

THE STATE OF INFORMATION TECHNOLOGY LAW – 2012

BY

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THE STATE OF INFORMATION TECHNOLOGY LAW – 2012

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I. INTRODUCTION

On September 16, 2011, President Obama signed the Leahy-Smith America Invents Act (AIA) (H.R. 1249). The AIA is the most sweeping modification of the Patent Act since 1952. Among the various objects of the AIA is to “reform” the patent law to provide greater certainty to inventors and to promote greater international patent harmonization.

While the AIA does not alter the fundamental requirements of patentability and infringement, the AIA moves the United States from a first-to-invent system to a first-inventor-to-file (FITF) system like the rest of the world. The AIA also limits the one-year “grace period” for pre-filing disclosures to disclosures derived from the inventor that is applying for a patent.

The AIA further modifies and creates procedures for examining patentability issues of both issued patents and patent applications at the U.S. Patent and Trademark Office (PTO), potentially avoiding patent litigation in the federal courts. Multiple sections of the AIA are directed towards this end including the creation of a new PTO-based, decision-making body called the Patent Trial and Appeal Board.

The AIA also adds statutory provisions specific to individual industries or technologies. Business method patent owners in the financial service industry who bring infringement claims in court are likely to see their litigation stayed while the PTO reexamines patent validity. Tax strategy patents are essentially nullified.

Finally, the AIA required the PTO to open a branch office in Detroit which opened on July 13, 2012 at The Elijah J. McCoy Patent office. McCoy was an African-American engineer and inventor who is the named inventor on numerous U.S. patents. He was born free in Ontario, Canada in 1844 and lived in Detroit where he died in 1929.

The Federal Circuit was quite busy in 2011, with the post-*Bilski* contours of patent eligibility under Section 101 taking center stage. In *CyberSource*, one Federal Circuit panel denied patent eligibility to patent claims on internet-based credit card fraud detection. The panel not only found the method steps ineligible as computational methods which can be performed entirely in the human mind, it added that so-called Beauregard claims, adding a “computer-readable medium” to the preamble, did not change the analysis.

In *Ultramercial*, a different Federal Circuit panel, with Judge Rader writing the opinion, held that claims directed to internet advertising are applications of an abstract idea that advertising can be monetized and so are patent eligible.

The court distinguished *CyberSource* by stating: “The eligibility exclusion for purely mental steps is particularly narrow,” the court said. “Unlike the claims in *CyberSource*, the claims here require, among other things, controlled interaction with a consumer via an Internet website, something far removed from purely mental steps.”

In *Perfect 10 Inc. v. Google Inc.*, the court refused a request for an injunction to stop Google from using thumbnail images of Perfect 10’s nude photos.

II. PATENTS

A. CASE LAW

1. U.S. Courts of Appeal

a. *MySpace Inc. v. GraphOn Corp.* 83 BNA's PTCJ 648

The U.S. Court of Appeals for the Federal Circuit ruled on March 2, 2012 that GraphOn Corp.'s patents asserted against Myspace and Craigslist are affirmed invalid as anticipated or obvious. GraphOn has sued many internet companies and purportedly has succeeded in obtaining patent licensing agreements worth nearly \$10 million for use of its claimed system.

b. *Digital-Vending Services International LLC v. University of Phoenix Inc.* 83 BNA's PTCJ 694

The U.S. Court of Appeals for the Federal Circuit on March 7, 2012 ruled that while the architecture claims for several patents directed to regulating access to content delivered through a computer network specifically required that a registration server be free of managed content, the method claims of the patents contained no such restrictive language, and therefore it was an error to construe all of the claims similarly.

c. *Ergo Licensing LLC v. Carefusion 303 Inc.* 83 BNA's PTCJ 767

The U.S. Court of Appeals for the Federal Circuit on March 21, 2012 ruled, with certain exceptions, that "control means" as it relates to computer processing must be described by an algorithm. Consequently, computer-based, means-plus-function patent claims may be at greater risk today.

d. *Noah Systems Inc. v. Intuit Inc.* 83 BNA's PTCJ 872

The U.S. Court of Appeals for the Federal Circuit on April 8, 2012 ruled that a patent specification must include the supporting algorithm for each and every functional limitation in a computer system claim, affirming a lower court ruling that patents asserted against Intuit Inc.'s popular Quicken and QuickBooks personal finance software products were invalid for indefiniteness.

e. *In re EMC Corp.* 84 BNA's PTCJ 57

The U.S. Court of Appeals for the Federal Circuit on May 4, 2012 ruled that the lower court must apply a more stringent standard in deciding whether a cloud storage patent

owner can join 18 defendants. The ruling only applies to those cases filed prior to September 16, 2011, the enactment date of the AIA.

**f. *Leader Technologies, Inc. v. Facebook, Inc.*
84 BNA's PTCJ 62**

The U.S. Court of Appeals of the Federal Circuit on May 8, 2012 ruled that Facebook had successfully showed that a software patent was invalid under the On-Sale bar.

**g. *Apple Inc. v. Samsung Electronics Co.*
84 BNA's PTCJ 95**

The U.S. Court of Appeals for the Federal Circuit on May 14, 2012 upheld a district court's denial of Apple Inc.'s request for a preliminary injunction against Samsung's Android-based smart phones but the possibility of an injunction against the Galaxy Tab 10.1 tablet computer remains.

**h. *Inventio AG v. ThyssenKrupp Elevator Americas Corp.*
82 BNA's PTCJ 257**

The U.S. Court of Appeals for the Federal Court on June 15, 2011, ruled on a patent involving computing functions. Reversing a summary judgment of invalidity for indefiniteness under 35 U.S.C. § 112, the Court determines that the patent challenger failed to show that the disputed terms were "so structurally devoid that we should rewrite them in means-plus-function format."

**i. *In re Aoyama*
99 USPQ2d 1936**

The U.S. Court of Appeals for the Federal Circuit on August 29, 2011 ruled that claims in application for system and method for distribution chain management, which recite "reverse logistics means for generating transfer data," are unpatentable as indefinite under 35 U.S.C. § 112, since only portion of specification linked to recited function is flowchart in figure in application, and since figure provides high level process flow, but it fails to describe, even at high level, how computer could be programmed to produce structure that provides results described in flowchart.

**j. *CyberSource Corp. v. Retail Decisions Inc.*
82 BNA's PTCJ 528**

The U.S. Court of Appeals for the Federal Circuit on August 16, 2011 ruled that a method for detecting fraud in credit card transactions over the Internet is not patent-eligible subject matter. Affirming a lower court's judgment, which relied on the machine-or-transformation test used prior to the Supreme Court's decision in *Bilski v. Kappos*, the Court's analysis differs sharply from that of the only other panel to rule on patent eligibility under 35 U.S.C. § 101 since the *Bilski* ruling. The Court also reached this conclusion about the

corresponding article of manufacture claim (*i.e.* Beauregard claim) because the steps of the method that would be carried out by the computer program are nothing more than an unpatentable method that can be performed entirely in the human mind or by a human using a pen and paper.

