12:15 pm Concurrent Program

[13] Perspectives on Recent Trends in Patent Law: Thoughts from the Federal Circuit

Fireside Chat with The Honorable Richard G. Taranto, U.S. Court of Appeals for the Federal Circuit. With the explosive growth in technology, the Federal Circuit continues in its ongoing efforts to bring uniformity and clarity to patent law. In this fireside chat, we will explore a wide range of hot-button issues, including the current state of patent subject matter eligibility, pending constitutional challenges to Patent Trial and Appeal Board (PTAB) appointments in view of the Supreme Court's decision in *Lucia v. SEC*, the procedural impact of SAS Institute on pending appeals, the recovery of foreign patent damages in the U.S. post-*WesternGeco*, and the recent administrative proposal to adopt the Phillips claim construction standard for all future PTAB proceedings.

Speaker

The Honorable Circuit Judge Richard G. Taranto, U.S. Court of Appeals for the Federal Circuit

Moderator

Matthew Powers, Litigation Partner, Tensegrity Law Group

[14] Ethical Considerations in the Startup Space (1.0 Hour Legal Ethics)

Representing startups, early-stage companies, accelerators, and companies that provide funding or assistance to them presents unique challenges but also a useful prism for assessing some of the many ethical considerations we all encounter in our legal practices. This panel will provide the view from a certified specialist in legal malpractice law, an in-house lawyer, and outside counsel on how to successfully manage these challenges.

Speakers

Bárrí A. Williams, StubHub

Merri Baldwin, Rogers Josephs O'Donnell

Louis Walton, Stubbs Alderton & Markiles, LLP

12:30 pm – 1:35 pm Interest Groups Meetings
(boxed lunches provided)

12:30 pm – 1:00 pm

Entertainment & Sports
Licensing
International
Technology Internet & Privacy
Copyright

1:05 pm – 1:35 pm

In-House Counsel
Trademark
Patent
Litigation
Trade Secret

**1:45 pm – 2:45 pm General Program
(1.0 Competency Issues)**

[15] Substance Abuse in the Legal Profession: Prevention, Detection, and Treatment

David Mann is a graduate of Ohio State University and Stanford Law School. He served as a Deputy Public Defender in San Francisco before becoming a solo criminal defense practitioner. After 12 years of practice, substance abuse-related issues caused him to resign from the Bar with disciplinary charges pending. Following a relentless battle with addiction that included numerous hospitalizations and periods of living on the streets, he succeeded in getting clean and sober in 1998. Since then he has worked, among other things, as a cab driver, a private investigator, a paralegal, and a drug and alcohol rehabilitation counselor. He presently serves as the Northern California Consultant to The Other Bar, a statewide organization of recovering attorneys, judges, and law students. In this capacity, he spends his time providing outreach and education to the legal community and assisting attorneys as they struggle with substance abuse and related challenges that threaten their ability and/or eligibility to practice law.

Speaker

David Mann - The Other Bar



HOTEL & REGISTRATION INFORMATION

Hotel Reservations at Fairmont San Jose, in San Jose

We have reserved a limited block of sleeping rooms at the rate of \$243 at The Fairmont San Jose, 170 S Market St, San Jose, CA 95113

Reservation deadline: October 15, 2018

For reservations call: (408) 998-1900. Please identify yourself as part of California Lawyers Association IP Institute to obtain the special hotel rate for our group.

How To Register

4 Ways to Register! Complete the registration form and course selector:

- 1. Register online:** at <https://calawyers.org/IP>
- 2. Mail:** Mail registration form and your check to:
Program Registrations
California Lawyers Association
180 Howard Street, Suite 410
San Francisco, CA 94105
- 3. Email:** ProgramRegistrations@CALawyers.org
- 4. Walk-in:** Subject to available space, walk-in registration is available. Call to confirm space availability.

REGISTRATION DEADLINE: OCTOBER 25, 2018

Special Assistance:

Please call (415) 795-7104 for special assistance.

Information:

For Registration Information, please call Program Registrations at (415) 795-7205

Registration Information:

The Intellectual Property Law Section welcomes all who are interested in Intellectual Property. You need not be a lawyer to attend, enjoy, and benefit from this program.

Registration Fees:

Registration fees include admission, up to 9 hours of MCLE, course materials, Thursday and Friday breakfast, Interest Group lunch, Casino Game Night, and Wednesday evening reception.

The Thursday Vanguard Award Luncheon is a ticketed event. Tickets must be purchased separately. See registration form.

