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Currents

ISSUES AND TRENDS IN INTELLECTUAL PROPERTY AND E-COMMERCE LAW

# False Marking Statute Interpretation Increases Potential Monetary Penalty for Violations

*By Amy Tulk*

**A recent Federal Circuit decision interpreting the False Marking section of the Patent Act has opened the flood gates to tidal waves of litigation concerning falsely marked articles by plaintiffs who see an opportunity for personal financial gain. Over the last several months, patent "marking trolls," as the Federal Circuit has dubbed them, have filed numerous lawsuits alleging false marking under Section 292 of the Patent Act. This article provides a brief overview of the false marking statute, the Federal Circuit's interpretation of the statute, what precautions manufacturers and patent holders should take in light of the decision and potential legislative reform.**

## QUICK LOOK INSIDE

SPRING 2010


- The Legal Limits in Generating the Green from *Green* in Green Marketing
- Green Advertising Guidance
- Trade Secret Battle Ends in $38 Million Deal
- Supreme Court Determines Copyright Registration is not Necessary for Jurisdiction
- Myriad Gene Patent Update


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### The False Marking Statute

False marking occurs when an unpatented article is marked with the word "patent" or similar language or such language is used in advertising an unpatented article, both of which deceive the public. Section 292 of the Patent Act allows any person to file suit against a party that has allegedly falsely marked an article and to split any resultant monetary penalty with the federal government. Such suits are known as *qui tam* actions. The potential to split large damage awards with the government provides a strong incentive for plaintiffs to fund a false marking lawsuit.

The two main elements of a false marking claim are (1) marking an unpatented article and (2) intent to deceive the public. The court in *Forest Group, Inc. v. Bon Tool Co.*, 590 F.3d 1295, 1300 (Fed. Cir. 2009) explained that "intent to deceive is a state of mind arising when a party acts with sufficient knowledge that what it is saying is not so and consequently that the recipient of its saying will be misled into thinking that the statement is true." A party asserting false marking must show by a preponderance of the evidence that the accused party did not have a reasonable belief that the articles were properly marked. For example, a party may have the requisite intent to deceive the public if that party is aware that its patent's claims have been narrowed so as to no longer reasonably cover the article marked.

### Previous Interpretations of the Statute and *Bon Tool*

Prior to the Federal Circuit's decision in *Bon Tool*, most courts had held that a party in violation of the false marking statute could be penalized for each decision to mark an article, rather than for each article marked. Thus, a manufacturer would be fined $500 or less for one decision to manufacture a large quantity of falsely marked articles, as opposed to paying a penalty for each article produced with the false mark.

In *Bon Tool*, the United States District Court for the Southern District of Texas fined the Forest Group, Inc. (Forest) $500 for its decision to mark its stilts, intended for use in construction, as covered by Patent No. 5,645,515 (the '515 patent). The district court determined that Forest knew its stilts were not covered by the '515 patent on Nov. 15, 2007, when a summary judgment was issued in related proceedings. The court found that Forest had placed at least one order to its manufacturer for additional stilts marked with the patent number after that date. Accordingly, Forest was fined a total of $500, the maximum under the statute, for the single decision to mark additional stilts after it had knowledge that the marking was false, despite the fact that numerous stilts had been marked.

On appeal, the Federal Circuit held that "the statute clearly requires that each article that is falsely marked with intent to deceive constitutes an offense under 35 U.S.C. § 292." Several considerations led the court to this determination. Importantly, the court noted that a 1952 amendment, which changed the penalty from a $100 minimum to a $500 maximum, eliminated the previous policy concern that a penalty imposed per article would result in a disproportionate fine for the false marking of small and inexpensive articles. As a result of the change in penalty, courts now have the discretion to strike a balance between encouraging enforcement of public policies and imposing disproportionate penalties for small, inexpensive items produced in large quantities. The court suggested that in such cases, a court could exercise its discretion and only impose a penalty of a fraction of a penny per article.