**k. *Cordance Corp. v. Amazon.com Inc.*
82 BNA's PTCJ 729**

The U.S. Court of Appeals for the Federal Circuit on September 23, 2011 held that online purchasing and order review patents, including U.S. Patent No. 6,088,717, are invalid and not infringed by Amazon.com.

**l. *CBT Flint Partners LLC v. Return Path Inc.*
82 BNA's PTCJ 536**

The U.S. Court of Appeals for the Federal Circuit on August 10, 2011 ruled that the asserted claim of a patent directed to method and system for charging fees for sending "spam" e-mail is not invalid as indefinite, despite a drafting error in phrase "the computer being programmed to detect analyze the electronic mail communication sent by the sending party to determine whether or not the sending party is an authorized sending part or an unauthorized sending par."

**m. *Ultramercial LLC v. Hulu LLC*
82 BNA's PTCJ 689**

The U.S. Court of Appeals for the Federal Circuit on September 15, 2011, overturned a lower court decision by holding that claims in U.S. Patent No. 7,346,545 directed to a method of monetizing and distributing copyrighted products over the Internet are applications of the abstract idea that advertising can be monetized and so are patent eligible.

**n. *Dealertrack Inc. v. Huber*
83 BNA's PTCJ 405**

The U.S. Court of Appeals for the Federal Circuit on January 20, 2012 ruled that adding a "computer-aided" limitation to a patent claim does not turn a claim on a preemptive abstract idea into patent eligible subject matter under 35 U.S.C. § 101. The majority holds that the patent owner asserted claims on an internet-based credit application clearinghouse system that represented an abstract idea with preemptive effect on a fundamental concept.

**o. *Fort Properties Inc. v. American Master Lease L.L.C.*
83 BNA's PTCJ 608**

The U.S. Court of Appeals for the Federal Circuit on February 27, 2012 ruled that patent claims on buying and selling real estate properties with a computer without incurring a tax liability are not patent eligible under 35 U.S.C. § 101, likening the invention to the claims rejected by the U.S. supreme Court in its *Bilski* decision.

- p. *Typhoon Touch Technologies Inc. v. Dell Inc.*
83 BNA's PTCJ 42**

The U.S. Court of Appeals for the Federal Circuit on November 4, 2011 ruled that it is not necessary for a means-plus-function claim pertaining to a computer-implemented innovation to include the mathematical algorithm so long as the algorithm is recited in the specification. The court reverses a lower court's decision of invalidity that was based on the claim's failure to disclose the "specific algorithm" that was to be used.

- q. *Fuzzysharp Technologies Inc. v. 3DLabs Inc.*
83 BNA's PTCJ 49**

The U.S. Court of Appeals for the Federal Circuit on November 4, 2011 ruled that Section 101 patent eligibility must be determined independently for each claim of a computer-implemented graphics patent.

2. U.S. District Courts

- a. *SmartGene Inc. v. Advanced Biological Laboratories SA*
83 BNA's PTCJ 811**

The U.S. District Court for the District of Columbia on March 30, 2012 ruled that a computer-based method of presenting expert medical knowledge is not patent eligible under 35 U.S.C. § 101.

- b. *Oracle America Inc. v. Google Inc.*
84 BNA's PTCJ 175**

A jury in the U.S. District Court for the Northern District of California determined on May 7, 2012 that Oracle failed to prove Google Inc.'s infringement of patents on the Java operating system by Android-based cell phones.

- c. *Apple Inc. v. Motorola Inc.*
84 BNA's PTCJ 252**

Judge Richard A. Posner, a judge in the U.S. District Court for the Northern District of Illinois stopped proceedings on June 7, 2012, in a cell phone patent battle between Apple Inc. and Motorola Mobility Inc. on the eve of a scheduled trial.

- d. *Silicon Graphics Inc. v. ATI technologies Inc.*
99 USPQ2d 1508**

The U.S. District Court for the Western District of Wisconsin on October 5, 2010 ruled that infringement defendants have rebutted presumption of shared confidences under Seventh Circuit's standard for determining whether law firm should be disqualified based on its

attorney's prior representation of opposing party, since, among other measure, law firm's screening procedures instructed litigation team members not to discuss case with disqualified lawyer or in his presence, denied disqualified lawyer access to records in case, and protected electronic records by computer security protocol.

**e. *Iconfind Inc. v. Google Inc.*
83 BNA's PTCJ 407**

The U.S. District Court for the Eastern District of California on January 18, 2012 ruled that a computer-implemented method of categorizing website pages as to the copyright status of material on the pages is patentable subject matter under Section 101 of the Patent Act, rejecting Google Inc.'s "abstract idea" challenge under 35 U.S.C. § 101.

**f. *Lucent Technologies Inc. v. Microsoft Corp.*
83 BNA's PTCJ 87**

The U.S. District Court for the Southern District of California on November 10, 2011 stated that Microsoft Corp. will have to pay \$26.3 million for patent infringement, instead of the half-billion dollar award first levied in 2008.

**g. *Apple Inc. v. Samsung Electronics Co.*
83 BNA's PTCJ 264**

The U.S. District Court for the Northern District of California on December 2, 2011 ruled that Apple failed to show irreparable harm that would justify taking competitors to its iPhone and iPad products off the market even though they likely infringe valid design and utility patents asserted by the company. The court thus denied Apple's motion for a preliminary injunction against Android-based phones made by Samsung.

3. International Trade Commission (ITC)

**a. *In re Certain Mobile Devices, Associated Software,
and Components Thereof*
84 BNA's PTCJ 1421**

The International Trade Commission on May 18, 2012 issued an order barring imports of Motorola Android-based phones that infringe a Microsoft patent.

**b. *In the Matter of Certain Personal Data and Mobile
Communications Devices and Related Software*
83 BNA's PTCJ 263**

The International Trade Commission on December 19, 2011 issues an order banning imports by HTC Corp. of Android smartphones as infringing a valid patent held by Apple Inc. The commission gives HTC until April 19, 2012 to comply with the order, "to provide a transition period for U.S. carriers."

