# The 28th Annual Intellectual Property Institute

**ORIGINAL PROGRAM DATE**
April 25, 2023 – April 26, 2023

**AVAILABLE MEDIA TYPES**
Video & Audio MP3

*Presented in partnership with WSBA Intellectual Property Section*

## REPORTING YOUR CREDIT

This on-demand seminar was originally presented as a live webcast on April 25, 2023 – April 26, 2023, in Seattle, WA. If you attended the live webcast and reported CLE credits, you cannot also report credits from watching or listening to this recording if repeated within your three-year reporting period.

## DESCRIPTION

The 2023 IP Institute features an esteemed faculty including the Hon. Judge Leonard Stark from the Federal Court of Appeals as well as practitioners from around the state, presenting on crucial and timely matters related to the practice of Intellectual Property law.

## AGENDA

**1    Navigating the Changing Landscape of Patent Litigation**
Third party funding is changing the dynamics of patent litigation.  We will explore the behavioral economic landscape confronting the parties and strategies for litigating and resolving matters in this new environment.
*Bill Harmon – Uber Technologies Inc., Seattle, WA*
*John Mulgrew – Lenovo, San Francisco, CA*
*Kevin Alschuler, PhD - Performance Psychologist, Seattle, WA*

**2    No Fair? Copyright, Fair Use, and the Legal Battle Over Generative AI**
Large AI models such as Chat GPT and Dall-E 2 have made headlines with remarkable abilities to simulate human creativity. Building these models requires huge amounts of information, much of it copyrighted works scraped from the internet. Rights holders claim that this involves infringement on a grand scale with the effect of conscripting human creators to train their replacements. Modelers argue that having to obtain permission to use all the data they need would end the development of this technology altogether. This serves as an overview of that technology and explore the issues being joined in the first wave of litigation over these models.
*Field Cady – Data Scientist Consultant, Edmonds, WA*
*Ian Crosby – Susman Godfrey LLP, Seattle, WA*
*Paul Reintz – Getty Images, Seattle, WA*

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**3    A Few Things from My First Year at the Federal Circuit**
After serving nearly 15 years as a district and magistrate judge in the District of Delaware, Judge Stark joined the Court of Appeals for the Federal Circuit in March 2022.  In this session he will share a few of the things he has learned during his first year as a circuit judge.
*Honorable Judge Leonard P. Stark – United States Court of Appeals for the Federal Circuit,*
*Washington, DC*
*Brooke Quist – Seed Intellectual Property Law Group LLP, Seattle, WA*

**4    Rogers Rides Again: The History and Destiny of the Rogers Test in Lanham Act Cases**
Taking as its starting point the Jack Daniel's case currently before the U.S. Supreme Court, this presentation examines the history and significance of the test from Rogers v. Grimaldi (2d Cir. 1989) for deciding when a Lanham Act claim must yield to a First Amendment defense. We'll look at how a simple test formulated to fit narrow circumstances became the Lanham Act defense of choice, applicable not only to personal names in movie titles but to trademarks and product names used in text as well as titles and in videogames, greeting cards, artworks, parodies, and commercial product design. The presentation will address the abundance of recent cases in which Rogers was pleaded and either applied or not, weigh arguments that today's courts may be using Rogers too broadly, and how the jurisprudence might or might not change. If the Supreme Court issues its opinion in Jack Daniel's v. VIP before the date of the presentation, the court's analysis and rationale will be the main focus; and if not, we'll discuss the possible outcomes.
*Robert Cumbow – Miller Nash LLP, Seattle, WA*

**5    Federal Circuit Year in Review**
Highlights of significant decisions released by the Federal Circuit Court of Appeals over the last 12 months and their significance for practitioners.
*Christina McCullough – Perkins Coie LLP, Seattle, WA*
*Ramsey al-Salam - Perkins Coie LLP, Seattle, WA*

**6    Critical IP Issues that Start-Ups Need to Know**
Start-ups face unique IP challenges and issues. Hear about strategies to overcome them.
*Dave Parker – DK Parker & Trajectory Media, Woodinville, WA*

**7    Blockchain Use Cases and Their Emerging Legal Landscapes**
This session will examine lesser-known use cases for blockchain & distributed ledger technology, why they matter, and legal cases relevant to the future of digital assets.
*Steve Cherewaty – Yellow Umbrella Ventures, Seattle, WA*

**8    Ethics Grab Bag for IP Lawyers**
The USPTO administers its own Rules of Professional Conduct.  While these generally conform to the ABA Model Rules, sometimes the USPTO Office of Enrollment and Discipline puts its own spin on the conduct of intellectual property practitioners in their dealings at the USPTO.  Periodically, a particular type of conduct draws the scrutiny of OED.  This presentation will highlight a handful of ethics issues unique to those lawyers who interact with examiners, staff and ALJs associated with the USPTO, and will also review some of the Washington Rules of Professional Conduct IP lawyers ought to keep in mind.
*Robert Carlson – Lee & Hayes PC, Seattle, WA*

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**9**    **Everyone Doesn't Get to Win: What We Have Been Getting Wrong about Patent Damages for Half a Century**
Learn why a traditional understanding of patent damages is wrong, and what that can mean to your damages position in current cases.
*Grant Kinsel - Perkins Coie LLP, Seattle, WA*
*Kevin Zeck - Perkins Coie LLP, Seattle, WA*

**10**   **Transformative Use for Artists? Goldsmith v. Andy Warhol Foundation for the Art**
Currently pending before the US Supreme Court, this important fair use case has the potential to re-frame and possibly cabin the concept of "transformative fair use" as well as draw a firmer line between fair use and the derivative work right.  This presentation will provide an analysis and update.
*Margaret Chon – Seattle University School of Law, Seattle, WA*