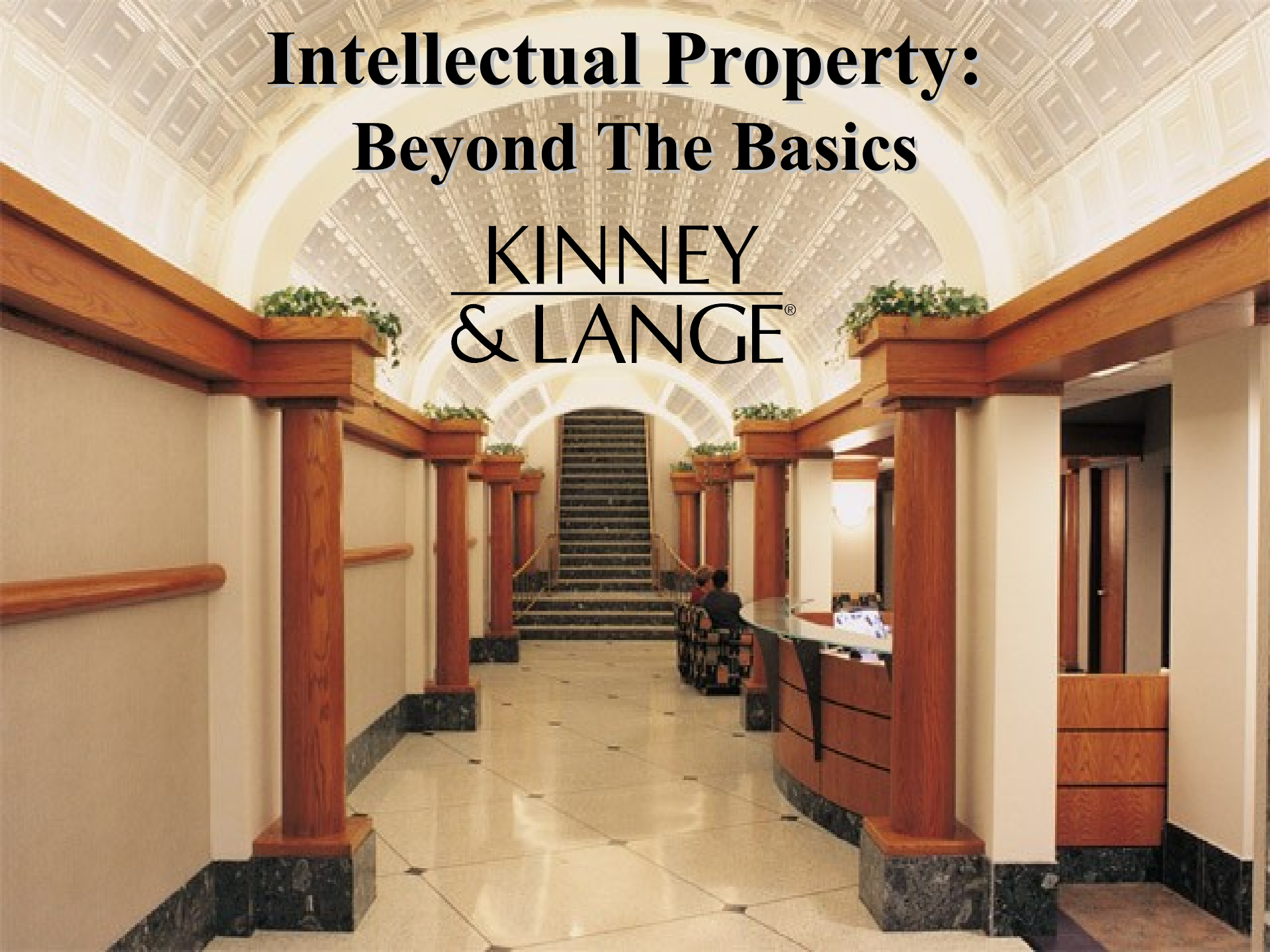


# Intellectual Property: Beyond The Basics

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# Welcome & Introductory Remarks

*Brian T. Craggs*

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**INTELLECTUAL PROPERTY  
ATTORNEYS**

# Seminar Book & Handouts

- Overview of Intellectual Property Law for Business Lawyers (Twenty-Third Edition)
- Welcome Letter
- Agenda
- Evaluation Form
- Question Form



**Intellectual Property: Beyond The Basics**  
Minneapolis – Friday, June 20, 2008

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**EVALUATION FORM**

1) What is your primary area of practice?  
\_\_\_\_

2) Why did you attend this seminar? (Please check all that apply.)  
 Free CLE Credits.  
 I have a client that may have a current Intellectual Property matter.  
 I have clients that had Intellectual Property matters in the past.  
 I know one or more members of Kinney & Lange.  
 I want to become more familiar with Kinney & Lange.  
 Other: \_\_\_\_\_

3) Have you attended a Kinney & Lange Seminar in the past? YES NO  
If so, when? \_\_\_\_\_

4) How far did you travel to attend today's seminar?  
\_\_\_\_

5) How did you find out about this seminar?  
\_\_\_\_

6) Have you visited Kinney & Lange's website at [www.kinney.com](http://www.kinney.com)? YES NO  
CORRECTION \_\_\_\_\_

7) Please rate the following aspects of the seminar using a scale of 1-5 (5 indicating excellent and 1 indicating poor):  
OVERALL SEMINAR \_\_\_\_\_ MATERIALS \_\_\_\_\_ PRESENTATION \_\_\_\_\_  
AUDIO QUALITY \_\_\_\_\_ VISUAL QUALITY \_\_\_\_\_

8) How could we improve this seminar? (additional topics, presentation style, etc.)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9) Comments  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**QUESTIONS**  
If you have any questions, please check the topic and state your question. Questions will be collected, and selected questions of general interest to the audience will be addressed at the conclusion of the morning and afternoon sessions.

