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U.S. Supreme Court Upholds Clear and Convincing Standard in *Microsoft v. i4i*

On June 9, 2011, the U.S. Supreme Court unanimously affirmed the Federal Circuit's decision in the closely watched *Microsoft Corporation v. i4i Limited Partnership* case, thus upholding the long-standing, clear and convincing evidence standard for overcoming the presumption of patent validity. A federal district court had found Microsoft guilty of infringing i4i's patent and ordered Microsoft to pay almost \$300 million in damages. Microsoft argued that the district court should have found i4i's patent invalid by applying the lower preponderance of the evidence standard.

Supreme Court Clarifies Standard for Induced Patent Infringement in *Global-Tech*

On May 31, 2011, the Supreme Court announced that a defendant, to be liable for actively inducing patent infringement under 35 U.S.C. § 271(b), must have "knowledge that the induced acts constitute patent infringement." *Global-Tech Appliances, Inc. v. SEB S.A.*, No. 10-6, 2011 WL 2119109 (May 31, 2011). In the first of three patent decisions to be handed down this term, the Court parted ways with the analysis, but not the outcome, of the Federal Circuit, which had previously held that the intent element for induced infringement required only that a plaintiff show that the alleged infringer "knew or should have known that his actions would induce actual infringements." The Court nevertheless affirmed the Federal Circuit's judgment based on evidence showing that the petitioner-defendant, Pentalpha, had "willfully blinded itself to the infringing nature" of the induced conduct.

Expediting Examination of U.S. Patent Applications

U.S. patent rights to an invention can only be enforced after the patent issues. However, due to a backlog in the U.S. Patent and Trademark Office's (USPTO) of approximately 700,000 patent applications, the average length of time before a patent application is even examined is over two years. In some areas of technology, the wait can be significantly longer. This prolonged examination of a patent application may be disadvantageous to an applicant for a number of reasons. For example, this may delay one's ability to enforce his or her rights to the invention, allowing infringing competitors to unduly gain market share. A postponement may also make it more difficult to raise capital or to license the patent rights. Fortunately, there are procedures that may be used to expedite examination of patent applications.

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Protecting Your Brand in the .xxx Domain

In the latest domain-name headache for brandowners, .xxx has been approved by ICANN as a new generic top-level domain, on the same plane as .com, .net, .org, .mobi, .info, and etc., but this one is for adult content.

The adult entertainment industry, trademark holders, and even some countries objected to the creation of the domain. Although no adult content is currently available in the domain, several countries have already announced their intention to block the .xxx domain.

The Protect IP Act : A Powerful Tool, A Powerful Controversy

The Protect IP Act is a proposed bill making its way through the Senate as S. 978 that aims to curb online counterfeiting, among other things. Congress is attempting again to pass legislation after COICA failed to pass during the previous session. While the Protect IP Act's stated goals are beyond dispute—to prevent the online sale of counterfeit goods—the means toward achieving those goals remains ripe for debate.

Supreme Court Rules on Individual Inventor Patents under the Bayh-Dole Act

On June 6, 2011, the Supreme Court ruled that, under the Bayh-Dole Act, an individual inventor retains the initial rights to any patentable inventions he creates while conducting federally-funded research, absent a specifically-worded agreement assigning those rights to his employer. *Board of Trustees of Leland Stanford Junior University v. Roche Molecular Sys.*, No. 09-1159, 2011 WL 2175210 (June 6, 2011).

Visit Venable at the 2011 BIO International Convention

Venable will be exhibiting at **booth #3504** June 28-30, in the Maryland pavilion. Please visit us there to meet members of our team. If you would like to schedule an appointment, please contact Brandon McAfee at bmcafee@Venable.com.

We would like to introduce you to the **Venable Venture Services** program for emerging technology companies. Stop by our booth or contact us for more information. <http://www.Venable.com/venture-services/>

Venable's, FDA chair, **David Adams** is leading two featured panels:

"Talking About Your Product in the New Age: Social Media and the Internet"
Tuesday, June 28, 10:00 a.m. - 11:30 a.m. EST.

"Navigating the New Law on Licensing Biosimilars"
Tuesday, June 28, 3:45 p.m. - 5:00 p.m. EST.

A highlight of Venable's involvement is our Rooftop Casino & Game Night Reception, Tuesday, June 28, 6:00 pm - 9:00 p.m., featuring a live swing band, a casino operation (using "cash" we will give to our guests), a bocce tournament, prizes, and a Chesapeake Bay themed menu. Co-hosts include Emergent BioSolutions, Montgomery County Economic Development Center, RCM&D, and McGladrey. Please see the invitation linked [here](#).

Michael Gollin, Venable's Life Science Chair, will be signing Intellectual Property and Human Development, the new book by Public Interest Intellectual Property Advisors, at the BIO Bookstore, Wednesday, June 29, 4:00 p.m. - 5:30 p.m. EST.

Venable will be co-sponsoring the Gala on Wednesday evening, June 29, to be held at Union Station.

Venable Welcomes New Attorneys to the Technology Division.



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