

# IP NEWSLETTER

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## HIGHLIGHTS OF 2015 AND WHAT TO WATCH IN 2016 IN THE UNITED STATES

By [Richard S.J. Hung](#) and [Nathan B. Sabri](#)



**COMMIL USA, LLC V. CISCO SYSTEMS, INC. (SUPREME COURT, MAY 26, 2015).**

In May, the Supreme Court held that a good faith belief that an asserted patent is invalid is not a defense to inducing infringement of that patent.

A party that induces another's patent infringement is liable if the party "knowingly" induced the infringement and possessed "specific intent" to encourage the other party's direct infringement. In *Commil*, the Federal Circuit had held that an accused inducer's good faith belief of invalidity may negate the requisite intent for induced infringement.

The Supreme Court reversed, holding that although a good faith belief in noninfringement can insulate a party from liability for induced infringement, a good faith belief in patent invalidity cannot provide such a defense. The Court explained that infringement and invalidity are separate matters under patent law and should not be "conflated." Accordingly, post-*Commil*, a reasonable belief in patent invalidity remains a defense to a charge of *willful* infringement — but not a defense to inducing infringement.

### **WILLIAMSON V. CITRIX ONLINE, LLC (FED. CIR. JUNE 16, 2015).**

In June, the *en banc* Federal Circuit expanded the scope of indefiniteness attacks against means-plus-function limitations in the *Williamson* decision.

Section 112, paragraph f, allows a patentee to recite a claim limitation as a "means or step for performing a specified function." A claim that is governed by Section 112, paragraph f, will be interpreted as encompassing the structures disclosed in the specification for performing the claimed function, along with equivalent structures. If the specification fails to disclose sufficient structure for performing that function, however, the claim is invalid as indefinite.

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Prior Federal Circuit precedent had held that absence of the term “means” gave rise to a “strong” presumption that Section 112, paragraph f, did not apply. In light of this “strong presumption,” accused infringers had found it difficult to argue that a claim limitation that lacked the word “means” was indefinite for lack of corresponding structure.

The *Williamson* court expressly overruled the Federal Circuit’s prior precedent requiring a “heightened” or “strong” presumption. Instead, it held that the standard is simply “whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure.” Relying on this standard, the court held that the phrase “distributed learning control module” invoked Section 112, paragraph f, but lacked sufficiently definite corresponding structure in the specification and therefore was indefinite.

The Federal Circuit’s abandonment of the “heightened burden” and “strong presumption” standard makes it easier for defendants to invalidate claims on definiteness grounds — particularly if the asserted claims include “nonce” words like “module.” By contrast, patent applicants must think carefully about how to avoid unintended means-plus-function treatment.

## **SUPREMA, INC. V. ITC (FED. CIR. AUG. 10, 2015).**

In *Suprema*, the *en banc* Federal Circuit held that the International Trade Commission has the authority to issue exclusion orders for induced infringement of method claims — even if the claims are not infringed until *after* the product was imported into the U.S.

The Commission had determined that certain imported goods qualified as “articles that infringe” under Section 337, even though they were not infringing when imported. Based on its construction of the statutory language as allowing inducement even if the direct infringement occurs after importation, the Commission found that the importer had induced infringement of the asserted method claim.

On appeal to the Federal Circuit, the initial panel vacated the exclusion order, holding that there were no “articles that infringe” at the time of importation for the importer to have induced infringement. Judge Reyna dissented, predicting that the panel’s decision would “effectively eliminate[] trade relief under Section 337 for induced infringement and potentially for all types of infringement of method claims.”

On *en banc* review, the full Federal Circuit vacated the panel’s decision. The *en banc* court explained that the phrase “articles that infringe” in Section 337 was ambiguous because it “introduce[d] textual uncertainty.” Due to this ambiguity, the Commission had the authority to construe the language, and the Federal Circuit was obligated to defer to

that interpretation if reasonable. Because the Commission’s interpretation was reasonable and consistent with the statutory text, policy, and legislative history, the Federal Circuit affirmed the Commission’s original order.

In view of *Suprema*, patentees can continue to raise inducement claims before the ITC based on the post-importation infringement of method claims.

## **SCA HYGIENE PRODUCTS V. FIRST QUALITY BABY PRODUCTS (FED. CIR. SEPT. 18, 2015).**

In September, the *en banc* Federal Circuit considered whether the laches defense in patent infringement cases remains viable in view of a 2014 Supreme Court decision. In that decision, *Petrella v. Metro-Goldwyn-Mayer, Inc.*, the Supreme Court had held that laches was no longer a defense to copyright infringement.