Cancellations:

All requests for refunds must be received (not postmarked) in writing by November 1st, 2018. Refunds will be issued less a \$50 non-refundable service charge.

The California Lawyers Association and the Intellectual Property Law Section are approved State Bar of California MCLE providers.



43rd ANNUAL INTELLECTUAL PROPERTY INSTITUTE | NOVEMBER 7-9, 2018

**REGISTRATION DEADLINE:
OCTOBER 25, 2018**

Note: One registrant per form. Photocopies may be used.

Bar Number: _____

First & Last Name: _____

Firm or Company: _____

Address: _____

City, State, Zip: _____

Phone Number: _____

E-mail Address:*

** Required for email confirmation*

Check here if you do not want your information released.

Firm In-House

Practice Area: _____

Practice Years: _____

Registration Fees:

- IP Section Members \$595
- Non-Members of the IP Section \$690
(includes enrollment in the Intellectual Property Law Section for 2019)
- Solo and Small Firm Section Members \$545
- California Young Lawyers Association Members \$495
- Law School Faculty/Paralegal/Government/Non-Profit \$275
- Law Student \$150

Subtotal of Registration Fee = \$ _____

Special Events:

- | | <i># of tickets</i> | <i>Total</i> |
|--|---------------------|------------------|
| <input type="checkbox"/> Wednesday Welcome Reception | ___ | Complimentary |
| <input type="checkbox"/> Thursday Vanguard Luncheon | ___ | @\$45 = \$ _____ |
| <input type="checkbox"/> Casino Night & Strolling Dinner | ___ | Complimentary |

Subtotal of Special Event Fee = \$ _____

Payment Method:

Make check payable to: California Lawyers Association

I authorize the California Lawyers Association to charge my IP Institute fees to my MasterCard or VISA account. (No other credit cards accepted)

VISA MasterCard

Account Number: _____

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Cardholder's Name: _____
(print as it appears on card)

Cardholder's Signature: _____

Course Selector:

Please check the following programs you will attend.

Thursday, November 8, 2018

9:00 am – 10:00 am

- [1] Unconscious Bias and the Legal Profession

10:05 am – 11:05 am

- [2] GDPR: Lessons Learned From the Front Line
- [3] Modernizing Copyright: The Past, Present, and Future of the U.S. Copyright Office

11:15 am – 12:15 pm

- [4] Cybercrime and Intellectual Property Crime: A Team Effort
- [5] Owning Innovation: Between Code and Contract

2:45 pm – 3:45 pm

- [6] Attorney-Client Privilege and Work Product Issues Facing In-House Counsel working with Business Clients in U.S. and Other Jurisdictions
- [7] Hot Topics in Trade Secret Litigation: the DTSA, Remedies, Anti-SLAPP, and Constitutional Issues

3:50 pm – 4:50 pm

- [8] Leveraging Innovation with NASA Spinoffs
- [9] The Communications Decency Act, Section 230 (CDA230) after FOSTA and *Hassel v Bird*

Friday, November 9, 2018

9:00 am – 10:00 am

- [10] The USPTO and American Innovation

10:05 am – 11:05 am

- [11] Online Brand Monitoring and Enforcement – Winning the Battle Without Losing the War
- [12] Legal Ways of Getting Paid for Music In the Digital Era

11:15 am – 12:15 pm

- [13] Perspectives on Recent Trends in Patent Law: Thoughts from the Federal Circuit
- [14] Ethical Considerations in the Startup Space

12:30 pm – 1:00 pm [Interest Group Luncheons](#)

- [16] Entertainment & Sports
- [17] Licensing
- [18] International
- [19] Technology Internet & Privacy
- [20] Copyright

1:05 pm – 1:35 pm [Interest Group Luncheons](#)

- [21] In-House Counsel
- [22] Trademark
- [23] Patent
- [24] Litigation
- [25] Trade Secret

1:45 pm – 2:45 pm

- [15] Substance Abuse in the Legal Profession: Prevention, Detection, and Treatment

Register Online at <https://calawyers.org/IP>



California Lawyers Association

Intellectual Property Law Section
180 Howard Street, Suite 410
San Francisco, CA 94105

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Fairmont San Jose

170 S Market St

San Jose, CA 95113

Hotel Deadline

October 15, 2018

Registration Deadline

October 25, 2018



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**Intellectual
Property
Institute**



NOVEMBER 7-9, 2018

Fairmont San Jose, San Jose, California

Hotel Deadline: October 15, 2018

Registration Deadline: October 25, 2018

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