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ANTITRUST IN AN AI WORLD: THE ROBOTS DID IT

By Barbara A. Reeves, Esq., CEDS, JAMS Mediator and Arbitrator

On Oct. 30, President Biden issued an executive order on the safe, secure and trustworthy development and use of artificial intelligence. It provides eight guiding principles and priorities, focusing on national security, privacy and intellectual property issues, but also sounds an alert about competition-related issues of concern to antitrust enforcers at the Department of Justice (DOJ) and the Federal Trade Commission (FTC), referencing the need "to ensure fair competition in the AI marketplace and to ensure that consumers and workers are protected from harms that may be enabled by the use of AI."

Antitrust regulators and scholars have been raising concerns for years about algorithmic pricing and whether pricing algorithms can enable pricing collusion. See, e.g., Algorithms and Collusion – Note by the United States, available at https://www.justice.gov/atr/case-document/file/979231/download. The recent advances in generative AI highlight the areas of concern.

Agreements between competitors to raise prices or limit supply is per se illegal under Section 1 of the Sherman Act. 15 U.S.C. § 1. A dominant firm that employs exclusionary or predatory conduct to monopolize, attempt to monopolize or raise prices above those that would be charged in a competitive market, or exclude competition, violates Section 2 of the Sherman Act. 15 U.S.C. § 2. Historically, enforcement has focused on collusion, explicit or conscious parallelism, by competitors, meaning people at the firms.

Enter artificial intelligence (AI), algorithms, and computers. Can computer-determined pricing be susceptible to coordination, just as human-determined pricing can?

- What if businesses agree to match prices and then leave it to their computer algorithms to monitor and enforce the agreement?
- What if competitors in a market adopt a common pricing algorithm, whether by agreement or just because it is highly recommended?

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PRESIDENT'S FAREWELL MESSAGE

Sandhya Ramadas Kogge
OUTGOING FBA-LA CHAPTER PRESIDENT

In looking back on my past year of service as President of the Los Angeles Chapter of the Federal Bar Association, I cannot believe all that we accomplished together in our first year back in person after the pandemic. The 2022-2023 Board of Directors, including our judicial Board Members, under the leadership of our stellar Executive Committee (Brittany Rogers, Jeff Koncius, and Erin Murphy), with the support of Chief Judge Gutierrez, furthered our core mission of service to the bench, the bar, and the larger community by:

- mentoring law students from underrepresented groups in the clerkship application process (led by Board Members Marisa Hernández-Stern, Moez Kaba and Board Liaison Jehan Pernas);
- creating a robust nuts-and-bolts legal series for young lawyers (led by Board Liaisons Lauren Border, Patrick Nutter, Board Members Lauren Blas and Robert Quigley, among others);
- hosting a reception honoring our newest judges to the bench in the Central District; (led by our Programming Committee Chairs Jonathan Eisenman and Amy Jane Longo);
- developing a process to promote the use of the Central District's Consent Program by litigants (led by Jeff Koncius, with the support of Chief Judge Gutierrez and Chief Magistrate Judge Stevenson);
- circulating an award-winning newsletter (led by Board Member Agustin D. Orozco and paralegal Kaman Chow);
- pairing young lawyers with lawyer mentors (led by Board Member Allison Westfahl Kong);
- boosting our social media presence (led by Board Members Arnold Lee, Sharlene Lee and Joseph Boufadel);
- winning the 2023 Presidential Excellence Award for our chapter from the National Federal Bar Association; and
- putting on our flagship events such as our Judge Barry Russell Awards and Dean Erwin Chemerinsky Supreme Court Review (led by Board Members Patricia Kinaga and Judge Russell), as well as our State of the Circuit/State of the District Luncheon with our tribute this year to The Honorable Terry J. Hatter (led by Board Members Sharlene Lee and John Carson).

Wishing Brittany Rogers a wonderful year as President - the Chapter is in great hands! I am so excited to see all that the Board and Chapter will accomplish under her leadership. Thank you to our amazing Board of Directors, including the members of the Judiciary who have joined our Board and support our organization. And thank you to all of our sponsors, our law firm sponsors and our organizational sponsors – ADR Services, Signature Resolutions, JAMS, and Judicate West – for their partnership and support. I look forward to continuing to serve on the Board and assist the Los Angeles Chapter of the Federal Bar Association in its work serving the bench, bar, and broader community.

Warmest regards,

Sandhya Ramadas Kogge Outgoing
President, FBA-Los Angeles

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PRESIDENT'S FAREWELL MESSAGE

Sandhya Ramadas Kogge
OUTGOING FBA-LA CHAPTER PRESIDENT

(Continued from page 2)

Pictured from left to right are Jeff Koncious (FBA-LA President-Elect), Erin Murphy (FBA-LA Treasurer), Sandhya Ramadas Kogge (FBA-LA Past President), Brittany Rogers (FBA-LA President)

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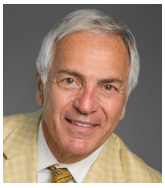
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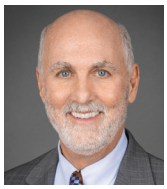
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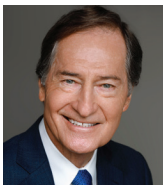
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Message from the District Court Executive/Clerk of Court

By Brian Karth

I am happy to introduce myself and provide a brief message on behalf of the Clerk's Office for the United States District Court for the Central District of California.