The court observed that simply imposing a single $500 fine for false marking numerous articles would render the statute useless, as it would have a very small deterrent effect on potential false markers. Despite the danger of patent "marking trolls" who might bring false marking actions for personal gain if a penalty per article interpretation were adopted, the court noted that Congress explicitly allowed individuals to bring false marking actions to help control false marking. Without a per article penalty, there would be insufficient financial motivation for plaintiffs to bring such suits.

Policy considerations such as encouraging innovation and competition in the marketplace were also persuasive to the court in determining that the statute should be applied to every occurrence of false marking. "If an article that is within the public domain is falsely marked, potential competitors may be dissuaded from entering the same market. False marks may also deter scientific research when an inventor sees a mark and decides to forego continued research to avoid possible infringement." Unnecessary investment in design-arounds or costs incurred in analyzing validity and enforceability of patents also weighed in favor of the court's determination that the false marking penalty provision applies to every article marked.

### Limiting Manufacturers' and Patent Holders' Liability

While the exact limits to these cases remain untested, including issues such as standing and whether courts will exercise discretion in imposing penalties, there are several steps manufacturers and patent holders can and should take to limit their exposure to these actions.

- Review all articles for markings and ensure that markings are up-to-date and do not refer to any expired patents.
- Review whether any patents have been declared invalid, held unenforceable or have had claims narrowed in any proceedings.
- Prior to marking any articles, review the intended mark to ensure that at least one claim reasonably covers the article.
- Use "patent pending" only when an application is on file and remove such marking promptly if the application is abandoned.
- Licensees and licensors should negotiate indemnification clauses directed to false marking suits in their license agreements.

## Editor's Notes

Regardless of whether it is easy to be green, business owners can exert control over claims they make about green products or how green their products really are. They also have control over how they mark patented products and products with patent pending. Recent legal developments in both areas can lead to liability if done incorrectly. This issue explains the developments and provides suggestions to avoid liability.

*Currents is published three times a year as a service to inform business owners and professionals of current legal developments in intellectual property and e-commerce law. The material in Currents should not be construed as offering legal advice. Readers should consult their own professional advisors to discuss their specific circumstances.*



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### Legislative Reform

In the wake of *Bon Tool*, the Senate Judiciary Committee is contemplating an amendment in S.B. 515 to the false marking statute to limit potential plaintiffs. First and foremost, the Committee is proposing removing the ability to bring *qui tam* suits, and instead, only allow plaintiffs who have "suffered a competitive injury" as a result of a false marking to bring an action. The amendment would further provide for "recovery of damages adequate to compensate for the injury." The proposed amendment has already met opposition, as some critics have noted that the wording could create a scenario where a competitor does not exist, and no one could bring an action.

Until any amendment is passed, companies should follow the above precautions to guard against false marking suits under the present statute, but be mindful of any changes in this area of law. Under the holding of *Bon Tool*, the consequences of careless marking could be financially disastrous for producers of vast volumes of patented products. ■

# The Legal Limits in Generating the Green from *Green* in Green Marketing

*By Roger Gilcrest*

**The relatively recent expansion of green marketing has renewed interest in the fairness of green marketing claims. Logically, every business that touts the saving of time and energy through its products or services may be able to make a green advertising claim. However, the most controversial green claims are those made by companies that are entering the market with a new or improved offering, particularly one developed in response to the current upsurge in demand for green products that are in some way environmentally friendly or claims emphasizing previously ignored green benefits of an existing product.**

Normally, green marketing centers on the basic themes of (1) recycling or biodegradability and (2) energy generation and associated emissions. In making green claims, businesses should be aware of the ground rules governing competition and consumer protection and the associated risks to the unwise. These constraints come from government enforcement and private action.

### Federal Trade Commission Enforcement

The Federal Trade Commission (FTC) is the principal U.S. government agency charged with policing fair trade practices and competition. The FTC's Bureau of Consumer Protection takes responsibility for protecting consumers from fraud, deception and unfair business practices in the marketplace.

