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Oakland

Palo Alto

Santa Ana

Dimalanta Clark recently celebrated its 2 year anniversary on April 1, 2010. We would like to say thank you to all of our clients who have worked with our firm. A special thanks goes out to our attorneys and staff. Their professional excellence and the continued confidence of our clients have catalyzed our firm's growth.

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Setting Goals: An Interview With Andrea M. Reyna, Esq.
By Heather M. Garland

Andrea M. Reyna is an attorney with Dimalanta Clark. I sat down with Andrea to ask her some questions about her future goals and her journey to becoming an attorney.

DC: "When did you first know that you wanted to become an attorney?"

Andrea: "When I was 7 years old, I was always asking questions and taking charge. A lot of people told me that I would make a good attorney."

DC: "What law school did you attend and what year did you graduate?"

Andrea: "I graduated from the University of San Francisco in May 2009."

DC: "How did you feel when you found out that you passed the state bar exam?"

Andrea: "I passed the November 2009 bar exam and felt extremely relieved. I never wanted to have to take it again!"

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Interview (From Page 1)

DC: "What are your goals for the future?"

Andrea: "My long term goal is to become a partner. In 5 years I hope to be working for Dimalanta Clark, building up my client base, and contributing to the success and growth of the firm. For now, I just want to learn the ropes as there is so much that I can learn from my experienced mentors at the firm."

DC: "What is one of your biggest accomplishments?"

Andrea: "Honestly, graduating from law school and passing the bar exam. The journey to becoming an attorney was a lot of work. I'm elated to have accomplished those goals and am excited to work towards my new ones."

DC: "So what are some of the things that you like to do in your free time, outside of work?"

Andrea: "I am a big sports fan. I like attending sporting events: Giants, 49ers, Cal games... it's a lot of fun. I also like trying new restaurants and experiencing new foods."

Congratulations, Andrea! We want to wish you the best of luck as you embark on your career.

You can email Andrea at AMR@DimalantaClark.com

"The journey to becoming an attorney was a lot of work. I'm elated to have accomplished those goals and am excited to work towards my new ones."



*Andrea M. Reyna
Oakland*

Dimalanta Clark Opens New Office in Southern California

By Heather M. Garland

Dimalanta Clark is pleased to announce that it added a third office, located in Santa Ana, California. The Santa Ana office is home to Ignascio G. Camarena, one of our senior trial attorneys, and Aracely O. Rivera, the firm's new marketing coordinator.

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New Office (From Page 2)

As the managing attorney for our new Southern California office, Ignascio brings significant experience to the table, specializing in civil and criminal litigation. His practice includes construction, real estate, commercial, personal injury, products liability and civil rights.

As the firm's marketing coordinator, Aracely is elevating Dimalanta Clark to new heights, unlocking opportunities for the firm. She adds another dimension to our firm, utilizing her ample marketing experience to efficiently implement our creative legal strategies.

You can email Ignascio at IGC@DimalantaClark.com and Aracely at AOR@DimalantaClark.com



*Ignascio G. Camarena
Santa Ana*



Santa Ana Office



*J. Erick Dimalanta
Oakland*



*Oscar G. Jimenez
Oakland*



*Oscar taking first place and winning the
gold medal at the 2010 American Cup*

Don't Choke

In the legal profession, the term “Don’t Choke” can be uttered in the context of warning a colleague not to make an error or mistake, which may be fatal to your client’s case, during the course of litigation or trial.

To attorney Oscar Jimenez, the phrase has taken a more *literal* meaning. While most attorneys play golf, softball, or basketball in their spare time, Oscar trains in a martial art form known as Brazilian Jiu-Jitsu (“BJJ”), in which the goal is to physically dominate your opponent by applying a variety of different chokes, strangle holds, and joint locks, forcing your opponent into submission to avoid injury (or if a choke is being applied, loss of consciousness).

Oscar has competed in several local, national, and international BJJ tournaments, most recently the 2010 Pan American Championships (Bronze medal) and 2010 American Cup (Gold medal).

Next up are the American Nationals in September and U.S. Open in October. Good luck, Oscar (don’t choke)!

You can email Oscar at
OGJ@DimalantaClark.com

Where There is a Will, There is a Way!

Dimalanta Clark has a new firm administrator: Will Carrillo. Will previously worked as an administrator for a respected San Francisco law firm. Will brings a wealth of experience to Dimalanta Clark and has implemented some new changes necessitated by a growing firm.