QUESTION NO. 1:

\_\_\_\_ PATENT AND TRADE SECRETS  
\_\_\_\_ PATENT LITIGATION  
\_\_\_\_ TRADEMARKS  
\_\_\_\_ COPYRIGHTS  
\_\_\_\_ OTHER

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

QUESTION NO. 2:

\_\_\_\_ PATENT AND TRADE SECRETS  
\_\_\_\_ PATENT LITIGATION  
\_\_\_\_ TRADEMARKS  
\_\_\_\_ COPYRIGHTS  
\_\_\_\_ OTHER

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# www.kinney.com

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Kinney & Lange, P.A. is a full-service intellectual property firm whose attorneys practice in all aspects of patent, trademark, copyright and related intellectual property law. Since its formation over thirty years ago, Kinney & Lange has secured, maintained and licensed national and international intellectual property rights, as well as litigated these intellectual property rights for its clients. The firm serves a wide range of clients, from start-up businesses to Fortune 500 corporations.

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Done

# Kinney & Lange Newsletter

Vol. 03  
Issue 02  
SUMMER  
2011

The Official  
Newsletter of  
Kinney & Lange

## K&L IP NEWS™

Your Source for  
Intellectual  
Property Law  
Updates and Tips



this issue

USPTO appeals **P.1**  
patent publication errors **P.2**  
recent cases **P.4**  
recent patents **P.4**

# **Kinney & Lange IP Law Desk Reference**

- Intellectual Property Law for Business Lawyers 2010-2011 ed. Thomson Reuters
- Expanded reference with explanations of most facets of intellectual property law, including:
  - Patents, trademarks, and copyrights
  - Trade secrets, advertising, the right of publicity, and foreign intellectual property rights

# Thrivent Facilities



# CLE Credits

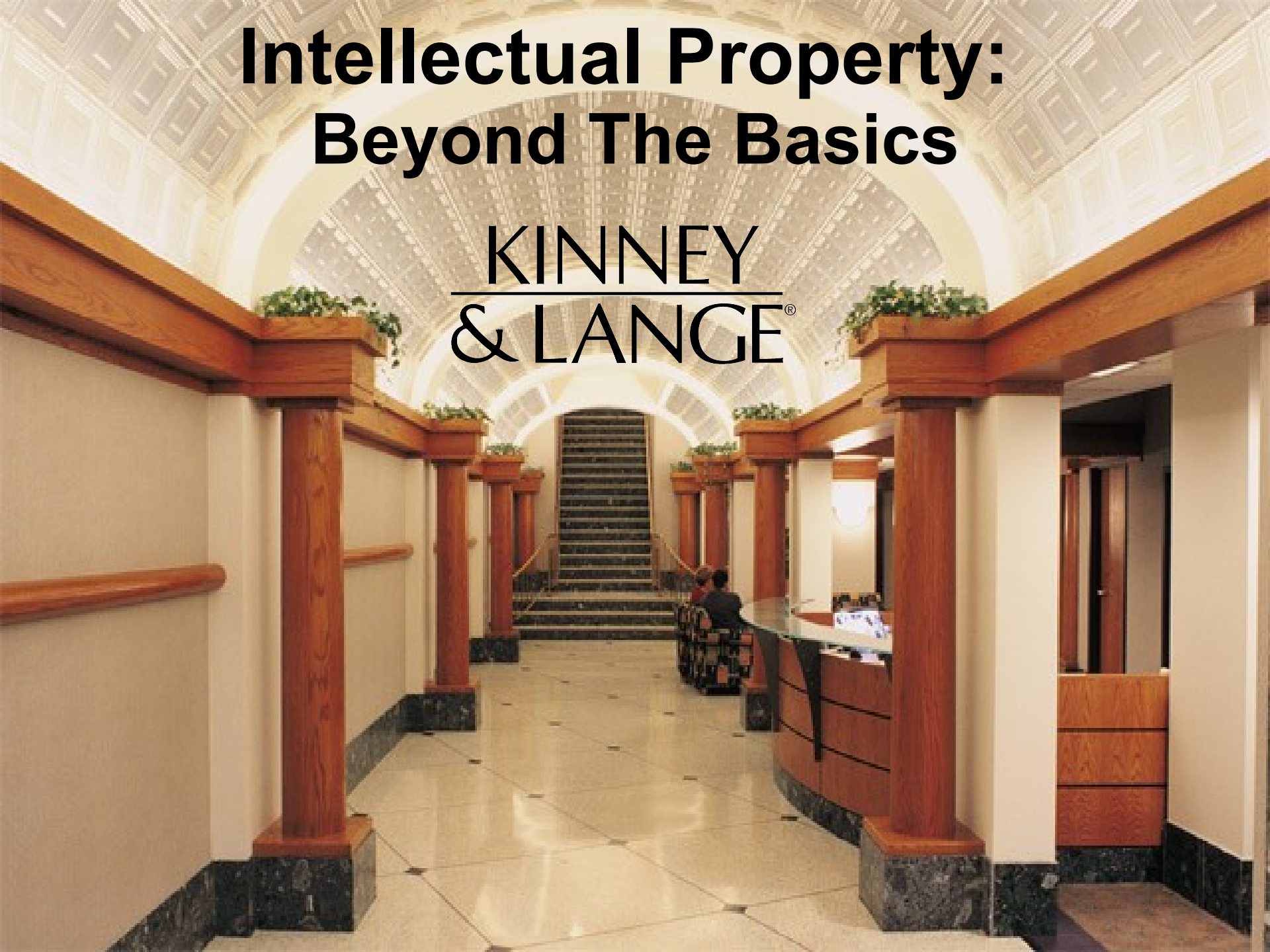
- CLE credits applied for
  - Minnesota
  - Wisconsin
  - [www.kinney.com/seminars/credits.html](http://www.kinney.com/seminars/credits.html)
- Anticipated Minnesota credits: 5.5 – 6 hours
- Anticipated Wisconsin credits: 6 – 7 hours