I newly assumed this role on January 1, 2024, following the retirement of my esteemed colleague, Kiry K. Gray. This is the third federal court for which I have had the privilege of holding this position. I first held the position of Clerk of Court for the District of Arizona. Most recently, I held the position for the District of Alaska. I look forward to serving the Central District of California in my new role and getting to know the Federal Bar Association, Los Angeles Chapter Board and its members.

As many of you may know, there have been other new developments in the Central District. Chief Judge Dolly M. Gee began her term as our court's chief judge on March 30, 2024, following the term of now Chief Judge Emeritus Philip S. Gutierrez. Additionally, Judge Dale S. Fisher and Judge Cormac J. Carney assumed senior status on May 1, 2024 and May 31, 2024, respectively.

President Biden has nominated candidates to fill three of the Court's four district judge vacancies. I hope the confirmation process moves quickly and am eager to have new judges join the Court to assist the current district judges with their heavy caseloads. With these new judges, the First Street Courthouse in Los Angeles will be full for the first time since the Courthouse opened in 2016.

Of note, in recent months, we have increased the bandwidth for courthouse attorney Wi-Fi district-wide. As a result, attorneys should experience fewer gaps in Wi-Fi coverage on courtroom floors.

Please be mindful that the Court publishes its Local Rules bi-annually on June 1st and December 1st. Before doing so, the Court publishes notice and calls for public comment on the new and revised Local Rules. I encourage all federal practitioners to provide public comments, as it is likely that the changes to the Local Rules will affect your practice.

In addition to providing comments about Local Rules changes, I welcome federal practitioners to partner with the Court at any opportunity. Attend our events and become involved in Court committees, such as the Standing Committee on Discipline, Merit Selection Panel, Attorney Admissions Fund Board, and Local Rules Advisory Committee. I also encourage federal practitioners to become a Ninth Circuit Lawyer Representative and join the Court's Criminal Justice Act (CJA) or Mediation Panels.

On behalf of the Central District, I look forward to working with you and I sincerely thank the FBA membership for your individual and collective support towards achieving the District Court's vital mission.

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Individual Registration Fees: FBA Members $115 • Govt Empl/Clerks/Students $75 • Non-Members $140
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Tables are set for 10 people. Purchasing a table buys 9 seats, with the 10th occupied by a judge or other guest assigned by FBA-LA. Please let us know when you purchase a table if sitting with any particular judge or judges would risk the perception of a conflict of interest. Thank you.

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Capturing the Moment: Honorable Philip S. Gutierrez's Portrait Presentation

The Portrait Presentation of United States District Court Judge Philip S. Gutierrez was a momentous occasion that honored Judge Gutierrez's tenure as Chief District Judge of the Central District of California. Held in Courtroom One of the First Street Courthouse on May 30, 2024, the ceremony brought together colleagues, family and friends to witness this lasting tribute. Through a collection of photographs, we present the highlights of this memorable event.

Judge Gutierrez and Chief Judge Dolly M. Gee enjoy the Portrait Presentation ceremony.

All present watch as Judge Gutierrez's portrait is unveiled in the ceremonial courtroom.

In a meeting of past and present chief judges, Judge Gutierrez is joined by Chief Judge Gee and his predecessor, former Chief Judge George H. King (Ret.).

FBA-LA would like to take this moment to express its gratitude to Judge Gutierrez for his years of dedicated service as Chief Judge. His leadership, commitment to justice, and unwavering integrity have left an indelible mark on the Central District and beyond. His portrait will serve as a lasting reminder of his contributions as Chief Judge. Thank you, Judge Gutierrez.

ANTITRUST IN AN AI WORLD: THE ROBOTS DID IT

(Continued from page 1)

- What if competitors unilaterally design a pricing algorithm to react in certain ways to changing market conditions, with the expectation that other competitors are developing and implementing similar algorithms?

- What if the competitors unilaterally design algorithms to maximize profit by monitoring supply, demand, costs and other market factors, and then the algorithms, learning through ongoing feedback, independently determine that profit is maximized by raising prices, signaling price changes and retaliating against a competitor's algorithm that undercuts the supracompetitive pricing?

- What if a dominant firm adopts an algorithm to produce exclusionary conduct, such as predatory pricing, inflated pricing and self-preferencing?

Barbara A. Reeves, Esq., is a mediator, arbitrator and special master with JAMS. She specializes in commercial cases, sports and entertainment law, intellectual property matters, health care business disputes and employment cases.