B. LEGISLATION

**a. Leahy-Smith America Invents ACT (AIA)
82 BNA's PTCJ 681**

President Barack Obama signed the Leahy-Smith America Invents Act (AIA) on September 16, 2011. The AIA presents the first significant revision to the U.S. patent system since 1952. The AIA will have far-reaching effects in both patent prosecution and litigation. Some aspects of the law will take effect immediately, although many of the primary features will be implemented one year or 18 months after enactment.

III. PATENT/ANTITRUST/BANKRUPTCY

A. CASE LAW

1. U.S. District Court

a. *Apple Inc. v. Samsung Electronics Co.* 82 BNA's PTCJ 892

The U.S. District Court for the Northern District of California on October 18, 2011, dismissed Apple's antitrust allegations against Samsung on wireless standard behavior with respect to Samsung's patents. Plaintiff's claim that defendants violated Sherman Act's Section 2 by affirmatively misrepresenting their intention to license patented technology on fair, reasonable, and nondiscriminatory terms, in order to induce standard-setting organization to adopt standards-essential patents, fails to meet heightened pleading standard for fraud set forth in Fed. R. Civ. P. 9(b).

2. U.S. Bankruptcy Court

a. *In re Nortel Networks Inc.* 82 BNA's PTCJ 392

The U.S. Bankruptcy Court for the District of Delaware on July 11, 2011 issued an order approving the sale of \$4.5 billion of Nortel Networks Inc.'s IT patents and related assets to Apple Inc. and Rockstar Bidco LP.

IV. COPYRIGHTS

A. CASE LAW

1. U.S. Court of Appeals

- a. *Airframe Systems Inc. v. L-3 Communications Corp.*
82 BNA's PTCJ 697

The U.S. Court of Appeals for the First Circuit on September 14, 2011 ruled that an infringement claim failed for absence of copy of registered source code to compare for similarity.

- b. *Barclays Capital Inc. v. Theflyonthewall.com Inc.*
82 BNA's PTCJ 253

The U.S. Court of Appeals for the Second Circuit on June 21, 2011 ruled that a claim of “hot news” misappropriation under New York law was preempted by federal copyright law in a dispute between financial institutions and an online financial news service. Reversing in part a judgment of infringement and misappropriation, the Court determines that the claim is preempted because under a test for exceptions to preemption, a website that is summarizing the investment recommendations of major investment banks is not a “free rider” and is reporting the news, something that the banks were not doing.

- c. *Nova Design Build Inc. v. Grace Hotels LLC*
82 BNA's PTCJ 463

The U.S. Court of Appeals for the Seventh Circuit on July 26, 2011 ruled that the deposit requirement of the Copyright Act can be satisfied by “re-created” copies based on hard copies and restored computer files.

- d. *In re Literary Works in Electronic Databases Copyright Litigation*
82 BNA's PTCJ 526

The U.S. Court of Appeals for the Second Circuit on August 17, 2011 ruled that a 2005 class action settlement between freelance authors and electronic publishers—which could have paid out up to \$18 million—is voided because the class should not have been certified.

- e. *Perfect 10 Inc. v. Google Inc.*
99 USPQ2d 1533

The U.S. Court of Appeals for the Ninth Circuit on August 3, 2011 ruled that the long-standing rule that irreparable harm is presumed in copyright infringement action if there has been showing of reasonable likelihood of success in merits is effectively overruled by *eBay Inc. v. MercExchange LLC*, 78 USPQ2d 1577; propriety of injunctions in copyright cases must be

evaluated on case-by-case basis in accordance with traditional equitable principles and without aid of presumption.

**f. *Sony BMG Music Entertainment v. Tenenbaum*
82 BNA's PTCJ 691**

The U.S. Court of Appeals for the First Circuit on September 16, 2011 ruled that a federal district court that drastically reduced a damages award against Harvard student Joel Tenenbaum for online file sharing erred in making its decision based on the Fifth Amendment without addressing Tenenbaum's motion for remittitur under common law, reinstating the award but remanding the case to consider the remittitur.

2. U.S. District Courts

**a. *Shropshire v. Canning*
82 BNA's PTCJ 603**

The U.S. District Court for the Northern District of California on August 22, 2011 ruled that uploading infringing video from Canada to YouTube in the United States is not wholly extraterritorial and is, consequently, infringing.

**b. *First Time Videos LLC v. Does 1-76*
82 BNA's PTCJ 565**

The U.S. District Court for the Northern District of Illinois on August 16, 2011 ruled that file sharers' First Amendment protection does not cover copyright infringement.

**c. *Brocade Communications Systems Inc. v. A10 Networks Inc.*
82 BNA's PTCJ 568**

The U.S. District Court for the Northern District of California on August 16, 2011 denied a TRO motion filed by a maker of networking hardware and software because of lack of irreparable harm even though there was a likelihood of success on the merits.

**d. *Authors Guild Inc. v. HathiTrust*
82 BNA's PTCJ 642**

A complaint was filed in the Southern District of New York on September 12, 2011 wherein a global group of authors sued several prominent universities (including the University of Michigan) participating in the HathiTrust digital library through agreement with Google Inc. The complaint alleges that the universities have engaged in widespread digitization of copyrighted works, in blatant derogation of copyright owners' rights.

**e. *Oracle USA Inc. v. SAP AG*
82 BNA'S PTCJ 654**

The U.S. District Court for the Northern District of California on September 1, 2011 dropped Oracle's \$1.3 billion copyright damages award for lack of factual support.

**f. *Real View LLC v. 20-20 Technologies Inc.*
82 BNA's PTCJ 267**

The U.S. District Court for the District of Massachusetts on June 9, 2011 ruled that declaratory defendant's claim for unfair trade practices under Mass. Gen. Laws Ch. 93A, as pleaded, is not preempted by federal copyright law, since defendant alleges that plaintiff circumvented password-protected area of defendant's website in order to view video tutorials for defendant's computer-aided design program, and if substantiated, this claim would include "extra element" of illegal "hacking" that makes it qualitatively different from copyright claim; however, defendant has not proved sufficient facts to establish plaintiff's liability under Chapter 93A.

**g. *Disney Enterprises Inc. v. Hotfile Corp.*
82 BNA's PTCJ 359**

The U.S. District Court for the Southern District of Florida on July 8, 2011 ruled that a digital "storage locker" website that generated unique URLs for user uploaded works and encouraged users to broadly distribute those links didn't commit a volitional act and was not liable as direct infringer.

**h. *Alexander v. Murdock*
82 BNA's PTCJ 395**

The U.S. District Court for the Southern District of New York on July 14, 2011 ruled that thumbnail images lack detail for copyright shield; byline removal no basis for DMCA liability.