The FTC issued its Guides for the Use of Environmental Marketing Claims (the Guides) to help marketers avoid making environmental claims that are unfair or deceptive under Section 5 of the FTC Act. The Guides outline general principles on environmental marketing claims and provide guidance on specific green claims, such as claims relating to a product's biodegradable, compostable or recyclable nature or characteristics, its recycled content and its ozone-safe status. The Guides explain how consumers understand commonly used environmental claims, such as recyclable and biodegradable, and describe the basic elements needed to substantiate those claims. They also instruct how to qualify specific claims to avoid deception, to assist marketers in making truthful and substantiated statements about the environmental attributes of their products and services.

The FTC last updated the Guides in 1996 and 1998 and continues to review them, particularly as the controversy over climate change and the economic downturn have spurred consumers' interest in environmental protection and conservation. The FTC may bring enforcement actions against false or misleading marketing claims, including green claims. Advertisers should be familiar with the Guides relating to use of certain terms in advertising to avoid liability.

### Recent FTC Enforcement Actions

In 2009, the FTC brought administrative complaints against three different U.S. companies, charging Kmart Corp., Tender Corp. and Dyna-E International with making deceptive and unsubstantiated claims that their products were "biodegradable." The alleged false claims were made with regard to Kmart's American Fare brand disposable plates, Tender Corp.'s Fresh Bath brand moist wipes and Lightload brand compressed dry towels. The complaints charged that these companies failed to qualify or explain the term biodegradable or explain whether it applied to the product and/or its packaging or merely to a component of either. The FTC further alleged that most municipal solid waste is disposed in landfills, incinerators or recycling facilities, and these disposal methods would prevent the products and/or their packaging from "completely break[ing] down and return[ing] to nature, i.e., decompos[ing] into elements found in nature, within a reasonably short period of time," making claims of biodegradability misleading.

All three cases were settled by the companies agreeing to refrain from claiming that their products or packages (a) are degradable, biodegradable or photodegradable or (b) offer any other environmental benefit, unless those representations are both true and not misleading, and, at the time, competent and reliable scientific evidence substantiates the representations.

In another recent round of complaints, the FTC charged four textile companies with deceptively advertising items as made of bamboo fiber, when actually made simply of rayon. The companies were charged with making false and unsubstantiated "green" claims that (1) the products are manufactured using an environmentally friendly process, (2) they retain the natural antimicrobial properties of the bamboo plant and (3) they are biodegradable.

Again, all the companies settled by agreeing to cease false claims and to abide by the FTC's Textile Fiber Products Identification Act (Textile Act) and Rules. The settlements bar these companies from making any unsubstantiated claims as to the bamboo or bamboo fiber content, its manufacturing process, the antimicrobial properties of the product from which it is made and its biodegradable nature. The settlements also bar the companies from making any claims about the benefits, performance or efficacy of any textile product, unless true, not misleading and substantiated by competent and reliable evidence.

## Substantiation

Successful complaints or settlements typically include the rather burdensome requirement that the charged companies maintain and make available to the FTC all advertising materials and related reports and test data related to any advertising claim, for a period of five years from the date of the claim. Also standard is the requirement that all current and future management agree to be bound by the order and that the company continue to keep the FTC apprised of any changes that may affect its compliance with the order. Individual respondents may be required to inform the FTC of any changes in employment for periods as long as 10 years. Thus, although these cases can be settled, the legacy costs can be substantial.

The Guides are not law but rather are designed to lead by example. While the FTC's mission is consumer protection, it generally will not issue advisory opinions to businesses to approve green marketing claims before they are made. Naturally, this is frustrating to those businesses seeking pre-market clearance to prevent running afoul of the FTC's policing function. On the other hand, businesses should not assume that the FTC will not monitor their advertising. Indeed, unfounded green claims often come to the attention of the FTC through competitors' complaints.

Accordingly, any company considering making a claim relating to its product's environmentally benign degradability or any other environmental benefit (energy savings, etc.) should be prepared to substantiate those claims as being true and not misleading and should involve legal counsel at an early stage.