Algorithms and AI have revolutionized the way we make decisions, process information, and forecast the weather. Business models rely on self-learning, or generative, algorithms that learn from experimentation and the data they process to make decisions in nanoseconds. Online platforms in retail, air travel, concert tickets and other areas have been using pricing algorithms for years to adjust prices based on supply and demand, also known as dynamic pricing.

Generative AI is now enabling algorithms to take over marketplace roles previously played by humans, not only setting prices, but also responding to prices and distribution practices set in motion by other algorithms in the marketplace. Can algorithms learn to collude? Can they create an environment in which they predict each other's moves and strategies? And whom can you blame for the results if the programmer of the algorithms employed a neutral, profit-maximizing set of instructions? A competitor's unilateral efforts to maximize its profits is not, by itself, illegal.

Antitrust regulators are grappling with these issues. Spokespersons from the Antitrust Division of the DOJ and the FTC have pointed to cases in which pricing algorithms used by competitors lead to collusion in the marketplace, potentially resulting in higher prices or a reduction in competition, calling out the need to bring antitrust enforcement in line with market realities. https://www.justice.gov/opa/speech/principal-deputy-assistant-attorney-general-doha-mekki-antitrust-division-delivers-0. The DOJ and FTC have announced that they are hiring data scientists, computer scientists and economists to help them better understand and detect anticompetitive conduct by algorithms, and developing new guidance on the antitrust risks associated with algorithms.

On Nov. 2, the Federal Trade Commission released new details in its antitrust case against Amazon about Amazon's secret pricing algorithm, code-named "Project Nessie," which is alleged to have generated more than $1 billion in extra profits for the company. The FTC and 17 states sued Amazon in September, alleging the company was abusing its position in the marketplace to inflate prices on and off its platform, overcharge

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sellers and stifle competition. The FTC alleges that Amazon activated the algorithm to predict where it can. raise prices and have other online shopping sites follow suit, and to keep the higher prices in place once competitors followed suit. Nessie would automatically raise the prices of selected items and then monitor competitors to make sure Amazon was not being undercut.

Antitrust regulators and plaintiffs' attorneys are studying these developments. The tools exist to "read" algorithms being used by businesses under investigation.

With this background, counsel will need to be prepared to advise clients about potential liability. To what extent will liability be imputed to the person who created the algorithm? To what extent is the algorithm acting as programmed, and to what extent is the algorithm acting on its iterative learning? Programming an algorithm not to fix prices may seem simple, but as the algorithm learns, it may program itself to act in ways that resemble collusion or predatory responses.

We don't know exactly how AI and pricing algorithms will evolve, but at this point, counsel should be advising clients on measures to avoid antitrust risk, including monitoring their algorithms to understand how they function and training their IT teams on the antitrust implications of the algorithms they create. Pricing algorithms should be based on objective factors, such as cost, supply and demand, and firms should document that the pricing decisions are made independently, not through cooperation with competitors. Finally, algorithms must be monitored as they change in order to address and mitigate antitrust risks as they occur.

A company that is alleged to have used an algorithm to engage in anticompetitive conduct may find itself raising the following defense: The robots did it!