Via a split 6-5 decision in *SCA Hygiene Products v. First Quality Baby Products*, the Federal Circuit confirmed that laches remains a viable defense in patent infringement cases — even if not in copyright cases. The Federal Circuit explained that, unlike the copyright statute, the patent statute expressly codifies the laches defense by referring broadly to the defenses of “[n]oninfringement” and the “absence of liability for infringement or unenforceability” in Section 282(b)(1).

Although confirming viability of the patent laches defense, the Federal Circuit rejected its prior precedent that laches bars only pre-suit damages, but not prospective relief such as injunctions. The court explained that, when considering whether to grant an injunction, the district court “must weigh the facts underlying laches [as part of] the [Supreme Court’s] *eBay* framework.”

## **ARIOSIA DIAGNOSTICS, INC. V. SEQUENOM, INC. (FED. CIR. DEC. 2, 2015).**

Finally, in December, the Federal Circuit declined to hear *en banc* a decision invalidating certain methods of using cell-free fetal DNA as directed to unpatentable subject matter.

In June, the *Ariosia* panel had affirmed a district court’s grant of summary judgment that the asserted claims were invalid under Section 101. Claim 1, for example, recited:

A method for detecting a paternally inherited nucleic acid of fetal origin performed on a maternal serum or plasma sample from a pregnant female, which method comprises amplifying a paternally inherited nucleic acid from the serum or plasma sample and detecting the presence of a paternally inherited nucleic acid of fetal origin in the sample.

The panel majority held that the fetal-diagnostic-method claims violated both prongs of the Supreme Court's test for subject matter eligibility in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.* (2012). First, the claims were "directed to a naturally occurring thing or a natural phenomenon." Second, the limitations did not "transform the nature of the claim" into a patent-eligible application and thus lacked an "inventive concept." This is because the methods themselves were conventional, routine, and well-understood applications in the art.

Concurring, Judge Linn suggested that the outcome should have been different, but for the panel's obligation to apply "the sweeping language of the test set out in *Mayo*." In his view, Ariosa "represents the consequence—perhaps unintended" of applying the *Mayo* test's "broad language [to] exclude[] a meritorious invention from the patent protection it deserves and should have been entitled to retain."

In view of Judge Linn's concurrence, some anticipated that the Federal Circuit would take the case *en banc*. Now that *en banc* rehearing has been denied, observers await a petition for certiorari and the Supreme Court's reaction to it.

## What to Watch in 2016

### HALO AND STRYKER

If a district court deems a case "exceptional," the prevailing party may be entitled to its attorneys' fees. If the court finds that the defendant's infringement was "willful," the court also may treble the jury's damages award. The Federal Circuit has historically applied strict tests for determining whether a case is exceptional and whether infringement was willful.

In its 2014 decision in *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, the Supreme Court rejected as too rigid the Federal Circuit's two-part test for awarding attorneys' fees. Next year, in *Halo Electronics, Inc. v. Pulse Electronics, Inc.*, and *Stryker Corp. et al. v. Zimmer, Inc.* (consolidated), the Supreme Court will consider whether the Federal Circuit's test for determining willful infringement also is too strict. The question pending before the Court in *Halo* is:

Whether the Federal Circuit erred by applying a rigid, two-part test for enhancing patent infringement damages under 35 U.S.C. § 284, that is the same as the rigid, two-part test this Court rejected last term in *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749 (2014) for imposing attorney fees under the similarly-worded 35 U.S.C. § 285.

The question in *Stryker* is:

Has the Federal Circuit improperly abrogated the plain meaning of 35 U.S.C. § 284 by forbidding any

## COMING IN HOT!

We'd like to extend our congratulations to our colleagues on recent awards and recognitions:

- *Law360* recognized the MoFo Intellectual Property Group as an "IP Practice Group of the Year" winner in their 2015 list.
- The *National Law Journal* recognized **Rachel Krevans** and **Grant Esposito** among its list of 2015 Litigation Trailblazers.
- In *The American Lawyer's* 2016 edition of its biannual Litigation Department of the Year contest the firm received an honorable mention in the overall Litigation category.
- For her outstanding contributions to intellectual property law, MoFo senior of counsel **Kate Murashige** was recently elected by her peers as a fellow in the American Association for the Advancement of Science.
- *Law360* named **Rachel Krevans** and **Grant Esposito** as Intellectual Property MVPs.
- The MoFo Intellectual property group was recognized as a top IP practice and 19 IP Group attorneys were recommended in the 2016 edition of *U.S. News – Best Lawyers* and "Best Law Firms."

award of enhanced damages, unless there is a finding of willfulness under a rigid, two-part test, when this Court recently rejected an analogous framework imposed on 35 U.S.C. § 285, the statute providing for attorneys' fee awards in exceptional cases?

