

# THE OPINION



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# THE OPINION

December Issue 2009

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## PLEASE NOTE:

The views expressed in articles and essays do not necessarily reflect the opinions of staff, contributors, editors, or the William Mitchell College of Law.

# IP INSTITUTE FILES AN AMICUS BRIEF IN FEDERAL COURT... FOR THE 6TH TIME

BY: MIKE VOGEL

Late afternoon, on November 19th, was a hectic time for Professor Carl Moy, and several William Mitchell students. The second Amicus Brief of the fall semester had to be postmarked by that evening. This time it goes to the Federal Circuit in the case Ariad Pharmaceuticals v. Eli Lilly and Company, and will be the sixth Amicus Brief filed by William Mitchell's IP Institute. While waiting for everything to print, Professor Moy took some time to talk to The Opinion about the IP Institutes role in helping to develop Patent Law through Amicus Briefs, and its benefits to the students.

## THE AMICUS BRIEFS

Professor Moy and other students and professors in the IP Institute usually keep a close eye on developing patent cases, and which cases they would be interested in making their voices heard. A Federal Court gives the institute a call asking if they are interested in filing an Amicus Brief with the court. If Professor Moy says yes, he and a team of student research assistants have 30-45 days to research and write a brief. This is not a small order. The IP institute got the call about Ariad in October, and on November 19th, mailed out a 39 page brief (counting contents, table of sources and cover page).

This latest Brief supports the appellant/defendant Eli Lilly. At issue on appeal is whether or not the plaintiff's patent, over a biological process which has no current technological value, should be held valid. The Brief's position is that the patent should be invalidated, as granting a right that is far beyond the scope of the inventor's actual contribution to the art. It argues that since there is no guarantee, under our current system of interpreting patent claims, that the technological scope of the patent claim will have any relation to the technological specification of the actual invention, unless a policing system of rules are followed. The brief goes on as to how the current rules are violated with the patent at issue.

Professor Moy explained that there are a lot of advantages in giving an analysis when you file on behalf of an academic organization, as opposed to a party brief by a law firm. The largest advantage is the ability to be candid. If the Brief's position is for the court to reject a body of law, the courts are more willing to listen, because the IP Institute's goals are for the overall development of IP law, and not the service of a specific client. However, this doesn't mean that the IP Institute proposes radical changes in patent law left and right. Moy noted that the briefs tend to seek more of an incremental change in the law, reflecting how law, in reality, gets changed in our court system.

## ADVANTAGES TO STUDENTS

Professor Moy does not file these briefs on his own. At his side is a team of students helping with both the researching and writing of the Amicus Briefs, much to the student's long term advantage. First, student's gain research and writing experience on something that will actually get filed in a Federal Court.

Students who help with the briefs also tend to find their own name credited in the brief itself as research assistants. The Ariad brief alone credited 10 students with assisting. This is beyond the praise clerks of the judges who decide these cases receive, which is rarely any credit if at all.

This fact does not go unnoticed by employers. It's not uncommon for students who worked on these Amicus Briefs to go into an interview, and once the brief comes up, it's all the employer wants to talk about for the duration. The student becomes memorable by playing a part, and having closer knowledge, in important and fascinating cases.

Students who work on these briefs don't necessarily have to be work study research assistants, or come into law school with an urge to practice patent litigation, or have the required background for patent prosecution. Several students are volunteers, and just find the area of law interesting.

When asked for comment, Dean Eric Janus may have summed it up best: "Our IP Institute has produced several influential amicus briefs in important IP cases. Representing intense collaborative work by faculty and students, these briefs are an important part of the Mitchell educational experience, and serve an important function in the legal system." With opportunities to the school to shape current IP law, and to the students to help take part in that process, it's clear there's no stopping Mitchell's voice from getting heard.

# AROUND THE NEIGHBORHOOD:

## COFFEE BENE

BY: Mike “The Chocoholic” Vogel

Grand Avenue does have many little finds. Some are further than walking distance from Mitchell than a few others. If you’re willing to get in your car and drive from class, head just over a mile West of Snelling on Grand Avenue to Coffee Bene. This review comes after my second visit to the coffee shop.

I went on a Wednesday afternoon. It wasn’t that crowded. There were around 12 people there and two staffers working the front of the house. Table space was plentiful and it was relatively quiet. For a wintertime getaway for an hour, the coffeehouse is fully equipped with a fireplace and comfortable seats near it.

It was snowing outside, so I decided to forego the usual iced coffee evaluation, in favor of some nice hot chocolate. A 16oz hot chocolate went for \$2.59 before tax. The pastry selection was around what you would expect for a coffee shop that doesn’t particularly specialize in pastries. I got a chocolate chunk cookie for \$1.60 before tax.