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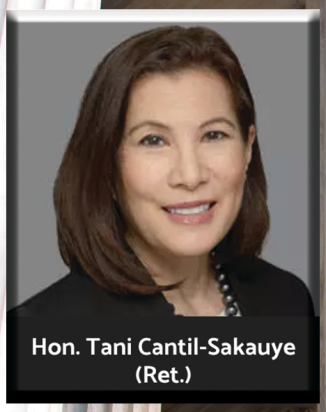
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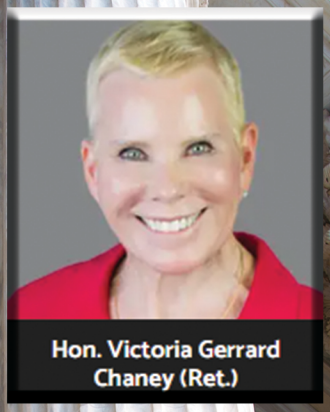
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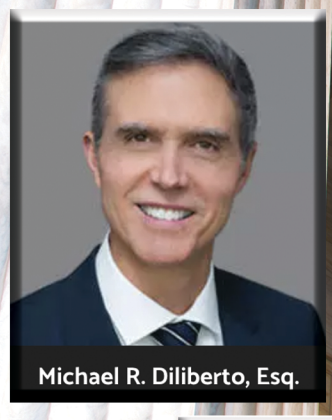
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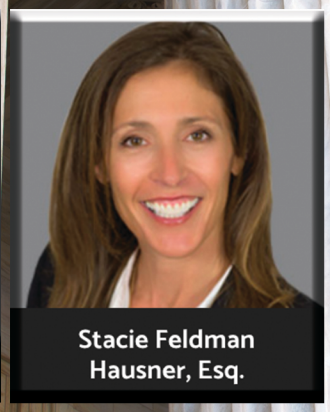
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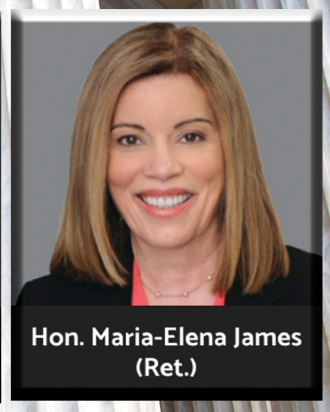
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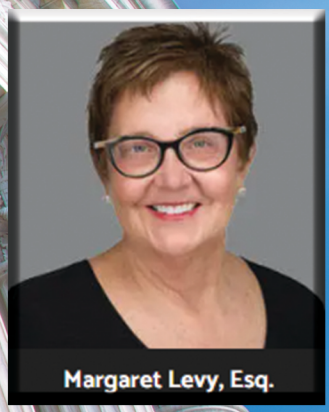
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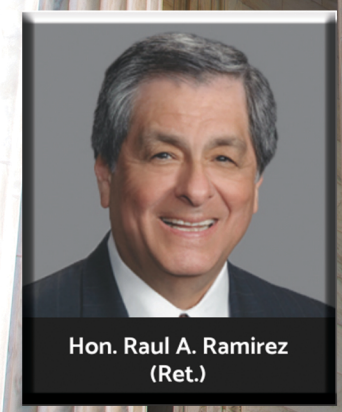
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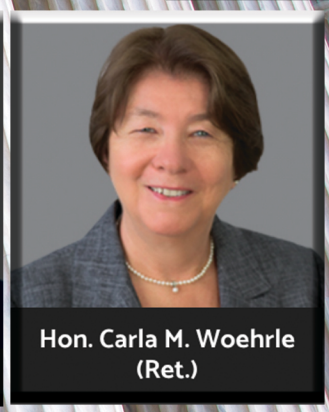
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NAVIGATING PATENT CASES IN THE CENTRAL DISTRICT POST-PATENT PROGRAM

By: Nancy M. Olson, Partner, Olson Stein LLP

In April 2024, practitioners and judges in the Central District of California were greeted by a new reality: a court without a Patent Program. Since September 2011, when the Court began participating in the inaugural Patent Pilot Program, judges who received a patent case assignment could return the case for reassignment to a Patent Program judge. The program was popular among participating and non-participating judges (and law clerks) and practitioners alike. Indeed, last year the six Patent Program judges received approximately 70% of all patent cases filed in the district. Further, the seven magistrate judges participating in the corresponding Magistrate Judge Patent Program handled all magistrate judge duties in those cases. Although the Court made its Patent Program permanent in 2021, funding constraints have necessitated the end of the program. The Court announced in October 2023 that the Patent Program would end on March 30, 2024. What does this mean for practitioners and judges?

For starters, over the past twelve+ years, sixteen new district judges and seventeen new magistrate judges have taken the bench. Since the Patent Program handled more than two-thirds of all patent cases in the district, with this many new bench officers, practitioners should consider the likelihood that a newly filed patent case may be assigned to a district and magistrate judge who have never handled this type of case. This is no cause for alarm. The Court has an unwavering reputation for its high-caliber bench officers, each of whom is more than capable of handling patent cases. It is, however, cause for considering best practices.

What if I am assigned to a new judge with no patent experience?

As with any complex case in federal court, you should approach the litigation by making every effort to assist the Court with effectuating a just, speedy, and inexpensive resolution. Fed. R. Civ. P. 1. This means working cooperatively with opposing counsel to provide helpful information to the Court, including by proposing how the case should proceed and why that may be different in some respects from a non-patent case.

For example, a judge who is handling their first patent case may be unfamiliar with the concept of patent local rules. As appropriate to the case, counsel should confer and attempt to agree on a set of rules to streamline the litigation. As one option, Judge Kronstadt has Standing Patent Rules as part of his Civil Standing Order (Exhibit B), which were modeled on now-retired Judge Guilford's original rules. As another option, parties often agree to abide by the Northern District of California's Patent Local Rules.

Nancy M. Olson is a Partner at Olson Stein LLP where she practices IP and other complex litigation in federal court. She also serves as a special master and technical advisor in patent cases in the Central District of California. Before co-founding Olson Stein LLP, she served as a law clerk to the Patent Program for three years. Earlier in her career, she served as an AUSA, worked in private practice, and clerked for district and circuit judges.

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NAVIGATING PATENT CASES IN THE CENTRAL DISTRICT POST-PATENT PROGRAM

(Continued from page 11)

In their Joint Rule 26(f) Report and at the scheduling conference, counsel should be prepared to explain the need for and practical consequences of adopting such rules. Indeed, both the joint report and scheduling conference (if one is held) present early opportunities for counsel to demonstrate that they stand ready to assist the Court in this new area of law. Counsel should use these opportunities wisely.

