

SYLLABUS/AGENDA [File01 on USB drive]

CHISUM PATENT ACADEMY®

Advanced Patent Law Small Group Seminars
August 10-11 and 14-15, 2017
Mayflower Park Hotel
Seattle, Washington

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Session	Topics	Cases and Materials for Discussion
Day 1 Morning Session 9:00 am – 12:00 pm	Recent Blockbuster Supreme Court and Federal Circuit En Banc Cases	File02 , Donald Chisum, <i>Powerpoints on Blockbusters: Recent Supreme Court and Federal Circuit En Banc Decisions; Pending Cases:</i> <ul style="list-style-type: none">● <i>Samsung Elecs. Co. v. Apple Inc.</i>, 137 S. Ct. 429 (Dec. 6, 2016) (design patent infringement damages for multicomponent products);● <i>Life Techs. Corp. v. Promega</i>, 137 S. Ct. 734 (Feb. 22, 2017) (supplying substantial portion of components from U.S.; Section 271(f)(1));● <i>TC Heartland LLC v. Kraft Food Brands Grp. LLC</i>, 137 S. Ct. 1514 (May 22, 2017) (venue);● <i>SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., LLC</i>, 137 S. Ct. 954 (Mar. 21, 2017) (laches);● <i>Impression Prods., Inc. v. Lexmark Int'l, Inc</i>, 137 S. Ct. 1523 (May 30, 2017) (conditional sales; international exhaustion);● <i>SAS Inst. Inc. v. Lee</i>, 137 S. Ct. 2160 (May 22, 2017) (granting <i>certiorari</i> to consider whether PTAB can institute IPR on less than all challenged claims);● <i>Oil States Energy Services, LLC v. Greene's Energy Group, LLC</i>, ___ S. Ct. ___, 2017 WL 2507340 (June 12, 2017) (granting <i>certiorari</i> to review Constitutionality of AIA-implemented

		<p>post-grant review procedures); <i>Note:</i> for a discussion of Supreme Court authority that might support finding IPR to be an unconstitutional conferral of “judicial power” on a tribunal not enjoying Article III status, see <i>Cascades Projection LLC v. Epson America, Inc.</i>, No. 2017-1517, 2017-1518 (Fed. Cir. May 11, 2017) (order denying initial hearing <i>en banc</i>) (Reyna, dissenting);</p> <ul style="list-style-type: none"> • <i>Apple Inc. v. Samsung Elecs. Co., Ltd.</i>, 839 F.3d 1034 (Fed. Cir. Oct. 7, 2016) (<i>en banc</i>) (obviousness; claim interpretation; jury trials; winner of our “Stinker of 2016” award); • <i>In re Aqua Prods., Inc.</i>, 823 F.3d 1369 (Fed. Cir. May 25, 2016), <i>vacated and reh’g en banc granted</i>, 833 F.3d 1335 (Fed. Cir. Aug. 12, 2016) (burdens of proof and production for IPR motions to amend) (also discussed in IPR session below); • <i>Wi-Fi One, LLC v. Broadcom Corp.</i>, 837 F.3d 1329 (Fed. Cir. Sept. 16, 2016), <i>vacated and reh’g en banc granted</i>, 851 F.3d 1241 (Fed. Cir. Jan. 4, 2017) (whether Federal Circuit can review PTAB’s §315 IPR time bar determinations) (also discussed in IPR session below).
<p>Day 1</p> <p>Afternoon Session</p> <p>1:00 pm – 4:00 pm</p>	<p><i>On Sale Bar:</i></p> <p><i>Pre-And Post-AIA</i></p>	<p>File03, Janice Mueller, <i>Powerpoints on On-Sale Bar</i>. Cases analyzed:</p> <ul style="list-style-type: none"> • <i>Helsinn Healthcare S.A. v. Teva Pharms. USA, Inc.</i>, 855 F.3d 1356 (Fed. Cir. May 1, 2017) (under AIA, on sale bar can be triggered by a publicized sale that does not disclose the details of the invention; patentee made a “commercial offer” of invention despite contingency on FDA approval; claimed invention was “ready for patenting” despite no completed Phase III clinical trials); • <i>The Medicines Co. v. Hospira, Inc.</i>, 827 F.3d 1363 (Fed. Cir. July 11, 2016) (<i>en banc</i>) (stockpiling of claimed invention by patentee/purchaser via outsourced manufacturing services did <i>not</i> trigger on sale bar).
<p>Day 2</p> <p>Morning Session</p> <p>9:00 am – 12:00 pm</p>	<p><i>Inter Partes Review:</i></p> <p><i>Reviewability; Burdens of Proof and Production;</i></p>	<p>File04, Donald Chisum, <i>Powerpoints on Inter Partes Review: Due Process Notice and Hearing Rights in PTAB Determinations of Obviousness</i>. Cases analyzed:</p> <ul style="list-style-type: none"> • <i>Belden</i>, 805 F.3d 1064; • <i>Ariosa Diagnostics</i>, 805 F.3d 1359; • <i>Redline Detection</i>, 811 F.3d 435; • <i>Dell</i>, 818 F.3d 1293;

	Due Process	<ul style="list-style-type: none"> ● <i>Intelligent Bio-Systems</i>, 821 F.3d 1359; ● <i>SAS Institute</i>, 825 F.3d 1360; ● <i>Genzyme Therapeutic</i>, 825 F.3d 1360; ● <i>TriVascular</i>, 812 F.3d 1056; ● <i>In re Magnum Oil Tools Int'l, Ltd.</i>, 829 F.3d 1364; ● <i>In re Nuvasive, Inc.</i>, 841 F.3d 966; ● <i>PersonalWeb Techs.</i>, 848 F.3d 987; ● <i>Novartis</i>, 853 F.3d 1316; ● <i>Emerachem</i>, 859 F.3d 1341.
<p>Day 2</p> <p>Afternoon Session</p> <p>1:00 pm – 4:00 pm</p>	<p>Patent-Eligible Subject Matter:</p> <p>2016-2017 Federal Circuit Cases</p>	<p>File05, Donald Chisum, <i>Powerpoints on Patent-Eligible Subject Matter: 2016-2017 Federal Circuit Cases</i>.</p> <p>2017 Cases:</p> <ul style="list-style-type: none"> ● <i>Cleveland Clinic Found. v. True Health Diagnostics LLC</i>, 859 F.3d 1352 (Fed. Cir. June 16, 2017); ● <i>Credit Acceptance Corp. v. Westlake Services</i>, 859 F.3d 1044 (Fed. Cir. June 9, 2017); ● <i>Recognicorp, LLC v. Nintendo Co., Ltd.</i>, 855 F.3d 1322 (Fed. Cir. Apr. 28, 2017); ● <i>Thales Visionix v. United States</i>, 850 F.3d 1343 (Fed. Cir. Mar. 8, 2017); ● <i>Intellectual Ventures I LLC v. Capital One</i>, 850 F.3d 1332; ● <i>Intellectual Ventures I LLC v. Erie Indemnity Co.</i>, 850 F.3d 1315. <p>2016 Cases Finding Claims Patent-Eligible:</p> <ul style="list-style-type: none"> ● <i>Amdocs (Israel)</i>, 841 F.3d 1288; ● <i>McRO</i>, 837 F.3d 1299; ● <i>Bascom</i>, 827 F.3d 1341; ● <i>Rapid Litigation</i>, 827 F.3d 1042; ● <i>Enfish</i>, 822 F.3d 1327. <p>File06: Representative Claims for Section 101 Cases.</p>