# Intellectual Property: Beyond The Basics

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# Illegal Filesharing

*Larrin Bergman*

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# Illegal Filesharing

- DMCA
  - *Viacom v. Youtube*
  - Safe Harbor
- BitTorrent Cases
  - BitTorrent Technology
  - Safe Harbor
  - Jurisdictional Issues
- File-hosting Sites

# Digital Millennium Copyright Act

- Modified Copyright Law
  - Implemented WIPO treaties
  - Addressed Digital Rights Management (DRM)
- Provided Safe Harbor
  - 17 U.S.C. § 512

# Viacom v. Youtube

- No. 07 Civ. 2103; S.D.N.Y. 2010
  - Currently on Appeal to 2<sup>nd</sup> Circuit

# Viacom v. Youtube

- Viacom claimed liability by Youtube
  - ▶ Actual knowledge
  - ▶ Received financial benefit
  - ▶ Not “storage at the direction of user”

# Viacom v. Youtube

- Court relied on DMCA Safe Harbor
  - General knowledge that infringement is “ubiquitous” does not impose duty on service providers
- Distinguished *Grokster* (545 U.S. 913 (2005))

# Viacom v. Youtube Aftermath

- Youtube remedial solutions
  - ▶ Terminates users for 3 DMCA “strikes”
  - ▶ Implemented own policing system for others' copyright claims



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### Copyright Center

#### Content Owners

[Copyright Infringement Notification](#)

**Content Verification Program**

[Content ID](#)

#### YouTube Users

[What happened to my video?](#)

[Why do I have a strike on my account?](#)

[Why was my account suspended?](#)

#### Copyright Education

[What is copyright?](#)

[Using copyrighted material in your video](#)

[Creative Commons](#)

[Frequently asked questions](#)

[Further resources](#)

## Content Verification Program

YouTube is committed to helping copyright holders find and remove allegedly infringing content from our site. To that end, we have created a Copyright Verification Tool that assists copyright owners in searching for material that they believe to be infringing, and providing YouTube with information reasonably sufficient to permit us to locate that material.

This tool is designed especially for copyright-holding companies to issue multiple removal requests. Individual notifications may be submitted by following [these instructions](#).

If you already have a YouTube account, you can apply for access to this tool by filling out the [YouTube Content Verification Program Application](#), printing it, and faxing it to the fax number shown on the printout. This form identifies your authorized agents and acts as a legal affirmation that you hold copyright to the material about which you will notify YouTube. If you do not currently have an account, please [create an account](#), after which you can access the Content Verification Program Application.

# Youtube Concerns as Copyright Holder

- Can use “claim your content” system provided by Youtube
- Beware of uploading material you don't want linked
- Youtube user agreement allows for unpaid license linking to all content

## 6. Your Content and Conduct

- A. As a YouTube account holder you may submit Content to the Service, including videos and user comments. You understand that YouTube does not guarantee any confidentiality with respect to any Content you submit.
- B. You shall be solely responsible for your own Content and the consequences of submitting and publishing your Content on the Service. You affirm, represent, and warrant that you own or have the necessary licenses, rights, consents, and permissions to publish Content you submit; and you license to YouTube all patent, trademark, trade secret, copyright or other proprietary rights in and to such Content for publication on the Service pursuant to these Terms of Service.
- C. For clarity, you retain all of your ownership rights in your Content. However, by submitting Content to YouTube, you hereby grant YouTube a worldwide, non-exclusive, royalty-free, sublicenseable and transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform the Content in connection with the Service and YouTube's (and its successors' and affiliates) business, including without limitation for promoting and redistributing part or all of the Service (and derivative works thereof) in any media formats and through any media channels. You also hereby grant each user of the Service a non-exclusive license to access your Content through the Service, and to use, reproduce, distribute, display and perform such Content as permitted through the functionality of the Service and under these Terms of Service. The above licenses granted by you in video Content you submit to the Service terminate within a commercially reasonable time after you remove or delete your videos from the Service. You understand and agree, however, that YouTube may retain, but not display, distribute, or perform, server copies of your videos that have been removed or deleted. The above licenses granted by you in user comments you submit are perpetual and irrevocable.
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- E. You further agree that you will not submit to the Service any Content or other material that is contrary to the YouTube Community Guidelines, currently found at [http://www.youtube.com/t/community\\_guidelines](http://www.youtube.com/t/community_guidelines), which may be updated from time to time, or contrary to applicable local, national, and international laws and regulations.
- F. YouTube does not endorse any Content submitted to the Service by any user or other licensor, or any opinion, recommendation, or advice expressed therein, and YouTube expressly disclaims any and all liability in connection with Content. YouTube does not permit copyright infringing activities and infringement of intellectual property rights on the Service, and YouTube will remove all Content if properly notified that such Content infringes on another's intellectual property rights. YouTube reserves the right to remove Content without prior notice.