**i. *Capitol Records Inc. v. Thomas-Rassett*
82 BNA's PTCJ 411**

The U.S. District Court for the District of Minnesota on July 22, 2011 ruled that a jury award of \$1.5 million in statutory damages for willful copyright infringement arising from an individual's act of downloading 24 sound recordings for personal use is "appalling" and unconstitutional because it is too severe, oppressive, and disproportionate to the offense. After finding the jury's award of \$62,500 for each infringed recording to be unconstitutionally harsh, the Court reduces the damage award to \$2,250 per song—three times the minimum statutory penalty allowed for willful infringement under the Copyright Act.

**j. *Flava Works Inc. v. Gunter*
82 BNA's PTCJ 462**

The U.S. District Court for the Northern District of California on July 27, 2011 ruled that a web host failing to axe infringers cannot use the DMCA statute's safe harbor to avoid contributory liability.

**k. *Adobe Systems Inc. v. Kornrumpf*
82 BNA's PTCJ 464**

The U.S. District Court for the Northern District of California on July 25, 2011 ruled that an E-Bay vendor accused of unpacking and selling software from second-hand computers cannot pursue counterclaim of copyright misuse duplicating a misuse defense.

**l. *Zynga Inc. v. Vostu USA Inc.*
82 BNA's PTCJ 540**

The U.S. District Court for the Northern District of California on August 11, 2011 granted a temporary restraining order allowing a competitor to Zynga Inc.'s popular online games to ignore a Brazilian court's injunction for copyright infringement.

**m. *Liberty Media Holdings LLC v. Swarm of November 16, 2010*
99 USPQ2d 1620**

The U.S. District Court for Southern District of California on April 21, 2011 ruled that infringement plaintiff seeking expedited discovery to identify defendants who allegedly reproduced and distributed plaintiff's copyrighted motion picture using "BitTorrent" file transfer protocol has made satisfactory showing that there are real persons or entities behind alleged infringing acts who would be amenable to suit, that plaintiff has made good-faith effort to comply with requirements of service of process, and that its infringement claim can withstand motion to dismiss.

**n. *Oracle America Inc. v. Google Inc.*
82 BNA's PTCJ 693**

The U.S. District Court for the Northern District of California on September 15, 2011 ruled that application programming interfaces, or APIs, used by Google Inc., in its Android operating system are not necessarily "methods of operation" that would be exempt from copyright protection under 17 U.S.C. § 102(b).

**o. *Authors Guild v. Google Inc.*
82 BNA's PTCJ 694**

The U.S. District Court for the Southern District of New York on September 16, 2011 allowed plaintiffs in a years-long lawsuit against Google Book Search to file a new amended complaint and class certification motion.

**p. *Adobe Systems Inc. v. Norwood*
99 USPQ2d 1954**

The U.S. District Court for the Northern District of California on July 7, 2011 dismissed copyright misuse counterclaim alleging that defendant was entitled to resell plaintiff's software pursuant to first sale doctrine, since defendant was licensee, not owner, of plaintiff's copyrighted software.

**q. *Capitol Records Inc. v. MP3tunes LLC*
83 BNA's PTCJ 16**

The U.S. District Court for the Southern District of New York on October 31, 2011 ruled that the safe harbor provision set forth in Section 512 of the Copyright Act applies to Internet users' infringement of sound recordings created before 1972, according to an amended decision.

**r. *Liberty Media Holdings LLC v. Swarm Sharing Hash File*
83 BNA's PTCJ 23**

The U.S. District Court for the District of Massachusetts on October 27, 2011 ruled in a file sharing case that a copyright owner was permitted to proceed collectively against multiple BitTorrent users through participation in the same "swarm."

**s. *Adobe Systems Inc. v. Hoops Enterprise LLC*
83 BNA's PTCJ 486**

The U.S. District Court for the Northern District of California on February 1, 2012 ruled that the pre-installation of software onto computer hard drives was governed by licensing agreements, rejecting an eBay seller's first-sale defense to copyright infringement.

**t. *Brownmark Films LLC v. Comedy Partners*
100 USPQ 2d 1844**

The U.S. District Court for the Eastern District of Wisconsin on July 6, 2011 ruled that the Defendants' use of portion of copyrighted music video in episode of television cartoon program was fair use, since defendants used parts of video to lampoon recent craze of watching video clips on internet that are of low artistic sophistication and quality, since such use is classic parody, and thus is truly transformative, in that it uses parts of original work to not only poke fun at original, but to comment on bizarre social trend, since use of copyrighted work in defendants' television episode was relatively insubstantial, and since there is little risk that defendants' use will somehow usurp market demand for original plaintiff's complaint is dismissed with prejudice.

**u. *Liberty Media Holdings LLC v. BitTorrent Swarm*
100 USPQ2d 1786**

The U.S. District Court for the Southern District of Florida on November 1, 2011 ruled that plaintiff's permissive joinder of Doe defendants, in action alleging that they illegally

reproduced and distributed plaintiff's copyrighted motion picture as participants in "BitTorrent swarm," is improper under Fed. R. Civ. P. 20(a)(2), since record shows that defendants used BitTorrent on different days and at different times over two-month period, and even if defendants had used BitTorrent at same time, this fact alone would not imply that defendants participated in or contributed to downloading of each other's copies of work at issue.

**v. *Scholz Design Inc. v. Sard Custom Homes LLC*
100 USPQ2d 1782**

The U.S. District Court for the Southern District of Connecticut on July 15, 2011 ruled that copyright protection extends to component images of architectural designs only to extent that those images allow copier to construct protected design; in presence case, plaintiff has failed to state claims for copyright infringement that are plausible on their face, since plaintiff alleges that defendants copied, and placed on web pages, thumbnail images depicting front elevation views of homes in plaintiff's architectural designs, but these images do not convey sufficient information with respect to designs to allow construction of homes; infringement claims, and related claim under Digital Millennium Copyright Act, are dismissed.

**w. *Brownmark Films LLC v. Comedy Partners*
83 BNA's PTCJ 183**

The U.S. District Court for the Eastern District of Wisconsin on November 30, 2011 awarded attorneys' fees against a small business whose YouTube video was clearly parodied by a South Park episode.

**x. *Elsevier Ltd. v. Chitika Inc.*
83 BNA's PTCJ 184**

The U.S. District Court for the District of Massachusetts on December 2, 2011 ruled that failure to establish that an online ad company knew it was engaging in infringement defeats the copyright owner's claim.

**y. *Boy Racer Inc. v. Does 1-52*
101 USPQ2d 1449**

The U.S. District Court for the Northern District of California on September 13, 2011 ruled that plaintiff alleged that unidentified defendants illegally reproduced and distributed its copyrighted motion picture over the internet, which was previously granted leave to subpoena internet service providers linked to internet protocol addresses listed in complaint in order to obtain subscriber information associated with each IP address, will not be granted additional expedited discovery in form of inspection of each subscriber's electronically stored information, and computers of those sharing subscriber's network.