Before making a scheduling and rules proposal to the Court, counsel should familiarize themselves with patent-specific scheduling and motion procedures employed by former Patent Program judges because non-program judges may find it helpful and persuasive to know how their patent-experienced colleagues have addressed these issues.

How should I approach Markman proceedings?
Most judges, including several former Patent Program judges, and law clerks do not have a technical background. And after the program ends, the Patent Program law clerk position will also be phased out. Thus, whether you have a former Patent Program judge or a non-patent judge, counsel should look for opportunities to teach the Court about the relevant technology. For starters, if your judge does not have a standing procedure for conducting a technology tutorial, or at a minimum submitting technology tutorial materials (e.g., slides, video), propose one. Some judges opt to hold tutorials on Saturday mornings to avoid their congested weekly calendars, so be prepared to be flexible in your proposal. If your case goes to trial, you will have to teach the jury about the technology, so use the tutorial as an opportunity to hone your teaching skills and refine the way you explain complex concepts before the judge and law clerks.

When you have an opportunity to conduct a tutorial (or submit materials), use that opportunity effectively. The best use of tutorial time is to teach the judge about the technology, not to preview or pivot to claim construction arguments. Too many times counsel waste a good teaching opportunity by jumping the gun on claim construction and having a shadow Markman hearing rather than a real tech tutorial. If it's not apparent from the order setting a tech tutorial, ask the Courtroom Deputy Clerk if he or she can provide guidance on what would be most helpful to the Court (e.g., should expert witnesses be on hand to answer questions, are slides desired). Pay special attention to what the Court says will be helpful. For example, tutorials are typically more informal than regular Court proceedings, so don't assume you should put a witness (e.g., expert, inventor) on the stand; this creates an overly formal proceeding, wastes the Court's time, and probably cause a few pairs of eyes to glaze over in the process.

Think about what illustrative physical materials and demonstratives will advance your teaching points; bring physical 3-D models and/or commercial embodiments where available. For any printed materials, be sure to have enough copies for the judge and law clerk(s) as well as opposing counsel.

In preparation for the Markman process, use the meet and confer process surrounding the Joint Claim Construction and Prehearing Statement (JCCPS) to your benefit and the benefit of the Court. Again, suggest this useful process in connection with the scheduling conference if your judge hasn't used it before. During the JCCPS process, counsel should narrow the claim terms subject to meaningful dispute and avoid hiding the ball as to infringement/invalidity theories. Counsel should also avoid raising inconsequential disputes to fill up the permitted number of disputed terms (usually ten). Don't bury the real dispute behind unarticulated "plain and ordinary meaning" or "indefiniteness" arguments because doing so can result in lurking claim construction issues that will come back to haunt you later (e.g., at summary judgment or trial). Or worse, ignoring the real issues may lead to a finding of waiver.

When it's time for the Markman briefing and hearing, provide a helpful overview of how the Court should approach its task of claim construction.

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NAVIGATING PATENT CASES IN THE CENTRAL DISTRICT POST-PATENT PROGRAM

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For example, it may be helpful to provide a checklist of fundamental claim construction principles identified by the Federal Circuit. See, e.g., Phillips v. AWH Corp., 415 F.3d 1303, 1324 (Fed. Cir. 2005) (en banc) (understanding the concept of a POSA, how a POSA reads claim terms, relevance of specification, hierarchy of intrinsic and extrinsic evidence, etc.). As relevant to the claim limitation disputes in your case, counsel may also need to provide other specific legal guidance (e.g., disclaimer, claim differentiation, means + function claims).

A word of caution: even if a judge may be relatively new to the Markman process, counsel should avoid overstating their claim construction positions because, as always, the Court's claim construction is subject to review by the Federal Circuit, a court chalk full of patent specialists.

How should I approach discovery motions?
As with any discovery motion, check the magistrate judge's procedures, which vary. If the judge begins with an informal conference, be prepared to succinctly explain what you are asking for and why you need it (i.e., why is it relevant and proportional to the needs of the case). See Fed. R. Civ. P. 26(b). For patent specific issues—e.g., infringement/invalidity contentions; prior art-related disputes; the hypothetical negotiation; noninfringing alternatives; convoyed sales; and the list goes on—be prepared to educate the judge on your patent-specific concept and how it fits into the general civil discovery framework. Although you may need to provide some technical background to properly illustrate relevance and/or proportionality, don't get lost in the weeds. Magistrate judges are well-versed in resolving discovery motions and will want to get to the heart of the dispute and find a practical solution.

If you believe your case will involve a high volume of discovery motions, or otherwise generate a disproportionate amount of other work for the Court, consider proposing that the Court appoint a special master. For example, a special master may be appointed to oversee discovery (like the function of a magistrate judge where orders are appealable to the district judge); act as a technical advisor during Markman or other proceedings (like the function of a technical law clerk submitting a draft order, or a magistrate judge submitting a report and recommendation to the district judge); or otherwise assist the Court as needed. Patent cases can be voluminous and complex and if the matters presented in your case "cannot be effectively and timely addressed by an available district judge or magistrate judge of the district," Fed. R. Civ. P. 53(a)(1)(C), employing a special master will help alleviate some of the burden on the Court and assist with streamlining resolution of motions and other disputes in your case, which often saves resources in the long run.