## 7. Account Termination Policy

- A. YouTube will terminate a user's access to the Service if, under appropriate circumstances, the user is determined to be a repeat infringer.
- B. YouTube reserves the right to decide whether Content violates these Terms of Service for reasons other than copyright infringement, such as, but not limited to, pornography, obscenity, or excessive length. YouTube may at any time, without prior notice and in its sole discretion, remove such Content and/or terminate a user's account for submitting such material in violation

# BitTorrent

- “Pull-based” “swarming” approach
- Each file split into smaller pieces
- Nodes request desired pieces from neighbors
  - As opposed to parents pushing data that they receive
- Pieces not downloaded in sequential order
- Encourages contribution by all nodes

# BitTorrent Terminology

- Seed: peer with the entire file
- Original Seed: The first seed
- Leech: peer that's downloading the file
  - Fairer term might have been “downloader”
- Sub-piece: Further subdivision of a piece
  - The “unit for requests” is a subpiece
  - But a peer uploads only after assembling complete piece

# BitTorrent Cont'd

- Swarm
  - Set of peers all downloading the same file
  - Organized as a random mesh
- Each node knows list of pieces downloaded by neighbors
- Node requests pieces it does not own from neighbors
- Does not allow “streaming”

# BitTorrent Cont'd

- Content of .Torrent file:
  - ▶ URL of tracker
  - ▶ Piece length – Usually 256 KB
  - ▶ SHA-1 hashes of each piece in file for reliability
  - ▶ “files” - allows download of multiple files

# BitTorrent Legal?

- Program: Yes
- Content: Typically NO!

# **Columbia Pictures Industries, Inc. v. Fung**

- No. 06 Civ. 5578, C.D. Cal. 2009
  - Currently on Appeal to 9<sup>th</sup> Circuit
- BitTorrent search sites are inducement
- No safe harbor available

# Jurisdiction of Courts in BitTorrent Cases

- **Maverick Ent. Group Inc. v. Does 1-2,115**
  - Civ. No. 10-0569; D.C.C. 2011
- **VPR Internationale v. Does 1-1,017**
  - Civ. No. 11-2068; C.D. III. 2011

# File-hosting Sites

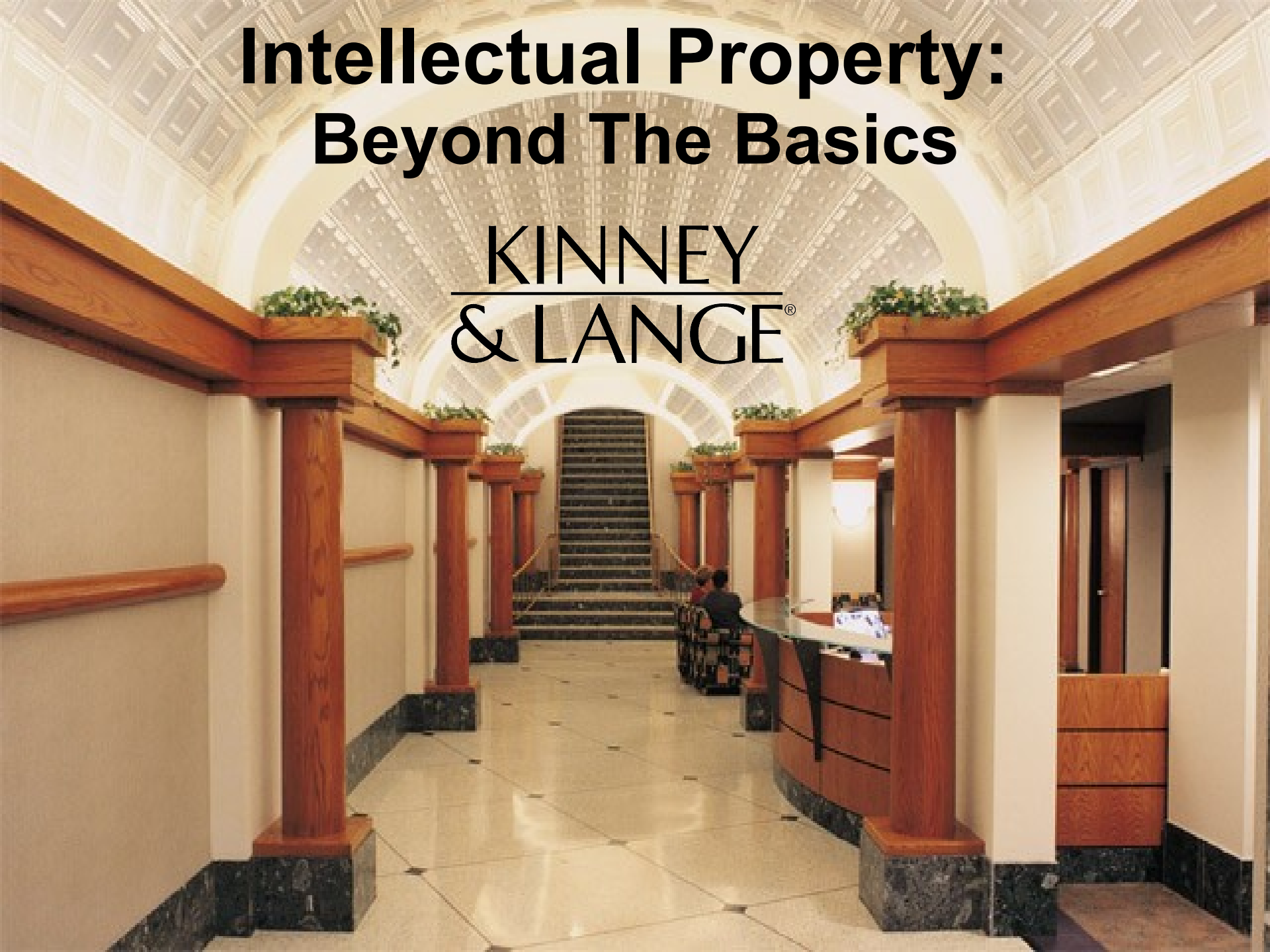
- Perfect 10 v. Rapidshare
  - Civ. No. 09-2596, S.D. Cal.
- Safe harbor applies?