**z. *Oracle America Inc. v. Google Inc.*
84 BNA's PTCJ 53**

The U.S. District Court for the Northern District of California on May 7, 2012 returns a split verdict in Oracle America Inc.'s lawsuit, finding that Google infringed Oracle's copyrights in the Android wireless operating system, yet not answering the key question of whether there is a fair use.

**aa. *Cambridge University Press v. Becker*
84 BNA's PTCJ 138**

The U.S. District Court for the Northern District of Georgia on May 11, 2012 ruled that to the extent that the copyright owners of scholarly works had not made digital excerpts available for licensing to students conveniently and at reasonable costs, unauthorized online access to such excerpts constituted fair use.

**bb. *Oracle America Inc. v. Google Inc.*
84 BNA's PTCJ 218**

The U.S. District Court for the Northern District of California on May 31, 2012 ruled that Java application programming interfaces are not eligible for copyright protection.

**cc. *Budsgunshop.com LLC v. Security Safe Outlet Inc.*
84 BNA's PTCJ 237**

The U.S. District Court for the Eastern District of Kentucky on May 23, 2012 ruled that a conversion claim over website data is not necessarily preempted by Copyright Act.

**dd. *GlobeRanger Corp. v. Software AG*
101 USPQ2d 1869**

The U.S. District Court for the Northern District of Texas on August 15, 2011 ruled that Plaintiff software developer's claims for tortious interference with contract and conversion are preempted by federal copyright law in action alleging that defendants misused plaintiff's copyrighted software, and claim for civil conspiracy, which is "derivative tort," is also dismissed.

3. Federal Claims Court

**a. *Aviation Software Inc. v. United States*
100 USPQ2d 1943**

The Federal Claims Court on December 5, 2011 ruled that prior adverse decisions in lawsuits against third party bar present infringement action against U.S. government based on alleged use of software program, which purportedly contained plaintiffs' copyrighted source code, to maintain and service government-owned aircraft.

V. COPYRIGHTS/CRIMINAL

A. CASE LAW

1. U.S. District Courts

a. *United States v. Tomorrow Now Inc.* **82 BNA's PTCJ 695**

The U.S. District Court for the Northern District of California on September 14, 2011 fined a defunct SAP subsidiary \$20M for criminal infringement of Oracle software.

b. *United States v. Megaupload Ltd.* **83 BNA's PTCJ 573**

The Department of Justice on February 16, 2012 filed a superseding indictment against the operators of the website Megaupload.com, adding additional criminal copyright infringement charges, and five counts of wire fraud. It was earlier reported at 83 BJA's PTCJ 402 that the Department of Justice on January 5, 2012 charged the same operators with copyright infringement and other claims and seized \$50 million in assets.

c. *U.S. v. Jones* **82 BNA's PTCJ 517**

The U.S. District Court for the Eastern District of Michigan on August 16, 2011 sentenced a woman from Ypsilanti, Michigan to two years in prison and ordered her to pay over \$440,000 in restitution for selling stolen computer software worth over \$2 million.

VI. COPYRIGHTS/DMCA

A. CASE LAW

1. U.S. Court of Appeals

a. *Viacom International Inc. v. YouTube Inc.* 83 BNA's PTCJ 864

The U.S. Court of Appeals for the Second Circuit on April 5, 2012 ruled that “Red flag” knowledge of infringement under Section 512(c) of the Digital Millennium Copyright Act is determined by a subjective reasonableness standard, affirming the district court’s interpretation that general awareness of infringement cannot trigger an internet service provider’s duty to remove content.

b. *UMG Recordings Inc. v. Shelter Capital Partners LLC* 83 BNA's PTCJ 289

The U.S. Court of Appeals for the Ninth Circuit on December 20, 2011 ruled that Video-sharing website Veoh Inc.’s acts of formatting, advertising, and organizing user uploads—including infringing content—did not take it beyond the reach of the Digital Millennium Copyright Act’s safe harbor. The court reaches several conclusions that reinforce the statute’s broad protections against intermediary liability under 17 U.S.C. § 512(c).

c. *Murphy v. Millennium Radio Group LLC* 82 BNA's PTCJ 255

The U.S. Court of Appeals for the Third Circuit on June 14, 2011 ruled that removal of a photographer’s credit line from an image may be a violation of Section 1202 of the Digital Millennium Copyright Act of 1998, which prohibits the removal of copyright management information from creative works. Vacating an award of summary judgment favoring a radio station that copied an image from a magazine article and posted it on the Internet, the Court says that the plain text of Section 1202, as well as the purpose of the DMCA, supported the photographer’s position.

2. U.S. District Courts

a. *Wolk v. Kodak Imaging Network Inc.* 83 BNA's PTCJ 330

The U.S. District Court for the Southern District of New York on January 3, 2012 ruled that the safe harbor provisions of the Digital Millennium Copyright Act do not require an online service provider to scour its servers for all infringing versions of an image when a copyright owner gives it notice of a specific instance where a copyrighted work is depicted on the site without permission.

**b. *Dish Network LLC v. Whitehead*
101 USPQ2d 1198**

The U.S. District Court for the Middle District of Florida on December 13, 2011 ruled that plaintiff satellite television companies are granted summary judgment that defendant violated anticircumvention provisions of Digital Millennium Copyright Act by distributing piracy software for circumvention of plaintiffs' security system and interception of their satellite broadcasts using "free to air" satellite receivers, since trafficking in satellite television decryption devices violates DMCA, since plaintiffs' security system is "access control measure" within meaning of DMCA, and since piracy software files had no commercially significant purpose other than circumvention of security system.

**c. *Capitol Records Inc.v. MP3tunes LLC*
82 BNA's PTCJ 559**

The U.S. District Court for the Southern District of New York on August 22, 2011 ruled that an outline music locker service must delete from its users' accounts unauthorized copies of works identified in takedown notices sent pursuant to the Digital Millennium Copyright Act. The Court, however, applies the DMCA's safe harbor to other allegedly infringing copies, which the copyright owners had not identified.

VII. COPYRIGHTS/LICENSING

A. CASE LAW

1. U.S. Court of Appeals

a. *Edgenet Inc. v. Home Depot USA Inc.* 82 BNA's PTCJ 695

The U.S. Court of Appeals for the Seventh Circuit on September 2, 2011 ruled Home Depot held valid license to use inventory database until it was terminated.

b. *Apple Inc. v. Psystar Corp.* 82 BNA's PTCJ 770

The U.S. Court of Appeals for the Ninth Circuit on September 28, 2011 ruled that Apple's distribution of its Mac OS X software is under a license, rather than as a sale, and the company did not misuse its copyright when it prohibited the installation of licensed software on non-Apple computers.