## Private Causes of Action

In addition to governmental enforcement, businesses may face private actions in court. False advertising claims may be made directly by competitors that allege lost sales to green advertising claims. These claims may be brought under the federal Lanham Act, state unfair competition statutes or case law bearing on false advertising. The Lanham Act allows business competitors to sue for false advertising, among other things. Section 43(a) prohibits use of a false or misleading description or representation in commercial advertising or promotion that "misrepresents the nature, characteristics, qualities, or geographic origin of . . . goods, services, or commercial activities." This is broad enough to encompass advertising claims based upon the alleged green nature, characteristics or qualities of a product or packaging.

To be successful under Section 43(a), courts require the following be proved: (1) the defendant must have made a false or misleading statement of fact in advertising; (2) the statement must have actually deceived or had the capacity to deceive a substantial segment of the audience; (3) the deception must have been material, i.e., likely to influence the purchasing decision; (4) the goods must have entered interstate commerce; and (5) the plaintiff must have been or is likely to be injured as a result.

Statements that are considered wrongful may either be literally false or impliedly false. Implied false advertising claims are those that are literally true but that imply another message which is false. Impliedly false statements typically occur where context allows more than one interpretation. These statements usually require greater proof as to the market effect upon consumers. By contrast, in literally false statements the element of deception is presumed. Monetary damages are available if the plaintiff shows actual consumer reliance on the false advertisement and a resulting economic impact on its own business.

Another type of private action is a consumer action typically brought under a state's statutory scheme, such as a recent case brought against so-called "greenwashing," the practice of making one's product seem more environmentally friendly than in actuality. A California consumer brought a class action case against S.C. Johnson & Son, Inc. (SCJ) asserting claims under California's statutory unfair competition, false advertising and consumer remedies laws, as well as for common law fraud and unjust enrichment. The case is based upon SCJ's sale of its Windex® cleaning products in packaging that prominently displays a "Greenlist" label allegedly deceptively designed to look like a third party seal of approval (which it is not), such that it falsely represents that the products are environmentally friendly. That case has survived a motion to dismiss and remains pending.

Private causes of action are typically brought under more directly competitive circumstances, or in cases of consumer harm, rather than those of the policing actions of the FTC, and more often involve claims for damages. Therefore, the motivation may be different, and settlement may not be as easy.

### Conclusion

These relatively recent cases appear to represent only the first wave of renewed enforcement efforts and private cases against unfounded and unfair green advertising claims. Some time will be required before government enforcement agencies, courts, businesses, consumers and advocacy groups settle on the proper use, understanding and legal governance of green advertising claims. ■

## Sidebar

## Green Advertising Guidance

To be best protected, the following steps should be followed:

- Use the updated Guides for the Use of Environmental Marketing Claims to assist in using green terms or green advertising schemes.
- Be specific about the green benefit of products or packaging (many cases involve overly broad claims that would have been legal had they been properly limited).
- Be prepared with valid testing or research to substantiate advertising statements, whether it be in-house research and data, contract testing or public information, and demonstrate reliance in making claims based on that information.
- Be careful in making new-found green claims regarding established products or packaging (so-called greenwashing).
- Be cautious when making claims that may be interpreted in more than one way to prevent falsehood by implication.
- Be equally skeptical regarding claims made by suppliers of product components or packaging and request information substantiating such claims. ■

# Trade Secret Battle Ends in $38 Million Deal

*By Jay Krasovec*

**A prolonged and hotly contested intellectual property battle in the Eastern District of Pennsylvania recently settled for $38 million. In a unique settlement agreement between the parties — competing manufacturers of water treatment and purification technologies — the parties will jointly own the trade secret technologies alleged to have been misappropriated.**

In *Bro-Tech Corp. t/a The Purolite Company v. Thermax, Inc.*, 2:05 CV 2330, brought in federal court in the Eastern District of Pennsylvania on May 18, 2005, Purolite sued its major competitor Thermax, for among other claims, misappropriation of trade secrets relating to Purolite's manufacturing process for its ion exchange resin. Purolite alleged that one of its key former high-level executives (its Corporate Manager of Quality who worked for Purolite for almost 20 years) was lured away by Thermax to exploit his knowledge of Purolite's processes and critical customer base for such products.