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# Standards of Proof

*David R. Fairbairn*

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# **i4i Limited Partnership v. Microsoft Corporation (Argued April 18, 2011)**

**What is the Standard of Proof for a Patent  
Invalidity Defense?**

Whether the CAFC erred in holding that Microsoft was required to prove its defense of invalidity by “clear and convincing evidence” even though the prior art on which the invalidity defense rests was not considered by the Patent and Trademark Office prior to issuance of the asserted patent.

# 35 U.S.C. § 282

“A patent shall be presumed valid.

...

The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting such invalidity.”

# Before 1952

The Supreme Court applied a presumption of validity – with a heightened burden of proof

- “every reasonable doubt” is resolved against the party asserting invalidity

*Morgan v. Daniels*, 153 U.S. 120 (1894),  
citing *Coffin v. Ogden*, 85 U.S. 120  
(1873), *Cantrell v. Wallick*, 117 U.S. 689  
(1886)

# Radio Corp of Am. v. Radio Eng. Labs, Inc. 293 U.S. 1 (1934)

- Justice Cordozo: “there is a presumption of validity, a presumption not to be overthrown except by clear and cogent evidence.”

293 U.S. at 2

- “convincing evidence of error”

293 U.S. At 7

- “evidence sufficient to carry thorough conviction to the mind”

293 U.S. at 9

# 1982

- CAFC created to “strengthen the U.S. Patent System [so] as to foster technological growth and industrial innovation.”

*Markman v. Westview Instr., Inc.*, 517 U.S. 370, 390 (1996)

# The CAFC on 35 U.S.C. § 282:

- Standard for proving invalidity is always clear and convincing evidence
- Evidence not before the PTO “may... carry more weight and go further toward sustaining the attacker's unchanging burden”

*American Hoist & Derrick Co. v. Sowa & Sons, Inc.*, 725 F.2d 1350, 1360 (Fed. Cir. 1984)



US005787449A

**United States Patent** [19]  
**Vulpe et al.**

[11] **Patent Number:** 5,787,449  
[45] **Date of Patent:** Jul. 28, 1998

[54] **METHOD AND SYSTEM FOR MANIPULATING THE ARCHITECTURE AND THE CONTENT OF A DOCUMENT SEPARATELY FROM EACH OTHER**

5,280,574 1/1994 Mizuta et al. .... 395/145 X  
5,404,435 4/1995 Rosenbaum ..... 395/149 X  
5,587,902 12/1996 Kugimiya ..... 395/798

[75] Inventors: **Michel J. M. G. Vulpe; Stephen P. Owens**, both of Toronto, Canada

*Primary Examiner*—Almis R. Jankus  
*Attorney, Agent, or Firm*—Pillsbury Madison & Sutro LLP