VIII. COPYRIGHT/PERSONAL JURISDICTION

A. CASE LAW

1. U.S. Court of Appeals

a. *Mavrix Photo Inc. v. Brand Technologies* 99 USPQ2d 1562

The U.S. Court of Appeals for the Ninth Circuit on August 8, 2011 ruled that nonresidents named as defendants in infringement action have purposefully directed their activities a forum state of California, since defendants committed “intentional act” by posting allegedly infringing photographs on their website, “expressly aimed” their intentional act at forum state, and have caused harm that they know is likely to be suffered in forum state.

IX. COPYRIGHTS/STANDING

A. CASE LAW

1. U.S. District Courts

- a. *Righthaven LLC v. Hoehn*;
Righthaven LLC v. Democratic Underground LLC.
82 BNA's PTCJ 264, 266**

The U.S. District Court for the District of Nevada on June 20, 2011 and June 14, 2011, respectively, twice determines that the copyright litigation firm Righthaven LLC lacked standing to sue for infringement over newspaper articles posted online.

X. TRADEMARKS

A. CASE LAW

1. U.S. Court of Appeals

- a. *Rosetta Stone Ltd. v. Google Inc.*
83 BNA's PTCJ 861

The U.S. Court of Appeals for the Fourth Circuit on April 9, 2012 ruled that Google, Inc. may have intended to create confusion by selling trademarks as advertising keywords, based on the record in the AdWords infringement litigation, so a federal trial court should not have granted the search giant's motion for summary judgment.

2. U.S. District Courts

- a. *L&A Designs LLC v. Extreme ATVs Inc.*
84 BNA's PTCJ 67

The U.S. District Court for the Southern District of New York ruled on July 22, 2010 that an Internet registrar did not induce a hacker's trademark infringement and so was not contributorily liable.

- b. *Groupon LLC v. Groupon Inc.*
84 BNA's PTCJ 150

The U.S. District Court for the Northern District of California on May 8, 2012 ruled that Groupon software customers are not likely to be confused by Groupon daily deals.

- c. *Apple Inc. v. Amazon.com Inc.*
100 USPQ2d 1835

The U.S. District Court for the Northern District of California on July 6, 2011 ruled that Plaintiff has not established likelihood of success on its claim that defendant's use of "Appstore," to refer to defendant's service offering mobile software applications, infringes plaintiff's "App Store" trademark, even though both parties offer downloads of software applications for mobile devices, and marks are identical in sight, sound, and meaning, since plaintiff has not shown that "App Store" is strong mark, and since applications offered by parties may be similar in use and function, but "apps" offered by defendant can only be used on "android" device's whereas plaintiff's apps are used on "Apple" devices, and thus parties' services are not purchased by same class of consumers.

- d. *Kinbook LLC v. Microsoft Corp.*
83 BNA's PTCJ 483

The U.S. District Court for the Eastern District of Pennsylvania on January 25, 2012 ruled that Microsoft's "Kin" and "Kinect" are not likely to create confusion with "Kinbox".

**e. *Mazelmints Inc. v. It's A Wrap LLC*
101 USPQ2d 1268**

The U.S. District Court for the Eastern District of Virginia on July 20, 2011 ruled that defendants have infringed plaintiff's registered "Engagemints" mark for candy and for metal containers used as novelty gift items, and plaintiff's registered "Announcements" mark for metal containers used as novelty gift items, by using "EngageMints" description to sell personalized metal containers used for novelty gift items, and by offering "Announce-Mints" for sale on defendants' website.

**f. *Carnivale v. Staub Design LLC*
100 USPQ2d 1778**

The U.S. District Court for the District of Delaware on December 12, 2010 ruled that plaintiff has established that defendants acted with bad faith intent to profit from plaintiff's trademark "The Affordable House" in registering their "theaffordablehouse.com" Internet domain name; defendants' knowing and wholesale inclusion of plaintiff's mark in their domain name, parties' status as competitors in house design business, and similarities between parties' domain names implies that defendants may have sought to divert customers from plaintiff's website.

**g. *Weather Underground Inc. v. Navigation Catalyst Systems Inc.*
100 USPQ2d 1778**

The U.S. District Court for the Eastern District of Michigan on November 9, 2011 ruled that plaintiff asserting claim for cybersquatting under 15 U.S.C. § 1125(d) cannot prove bad faith intent to profit from registration and use of domain name merely by showing "willful blindness" on defendant's part.

**h. *Ascentive LLC v. Opinion Corp.*
83 BNA's PTCJ 271**

The U.S. District Court for the Eastern District of New York on December 13, 2011 ruled that host of negative product, company review website has Communication Decency Act (CDA) immunity does not infringe trademarks.

**i. *Groupion LLC v. Groupon Inc.*
101 USPQ2d 1341**

The U.S. District Court for the Northern District of California on November 28, 2011 ruled that lack of similarity between infringement plaintiff's "Groupion" mark, for business groupware services used to unify functions of businesses dealing with customer information, and defendant's "Groupon" mark for website offering discounted goods and services from variety of

merchants, weighs against finding likelihood of confusion, since marks are similarly spelled, but they are presented differently in terms of colors, capitalization, and addition of plaintiff's tag line "Business Groupware and CRM for the Cloud," and since marks suggest different meanings.

**j. *Facebook Inc. v. Various Inc.*
99 USPQ2d 1300**

The U.S. District Court for the Northern District of California on June 17, 2011 ruled that plaintiff alleging infringement of its "Facebook" mark by unidentified website operators has failed to demonstrate good cause for taking expedited discovery from named defendants in order to identify as-yet unnamed defendants, and to facilitate plaintiff's submission of motion for preliminary injunction, since plaintiff can obtain discovery to identify unnamed defendants during normal course of discovery, and has not argued that relevant information may be in danger of destruction, and since nothing has prevented plaintiff from filing motion for preliminary injunction that it could later amend once identities of unnamed defendants are known.

**k. *Maremont v. Susan Fredman Design Group Ltd.*
99 USPQ2d 1384**

The U.S. District Court for the Northern District of Illinois on March 15, 2011 ruled that plaintiff professional interior designer has sufficiently alleged Lanham Act claim for false endorsement in action brought against defendant competitors, since plaintiff alleges that she created popular personal following on social networking websites, that her posts to websites relate to her work in commercial context, and that she was engaged in commercial marketing of her skills when defendants wrongfully used her name and likeness by writing posts under her name.