We are excited to have him join our team!

You can email Will at WNC@DimalantaClark.com



***Dimalanta Clark
Attorneys and Staff***

Dimalanta Clark Goes to Trial: An Overview of *Dennis Fong, et al. vs. Bovis Lend Lease, et al.*

By Lee W. Clark

Dimalanta Clark recently tried to verdict a two month jury trial in Santa Clara County.

Four defendant companies were represented by Dimalanta Clark, including the owner, developer, general contractor, and foundation contractor involved in building a mixed use high-rise luxury condominium in San Jose, California.

Plaintiffs were the owners of the historic West Prussia Building in downtown San Jose located in the Arts District between Market Street and First Street. The Plaintiffs filed suit in July 2007, claiming damages to their building and loss of profit arising from building subsidence and plaster cracks. Though this differential settlement was not visible to the naked eye (being a one inch difference over 135 feet), the damage to an interior mezzanine was substantial.

Another Plaintiff was a tenant who was evicted from the West Prussia Building and was seeking to recover \$1.3 million for lost profits. The tenant Plaintiff also sought to recover the loss of value to their business, alleging that the eviction was a result of damage to the West Prussia Building.

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Trial (From Page 5)

Our clients acknowledged that the subsidence and resulting damage to the West Prussia Building was likely the result of unforeseeable soils densification beyond the expected region of the soils stabilization work. Consultants and engineers could never determine the cause of the subsidence, but all agreed that it was likely related to the soils work. Since the movement occurred at the time of the work, liability was not disputed.

The primary issue at trial was the proper measure of damages to repair the building and a reasonable amount to compensate the owners for their economic losses. At trial, the Plaintiffs focused their arguments on trying (unsuccessfully) to prove that our clients should be punished. The Plaintiffs sought an award of punitive damages in the tens of millions of dollars, asserting that the builders acted either with malice, oppression, and/or intentionally caused the damages.

The matter was tried before the Honorable Franklin Bondonno. For six weeks, the jury listened intently to twenty-five witnesses and nine experts, and was presented with over 1,350 exhibits, including nearly a thousand photographs, emails, reports, and charts. Though the sheer volume of witnesses and exhibits was a challenge, the Judge impressed everyone with his mastery of the facts and his knowledge of the applicable law.

After several days of juror deliberations and reviewing the evidence, the triers-of-fact determined that none of the defendants acted in a vile or intentional manner. The jury calculated fairly a cost of repair and a reasonable amount to compensate the owners for proven losses. The verdict was returned at \$2 million for compensation to the building owners with no punitive damages awarded, and a \$470,000 award to the tenant.

Our clients were thrilled with the outcome because the jury verdict was substantially less than our clients' potential exposure and, more importantly, the jury found that our clients were not liable for any punitive damages much to the chagrin of the Plaintiffs.

Lee Clark was the lead trial counsel for the defense, assisted by Senior Attorney, Lisa Lenoci, and paralegal, Jennifer Short. Great job!

You can email Lee at LWC@DimalantaClark.com, Lisa at LAL@DimalantaClark.com and Jenn at JAS@DimalantaClark.com



*Lee W. Clark
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*Lisa A. Lenoci
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Intellectual Property as Collateral: Is your Security Interest Really Secure?

By Jessica Trudeau Ehsanian

The recent US economic crisis has forced many companies into bankruptcy. In many cases, their intellectual property is the most valuable, and sometimes, only remaining asset. A major issue facing creditors today is ensuring the proper perfection of their security interests in a company's intellectual property. In today's business climate, intellectual property assets have become more valuable than equipment and real property. With a dramatic increase of the securitization of intellectual property as a value for corporations over the last thirty years, intangible assets and intellectual property may be the most important assets of modern industrial companies. In response, lending institutions and other creditors have extended loans and taken out security interests in the intellectual property of a diverse set of companies ranging from bio-tech and software companies to movie studios. With such a broad range of companies, all having differing forms of intellectual property, creditors must be aware that perfecting their security interests can be tricky, and if not done correctly, may lead to no security interest at all.

Security interests in intellectual property involve two conflictual bodies of law: The federal intellectual property statutes and state commercial law in the form of the Uniform Commercial Code ("UCC").

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The Federal Preemption Problem

To what extent will federal law preempt state law with respect to security interests in intellectual property? The answer to this question depends on the type of intellectual property involved. For example, although both patents and copyrights are now considered almost exclusively federal law, trademarks and certain types of copyrights are not. This is because state law is permitted to operate where federal law has not preempted it.