[73] Assignee: **Infrastructures for Information Inc.**, Toronto, Canada

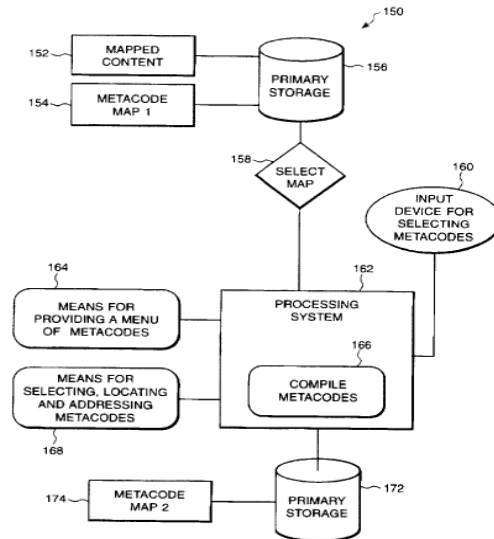
[57] **ABSTRACT**

[21] Appl. No.: 253,263  
[22] Filed: Jun. 2, 1994  
[51] Int. Cl.<sup>6</sup> ..... G06F 17/00  
[52] U.S. Cl. .... 707/513  
[58] **Field of Search** ..... 395/145-149,  
395/155-161, 600, 400, 761, 762, 766,  
772-778, 779, 784-786; 707/500, 501,  
505-508, 511-516, 517, 522-524

A system and method for the separate manipulation of the architecture and content of a document, particularly for data representation and transformations. The system, for use by computer software developers, removes dependency on document encoding technology. A map of metacodes found in the document is produced and provided and stored separately from the document. The map indicates the location and addresses of metacodes in the document. The system allows of multiple views of the same content, the ability to work solely on structure and solely on content, storage efficiency of multiple versions and efficiency of operation.

[56] **References Cited**  
U.S. PATENT DOCUMENTS  
5,133,051 7/1992 Handley ..... 395/148

**20 Claims, 9 Drawing Sheets**



# U.S. Patent 5,787,449

- metacodes – tags or markup codes that indicate how text between the tags should appear
- metacode map – stores metacodes and their locations within a document

# Microsoft Word Custom XML Editor

- Introduced 2003
- Word separates custom XML metacodes and stores them as claimed in '449 patent

- i4i had products that were an add-on to Word
- Microsoft Word custom XML Editor obsoleted the i4i products

# 2007

- i4i brought suit for infringement of '449 patent in E.D. Texas
  - ▶ Alleged infringement of claims 14, 18, and 20
  - ▶ Alleged willful infringement
- Microsoft counterclaimed – D.J. Invalidity and unenforceability

# 2009 – Jury Trial

- Microsoft asserted prior i4i product S<sup>4</sup> was on sale more than one year before '449 filing date
- One time project for one customer in 1993
- Source code had been destroyed many years earlier
- i4i witnesses said '449 claim features came after S<sup>4</sup>

# Jury Trial

- Microsoft sought jury instruction that the burden of proof for invalidity was a “preponderance of the evidence” because S<sup>4</sup> was not considered by PTO

# Jury Trial

- Verdict against Microsoft on every issue
- \$200 Million damages
- willful infringement
- '449 patent valid

# Jury Trial – Post Verdict

- JMOL denied
- \$40 million for willful infringement
- \$50 million interest and post verdict infringement
- permanent injunction limited to versions of word sold after a specified date

# Appeal

- Affirmed
- 12 lines of 50 page opinion dealt with standard of proof – Panel: KSR did not change standard
- Microsoft: “largest patent infringement verdict ever to be affirmed on appeal”

# Appeal

- Petition for en banc rehearing denied
- Standard of Proof issue not raised in Petition for en banc rehearing

# Supreme Court

- Cert granted Nov. 29, 2010

# Supreme Court

- Amicus Briefs supporting Microsoft
  - ◆ Apple
  - ◆ Business Software Alliance
  - ◆ SAP
  - ◆ Timex
  - ◆ Securities and Financial Markets Assoc
  - ◆ Hercules – Open Source Project
  - ◆ Google
  - ◆ Cisco Systems
  - ◆ Teva Pharmaceuticals
  - ◆ William Mitchell College of Law

# Supreme Court

- Amicus Briefs Supporting i4i
  - ▶ United States of America
  - ▶ 3M et al.
  - ▶ 19 Leading Venture Capital Firms
  - ▶ The Biotechnology Industry Organization (BIO)
  - ▶ 6 Former USPTO Commissioners
  - ▶ 7 Former Military Officers
  - ▶ Genentech
  - ▶ Intellectual Property Owners Assn (IPO)
  - ▶ University Patent Owners and Licensees

# Microsoft

- § 282 does not impose a heightened standard
- Appropriate standard: preponderance of the evidence
- § 282 did not codify a heightened standard
  - Particularly when PTO did not consider relevant prior art
- CAFC got it wrong, and Congress has not ratified by inaction

# Microsoft

- Agency deference does not justify a heightened standard
- CAFC decision can not be reconciled with KSR
- Eliminating questionable patents will promote competition and innovation

# i4i

- § 282 codified S.Ct. precedent of a clear and convincing standard
- CAFC longstanding construction of § 282 has been applied nationwide for 28 years
- Settled expectations of inventors, businesses, and investors – if a change is made, Congress should make it

# Public Interest Factors

- Need to confer strong IP rights
- Promote innovation and disclosure of inventions
- Minimize erroneous invalidations of patents by lay juries
- Preserve a meaningful role for USPTO

# Three Possible Outcomes

- Always clear and convincing
- Always preponderance
- Clear and convincing for prior art considered by PTO, and preponderance for prior art not considered by PTO

# Practical Challenges to Split Standard

- Some art considered / some art not considered
  - Different burdens in same case
- What was considered by the PTO
- How is a reference that was not considered treated if it is similar to a reference that was