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The Court may be particularly inclined to make such an appointment if counsel's apparent refusal to work cooperatively and streamline disputes becomes unwieldy.

How should I approach summary judgment?
A common pitfall in patent motions for summary judgment is that both sides seek summary judgment on too many issues, many of which present clear disputes of material fact. Before filing your motion, consider your strongest summary judgment issues and ask the Court to consider only those on which you stand a reasonable chance of prevailing. Doing this will streamline the motion for the Court and reduce the number of patent-specific areas with which the judge must become familiar to resolve the motion. This is good advice in any civil case, but following it in patent cases will allow your judge to focus on the real issues if they are relatively new to the patent arena.

Another way to streamline common patent related summary judgment issues is to confer with opposing counsel and determine whether some issues will be subject to cross-motions. (You should be doing this anyway to comply with Local Rule 7-3.) If there are cross-motions for, e.g., infringement and non-infringement, agree on a proposal that will allow the Court to consider one full set of briefs and statements of undisputed facts / genuine disputed facts. This will reduce the amount of paper the Court must sift through and ideally crystalize any real factual disputes (or lack thereof) on parallel issues.

The advice relating to summary judgment motions applies to Daubert motions, too. Resolving Daubert motions at the summary judgment stage is a better use of Court and party resources because it allows the Court to provide clear guidance under Rule 702 and in turn will allow the parties to craft permissible trial presentations.

How should I approach pretrial and trial?
Motions in Limine. Rather than filing patent-adjacent cookie-cutter motions in limine, e.g., a motion to preclude defendant from referring to plaintiff as a patent troll, spend your time homing in on real, substantive issues for trial and present them with the same care you would at the Markman or summary judgment stage. This will allow you to focus on the merits of your trial presentation and not waste the Court and jury's time mid-trial. Provide enough underlying technological background to educate the Court on the dispute and provide clear authority for your request. Don't file belated or do-over motions for summary judgment disguised as motions in limine.

Exhibits. Effectively meet and confer on exhibits and agree to pre-admit the bulk of what both sides will introduce. Asking the Court to pore over hundreds of exhibit disputes is strongly disfavored and most judges will order you back to the drawing board to present critical disputes in a more manageable way. If you can be reasonable and cooperative form the beginning it can save vast judicial and party resources.

Jury Instructions. Because judges in this district are accustomed to using Ninth Circuit Model Jury Instructions in most civil cases, when it comes to identifying patent-specific jury instructions, you should plan to spend more time carefully proposing any instructions that are warranted by the facts of your case. Most former Patent Program judges have relied on a combination of the Federal Circuit Bar Association's Model Patent Jury Instructions and the Northern District of California's Model Patent Jury Instructions. Both sources provide an excellent starting point for identifying necessary patent-specific instructions. If you plan to request an instruction about something for which no model exists, allow ample time to present your request to the Court and provide adequate legal support for the request.

Trial. Carefully consider how you will explain complex technical concepts to the jury in opening statements, and make sure it's consistent with what you've told the Court at the Markman and summary judgment stages.

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If you've done a good job of explaining the technology throughout the case, it is more likely the Court will allow you to make your trial presentation in the way you propose. Don't attempt to backdoor in new infringement or invalidity positions, especially through your experts. If you see the other side doing this, be prepared with record citations to earlier relevant rulings (e.g., summary judgment, Daubert, MIL rulings) to delineate how the new line of questioning exceeds the bounds of a prior order or disclosure. Prepare your experts to teach the lay jury about the relevant technology in a straightforward way, which may be even more basic than how you presented the issues in earlier proceedings (e.g., Markman and summary judgment). Use easy-to-understand demonstratives during opening statement and closing argument and with your experts to help explain complex concepts and keep the jury's attention. Be sure to meet and confer about your demonstratives as required by the judge's procedures so you aren't left empty handed unexpectedly during trial.

Conclusion

Although the end of the Patent Program will change the way patent cases are assigned in this district and will likely lead to a transition period among the bench and bar, at the end of the day, a patent case is just another civil case. Your patent case will be in good hands with any bench officer in this district. Nonetheless, you can make both your life and the Court's life easier if you strive to work cooperatively with opposing counsel from the beginning with an eye toward educating the Court on technical, procedural, and substantive issues unique to patent law generally and your case specifically. This will help crystallize the key disputes and lead to more just, speedy, and inexpensive resolutions.

