

New Federal Rules on Electronic Discovery

Amendments to the Federal Rules of Civil Procedure addressing the discovery of electronically-stored information are scheduled to take effect on December 1, 2006. With the Information Age in full swing, the roles of corporate IT departments and IT professionals have changed from merely keeping the company's computer systems up and running to acting as librarians and record keepers for all activities occurring on the company's computer system, including managing electronic data on networks spanning multiple servers, back-up tapes, hard drives, laptops and PDAs. Savvy litigants are increasingly pursuing electronic records of all types as part of the discovery process.

The amendments to the Federal Rules of Civil Procedure attempt to reduce costly discovery disputes pertaining to electronic discovery by offering structure, uniformity and guidance as to how electronic discovery should proceed. However, the rules also dictate a significant amount of work that must be done by litigants in the first 120 days after commencement of the lawsuit. From the beginning of the litigation, litigants must work closely with their IT departments and litigation counsel to ensure compliance with electronic discovery rules. Penalties for non-compliance with the electronic discovery rules can be devastating, ranging from significant monetary penalties to dismissal of lawsuits.

U.S. Supreme Court to Rule on Issue of Patent Claim Obviousness

More than twenty interested parties have filed *amicus curiae* briefs in a recent patent case, *KSR v. Teleflex* (S.Ct. 2006, Docket No. 04-1350). Leave to appeal to the U.S. Supreme Court was granted to clarify the standard of obviousness for a patent claim as propounded by the Court of Appeals for the Federal Circuit. The question presented to the Supreme Court is whether the Federal Circuit has erred in holding that a claimed invention cannot be held "obvious," and thus unpatentable under 35 U.S.C. 103(a) in the absence of some proven "'teaching, suggestion, or motivation' that would have led a person of ordinary skill in the art to combine the relevant prior art teachings in the manner claimed." Oral arguments in *KSR v. Teleflex* are set for November 28, 2006.

A Supreme Court holding that overrules the present Federal Circuit standard by eliminating the "motivation test" will profoundly and retroactively change how the U.S. Patent and Trademark Office and the courts view the standard of obviousness as applied to already granted patents. A reversal will call into question the validity of literally hundreds of thousands of patents, issued after the CAFC added the "motivation test" in 1993. Any arguments presented during patent application prosecution will undergo close scrutiny and any reliance on the Federal Circuit standard will provide a basis to attack patent validity, should the Supreme Court change the standard. The Supreme Court is expected to decide the *KSR* case during its present term, ending in June 2007.

MPAA and the Boy Scouts Unveil New "Respect Copyrights" Activity Patch

The Los Angeles area Boy Scouts of America have added a new merit badge, developed in part with the Motion Picture Association of America. This activity patch is another effort to help combat illegal downloading and pirating of movies and music. Partnering with the area Boy Scouts, many of whom come from families that are involved in some aspect of the entertainment industry, is a strategic step for MPAA that aims to change attitudes about intellectual property theft. To earn the badge scouts will have to learn some copyright basics and will also be given the opportunity to visit a studio or to create public service announcements appealing to their peers to not participate in illegal downloading. These scouts may be facing a tall order though, as most of those who partake in pirated movies and music appear to be well aware of the illegal nature of their actions, and consider pirating an acceptable alternative to purchasing movies and music that they may not otherwise be able to afford.