# Final Notes

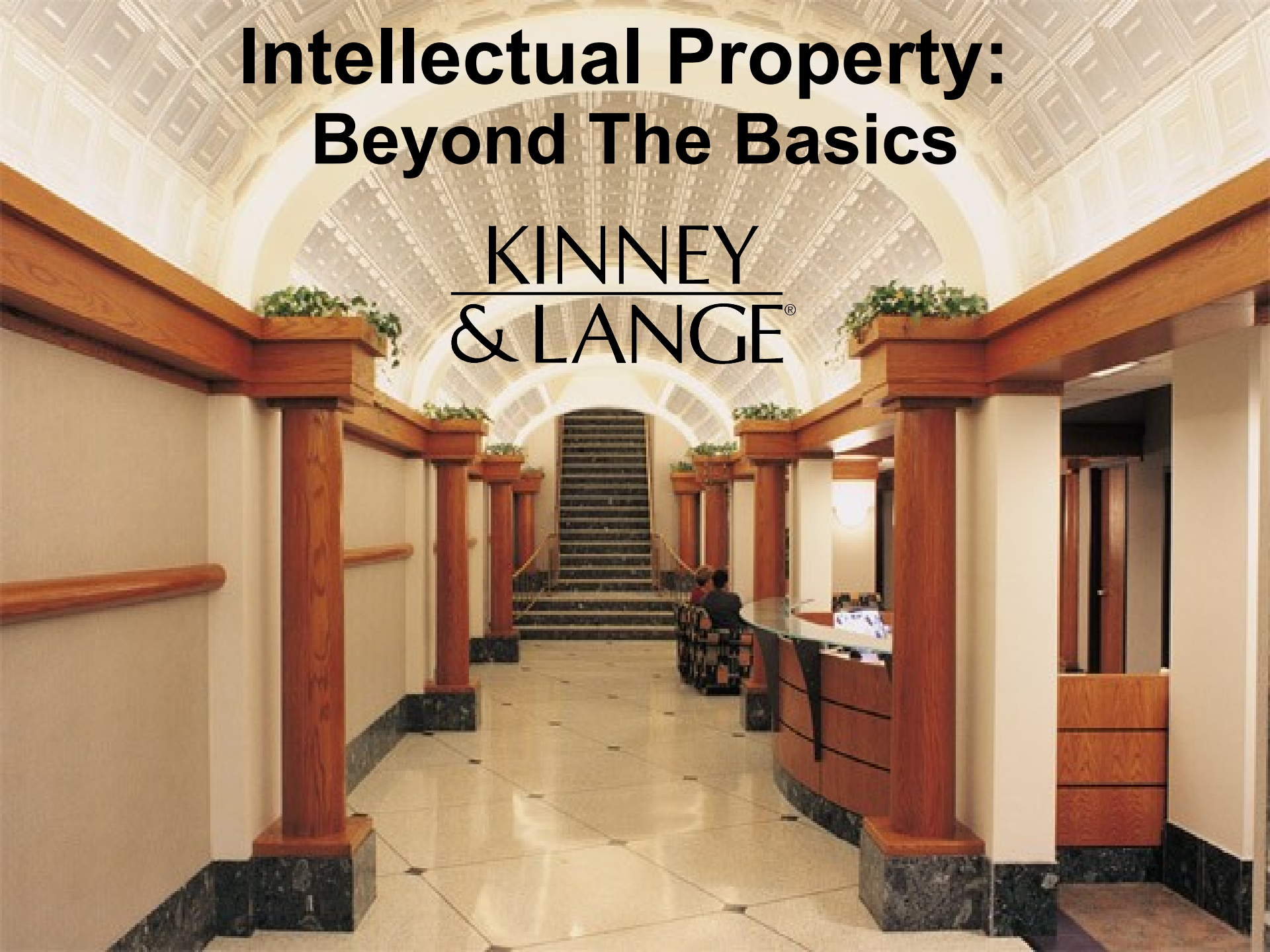
- 8 justices will decide – Chief Justice Roberts owns Microsoft stock
- Decision expected late June
- Microsoft twice requested reexamination of '449 patent by PTO
  - ◆ 1<sup>st</sup> time, PTO reaffirmed patentability
  - ◆ 2<sup>nd</sup> time, PTO denied request

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# Unclaimed Works and the Google Books Settlement Agreement

*John C. McIntire*

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# Road Map

Copyright

Unclaimed Works

Google Books Settlement Agreement

# Copyright

- Basis of Copyright

- U.S. Constitution, Article I, Section 8 – Powers of Congress
  - “To promote the Progress of Science and the useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries”
- 17 U.S.C. § 102
  - “Copyright protection subsists . . . in original works of authorship fixed in any tangible medium of expression . . . .”