**l. *Jurin v. Google Inc.*
99 USPQ2d 1367**

The U.S. District Court for the Eastern District of California on February 15, 2011 ruled that a claim for false designation of origin under 15 U.S.C. § 1125(a)(1)(A) does not require defendant to be "direct competitor" of plaintiff; defendant Internet search engine provider's motion to dismiss false-designation claim, based on defendant's use of plaintiff's "Styrotrim" mark as keyword that plaintiffs competitors may bid on to secure "sponsored link" that appears on search results page when uses search for "Styrotrim," is denied.

**m. *Facebook Inc. v. Teachbook.com LLC*
82 BNA's PTCJ 774**

The U.S. District Court for the Northern District of Illinois on September 26, 2011 held that Facebook uses the suffix "book" to refer to its social networking services, and thus use of the same suffix may be trademark infringement.

3. U.S. Patent and Trademark Office

**a. *Research in Motion Limited v. Defining Presence Marketing Group Inc.*
102 USPQ2d 1187**

The Trademark Trial and Appeal Board on February 27, 2012 ruled that assertion of parody as defense to dilution claim does not place “increased burden” on trademark oppose to demonstrate that distinctiveness of its famous mark is likely to be impaired by parody; applicants’ alleged parody use of applied-for “CrackBerry” mark does not insulate applicants from opposer’s claim for dilution of its “BlackBerry” marks by blurring, since public itself, not applicants’ adopted and popularized “CrackBerry” as nickname for opposer’s “BlackBerry” wireless handheld communication devices.

**b. *In re TheDot Communications Network LLC*
83 BNA’s PTCJ 145**

The Trademark Trial and Appeal Board on November 22, 2011 ruled that the term “.music” is merely descriptive of a broad range of internet services relating to music, and thus the term is not eligible to be registered as a trademark.

**c. *In re ING Direct Bancorp.*
82 BNA’s PTCJ 860**

The Trademark Trial and Appeal Board on September 27, 2011 held that “Person2Person payment” is a generic term referring to electronic transfers via electronic communications network from one party to another and, consequently, is not entitled to trademark protection.

4. State Courts

Wisconsin

**a. *Habush v. Cannon*
83 BNA’s PTCJ 223**

The Wisconsin Circuit Court for Milwaukee County on June 8, 2011 ruled that a law firm’s use of the names of two competing trial attorneys as keywords to trigger online advertising invaded privacy, but was not unreasonable.

XI. TRADEMARKS/CLASS ACTIONS

A. CASE LAW

1. U.S. District Court

a. *FPX LLC v. Google* 82 BNA's PTCJ 852

The U.S. District Court for the Eastern District of Texas on September 29, 2011 ruled the Lanham Act's initial interest confusion analysis is extremely fact-intensive, so class certification in a lawsuit alleging that Google infringed brands' marks by selling them to competitors as invisible advertising triggers is inappropriate. Denying a group of plaintiffs' motion for class certification, the court adopts a magistrate judge's report in its entirety.

XII. TRADEMARK/COPYRIGHTS

A. CASE LAW

1. U.S. Court of Appeals

a. *Louis Vuitton Malletier v. Akanoc Solutions Inc.* 82 BNA's PTCJ 645

The U.S. Court of Appeals for the Ninth Circuit on September 12, 2011 upholds a jury's finding that a web hosting company and its manager were contributorily liable for permitting their customers to build websites that infringed Louis Vuitton trademarks and copyrights.

XIII. TRADEMARKS/CYBERSQUATTING

A. CASE LAW

1. U.S. Court of Appeals

a. *GoPets Ltd. v. Hise* 100 USPQ2d 1292

The U.S. Court of Appeals for the Ninth Circuit on September 22, 2011 ruled that re-registration of Internet domain name is not “registration” within meaning of 15 U.S.C. § 1125(d)(1), which states in relevant part that it is a violation of Anticybersquatting Consumer Protection Act to register, with bad faith intent to profit, domain name that is identical or confusingly similar to a trademark that is distinctive “at the time of registration” of domain name, since, viewing ACPA in light of traditional property law, “registration” is meant to refer only to initial registration.

2. District Court

a. *American University of Antigua College of Medicine v. Woodward* 83 BNA’s PTCJ 226

The U.S. District Court for the Eastern District of Michigan on December 5, 2011 ruled that gripe site’s use of medical school’s mark does not violate the ACPA or Lanham Act.

b. *Petroliam Nasional Berhad v. GoDaddy.com Inc.* 83 BNA’s PTCJ 331

The U.S. District Court for the Northern District of California on January 3, 2012 ruled that GoDaddy’s forwarding of domain name traffic to other websites does not make it liable under Anticybersquatting Consumer Protection Act; plaintiff also failed to prove “bad faith” element of ACPA claim.

XIV. TRADEMARKS/PERSONAL JURISDICTION

A. CASE LAW

1. U.S. District Court

a. *Shymatta v. Papillon* 99 USPQ2d 1854

The U.S. District Court for the District of Idaho on April 21, 2011 ruled that defendant's operation of "Cell Phone Junkie" website, which reviews cell phones and their accessories and provides related podcasts and free links to retailers of related podcasts and free links to retailers of related products, is insufficient for exercise of specific personal jurisdiction over defendant in Idaho action alleging infringement of plaintiff's "Cell Junkie" mark, since defendant's operation of blog accessible in Idaho does not constitute intentional act expressly aimed at Idaho.

XV. TRADEMARKS/UNFAIR COMPETITION

A. CASE LAW

1. U.S. District Court

**a. *Doctor's Data Inc. v. Barrett*
83 BNA's PTCJ 187**

The U.S. District Court for the Northern District of Illinois on November 22, 2011 ruled that unfair competition, but not dilution claim, fails because website not a competitor.

XVI. TRADE SECRETS

A. CASE LAW

1. U.S. Court of Appeals

- a. *United States v. Aleynikov*
83 BNA's PTCJ 910

The U.S. Court of Appeals for the Second Circuit on April 11, 2012 ruled that theft of source code to create a competing program does not violate the federal Economic Espionage Act.

2. District Court

- a. *United States v. Jin*
83 BNA's PTCJ 531

The U.S. District Court for the Northern District of Illinois on February 8, 2012 noted that a former Motorola Inc. software engineer who attempted to pass proprietary information to the Chinese military is guilty of trade secret theft.

- b. *Wells Fargo Bank N.A. v. Clark*
82 BNA's PTCJ 604

The U.S. District Court for the District of Virginia on August 23, 2011 granted a bank a preliminary injunction against ex-employee fired for misuse of e-mail.

