

# SYLLABUS [File01 on USB drive]

## CHISUM PATENT ACADEMY<sup>®</sup>

### Patent Law Seminars August 13-15 and August 18-20, 2014 Seattle, Washington

Instructors: Donald S. Chisum and Janice M. Mueller

Session	Topics	Cases and Materials for Discussion	Background Reading in Mueller, <i>Patent Law, Fourth Edition</i> (Aspen 2013)
<b>Day 1</b> <b>Morning Session</b> <b>9:00 am – 12:00 pm</b>	<b><i>Recent Blockbuster Supreme Court and Federal Circuit Cases</i></b>	<b>File02</b> , Donald Chisum, <i>Abstracts of 2014 Supreme Court Patent Cases</i> . Abstracted decisions: <ul style="list-style-type: none"><li>• <i>Medtronic, Inc. v. Mirowski Family Ventures, LLC</i>, 134 S. Ct. 843 (2014) (burden of proof in licensee DJ suits);</li><li>• <i>Octane Fitness, LLC v. ICON Health &amp; Fitness, Inc.</i>, 134 S. Ct. 1749 (2014) (exceptional case standard for attorney fee awards in patent cases);</li><li>• <i>Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.</i>, 134 S. Ct. 1744 (2014) (standard for reviewing district court exceptional case determinations; abuse of discretion);</li><li>• <i>Petrella v. Metro-Goldwyn-Mayer, Inc.</i>, 134 S. Ct. 1962 (2014) (laches in copyright infringement cases);</li><li>• <i>Nautilus, Inc. v. Biosig Instruments, Inc.</i>, 134 S. Ct. 2120 (2014) (repudiation of lenient Federal Circuit claim definiteness standard);</li><li>• <i>Limelight Networks, Inc. v. Akamai Techs., Inc.</i>, 134 S. Ct. 2111 (2014)</li></ul>	Chapter 7 (“Potentially Patentable Subject Matter”).

		<p>(divided infringement; no inducement absent direct infringement);</p> <ul style="list-style-type: none"> <li>• <i>Alice Corp. Pty. Ltd. v. CLS Bank Int'l</i>, 134 S. Ct. 2347 (2014) (computer-implemented inventions as patent eligible subject matter).</li> </ul> <p><b>File03</b>, Donald Chisum, <i>Abstracts of Selected Critical 2014 Federal Circuit En Banc and Panel Decisions</i>. Abstracted decisions:</p> <ul style="list-style-type: none"> <li>• <i>Lighting Ballast Control LLC v. Philips Elecs. N. Am. Corp.</i>, 744 F.3d 1272 (Fed. Cir. 2014) (<i>en banc</i>) (no change from <i>de novo</i> standard of review of claim construction; stare decisis).</li> <li>• <i>Digitech Image Techs., LLC v. Electronics for Imaging, Inc.</i>, 2014 U.S. App. LEXIS 13149, 2014 WL 3377201 (Fed. Cir. 2014) (method claim to generating “device profile” is ineligible subject matter as to abstract idea; applying <i>Alice Corp.</i> (U.S. 2014)).</li> </ul>	
<p><b>Day 1</b></p> <p><b>Afternoon Session</b></p> <p><b>1:00 pm – 4:00 pm</b></p>	<p><b><i>Patent Claim Construction, Standard of Review, and Definiteness Requirement</i></b></p>	<p><b>File04</b>, Janice Mueller, PowerPoints on “Patents Claims: Definiteness Requirement and Interpretation”;</p> <p><b>File05</b>, <i>Nautilus, Inc. v. Biosig Instruments, Inc.</i>, 134 S. Ct. 2120 (2014) (§112(b) definiteness requirement);</p> <p><b>File06</b>, <i>In re Packard</i>, 751 F.3d 1307 (Fed. Cir. 2014) (definiteness standard in USPTO);</p> <p><b>File07</b>, <i>Lighting Ballast Control LLC v. Philips Elecs. N.A. Corp.</i>, 498 Fed. App’x 986 (Fed. Cir. 2013) (non-precedential) (VACATED panel opinion);</p> <p><b>File08</b>, <i>Lighting Ballast Control LLC v. Philips Elecs. N.A. Corp.</i>, 744 F.3d 1272 (Fed. Cir. 2014) (<i>en banc</i>) (reaffirming <i>de novo</i> standard of review for claim construction).</p>	<p>Chapter 2[B] (“Patent Claims: Claim Definiteness Requirement (35 U.S.C. §112(b))”);</p> <p>Chapter 9[B] (“Patent Infringement: Step One: Patent Claim Interpretation”).</p>

