

WHAT'S INSIDE

PATENT

- 6 Analysis: Allergan ruling casts doubt on tribal patent strategy
Allergan v. Teva Pharmaceuticals USA (E.D. Tex.)
- 7 Owens Corning's appeal blows roof off PTAB nonobviousness ruling
Owens Corning v. Fast Felt Corp. (Fed. Cir.)
- 8 Federal Circuit says patent for plane bathroom design invalid
B/E Aerospace v. C&D Zodiac (Fed. Cir.)
- 9 Golf equipment retailer comes up short on bid for coverage in patent dispute
WAWGD Inc. v. Sentinel Insurance Co. (S.D. Cal.)

COPYRIGHT

- 10 Ripoff Report escapes copyright, defamation appeal over lawyer review posts
Small Justice v. Xcentric Ventures (1st Cir.)
- 11 Fox hit with lawsuit over use of Muhammad Ali in Super Bowl promo
Muhammad Ali Enterprises v. Fox Broadcasting Co. (N.D. Ill.)

TRADEMARK

- 12 No IP coverage for dispute over 'Land's End' trademark
Land's End at Sunset Beach Community Ass'n v. Aspen Specialty Insurance Co. (M.D. Fla.)
- 13 Sanofi wins domains from 'bad faith' registrants
Sanofi v. Goecke (WIPO Arb.)

EXPERT INTERVIEW

Q&A: International trade expert Brian Pomper on the NAFTA negotiations and IP enforcement in U.S. trade agendas

Akin Gump Strauss Hauer & Feld attorney Brian Pomper answers some questions about the NAFTA negotiations, the agreement's impact on intellectual property rights and President Donald Trump's views on international trade.

Thomson Reuters: President Trump has called the North American Free Trade Agreement a "disaster." For intellectual property enforcement, was he right?

Brian Pomper: It is important to remember that NAFTA was negotiated in 1992, even before the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights. NAFTA's IP chapter was monumental at the time and had an invaluable role in highlighting the importance of IP in the trading system. NAFTA's IP chapter has served as a model for trade agreements since it was established. But NAFTA is now over 20 years old, and the global economy has gone through whirlwind changes during that time, both through the development of the digital economy and through an evolution of the global trading system. So while NAFTA has served a valuable purpose, it is in need of modernization.



REUTERS/Jonathan Ernst
President Donald Trump meets with Canada's Prime Minister Justin Trudeau on Oct. 11 to negotiate the modernization of NAFTA.

CONTINUED ON PAGE 15

EXPERT ANALYSIS

Alternative facts on patent-eligibility from the Electronic Frontier Foundation

McDonnell Boehnen Hulbert & Berghoff attorney Michael S. Borella describes the impact of the U.S. Supreme Court's patent eligibility test and critiques a patent reform advocate's stance on the current standard.

SEE PAGE 3



Q&A

CONTINUED FROM PAGE 1

TR: The fourth round of NAFTA talks just completed. What was accomplished, if anything?

BP: The first four rounds of the NAFTA talks were important in establishing the positions of the negotiating parties. At this time, each party's opening positions are now set and a large portion of the text tabled. These are meaningful developments, but the hard work starts from here. The parties must now go through the difficult task of finding a way to reach a consensus on issues where each country may hold vastly different views and divergent positions

TR: Why have the participating countries been renegotiating?

BP: The Trump administration called for the modernization talks because it felt that NAFTA was exacerbating the U.S. trade deficit and harming heavy industries. While the talks were launched under the initiative of the United States, Canada and Mexico were quick to agree that NAFTA could be updated. Given the consensus on the utility of modernization, the new NAFTA should focus not only on commodity goods but also on fostering growth in creative and innovation industries.

TR: How much have the renegotiations centered on IP?

BP: The negotiations have covered the waterfront of issues, including IP. But if the aim of the talks is to "modernize" the agreement, IP should be central to the discussion. The parties should take advantage of this unprecedented opportunity to strengthen IP protection, include provisions to ensure that creativity and innovation are appropriately valued, and otherwise create a trading environment that fosters creativity and innovation. In light of the magnitude of growth in creative industries, this is an area where all three countries could achieve a win-win-win situation.

TR: You say Canada refused America's proposals earlier in the negotiations. Did the latest round resolve this?

BP: These negotiations will continue to be a process where the parties work together to reach consensus on difficult issues. The latest round brings us closer to a resolution as the positions of each of the parties are now clearer. The parties will now have to work towards reaching a consensus in light of these positions.

TR: Some have considered NAFTA a job killer. Is this true with respect to IP?

BP: On the contrary, NAFTA has played a significant role in improving IP protection in

North America, which has led to the creation of a robust IP industry. However, the world has changed since NAFTA was negotiated, and NAFTA should be modernized in order to continue fostering growth in creative and innovative industries in today's global economy.

TR: How might NAFTA be shaped to help combat counterfeiting, piracy and other forms of IP theft?

BP: Developments in e-commerce and the internet have created new challenges for the protection and enforcement of IP protection. NAFTA should be updated to encourage better disciplines in the digital economy, strengthen enforcement capabilities of local authorities and ensure that counterfeiters are not able to use technology to evade enforcement. Action for Trade works with stakeholders in the creative and innovation industries to identify these issues and to propose concrete and workable solutions to help combat illegal and harmful actions that devalue IP rights of inventors and innovators and ensure that creativity and innovation are appropriately valued.

TR: How can NAFTA help the creative industries, both in the U.S. and abroad?

BP: Today, economies around the world are more interconnected than ever. By ensuring robust IP protection that rewards innovation and creativity, NAFTA will not only enhance the competitiveness of U.S. creative and innovative industries within North America, but will also serve as a model for trade agreements and IP regimes around the world, fostering a global trading environment that encourages growth in creative and innovation industries. **WJ**

(Reporting by Patrick H.J. Hughes)



Brian Pomper is the executive director of **Action for Trade**, a coalition of trade associations and businesses dedicated to shaping U.S. trade policy. He has previously served as chief international trade counsel to Senate Finance Committee Chairman Max Baucus and is currently a partner at **Akin Gump Strauss Hauer & Feld** in Washington. He is also a member of the U.S. patent bar.