## LEXMARK

In its 2013 decision in *Kirtsaeng v. John Wiley & Sons*, the Supreme Court considered whether a copyright holder could bring a copyright infringement lawsuit based on a reseller's re-sale in the United States of a work purchased overseas. Applying the "exhaustion" doctrine, the Court held that it could not. By contrast, existing Federal Circuit precedent has held that a patent holder's prior foreign sales do *not* exhaust its U.S. patent rights, such that it remains able to file suit for patent infringement against U.S. resellers of those products.

Many have questioned whether *Kirtsaeng's* "first sale" doctrine also should apply to patent law and thus whether prior Federal Circuit precedent should be overturned. In *Lexmark Int'l v. Impression Prod.*, the Federal Circuit sua sponte agreed to address this issue *en banc*. The two pending questions are:

1. Should the court overrule *Jazz Photo Corp. v. Int'l Trade Commission*, 264 F.3d 1094 (Fed. Cir. 2001) [establishing that foreign sales of a patented product do not exhaust the patent owner's rights to assert the U.S. patent]?
2. Do sales of patented articles to end users with a restriction that the articles must be returned after a single use give rise to patent exhaustion?

## HIGHLIGHTS OF 2015 AND WHAT TO WATCH IN 2016 IN THE EUROPEAN UNION

By [Kristina Ehle](#), [Deirdre Moynihan](#), [Mercedes Samavi](#), [Alistair Maughan](#), Morrison & Foerster Europe



### Europe

## THE EUROPEAN COMMISSION'S DIGITAL SINGLE MARKET STRATEGY AND ITS IMPLICATIONS FOR COPYRIGHT LAW

In May 2015, the European Commission announced one of its key initiatives for the next five years: a

Digital Single Market Strategy (the "**DSM Strategy**"). The Commission's intention is to ensure that Europe maintains its position as a world leader in the digital economy, helping European companies to grow globally. In the DSM Strategy, the Commission announced 16 specific initiatives built on three "pillars": (i) to maximize the growth potential of the European Digital Economy; (ii) to create better access for consumers and businesses to online goods and services across Europe; and (iii) to create the right conditions for digital networks and services to flourish. Against this backdrop, the DSM Strategy has tasked the Commission with reviewing pan-European copyright laws to create a modern, more European copyright framework. The Commission is concerned that the fragmented national copyright laws limit cross border sales and the availability of copyrighted works.

### First Action Point – Cross Border Portability of Digital Content

In the DSM Strategy, the Commission has identified *cross border portability* of digital content in the EU as its first action point because the territoriality of copyright – and resulting commercial licensing practices – effectively partition the single EU-wide market for the sale of digital goods and services. Currently, when EU consumers buy digital content (like films, music, or apps), access often is limited to the Member State in which the consumer is ordinarily resident, meaning that many consumers are restricted from accessing their content when in another country.

On December 9, 2015, the Commission published a proposal for a Regulation on ensuring the cross border portability of online content services. According to this proposal, providers of online content services would be obliged to enable their subscribers habitually residing in a Member State to use such services while they are temporarily present in another Member State. That obligation would not apply to services made available to users (i) free of charge, and (ii) without any verification by the service provider of the user's Member State of residence (e.g., when a user registration is not required, such as on YouTube). Such temporary use of the service in another Member State would be deemed to take place in the subscriber's Member State of residence only so that the service provider would not have to acquire from the content owners additional licenses for the other Member State. Contractual provisions in the license agreements between content owners and service providers restricting such portability would be unenforceable (e.g., an obligation of the service provider to use geo-blocking for IP-addresses from outside the licensed territory). Thus, the proposed Regulation would affect the rights of content owners who have limited the license territory to a certain Member State as well as exclusively licensed rights of other licensees of such content in other Member States.

