

Franklin Pierce Law Center's Fifth Biennial Patent System Major Problems Conference

I. INTRODUCTION

A. Conference Background

On November 11, 1995, Franklin Pierce Law Center (FPLC), in cooperation with the Kenneth J. Germeshausen Center for the Law of Innovation and Entrepreneurship and the PTC Research Foundation, both of which are located at FPLC, held its fifth conference on the major problems of the patent system. This biennial series of Patent System Major Problems Conferences was started in 1987 by former FPLC professor Homer O. Blair.

The discussions in the first and inaugural conference focused on such diverse topics as New Forms of Patents, Litigation Cost Reduction Measures, and First-to-File versus First-to-Invent Systems. 28 IDEA 61 (1987) and 28 IDEA 117 (1987).

The 1989 conference dealt primarily with Patent Trial Simplification and Dispute Resolution. 30 IDEA 107 (1989).

The 1991 conference covered such patent law harmonization subjects as Secret Prior Art, Prior User Rights, 35 U.S.C. § 104, and Publication of Pending Applications. 32 IDEA 7 (1991).

The 1993 conference featured such subjects as Abolition of Jury Trials in Patent Cases, a New Specialized Patent Court in England, Prior User Rights, and the U.S. Patent and Trademark Office as an Independent Government Corporation. 34 IDEA 67 (1994).

*346 B. 1995 Conference Design

The 1995 conference focused on three topics: 1) Patent Costs; 2) Future of the U.S. Patent and Trademark Office; and 3) Prior User Rights. Towards the end of the conference, each attendee was given an opportunity to briefly identify additional major problems.

The purpose of the 1995 conference was to elicit opinions of people who are knowledgeable about the patent system about what could be done to solve or alleviate what some see as the patent system's major problems.

Hence, the conference attendees included invited guests from the private and corporate patent bars, universities, the ranks of private inventors and entrepreneurs, as well as faculty from FPLC.

The format of the conference was in-depth discussions and exchanges among the attendees, without prepared speeches. However, prefatory comments to each of the three subjects on the agenda were made by Bud Berrier, Herb Wamsley, and Chris Konkol, respectively. For the purpose of introducing these subjects, they used the following background materials:

1. Erwin F. Berrier, Jr., Global Patent Costs Must Be Reduced, Address at the International Patent Club in New York (Sept. 12, 1995). An article and accompanying charts on this topic will be published in Vol. 36, No. 4 of IDEA.
2. Hearing on H.R. 1659 and Related Bills, Before the Subcomm. on Courts and Intellectual Property of the House Comm. on the Judiciary, 104th Cong., 1st Sess. (1995) (testimony of Herbert C. Wamsley).
3. H.R. 1659, 104th Cong., 1st Sess. (1995) (Patent and Trademark Office Corporation Act of 1995).
4. Chris P. Konkol, Prior-Invention Rights: The Excluded Middle, 77 J. PAT & TRADEMARK OFF. SOC'Y 666 (1995).

The conference was chaired by Robert B. Benson, Chairman of FPLC and its Advisory Committee on Intellectual Property (ACIP), as well as the former President of Bancroft Corporation, Chief Patent Counsel of Allis Chalmers, President of the American Intellectual Property Association, and Chairman of the IP Law Section of the American Bar Association.

C. Speaker Introductions

MR. BENSON: Many of you already know each other. You all have a place card in front of you saying who you are, but to get started and for those who don't know everybody, I'd like to go around the room for introductions. Just make a statement of who you are and where you are from.

MR. VILES: I'm Bob Viles, the President of Franklin Pierce Law Center.

MR. KEEFAUVER: I'm Bill Keefauver from New Jersey.

MR. WELCH: I'm Larry Welch from Kalamazoo, Michigan. I now work for a company called Pharmacia & Upjohn, Inc.

MR. KLITZMAN: I'm Maury Klitzman from Bethesda, and I'm retired from IBM.

MR. MYRICK: I'm Ron Myrick from Boston.

MR. C. BENSON: I'm Chris Benson from Houston and a shareholder with Arnold, White & Durkee.

MR. SMITH: Roger Smith from New York. I'm with Morgan & Finnegan and retired from IBM.

MR. BALMER: Norm Balmer, Danbury, Connecticut, Union Carbide.

MR. GOLDRIAN: Hans Goldrian with the law firm of Bardehle in Munich.

MR. KONKOL: Chris Konkol. I'm from Wilmington, Delaware, and I work at E. I. du Pont.