Purolite also alleged that three other individuals were recruited and specifically targeted by Thermax, as they had access to Purolite's manufacturing and customer information. The suit alleged all the ex-Purolite employees were offered jobs with Thermax with the specific understanding that they would bring such confidential and proprietary manufacturing and customer information with them to Thermax.

Purolite is based in Bala Cynwyd, Pa., and had been making ion exchange resins, which are chemical products used to remove impurities from water and other liquids, for over 23 years. Thermax is an India-based energy and environmental engineering company that also makes ion exchange resins in direct competition with Purolite's main product line.

Purolite sought a temporary restraining order and preliminary and permanent injunctive relief in early 2005. Purolite relied upon the Pennsylvania Uniform Trade Secrets Act, 12 P.S. § 5301 et seq. (which is virtually identical to Ohio's Uniform Trade Secrets Act, O.R.C. § 1333.61 et. seq.) in seeking its injunctive relief and preventing Thermax from employing its former executive at its Indian manufacturing facility. Purolite's complaint asserted 15 causes of action including claims under the Racketeer Influenced and Corrupt Organizations Act (RICO) and the Computer Fraud and Abuse Act and state law claims of unfair competition, civil conspiracy and conversion. Most of the claims, however, were narrowed upon the court's summary judgment opinion, leaving the trade secret claims as the main point of contention for trial.

The case was hotly litigated from the outset. During five years of litigation, there were more than 600 pleadings filed and orders entered by the court. The most important of which came early on in the case and was the eventual driver behind the massive settlement.

On May 20, 2005, only a few days after Purolite's complaint was filed, the parties entered into a stipulated temporary restraining order. Thermax (including its officers, agents and new employees) agreed, during the pendency of the case that until its request for preliminary and permanent injunctive relief was heard it would not directly or indirectly use or disclose any of Purolite's alleged trade secret or confidential information.

The suit alleged that, subsequent to the entry of the stipulated temporary restraining order one of Thermax's newly hired ex-Purolite employees, who was working on the production of ion exchange resins at Thermax, confessed that he had taken a number of documents both in hard copy and electronic form from Purolite. Thermax represented that it was unaware of such facts until he confessed and made him return all the documents.

As a result, Purolite moved to hold Thermax in contempt of the stipulated restraining order and two subsequent orders. Shortly before trial was to start, the Court entered a Jan. 14, 2010, Memorandum, Opinion & Order (its Contempt Ruling) holding, in part, that Thermax had, in fact, violated the stipulated restraining order and used certain aspects of Purolite's purported trade secret information. In the Contempt Ruling, the Court specifically found, as to three of the main manufacturing processes at issue, that Thermax continued to make products using Purolite's trade secret formulas.

Shortly thereafter, a settlement was announced. Under its terms, Thermax agreed to pay $38 million to Purolite in four equal installments of $9.5 million by the end of 2010. The parties issued a statement that they would be "joint co-owners" in perpetuity of the information and technology in dispute.

While the exact nature of the structure of the settlement and technology ownership issues was not fully disclosed, the parties likely entered into a hybrid license agreement for Thermax's continued ability to use certain manufacturing processes to make its ion resins. The $38 million payment could be seen as a lump sum license fee rather than a traditional royalty payment stream. Thus, while such licensing agreements are common for other aspects of intellectual property law, such as patents and copyrights, they are unique with respect to trade secrets and are not that common. Trade secrets, which can theoretically last in perpetuity, are often not seen as the most ideal subjects for licensing agreements given that the initial owner can lose direct control over the disclosure of its information by the licensee and, therefore, ultimately risk the protections afforded under trade secret law.