Central District Annual Bar Membership Renewal Fee

On May 28, 2020, the United States District Court for the Central District of California issued General Order No. 20-07, which instituted an annual renewal fee of $25 for all members of this Court's Bar. See General Order No. 20-07, available at www.cacd.uscourts.gov/court-procedures/general-orders. You can pay your fee online at: https://apps.cacd.uscourts.gov/registration/Home/BarRenewal

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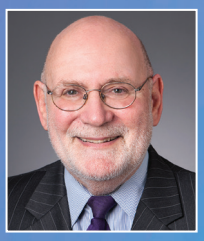

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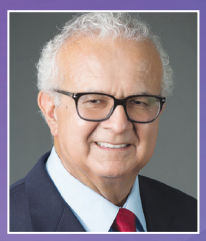

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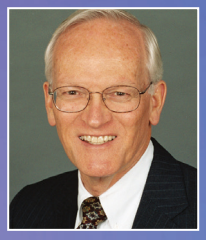
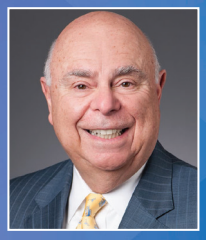


Hon. Gary L. Taylor (Ret.)



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Hon. James Ware (Ret.)

FBA-LA EVENTS RECAP: THE EXCITING WORLD OF FEDERAL PRACTICE

Since the publication of our last newsletter, the Los Angeles Chapter of the Federal Bar Association ("FBA-LA") has organized a number of successful events. This article highlights six of these events: the Annual Supreme Court Review, Meet the Enforcers panel, the State of the Circuit/District, Trends in Antitrust Enforcement panel, and Understanding the Nuances of the Attorney-Client Privilege and Work Product Doctrine panel. FBA-LA would like to thank all of the federal practitioners that organized and participated in its events.

Annual Supreme Court Review

On October 5, 2023, FBA-LA held its annual United States Supreme Court Review. Dean and Jesse H. Choper Distinguished Professor of Law Erwin Chemerinsky shared his insights into cases decided during the Supreme Court's October 2022 Term. FBA-LA members joined Dean Chemerinsky in a packed conference room at the DoubleTree Hotel in downtown Los Angeles for the event. Prior to Dean Chemerinsky's presentation, Honorable Wesley L. Hsu swore in FBA-LA's Officers for the 2024 term: Brittany Rogers, FBA-LA President; Jeff Koncious, FBA-LA President-Elect; Erin Murphy, FBA-LA Treasurer; and Amy Jane Longo, FBA-LA Secretary.

During his nearly 40-minute presentation, Dean Chemerinsky walked those in attendance through the notable decisions of the term. In doing so, Dean Chemerinsky hit on a number of legal issues including affirmative action, civil rights, the Confrontation Clause, the First Amendment, elections, and the state's challenge of executive power. Dean Chemerinsky also discussed topics and themes for the coming term, highlighting cases focused on social media and noting that the coming term would give practitioners a sense of how far the Court was willing to go with its originalism theory of interpretation. Dean Chemerinsky then capped off his presentation on a positive note, telling those in attendance that "it's a really amazing time in the United States."

Brittany Rogers addresses those in attendance after being sworn in as FBA-LA President.

Dean Erwin Chemerinsky shares his insights into cases decided during the Supreme Court's October 2022 Term.

The Honorable Wesley L. Hsu swears in FBA-LA Officers during the United States Supreme Court Review. Pictured from right to left: Sandhya Ramadas Kogge (FBA-LA Past President), the Honorable Wesley L. Hsu, Brittany Rogers (FBA-LA President), Jeff Koncious (FBA-LA President-Elect), Erin Murphy (FBA-LA Treasurer), and Amy Jane Longo (FBA-LA Secretary).

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FBA-LA EVENTS RECAP: THE EXCITING WORLD OF FEDERAL PRACTICE

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Meet the Enforcers Panel

On March 28, 2024, the Los Angeles Chapter of the Federal Bar Association hosted a "Meet the Enforcers" panel discussion at the Roybal Federal Building and United States Courthouse in Los Angeles. The panel featured the leaders of several enforcement agencies with offices in California, including Gary Y. Leung, Associate Director, Securities and Exchange Commission's Los Angeles Regional Office; Jina Choi, Chief of the Corporate and Securities Fraud Section at U.S. Attorney's Office for the Northern District of California; William Ryan, Chief Counsel of the Division of Enforcement and Investigations of the Public Company Accounting Oversight Board (PCAOB); and Mack Jenkins, Chief of the Criminal Division at the U.S. Attorney's Office for the Central District of California. The panel was artfully moderated by Tom O'Brien, a shareholder at Greenberg Traurig and former United States Attorney for the Central District of California, who kept the discussion lively and entertaining.