MR. BREMER: Howard Bremer, formerly patent counsel with Wisconsin Alumni Research Foundation, Madison.

MR. COLEMAN: Ed Coleman, adjunct faculty at Franklin Pierce Law Center and retired from GTE Sylvania Lighting as General Counsel *348 Intellectual Property.

MR. ARMITAGE: Bob Armitage. I'm with the Washington office of Vinson & Elkins. I was formerly patent counsel at the Upjohn Company.

MR. GRISWOLD: Gary Griswold. I'm with 3M in St. Paul, Minnesota.

MR. WITTE: Dick Witte, Cincinnati, Ohio, Morgan & Finnegan, and retired from Procter & Gamble.

MR. CROOKS: I'm Bob Crooks, in private practice in Durham, New Hampshire.

MR. SHAW: Bob Shaw, Franklin Pierce Law Center.

MS. LINCK: Nancy Linck, Solicitor, Patent and Trademark Office.

MR. FIELD: Tom Field, Franklin Pierce Law Center.

MR. MACKEY: Len Mackey, Sarasota, Florida, formerly with ITT Corporation.

MR. RISSMILLER: I'm Kent Rissmiller, a graduate of Franklin Pierce Law Center and a professor of political science at Worcester Polytechnic Institute in Massachusetts.

MR. GOLDSTEIN: I'm Steve Goldstein. I'm Chairman of the Intellectual Property Department at the law firm of Frost & Jacobs in Cincinnati and a professor of law at the University of Cincinnati.

MR. LOWIN: I'm Dave Lowin, also a graduate of Franklin Pierce Law Center. I'm with Connective Therapeutics in Palo Alto, California. I am a lecturer on patent law at Stanford and UC Berkeley's Boalt Hall.

MR. GHOLZ: Chico Gholz, Oblon, Spivak, in Arlington, Virginia.

MR. BERRIER: Bud Berrier, Fairfield, Connecticut, GE.

MR. KLINE: Bob Kline, with the Washington office of Fitzpatrick, Cella, and retired from E. I. du Pont.

MR. HENNESSEY: Bill Hennessey, Franklin Pierce Law Center.

MR. WAMSLEY: I'm Herb Wamsley, Executive Director of *349 Intellectual Property Owners Association in Washington.

MR. RINES: Bob Rines, the Executive Board of Franklin Pierce Law Center.

MR. BARDEHLE: Heinz Bardehle, patent attorney in Munich, but born in Berlin.

MR. JORDA: Karl Jorda, faculty of Franklin Pierce Law Center, formerly patent counsel of Ciba-Geigy Corporation.

D. Opening Welcome and Announcements

MR. BENSON: Okay, to get things rolling, the first thing we have is some remarks from Bob Viles, who is the President and Dean of Franklin Pierce Law Center.

MR. VILES: Welcome to Franklin Pierce Law Center. This is the fifth event in a series this week, so some of you have been welcomed and may be welcomed out by now.

At the first event, which was the quarterly meeting of the Law Center Governing Board, we elected Bob Benson Chairman of Franklin Pierce Law Center, succeeding Bob Rines. A note of congratulations to both Bobs is in order. Those of you who are interested in legal education should note that we have gone from one patent lawyer to another in leading the Law Center and keeping a balance, perhaps, with me as a bankruptcy lawyer.

The second event was yesterday afternoon's Advisory Committee on Intellectual Property's semiannual meeting, and last evening we honored Karl Jorda for his service to the Law Center. We managed to keep the last as a surprise, at least we think we did. It

was a great source of satisfaction for me personally to have this opportunity to honor Karl for all of the help and generosity he has extended to the school.

This conference is the culminating event for the series, and one for which we appreciate very much your coming to Concord, whether it's God's country or some lesser state. We know that you've given up a fair amount of time to get here and look forward to hearing what you have to say today.

*350 MR. JORDA: Before we go on, and as a matter of personal privilege, I'd like to make an announcement. It's very, very good news that I would like to share with you. Heinz Bardehle, earlier this week on Monday, received from the German Government in Bonn the highest award that a German citizen can receive from the government, namely the "Bundesverdienst-Kreuz Erster Klasse" (the "Federal Cross of Merit, First Class"), for his many, many contributions over many, many years to the German and the European intellectual property systems, and we want to recognize that.

MR. BENSON: Congratulations! (Applause). A few running rules for this conference. Those who have been here before know them. Each subject will be introduced by a speaker, and then we open discussion up to the floor. Each person will be given an opportunity to say whatever they want to say, as long as it's said in three minutes.