## 2016 Agenda

On the same day, the Commission also published a detailed action plan for further legislative proposals in 2016 to make “EU copyright rules fit for the digital age.” The main aspects of those proposals are:

- Harmonizing **copyright exceptions** that permit the use of copyrighted works without the right holder’s authorization (*e.g.*, for private use, educational and research purposes), including a possible **new exception for text and data mining** of content for scientific research purposes, and including an assessment of (and possible further measures on) the **levies** imposed by Member States to compensate right holders for such exceptions.
- Considering a re-definition of the right holders’ **“right of communication to the public”** regarding the re-use of content published online by online platforms and aggregation services through methods like linking, embedding and framing;
- Considering further options for **full cross-border access for all types of digital content** (*e.g.*, enhancing the existing cross border distribution of TV and radio programs online and supporting rights holders and distributors to reach licensing agreements for cross border access to content); and
- Providing a legal framework for **an effective and balanced civil enforcement** of copyright and other intellectual property rights (including a “follow the money” approach, “notice and action” and “take down and stay down” mechanisms) to fight IPR infringement in the online world.
- Support online tools to bring more **European content** into the EU market and the development of **European/national online search tools**

## PROGRESS WITH THE ESTABLISHMENT OF EUROPE’S UNITARY PATENT AND UNIFIED PATENT COURT SYSTEM

Efforts continue to be made to establish a unified pan-European patent system through the creation of a Unitary Patent and a pan-European Patent Court. Two EU regulations creating a Unitary Patent were adopted in 2012, and the Unified Patent Court Agreement establishing the Unified Patent Court (“**UPC**”) was signed by all Member States, except Poland and Spain, in 2013 (the “**UPC Agreement**”). Once operational, this new patent system will provide focal points for

both the registration and litigation of patents across 25 Member States. While progress has been slightly slower than anticipated, 2015 has seen significant developments in this regard:

- at present, eight Member States, including France, have ratified the UPC Agreement;
- Italy has decided to participate in the regime;
- the UK government has declared that it intends to complete domestic preparations for the new system in early 2016;
- administrative preparations regarding operational matters, including the budget for the UPC, have progressed; and
- Spain’s challenge to the legality of the new system has been rejected by the Court of Justice of the European Union.

The Unitary Patent system is expected to become effective in early 2017. The UPC will become operational once 13 Member States ratify the UPC Agreement. While the Unitary Patent and the UPC will not supplant, but rather operate alongside, current national patent laws, owners of existing patent portfolios will have to decide whether to opt out or opt in to the new regime. We recommend that patentees begin considering their options and start to develop a strategy now, rather than waiting until the Unitary European Patent and the Unified Patent Court become effective.

## Private Copying Exception under UK Law struck down by High Court

Private copying is not generally covered by the fair use exception to copyright in the EU. Rather, Article 5(2)(b) of the EU’s Copyright Directive (2001/29/EC) leaves it to the individual Member States to decide whether to provide for an exception to copyright “*in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rights holders receive fair compensation . . .*” Several Member States, including Germany, have made use of this exception to expressly allow private copying while introducing copyright levy schemes to provide for compensation to rights holders.

The UK government introduced such an exception into UK law as part of the Copyrights and Rights in Performances (Personal Copies for Private Use) Regulations 2014 (SI 2014/2361). It did not, however, provide for compensation

to be paid to rights holders, relying instead on a provision of the Copyright Directive that states that no compensation is required to be paid where there is minimal prejudice or potential harm to the rights holder.

In *British Academy of Songwriters, Composers and Authors Musicians' Union & Ors, R (on the application of) v Secretary of State for Business, Innovation and Skills & Anor* [2015] EWHC 1723 (Admin), the High Court found that the assumption made by the UK government that harm caused to rights holders by private copying would generally be minimal or non-existent was “*nowhere near to being justified.*” Consequently, in its June 17, 2015, decision, the High Court struck down the private copying exception with prospective effect. UK law therefore no longer expressly regulates private copying for personal use, leaving consumers and rights holders to deal with the resulting uncertainties.

It is not yet clear whether the UK government will attempt to re-introduce the exception with a compensation mechanism.

## What to Watch in 2016

### MODERNIZATION OF EU COPYRIGHT RULES

As outlined in the European Highlights of 2015 above, we will see further proposals by the EU Commission on modernizing the EU copyright rules in 2016.

### THE EU TRADE SECRETS DIRECTIVE

Confidential information and trade secrets will be hot topics in the EU over the next 12 months. One in five European companies have been the victim of trade secret misappropriation, or attempts at misappropriation, at least once in the past 10 years, and the risk of trade secret misappropriation has increased significantly in recent years. Unlike many other major jurisdictions, the EU has had no consistent legal approach to trade secret protection. The European Commission hopes to achieve a consistent and better level of trade secret protection across its 28 Member States with the proposed draft directive on the “protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure” (the “**Directive**”).