Furthermore, to the extent the *Purolite* settlement agreement could be interpreted as a traditional intellectual property license, it could then implicate distinct foreign antitrust regulations. For example, certain antitrust regulators may adopt rules and impose outright restrictions on the use of certain licensing practices; such as no patent owner may fix prices to be charged by a licensee. The intersection of such antitrust issues, foreign regulations and traditional trade secret law could prove complex.

These unique risks associated with such trade secrets mandate that any company considering such approaches involve appropriate intellectual property counsel from the outset and throughout any licensing period. Standard form licensing agreements that some companies may routinely employ with patents and/or copyrights will not suffice.

More importantly, from a practical standpoint for companies and owners of trade secrets and confidential information, the *Purolite* case demonstrates that business owners and non-lawyer managers must take an active, hands-on approach when sued for trade secret theft. Again, appropriate intellectual property counsel is the first step in any such lawsuit. The burdens, however, also rest upon the business owners and front-line managers to properly police their work force and monitor exactly what information is to be restricted during the pendency of any litigation. In the *Purolite* case, there appears to have been a disconnect with Thermax's U.S. management team and the manufacturing plant in India where ex-Purolite employees were using Purolite's trade secret information in violation of the court's orders.

Companies, therefore, should establish response plans for trade secret litigation cases, including appropriate litigation holds for the preservation of electronic records, so they can immediately enlist the necessary expertise upon the institution of litigation to efficiently and cost effectively deal with such critical issues. Failure to do so could result in a multi-million dollar settlement being driven by a court rather than legitimate business decisions. ■

# Supreme Court Determines Copyright Registration is not Necessary for Jurisdiction

By Earl LeVere

**On March 2, 2010, the U.S. Supreme Court issued its unanimous decision in *Reed Elsevier, Inc. v. Muchnick* and held that a copyright claimant's failure to register the copyright at issue does not deprive the district court of subject-matter jurisdiction to hear the case. The decision reversed a contrary ruling by the Second Circuit Court of Appeals and resolved a split of authority among the federal circuits as to whether the Copyright Act's registration requirement is a jurisdictional prerequisite to suit or a substantive element of a claim for infringement.**

Section 411 of the Copyright Act provides, in part, that "no action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made." Prior to *Reed Elsevier*, many federal courts held that this section limited a court's power (its jurisdiction) to take any action in a case for infringement of an unregistered copyright. Other courts were of the view that the language created a substantive requirement for a copyright claimant to satisfy in order to state a claim for copyright infringement. Within this latter camp, certain courts required that the claimant have an issued registration in hand, while others would allow a suit to proceed if the application for registration was pending, so long as it issued by the time of trial.

*Reed Elsevier* arose out of a class action suit brought by more than 20,000 freelance authors against several print publishers and operators of online databases who had reproduced the authors' works electronically without their permission. The plaintiff-authors asserted rights in works that were registered as well as in works for which the copyright was not registered. The parties reached an $18 million settlement, which the New York District Court approved, over the objection of 10 plaintiffs. The 10 plaintiffs appealed.

The Second Circuit Court of Appeals raised the question of jurisdiction on its own initiative and reversed the district court's approval of the settlement, finding that the district court lacked jurisdiction to hear the case, because the copyrights in some of the works at issue were not registered. The Supreme Court reversed the Second Circuit and held that the registration requirement in Section 411(a) was not jurisdictional and, instead, was "claim processing rule" that acts as a "nonjurisdictional limitation...on causes of action." Because it was not jurisdictional, the Supreme Court found that the district court had the authority to certify the class of plaintiff-authors and to approve the settlement.

Ultimately, the decision was more of a victory for federal courts than for copyright owners. Section 411 still stands, and clearly makes owning a registered copyright a requirement for filing suit and for prevailing on a copyright infringement claim. Courts, however, now have slightly more discretion in deciding how to handle cases where the application for copyright registration is merely pending. Yet the decision offers no guidance on how courts should exercise that discretion or how, if at all, that discretion should inure to the benefit of the copyright owner. Rather, the Supreme Court avoided that issue entirely, stating, "We also decline to address whether § 411(a)'s registration requirement is a mandatory precondition to suit that...district courts may or should enforce *sua sponte* by dismissing copyright infringement claims involving unregistered works."