The hot chocolate was rich and smooth, and packed with enough actual chocolate to be able to taste it. If you have a craving for hot chocolate, this may just be your place. \$2.59 is on par for a medium hot chocolate comparatively for other places, and this hit the spot. One nice touch also is that they heated up the cookie upon ordering, and it wasn’t dry and brittle, which you sometimes get at some coffee shops.

One of their rather exquisite pastry offerings is a large frosted brownie that runs around \$2.99. This brownie is chocolaty, massive and rich. It may be expensive, but it would satisfy a chocolate craving for 2 people easily.

My first visit to the coffee shop was on a Friday night, which is when the live music comes. On that night it was a very good blues musician. Their website’s calendar lists all the live performances. Most of them are on a Friday night.

Coffee Bene is located at 53 Cleveland Avenue South. There is an entrance to their parking lot from Grand Avenue, however, the lot is small and difficult to maneuver. Better parking can be found along the curb at Cleveland Avenue. Coffee Bene is attached to a Davanni’s pizza. In these situations, it would normally be a good idea to review both in one visit. However, I’m cheap, and The Opinion doesn’t pay for these reviews.

# God Officially Blesses America

## U.S. now God's Chosen Country

Responding to millions of requests over hundreds of years, God officially blessed the United States of America Wednesday.

Some expressed surprise that the creator of all the cosmos even took notice of Earth, a single planet among billions within its own galaxy, which galaxy itself is one among hundreds of billions in the universe, much less a single country that comprises less than 6.5% of the planet's total surface area.

Supreme Regulator T'vix'qPy of the Ykaklywyni Empire expressed outraged at the decision: "Our species has been asking for the boon of the Originator Absolute for thousands of millennia. We have conquered two-thirds of our galaxy in tribute. Trillions extol the Great One every dM'h'Tgy cycle. Why must we go disregarded?"

However, the Lord Almighty, graciously overlooking the blasphemy of ever questioning His Divine Will, responded: "IN MY INFINITE WISDOM, I FIND IT FITTING THAT AMERICA, WITH ITS OPULENT MEGACHURCHES AND LIP-SERVING PUBLIC FIGURES, RECEIVE MY BLESSING. DOTH SAITH I."

While the cosmic impact was negligible, the local effects on Earth were extreme when the blessing came into effect. Several hundreds of scientists across the nation simultaneously deciphered formulae for numerous new processes, including one for producing limitless energy from garbage and other waste, and one for creating matter from energy.

With the addition of these new processes as well as the plethora of funds to be generated through their licensing worldwide (patent pending), America's economy and international standing has surged.

Poverty has been eliminated within the borders of the U.S. thanks to the limitless energy and resources it

can now produce. Crime has also disappeared, because Americans now have a strong aversion to hurting other Americans. Disease is now unknown, as every U.S. citizen and legal resident is inexplicably immune to all injury and infection.

Air, water, and ground pollution within the borders of the U.S. has been miraculously eliminated. Scientists have also reported an invisible thermal bubble that seems to be insulating America from the environmental and meteorological effects of global warming.

Members of the United States Military have become impervious to physical harm. They have also gained the ability to fly and shoot lasers from their eyes.

These newfound powers never saw any action, though, since all of America's self-proclaimed enemies suddenly realized the errors of their ways and are all currently seeking U.S. citizenship. There is now also an invisible force field around America that automatically senses and neutralizes threats.

Some commentators have noted irony in that the benefits the blessing of God has bestowed upon America eliminated any reason for Americans to ask for God's assistance, a notion worrying to some religious leaders.

The Almighty, of course, put that concern to rest: "AMERICANS SHALL ALWAYS SING PRAISES TO MY HOLY NAME, LEST THEIR HEAVENLY GIFTS BE REVOKED."

# RIAA TO STOP SEEKING MONETARY DAMAGES FROM INDIVIDUALS ILLEGALLY DOWNLOADING

ORGANIZATION TO START SEEKING ETERNAL SOULS INSTEAD

By: Shmuck MacCallister

In a press conference last Friday, a spokesperson for the RIAA announced: “The RIAA will no longer seek monetary damages against individuals for illegally downloading a song. We are proud to announce that we will be seeking the offender’s eternal soul.” The spokesperson continued, “no longer will we be asking for five-to six-figure sums against individuals in an arduous lawsuit for downloading a single song, which could potentially ruin their lives, when we could be doing so much more: ruin their eternity.”

The RIAA outlined a two-part plan for implementing this new initiative. For states that have not adopted the Uniform Electronic Trade Act (UETA), attorneys for the RIAA will simply create an action in equity asking the judge to bind the defendant’s soul to the RIAA.

For states that have adopted the UETA, a new provision has been added allowing the RIAA to reach into the downloader’s computer, and steal their soul directly from their Facebook page. This is on top of the already existing provision allowing the RIAA to send a moderate electric shock to any computer user who has a positive thought about KaZaa.

