

# IP Law Continues to Expand Reach

By Tyler Tassone

THERE HAVE BEEN RECENT DEVELOPMENTS in intellectual property law, summarizing Federal Circuit and U.S. Supreme Court decisions involving trade secrets, trademarks, patents, and copyrights, while also looking forward to upcoming cases. The Philadelphia Bar Association's Intellectual Property Committee hosted a CLE titled "Hot Topics in Intellectual Property Law" on Aug. 16.

Ernest Holtzheimer, associate at Montgomery McCracken Walker & Rhoads LLP, discussed trade secrets and the Defend Trade Secrets Act of 2016 that, in part, creates a federal cause of action for trade secret misappropriation. In discussing the background of the DTSA, he explained that "the risks of cybersecurity attacks really drove this legislation." The DTSA has already been put to the test, and a federal jury awarded the first verdict under the DTSA in *Dalmatia Import*

*Group, Inc. v. FoodMatch Inc.* Also discussed was the ongoing high-profile case *Waymo v. Uber* involving an ex-Waymo employee who allegedly misappropriated trade secrets relating to Waymo's driverless-vehicle technology.

Brian Saunders, associate at Baker & Hostetler LLP discussed recent developments in patent law. He said, "The Supreme Court is now taking more of an interest in patent law cases and appeals," noting the uptick in the number of patent law cases decided by the U.S. Supreme Court in recent years. Cases discussed include *Samsung v. Apple* where the court weighed in on how to determine damages in design patent-infringement cases, *SCA Hygiene Products v. First Quality Baby Products* where the court held that laches is no longer a defense in patent infringement lawsuits, and *Life Technologies Corp. v. Prometheus Corp.* where the court addressed the question of whether exporting a single component of a patented product can

constitute a "substantial portion" of the patented invention for purposes of patent infringement. Continuing the discussion of developments in patent law, Ben Fuller, associate at Montgomery McCracken Walker & Rhoads LLP discussed the patent venue case of *TC Heartland v. Kraft Foods* and its implications, and *Impression Products, Inc. v. Lexmark Int'l, Inc.* that raised questions about the contours of the doctrine of patent exhaustion.

Jessica Watkins, associate at Baker & Hostetler LLP, discussed recent developments in trademark law such as the well-known case of *Matal v. Tam* where the U.S. Supreme Court held that the disparagement clause, which prevents registration of disparaging trademarks, is an unconstitutional restriction on free speech. She said that *Matal* "opens the door for a lot of minority groups that wish to reclaim slurs..." but also paves the way for those who wish to use marks for discriminatory purposes. Also discussed

was the case of *Skidmore v. Led Zeppelin* in which Led Zeppelin's famous song from the 1970s titled "Stairway to Heaven" was alleged to infringe the copyright of a song by the band Spirit, and *Star Athletica, LLC v. Varsity Brands, Inc.* where the U.S. Supreme Court set forth a revised standard for determining whether a design feature of a useful article is protectable under the Copyright Act.

Tyler Tassone (Tyler.Tassone@flastergreenberg.com) is an associate at Flaster/Greenberg.



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