Additionally, although not at issue in *Reed Elsevier*, where infringement occurs after a work is registered, a plaintiff can recover statutory damages and attorneys' fees, in lieu of actual damages, which is the remedy for infringement of an unregistered work. Thus, prudence dictates that copyright owners register their copyrights as soon as possible to secure the broadest statutory protection and greatest measure of damage recovery. ■

## WEBEXTRAS

The cases, statutes and regulations referenced in this newsletter can be accessed from the online version of this *Currents* issue accessible from the SZD homepage at: www.szd.com. Click *Resources*, *SZD Publications*, then *Currents*. SZD newsletters are posted with live links (when applicable).

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# Myriad Gene Patent Update

*By Amy Tulk*

On March 30, 2010, the United States District Court for the Southern District of New York published its opinion in *Association for Molecular Pathology and ACLU v. USPTO and Myriad* (the subject of an article in the Winter 2010 issue of *CURRENTS*). At issue in the litigation was the validity of Myriad Genetics' patents relating to the BRCA1 and BRCA2 genes, the mutations of which are commonly associated with higher risks of breast cancer. The court held that the patents, which claimed "isolated DNA" — containing sequences found in nature, do not claim patentable subject matter. Importantly, the court explained that "DNA represents the physical embodiment of biological information, distinct in its essential characteristics from any other chemical found in nature... DNA's existence in an 'isolated' form alters neither this fundamental quality of DNA as it exists in the body nor the information it encodes." Thus, "isolated DNA" does not constitute patentable subject matter.

This case was closely monitored by many groups, as the outcome will have a significant financial impact on gene patent holders, drug manufacturers and research institutes, to name just a few. The case will undoubtedly be appealed to, and heard by, the Federal Circuit in the near future. ■

## NEWS YOU CAN USE

Need help pronouncing the name of a person or place? Not an uncommon occurrence in an increasingly pluralistic society. Here are two web sites that can help:

- **www.pronouncenames.com** for the proper phonetic spelling of names and places
- **www.hearnames.com** to hear audio files of persons' names recorded by native speakers

Both sites accept recommendations for additions. ■



## Speeches and Publications

On Dec. 15, 2009, **Susan Rector** presented "Understanding FTC Guidelines and Social Media: Navigating Endorsements and Testimonials and Becoming Compliant," at a Webinar co-sponsored by SBC Advertising and Schottenstein Zox & Dunn.

On Feb. 8, 2010, **Earl LeVere** presented "Counterfeits and Knock-Offs: Tools and Options for Protection" at the Easyriders V-Twin Expo in Cincinnati, Ohio.

On Feb. 23, 2010, **Susan Rector** presented "Successful Women Rainmakers - and How They Got There," at *The Secret of Rainmaking for Women Attorneys: Tips on Making it to the Corner Office* for the Ohio Women's Bar Association in Columbus, Ohio.

On March 23, 2010 (Columbus, Ohio) and March 25, 2010 (Cleveland, Ohio), Schottenstein Zox & Dunn presented "**Social Networking Brings New Challenges for Employers.**" Discussion leaders in Columbus were **Paul Bittner, Susan Porter, Angel Newcomb, Eve Ellinger** and **Tim Eckenrode**. Discussion leaders in Cleveland were **Paul Bittner, Aaron Granger** and **Tim Eckenrode**.

On April 7, 2010, **H. Alan Rothenbuecher** presented "Trade Secret Case Law Update" at the Annual IP Conference for the American Bar Association in Washington, D.C.

**Susan Rector** authored an article entitled "Revised FTC Endorsement Guides for the First Time Apply to Bloggers" in the April/May 2010 issue of *Executive Counsel*.

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