Problems have been reported in implementing this new policy. On Tuesday, discovery began on the RIAA’s case against 43 year old Jonathan Davis. Documents being submitted to public record revealed that Davis had already bound his soul to Ticketmaster, so he could get Taylor Swift concert seats for his kids. The RIAA now seeks a licensing deal with Ticketmaster where they can retain joint possession of Davis’s soul.

The RIAA has also faced similar issues in wielding this policy against certain defendants. Three actions in equity this past week were instigated in Minnesota against two CPA’s and a Vice President of Marketing. The cases were joined, but the judge was eventually forced to dismiss due to the defendants, in the judges words: “...not being equipped with item requested by the RIAA.”

When asked what the RIAA plans on doing with these souls, the spokesperson stated, “Well, we unfortunately find ourselves in a lot of litigation requiring heavy discovery. We need to amass a small army to sift through the boxes and boxes of documents looking for useful evidence.” Examining responses to document requests in complex litigation was generally left to prisoners of war, until being banned by the Geneva Convention.

The RIAA spokesperson further commented, “We are especially excited that people can see this new initiative, and no longer see us an entity that’s taking away their life’s savings for downloading the latest Jonas Brother’s track. We don’t want their money, we just want their souls.”

# WRAP:

## THE MISSING FACTS FROM THE FAMOUS JOHN KELLEY CASE

By Stuart Stendahl

Okay, final drafts of the Kelley Memorandum have been submitted through TWEN, and the WMCL 1L's have once again wracked their brains over 25 points, trying to come up with the best legal advice to give John Kelley, the well-known farmer from WRAP lore.

You see, the Gardners from across the street were threatening to sue for trespass and/or nuisance if John Kelley killed anymore of their wildflowers because his pesticide supposedly wafted onto their property, which was consistent with the Bradley holding that dealt with particulate matter.

Remember the facts? Well that was only half of the story. The Opinion has been granted exclusive permission to share the real heart of the conflict. Here it goes:

You see, John Kelley and the Gardner's history goes back much further than when the Gardners rented their new home two years ago. Mrs. Gardner was actually John Kelley's disgruntled daughter who ran away with the farmhand, Mr. Gardner, many years ago only to return to claim what was rightfully hers/theirs.

Mr. Gardner had been an itinerant traveler through town when his car broke down and he went to the Kelley Farmhouse asking for help. John Kelley told Mr. Gardner he could stay in the barn under two conditions: (1) That in the morning he feed the pigs and chickens; and (2) Not touch his daughter. So the story goes...

Mrs. Gardner wanted the farm all to herself to open a hippotherapy riding clinic for the handicapped. However, John Kelley had verbally promised the oldest son, Clem, the farm when he retired. But John Kelley could not retire, because the farm was double mortgaged to the hilt stemming from his own gambling debts at the local Big Ben Resort and Casino.

(By the way, John Kelley still has not paid any of the 1L's for their legal advice yet, hmmm?)

This is why he used the pesticide to increase his yield – he had to. It wasn't because all of the other farmers were now using it so Kelley had to remain competitive. That was just a cover up.

Mrs. Gardner has enlisted Hamline law School to research the Minnesota laws of intestate succession to see if she can get her share now or wait until Kelley kicks the bucket and contest the will if there is one. Mr. Gardner attended an employment law clinic to see if he can put in a claim under the Fair Labor Standards Act (FLSA) for not ever getting paid for his farm labor.

So the story goes...Now with the new facts uncovered, how does this change the legal analysis?

# 5 WAYS TO CUT COSTS

BY: JEREMY BYELLIN

During these tough economic times, we all could stand to save a few bucks. Here are five easy ways to cut costs:

1. We all know how much the cost of textbooks can add up to each semester. Instead of buying them from the bookstore or online, just find an unattended table in the library or cafeteria with the book you need.
2. Instead of paying for a garbage collection service, just burn your garbage in your yard or fireplace. It's also a great way to save money on your heating bill.
3. Groceries are expensive. Here's a helpful tip: stores won't charge you for merchandise if they don't see you leave with it.
4. Instead of paying for your own cell phone plan, just ask a friend or random stranger to borrow their phone to make a call. How often does someone say "no"?
5. Did you know that the national average indoor residential water use per day per person is 60-70 gallons? And that 50-75% of all residential water use occurs in the bathroom? A simple way to cut water costs is to avoid using water in the bathroom. Flush and bathe sparingly.

## PROF'S SAY THE DARNDEST THINGS (LIGHT)

Okay, so we didn't get that many submissions this month on professor quotes. We concede: law professors are boring.

"Think about it, before you graduate you want to take a 4 hour final."

"When you're that good, you're not arrogant."

"Every kid is born a lawyer. It gets socialized out of them when they get to school."

"Who gives a riff what the DMV said." (Taken way out of context)

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IS  
INTENTIONALLY  
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