# Copyright

- Scope of Copyright
  - 17 U.S.C. § 106
    - Owner of Copyright has exclusive rights to:
      - **Reproduce the work**
      - Prepare derivative works
      - **Distribute copies**
      - Perform the work publicly
      - **Display the work publicly**

# Copyright

- Limitation of Copyright
  - ♦ 17 U.S.C. § 107 – Fair Use
    - Criticism, comment, news reporting, teaching, scholarship
    - Criteria:
      - Purpose and character of the use
      - Nature of work
      - Amount and substantiality of portion used
      - Effect of use upon the potential market, or value of, the work
  - ♦ 17 U.S.C. § 108 – Library/Archives

# Copyright

- Effect of Copyright

- ▶ “Intended to motivate the creative activity of authors and inventors by the provision of a special reward, and to allow the public access to the products of this genius after the limited period of exclusive control has expired.” - Justice Stevens
- ▶ ONLY Two Types of Works
  - Copyrighted Works Still In-Copyright
  - Works in the Public Domain

# Unclaimed Works

- Orphan Works

- “The owner of a copyright work cannot be identified and located by someone who wishes to make use of the work in a manner that requires permission of the copyright owner.” - Report on Orphan Works, Register of Copyrights, January 2006

- Out-of-Print Works

- Includes orphan works
- Over-inclusive, but easy to determine

# Unclaimed Works

- How BIG is the Problem?
  - ▶ 600,000, 2 million, 5 million?
  - ▶ 85% (93% books) – Not Renewed
  - ▶ 22% orphan works to 60% out-of-print
- Why?
  - ▶ No formalities (registration, renewal, etc.)
  - ▶ Extension of Copyright Term – 140 years
- So What?
  - ▶ Thwarts policy behind Copyright

# Unclaimed Works

- Sonny Bono Copyright Term Extension Act of 1998 – 17 U.S.C. § 108(h) - “orphan works” provision
  - Libraries/Archives
  - Last 20 years of term
  - More than orphan works
- Orphan Works Acts of 2006 & 2008
  - Required good faith effort to locate owner
  - Died in committee

# Google Books

- Library Project – 2004
  - Scan complete works from library collections
  - Accessible, searchable, preserved, free digital copy to libraries
  - Displaying:
    - Public domain works – full view
    - In-copyright works
      - “Snippet” view
      - Direct to library or purchase
- Publisher Program - preview

# Google Books

- Law Suits - 2005
  - ▶ The Authors Guild et al., The Association of American Publishers
    - Plaintiffs: Google scanning and displaying works without the permission of copyright holders
    - Defendant: Fair use
      - Scanning to compile searchable index
      - Snippet display is just a few lines
  - ▶ Held up pending settlement discussions

# Google Books

- Settlement Agreement (SA) – Oct. 2008
  - Settles both suits - \$125 million
  - Establishes
    - Partner Program – expands Publisher Program
    - Institutional Subscriptions
    - In-copyright, out-of-print
      - Preview
      - Sale
      - Free full view at public library terminals
      - Full access under institutional subscriptions

# Google Books

- Settlement Agreement (cont.)
  - Book Rights Registry
    - Represents interests of authors and publishers
    - Attempts to locate copyright holders for orphan works
    - Distributes payments from online access
      - Orphan works payments: to expenses, other copyrights holders or charities after 5 years
      - Mechanism for copyright holders to:
        - Opt-in for in-print works
        - Opt-out for out-of-print works
- Revenue Split: 37% to Google

# Google Books

- Amended Settlement Agreement (ASA) – Nov. 2009
  - No longer includes books published outside U.S. (except for CA, AS, UK)
  - Opt-out rights enhanced
  - BBR must “use commercially reasonable efforts” to locate copyright holders
  - Unclaimed funds
    - Held for 5 years
    - Next 5 – 25% used by BBR to locate owners

# Google Books

- Amended Settlement Agreement (cont.)
  - ▶ Unclaimed Works Fiduciary established
    - Acts on behalf of copyright holders for orphan works
    - Independent of BBR – no authors or publishers
    - Approves use of unclaimed funds
    - May license to third parties (if permitted by law)
  - ▶ Noerr-Pennington Doctrine Waiver
    - No anti-trust immunity

# Google Books

- ASA Rejected – March 2011
  - ASA Prelim Approval Nov. 2009 to Fairness Hearing Feb. 2010
    - Hundreds of objections
    - Concerns raised were significant
    - 6,800 class members opted-out of settlement
  - Court concluded settlement was not “fair, reasonable, and adequate” as required under FRCP Rule 23 Class Actions

# Google Books

- ASA Rejected – Major Objections
  - ▶ Forward-looking business arrangement released claims not before the Court
  - ▶ Scope of Pleadings
    - “Google would have no colorable defense as to a claim of infringement based on the unauthorized copying and selling or other exploitation of entire copyrighted books.”
  - ▶ Matter for Congress, not courts or private parties
  - ▶ Interest of Class Members in conflict

# Google Books

- ASA Rejected – Major Objections (cont.)
  - Antitrust Concerns
  - Copyright Concerns
    - “It is incongruous with the purpose of the copyright laws to place the onus on copyright owners to come forward to protect their rights when Google copied their works without first seeking their permission.”
    - Absent class members, not even aware of the ASA, are deemed to have released their rights to future infringing conduct and will not know to come forward to opt-out.

# Future of Google Books

- Google will continue to scan and display snippets
- Google will probably not consider opt-in for all in-copyright works - \$\$\$\$
- Next: Status conference June 19, 2011
  - ▶ Appeal ASA rejection
  - ▶ Wait for legislative solution
  - ▶ Move forward with lawsuits

# Intellectual Property: Beyond The Basics

KINNEY  

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