- c. *Agency Solutions.com LLC v. Trizetto Group Inc.*
82 BNA's PTCJ 702

The U.S. District Court for the Eastern District of California on September 13, 2011 ruled that insights about software function and workflow shared during partnership are not trade secrets.

- d. *Dracon Wireless Solutions Inc. v. Garmin International Inc.*
84 BNA's PTCJ 118

The U.S. District Court for the Western District of Virginia on May 9, 2012 ruled that lack of code "use" defeats trade secrets claim.

- e. *Mentor Worldwide LLC v. Craigo*
102 USPQ2d 1602

The U.S. District Court for the District of Colorado on April 26, 2012 denied Plaintiff preliminary injunction in action for trade secret misappropriation against defendant sales representative, who worked for plaintiff under confidentiality agreement but resigned to work for competitor; defendant e-mailed customer lists to her husband while she was still working for plaintiff, but lists have been removed from husband's computer, and there is little evidence that defendant is using plaintiff's trade secret information in making customer contacts on behalf of her current employer.

XVII. ANTICYBERSQUATTING CONSUMER PROTECTION ACT

A. CASE LAW

1. U.S. District Court

a. *Fagnelli Plumbing Co. v. Gillece Plumbing and Heating Inc.* 98 USPQ2d 1997

The U.S. District Court for the Western District of Pennsylvania on February 15, 2011 ruled that defendants, in registering and using Internet domain name www.fagnelli.com, acted with bad faith intent to profit from use of plaintiff's "Fagnelli" mark for plumbing, heating, and cooling business in Western Pennsylvania, since defendants have no intellectual property rights in domain name, they have not used name in non-commercial or fair-use manner, and their domain name is variation of plaintiff's official www.fagnelli-plumbing.com website.

XVIII. LANHAM ACT

A. CASE LAW

1. U.S. Court of Appeals

- a. *Traffic-School.com Inc. v. Edriver Inc.*
82 BNA's PTCJ 472**

The U.S. Court of Appeals for the Ninth Circuit on July 28, 2011 ruled that injunction issued in action which defendants were found to have actively fostered false belief among consumers that their "DMV.org" website is official state department of motor vehicles (*i.e.* DMV) website, or is affiliated with or endorsed by state DMV, impermissibility burdens protected speech by requiring defendants to display "splash screen" disclaimer on their website.

2. U.S. District Court

- a. *Eppley v. Iacovelli*
99 USPQ2d 1040**

The U.S. District Court for the Southern District of Indiana granted summary judgment on August 17, 2010 to plaintiff plastic surgeon on Lanham Act claim for false designation of origin, asserted against former patient who used Internet to disparage and divert trade from plaintiff, since defendant used plaintiff's name, "Dr. Barry Eppley," throughout her campaign of Internet disparagement, with conscious design of driving Internet traffic away from plaintiff's authorized websites and toward her own sites.

XIX. RIGHT OF PUBLICITY

A. CASE LAW

1. U.S. District Court

a. *Cohen v. Facebook Inc.* 100 USPQ2d 1767

The U.S. District Court for the Northern District of California on June 28, 2011 ruled plaintiffs have failed to sufficiently plead injury element of their right of publicity claims in alleging that defendant proprietor of “social networking” Internet site misappropriated plaintiffs’ names and “profile pictures” for use in promoting defendant’s “Friend Finder” service; plaintiffs must, at minimum, plead mental anguish supported by plausible factual basis, and misappropriation claims are dismissed with leave to amend.

b. *Fraley v. Facebook Inc.* 101 USPQ2d 1348

The U.S. District Court for the Northern District of California on December 16, 2011 ruled that plaintiffs asserting claims under California’s Right of Publicity Statute, Cal. Civ. Code § 3344, challenging defendant social networking website’s “Sponsored Stories” advertising practice, have pleaded sufficient injury under statute, since plaintiffs allege that they were not compensated for defendant’s commercial use of their names and likenesses in targeted advertisements, and since, even if noncelebrities are subject to heightened pleading standard, plaintiffs have alleged with sufficient specificity that they enjoy commercially exploitable opportunities to advertise among their immediate friends and associates.

XX. FOREIGN CASES/COURTS

A. CASE LAW

1. Europe/European Union

- a. *Interflora Inc. v. Marks & Spencer PLC*
82 BNA's PTCJ 479**

The European Court of Justice on September 22, 2011 ruled that a mark as an AdWord may be infringing, but diversion, comparison won't tip scales.

- b. *Scarlet Extended SA v. Societe belge des auteurs, compositeurs et editeurs SCRL*
83 BNA's PTCJ 189**

The European Court of Justice on November 24, 2011 ruled in a file sharing case that IP addresses are personal data and thereby rejects forced ISP monitoring.

- c. *SAS Institute Inc. v. World Programming Ltd.*
83 BNA's PTCJ 151**

The European Court of Justice on November 24, 2011 ruled that internet service providers cannot be forced to filter illegal downloads.

- d. *SAS Institute Inc. v. World Programming Ltd.*
83 BNA's PTCJ 151**

The European Union's Legal Advisor on November 29, 2011 ruled that software language "functionalities" are not protected by copyright.

- e. *SAS Institute Inc. v. World Programming Ltd.*
84 BNA's PTCJ 72**

The European Union High Court (*i.e.* European Court of Justice) on May 2, 2012 restricts copyright protection for software programming by stating that functionality of the software cannot be protected by copyright.

2. France

- a. *eBay Inc. v. LVMH*
84 BNA's PTCJ 118**

A French high court on May 3, 2012 found eBay liable for counterfeit sales.

- b. *YouTube LLC v. Television Francaise S.A.*
84 BNA's PTCJ 238**

The Paris First Instance Court on May 29, 2012 found that YouTube prevails against French TV group seeking \$180 million for video uploads.

- c. *eBay International A.G. v. Burberry Ltd.*
83 BNA's PTCJ 704**

The Paris Court of Appeals on March 6, 2012 ruled that eBay is liable for the sale of counterfeit luxury goods and fined it 200,000 euros.

3. *United Kingdom*

- a. *Newspaper Licensing Agency Ltd. v. Meltwater Holdings Ltd.*
82 BNA's PTCJ 460**

The England and Wales Court of Appeals on July 27, 2011 ruled that a user's act of making an unauthorized copy of a news article that has been flagged by a web news media clipping service is an infringement of the news publisher's copyright. The Court of Appeals on July 28, 2011 ordered the biggest U.K. ISP to block all user access to an infringing website.

- b. *Twentieth Century Fox Film Corp. v. British Telecommunications PLC*
82 BNA's PTCJ 479**

The England and Wales Court of Appeals on July 28, 2011 ordered the biggest U.K. ISP to block all user access to an infringing website.