<p><b>Day 2</b></p> <p><b>Morning Session</b></p> <p><b>9:00 am – 12:00 pm</b></p>	<p><b><i>Drafting and Enforcing Method and System Claims: Active Inducement, Divided Infringement, Damages, Knowledge and Intent</i></b></p>	<p><b>File09</b>, Donald Chisum, <i>Abstracts of Recent Cases on Method and System Claims</i>. Abstracted decisions:</p> <ul style="list-style-type: none"> <li>● <i>DSU Med. Corp. v. JMS Co., Ltd.</i>, 471 F.3d 1293 (Fed. Cir. 2006) (<i>en banc</i> as to "Section III.B");</li> <li>● <i>Global-Tech Appliances, Inc. v. SEB S.A.</i>, 131 S. Ct. 2060 (2011);</li> <li>● <i>Centillion Data Systems, LLC v. QWest Communications Int'l, Inc.</i>, 631 F.3d 1279 (Fed. Cir. 2011);</li> <li>● <i>Advanced Software Design Corp. v. Fiserv, Inc.</i>, 641 F.3d 1368 (Fed. Cir. 2011);</li> <li>● <i>HTC Corp. v. IPCom GmbH &amp; Co., KG</i>, 667 F.3d 1270 (Fed. Cir. 2012);</li> <li>● <i>Toshiba Corp. v. Imation Corp.</i>, 681 F.3d 1359 (Fed. Cir. 2012);</li> <li>● <i>Akamai Techs., Inc. v. Limelight Networks, Inc.</i>, 692 F.3d 1301 (Fed. Cir. 2012) (<i>en banc</i>), <i>rev'd</i>, 134 S. Ct. 2111 (2014);</li> <li>● <i>Mirror Worlds, LLC v. Apple Inc.</i>, 692 F.3d 1351 (Fed. Cir. 2012);</li> <li>● <i>LaserDynamics, Inc. v. Quanta Computer, Inc.</i>, 694 F.3d 51 (Fed. Cir. 2012);</li> <li>● <i>R&amp;L Carriers, Inc. v. Pitt Ohio Express, Inc. (In re Bill of Lading Transmission &amp; Processing Sys. Patent Litig.)</i>, 681 F.3d 1323 (Fed. Cir. 2012);</li> <li>● <i>Commil USA, LLC v. Cisco Sys., Inc.</i>, 720 F.3d 1361 (Fed. Cir. June 25, 2013), <i>appellee's petition for panel rehearing and rehearing en banc denied</i>, 2013 U.S. App. LEXIS 21713 (Fed. Cir. Oct. 25, 2013), <i>appellant's petition for panel rehearing and rehearing en banc denied</i>, 2013 U.S. App. LEXIS 21714 (Fed. Cir. Oct. 25, 2013);</li> <li>● <i>Move, Inc. v. Real Estate Alliance Ltd.</i>, 709 F.3d 1117 (Fed. Cir. 2013);</li> <li>● <i>SynQor, Inc. v. Artesyn Techs., Inc.</i>, 709 F.3d 1365 (Fed. Cir. 2013);</li> <li>● <i>Aristocrat Techs. Australia Pty Ltd. v. Int'l Game Tech.</i>, 709 F.3d 1348 (Fed. Cir. 2013);</li> <li>● <i>Suprema, Inc. v. Int'l Trade Comm'n</i>, 742 F.3d 1350 (Fed. Cir. 2013), <i>reh'g en banc granted, opinion vacated</i>, No. 2012-1170, 2014 WL 3036241 (Fed. Cir. May 13, 2014);</li> <li>● <i>Nazomi Comm., Inc. v. Nokia Corp.</i>, 739 F.3d 1339 (Fed. Cir. 2014);</li> <li>● <i>Limelight Networks, Inc. v. Akamai Technologies, Inc.</i>, 134 S. Ct. 2111</li> </ul>	<p>Chapter 9[A][1][b] (“Joint Direct Infringement by Multiple Parties”);</p> <p>Chapter 9[E][1] (“Inducing Infringement Under §271(b)”).</p>