The panelists principally discussed their agencies' enforcement priorities. On the criminal side, Mack Jenkins (USAO C.D. Cal.) discussed his office's renewed focus on corporate crime and market manipulation, highlighting the office's newly created Corporate and Securities Fraud Strike Force (CSFSF), while also noting that CSFSF is not the only section in the office bringing corporate prosecutions, noting that the office's Environmental Crimes and Consumer Protection Section has recently pursued consumer protection prosecutions against various companies. Jina Choi (USAO N.D. Cal.) explained that due to the office's location in the northern California, her office focuses significant attention on fraud committed by companies and start-ups in Silicon Valley, noting that her office has recently been more aggressive about bringing charges against companies for pre-IPO investment scams; she also discussed her office's commitment to combating fentanyl, highlighting a new fast-track program aimed at increasing the volume of the office's fentanyl prosecutions. Speaking for the Securities and Exchange Commission, Gary Leung discussed how his agency acts both as a regulator and an enforcer, but noted that it has broad enforcement priorities ranging from investment fraud to books and records violations to insider trading. He explained that his agency has a cooperative relationship both with the U.S. Attorney's Office and the PCAOB. As to the PCAOB, William Ryan explained that his lesser known organization was created by the Sarbanes-Oxley Act to protect investors by providing oversight of the auditors of U.S. public companies. He noted that all PCAOB investigations and disciplinary proceedings are confidential and nonpublic and that any sanction imposed is stayed until and unless the SEC lifts the stay.

In addition to enforcement priorities, the panelists discussed best practices for interacting with their agencies, including the importance of voluntary self-reporting, as well as agency whistleblower programs, including DOJ's recently announced whistleblower reward program and the SEC's highly successful whistleblower program that likely served as a model for DOJ's new program. The event was fun, informative, and well-attended. Thank you to Doug Miller, Robert Quigley, and Magistrate Judge Michael Wilner for planning the event, and thank you to the Orange County Chapter of the Federal Bar Association, Langston Bar Association, and the FBA of the Northern District of California for co-sponsoring the event.

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FBA-LA EVENTS RECAP: THE EXCITING WORLD OF FEDERAL PRACTICE

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FBA-LA members listen attentively as leaders of several enforcement agencies discussed their agencies' enforcement priorities during the "Meet the Enforcers" panel.

State of the Circuit/District

April 10, 2024, FBA-LA held its annual State of the Circuit/District. The event included remarks from FBA-LA President Brittany Rogers and featured Chief Judge Mary H. Murguia, United States Court of Appeals for the Ninth Circuit, Chief Judge Dolly M. Gee, United States District Court, Chief Magistrate Judge Karen L. Stevenson, United States District Court, and Chief Judge Theodor C. Albert, United States Bankruptcy Court. The event was highlighted by a beautiful tribute to the late Judge Ronald S.W. Lew.

FBA-LA Board Member, Patricia Kinaga, provides a glowing tribute to the late Judge Ronald S.W. Lew while Judge Lew's family was in attendance.

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FBA-LA EVENTS RECAP: THE EXCITING WORLD OF FEDERAL PRACTICE

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Trends in Antitrust Enforcement Panel

On April 23, 2024, Judicate West hosed FBA-LA's "Trends in Antitrust Enforcement" panel. Leslie Wulff, Chief of the San Francisco Office of DOJ's Antitrust Division, Catherine Simonsen, Assistant Director of the Western Region Competition Group, and Matt Accornero, Assistant General Counsel, Antitrust at the Walt Disney Company shared their perspectives on recent trends in antitrust law enforcement. The panel was brilliantly moderated by Amy Brantly, Partner at Kesselman, Brantly, Stockinger LLP. The panelists discussed DOJ and FTC antitrust enforcement priorities and recent civil and criminal matters; the in-house perspective on the current antitrust landscape; the merger review process under the 2023 Merger Guidelines; proposed changes to the Hart-Scott-Rodino premerger notification rules and forms, and their practical impact for business; and the revitalized popular interest in antitrust. A big thank you to FBA-LA sponsor, Judicate West, for hosting this event at their beautiful offices.

Understanding the Nuances of the Attorney-Client Privilege and Work Product Doctrine Panel

On May 9, 2023, FBA-LA members attended the "Understanding the Nuances of the Attorney-Client Privilege and Work Product Doctrine" panel at Crowell & Moring LLP's offices in downtown Los Angeles. The all-star panel consisted of the Honorable Patricia Donahue, U.S. Magistrate Judge, Assistant United States Attorney Lindsey Greer Dotson, Chief of the Public Corruption and Civil Rights Section, and Carolyn Small, Special Counsel at Jenner & Block. The panel was moderated by Agustin Orozco, Partner at Crowell & Moring LLP. The panel discussion explored the multifaceted dimensions of the attorney-client privilege and work product doctrine, focusing on their critical roles and limitations. The panel also discussed how the privilege and doctrine apply in various scenarios, including in the joint defense context and when dealing with third parties--such as external auditors. Thank you to Christine Adams, Partner at Adams, Duerk & Kamenstein, for planning the event and Crowell & Moring for hosting.

FBA-LA members join panelists AUSA Greer Dotson, Judge Patricia Donahue, and defense attorney Carolyn Small along with moderator Agustin Orozco in a lively discussion about the attorney-client privilege and work product doctrine.