Perfection Under the UCC

UCC Article 9 governs security interests in personal property interests and intellectual property, and the rights to payment stemming from such property. For purposes of Article 9, intellectual property is considered personal property and falls under the category of “general intangibles” of Section 9-102.

Before a creditor has an enforceable security interest under Article 9, the security interest must “attach.” However, an attached security interest alone will not give a creditor priority over other creditors. In order for a secured creditor to have first priority, the security interest must be perfected. In order to perfect a security interest under UCC Article 9, a secured creditor must file a financing statement with the designated state office in the location of the debtor.

The benefits afforded to secured creditors of a perfected security interest under UCC Article 9 are invaluable. In the event of a debtor’s default, a perfected security interest gives a secured creditor the right to foreclose on and sell, or otherwise dispose of, the secured collateral and apply the proceeds to the secured obligation.

The UCC Conflicts With Federal Preemption

Revised Article 9 provides that where a federal statute regulates the incidents of security interests in particular types of property, those security interests are governed by the federal statute and are excluded from the purview of Article 9. Because each type of intellectual property is governed by a distinct body of federal statutory and case law, they each present preemption problems under the UCC. A creditor must examine them separately to determine the correct method for perfecting a security interest in intellectual property. For example, copyrights are covered under federal statutory law by way of the Copyright Act, which provides protections in “original works” as these works are created. Though greater protections are afforded by registering these works with the U.S. Copyright Office, protections apply under the federal statute even if unregistered.

Accordingly, the owners of copyrights have an exclusive right to reproduce, distribute, license, and display their works; all of which are governed by federal statute, which expressly preempts duplicate state laws affording the same rights and protections. It is important for creditors to understand the nuances in interpreting the law because the answer differs with respect to registered and unregistered copyrights.

Patents and patent rights are covered under the Patent Act and are exclusively federal in nature. Unlike the Copyright Act, the Patent Act does not contain an express preemption clause. However, recent case law has held that the Patent Act does not provide for perfecting lien-type security interests, only ownership rights and the transfer of ownership. Thus, the issue has been raised as to whether or not security interests rise to the level of “ownership rights” that would create a conflict with federal law. It has been posited that the law “leaves creditors suspended over a gulf between federal and state law.” Lien creditors are unable to perfect a security interest as against a subsequent purchaser under the UCC because ownership in patents are solely regulated by the Patent Act. Creditors cannot perfect “lien-type” security interests under the Patent Act because the Act does not expressly provide for such filings. Current case law supports the notion that it is impossible to perfect a security interest on a patent so as to protect the creditor against subsequent purchasers. The challenge in this area will be to strike a balance between state and federal law so that the gaps in the law are eliminated.

Trademarks present a different problem because security interests in trademarks are subject to both state and federal law. Under state common law, rights will arise in a trademark through the creation of the mark and its use on goods and services. Federal trademark law under The Lanham Act does not create a trademark right in and of itself, but trademarks *may* be federally registered if they are used in interstate commerce. The federal protection of trademarks is grounded in the Commerce Clause of the U.S. Constitution. Thus, federally registered trademarks represent rights that are protected, but not generated, by federal law. The case law addressing security interests in trademarks is relatively clear, indicating they are governed by the UCC. However, since the Patent and Trademark Office regulates both patents and trademarks, it treats the assignment of rights and other ownership interests in patents and trademarks equally.

Since copyrights, patents and trademarks are each governed by a distinct body of statutory and case law, and each therefore dealt with differently, a creditor should closely examine the form of intellectual property to determine the proper method for perfecting its security interest.



*Jessica T. Ehsanian
Palo Alto*

Jessica works out of our Palo Alto office. Having previously served as Senior Counsel for a Bay Area finance corporation, she has significant experience handling secured lender litigation and collection cases. She was also a deputy District Attorney for Santa Cruz County.

You can email Jessica at JTE@DimalantaClark.com

Upcoming DC Events: Fall 2010

Senior attorney Andrej (Andy) Stoelting will be making a presentation on California Construction Defect Litigation before the Sacramento Claims Association in the Fall of 2010. Andy is a seasoned construction litigator and serves on the firm's Executive Committee. Andy is a licensed insurance broker and is available for presentations and consultations for private businesses, insurers and claims professionals on liability issues facing the construction industry and their insurers doing business in California.

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