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<b>Day 2</b> <b>Afternoon Session</b> <b>1:00 pm – 4:00 pm</b>	<b><i>Inter Partes Review: Case Study; Guidance from Inter Partes Reexamination Decisions</i></b>	<b>File010</b> , Janice Mueller, PowerPoints on <i>Inter Partes</i> Review Case Study; <b>File011</b> , <i>Covidien LP v. Ethicon Endo-Surgery, Inc.</i> , Case IPR2013-00209 (PTAB June 9, 2014) (Final Written Decision); <b>File012</b> , Petition for IPR by Covidien (Mar. 25, 2013); <b>File013</b> , Response by Patentee Ethicon (Nov. 19, 2013); <b>File014</b> , Ethicon’s USP 8,317,070 (issued Nov. 27, 2013); <b>File015</b> , Donald Chisum, <i>Inter Partes and Post-Grant Review Under the America Invents Act (Overview)</i> ; <b>File016</b> , Donald Chisum, <i>Abstracts of 2013-2014 Federal Circuit Decisions on America Invents Act Inter Partes and Post-Grant Review and on Pre-AIA Inter Partes Reexamination</i> .	Chapter 8[E] (“AIA-Implemented Procedures for Challenging Issued Patents”).
<b>Day 3</b> <b>Morning Session</b> <b>9:00 am – 12:00 pm</b>	<b><i>Patent Practice Gone Wrong: Lessons from Recent Cases on Patent Malpractice, Rule 11 and Attorney Fee Sanctions, and Inequitable Conduct</i></b>	<b>File017</b> , Donald Chisum, <i>Patent Practice Gone Wrong: Abstracts of Recent Cases on Patent Malpractice, Rule 11 and Attorney Fee Sanctions, and Inequitable Conduct</i> . Abstracted decisions: <ul style="list-style-type: none"> <li>● <i>Davis v. Brouse McDowell, L.P.A.</i>, 596 F.3d 1355 (Fed. Cir. 2010);</li> <li>● <i>USPPS, Ltd. v. Avery Dennison Corp.</i>, 676 F.3d 1341 (Fed. Cir. 2012), vacated and remanded, 133 S. Ct. 1794 (2013);</li> <li>● <i>Landmark Screens, LLC v. Morgan, Lewis, &amp; Bockius, LLP</i>, 676 F.3d 1354 (Fed. Cir. 2012);</li> <li>● <i>Minkin v. Gibbons P.C.</i>, 680 F.3d 1341 (Fed. Cir. 2012);</li> <li>● <i>Gunn v. Minton</i>, 133 S. Ct. 1059 (2013) (jurisdiction in patent law malpractice suits);</li> <li>● <i>iLOR, LLC v. Google, Inc.</i>, 631 F.3d 1372 (Fed. Cir. 2011);</li> <li>● <i>Old Reliable Wholesale, Inc. v. Cornell Corp.</i>, 635 F.3d 539 (Fed. Cir.</li> </ul>	Chapter 10[D][1] (“Inequitable Conduct”); Chapter 11[E] (“Attorney Fees”).

2011);

- *Eon-Net, LP v. Flagstar Bancorp.*, 653 F.3d 1314 (Fed. Cir. 2011);
- *MarcTec, LLC v. Johnson & Johnson*, 664 F.3d 907 (Fed. Cir. 2012);
- *Rates Tech., Inc. v. Mediatrix Telecom, Inc.*, 688 F.3d 742 (Fed. Cir. 2012);
- *Highmark, Inc. v. Allcare Health Management Sys., Inc.*, 687 F.3d 1300 (Fed. Cir. 2012), rev'd, 134 S. Ct. 1744 (2014);
- *Icon Health & Fitness, Inc. v. Octane Fitness*, 496 Fed. App'x 57 (Fed. Cir. October 24, 2012), rev'd, 134 S. Ct. 1749 (2014);
- *Woods v. Deangelo Marine Exhaust, Inc.*, 692 F.3d 1272 (Fed. Cir. 2012);
- *Raylon, LLC v. Complus Data Innovations, Inc.*, 700 F.3d 1361 (Fed. Cir. 2012);
- *Taurus IP, LLC v. Daimler Chrysler Corp.*, 726 F.3d 1306 (Fed. Cir. 2013);
- *Monolithic Power Systems, Inc. v. O2 Micro Int'l Ltd.*, 726 F.3d 1359 (Fed. Cir. 2013);
- *Kilopass Tech., Inc. v. Sidense Corp.*, 738 F.3d 1302 (Fed. Cir. 2013);
- *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749 (2014) (exceptional case standard for attorney fee awards in patent cases);
- *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 134 S. Ct. 1744 (2014) (standard for reviewing district court exceptional case determinations; abuse of discretion);
- *Source Vagabond Sys. v. Hydrapak, Inc.*, 753 F.3d 1291 (Fed. Cir. 2014) (Rule 11 sanctions);
- *Aventis Pharma S.A. v. Hospira, Inc.*, 675 F.3d 1324 (Fed. Cir. 2012);
- *1st Media, LLC v. Electronic Arts, Inc.*, 694 F.3d 1367 (Fed. Cir. 2012);
- *Outside the Box Innovations, LLC v. Travel Caddy, Inc.*, 695 F.3d 1285 (Fed. Cir. 2012);
- *In re Rosuvastatin Calcium Patent Litigation*, 703 F.3d 511 (Fed. Cir. 2012);
- *Novo Nordisk A/S v. Caraco Pharm. Labs., Ltd.*, 719 F.3d 1346 (Fed. Cir. 2013);
- *Network Signatures, Inc. v. State Farm Mutual Automobile Ins. Co.*, 731 F.3d 1239 (Fed. Cir. 2013);
- *Intellect Wireless, Inc. v. HTC Corp.*, 732 F.3d 1339 (Fed. Cir. 2013);

		<ul style="list-style-type: none"> <li>● <i>Ohio Willow Wood Co. v. Alps South, LLC</i>, 735 F.3d 1333 (Fed. Cir. 2013).</li> </ul>	
<b>Day 3</b> <b>Afternoon Session</b> <b>1:00 pm – 4:00 pm</b>	<b><i>Injunctions; New “Causal Nexus” Requirement for Irreparable Harm; Design Patents</i></b>	<p><b>File018</b>, Janice Mueller, PowerPoints on “Injunctive Relief: Developments in the <i>Apple v. Samsung</i> Smartphone Wars and Beyond”;</p> <p><b>File019</b>, Donald Chisum, <i>Abstracts of Recent Injunction Cases</i>. Abstracted decisions:</p> <ul style="list-style-type: none"> <li>● <i>Apple, Inc. v. Samsung Elecs. Co., Ltd.</i>, 678 F.3d 1314 (Fed. Cir. May 14, 2012) (“<i>Apple I</i>”);</li> <li>● <i>Apple, Inc. v. Samsung Elecs. Co., Ltd.</i>, 695 F.3d 1370 (Fed. Cir. Oct. 11, 2012) (“<i>Apple II</i>”);</li> <li>● <i>Apple, Inc. v. Samsung Elecs. Co., Ltd.</i>, 735 F.3d 1352 (Fed. Cir. Nov. 18, 2013) (“<i>Apple III</i>”);</li> <li>● <i>Celsis in Vitro, Inc. v. CellzDirect, Inc.</i>, 664 F.3d 922 (Fed. Cir. 2012);</li> <li>● <i>Aria Diagnostics, Inc. v. Sequenom, Inc.</i>, 726 F.3d at 1296 (Fed. Cir. 2013).</li> </ul>	<p>Chapter 7[H][2] (“Design Patents”);</p> <p>Chapter 11[B] (“Injunctions”);</p> <p>Chapter 11[C] (“Ongoing Royalties for Future Infringements”).</p>
<b>Time Permitting</b>	<b><i>Patent Exhaustion Defense</i></b>	<p><b>File020</b>, Donald Chisum, <i>Abstracts of Recent Patent Exhaustion Cases</i>. Abstracted decisions:</p> <ul style="list-style-type: none"> <li>● <i>Keurig, Inc. v. Sturm Foods, Inc.</i>, 732 F.3d 1370 (Fed. Cir. 2013);</li> <li>● <i>Lifescan Scotland, Ltd. v. Shasta Techs., LLC</i>, 734 F.3d 1361 (Fed. Cir. 2013).</li> </ul>	<p>Chapter 10[C][8] (“Patent Exhaustion”).</p>