**Defining “trade secret.”** Under Article 2 of the Directive, information will be protected as a trade secret if: (a) it is not generally known among or readily accessible to people within the circles that normally deal with the kind of information in question, (b) it has commercial value because it is secret, and (c) it has been subject to reasonable efforts to keep it secret.

### Unlawful acquisition, use, and disclosure.

Article 3 of the Directive will prohibit attempts to:

(a) access, appropriate, or copy confidential information without authorisation; (b) unlawfully acquire confidential information; (c) use or disclose a trade secret in breach of a confidentiality agreement or a contractual duty or other obligation not to disclose the trade secret; and/or (d) engage in “any other conduct which, under the circumstances, is considered contrary to honest commercial practices.”

**Protecting employees.** The original proposal regarding employees and trade secrets provided that any experience and skills honestly acquired by an employee during the ordinary course of employment would remain with the employee. Recent private discussions between the European Council, Parliament, and Commission (see below under Next Steps) appear to have resulted in an agreement that the Directive will not impose any additional restrictions on workers in their employment contracts and national laws will continue to apply to regulate employee use and disclosure of trade secrets and confidential information.

**Next steps.** The Directive is currently moving through the EU legislative process. On 15 December 2015, the Luxembourg Presidency of the Council of Europe reached a provisional agreement with representatives of the European Parliament during private discussions among European Council, European Parliament and European Commission representatives on the Directive. The text of the Directive will now be subject to a legal-linguistic review and a vote in the European Parliament, which is provisionally scheduled to take place in early March 2016. Once approved by the European Parliament, the Directive will be adopted and Member States will be given a maximum of 24 months to incorporate the Directive into domestic law. In the meantime, we would recommend that companies continue to strengthen their trade secret programs and policies by using adequate non-disclosure agreements and ensuring that their HR policies and procedures clearly set out what information belongs to the employer and what is owned by the employee.

### REFORM OF EU TRADE MARK LAW

Also on 15 December 2015, the European Parliament approved new rules intended to modernize EU trade mark law. The new rules amend the EU Trade Marks Regulation (207/2009/EC) and the Trade Marks Directive (2008/95/EC) and are intended to “*bring the legislation in line with the times we are living in.*” Changes include:

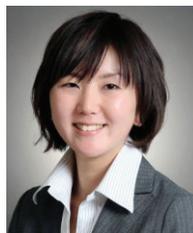
- revisions intended to simplify and harmonise national and EU procedures for registration of trade marks;

- dropping the requirement for trade marks to be capable of graphic representation;
- specific references to colours and sounds in the list of signs that are capable of registration;
- a revised fee structure designed to make EU trade mark registration cheaper;
- improved rights to seize counterfeit goods in transit;
- the establishment of a new European Trade Marks and Design Agency which will replace the Office for Harmonisation in the Internal Market (trade marks and designs); and
- changes to terminology such that Community Trade Marks will be known as European Trade Marks.

The new regulation ([Regulation \(EU\) 2015/2424](#)), which is directly applicable in all member states, was published in the Official Journal of the European Union (the “**Official Journal**”) on 24 December 2015 and will enter into force on 23 March 2016. Certain provisions will take effect from 1 October 2017. The new directive ([Directive \(EU\) 2015/2436](#)) was published in the Official Journal on 23 December 2015 and enters into force 20 days thereafter. The old directive is repealed with effect from 15 January 2019 and member states will have between 3 and 7 years to implement the various requirements of the directive into national law.

## HIGHLIGHTS OF 2015 AND WHAT TO WATCH IN 2016 IN JAPAN

By [Chie Yakura](#), [Aramide O. Fields](#), and [Naoko Ishihara](#)



### Japan

- **Changes to Patent Opposition System**
  - As we reported in the [July 2015 IP Newsletter](#), a 2014 revision to Japan’s Patent Act created an Opposition System that provides a simpler procedure for challenging patents and redefines

the scope of the Invalidation Trial System. The revision went into effect on April 1, 2015.

- Proceedings are conducted by a panel of administrative law judges from the Japan Patent Office (JPO) and involve only the patentee — not the challenger, even though the proceedings are triggered by the challenger. The panel generally makes a decision based on submitted paperwork, and if it finds that a patent should be revoked, then the patentee may request a correction to the specification through a process that allows input from the challenger.
  - If the panel revokes the patent, then the patentee can appeal the decision to the Intellectual Property High Court. In contrast, if the panel deems the patent valid, then the challenger cannot appeal the decision. Instead, the challenger may initiate an Invalidation Trial or, if the challenger is an alleged infringer, a declaratory action with a district court.
  - The 2014 revision also amended the Japanese Patent Act to specify that only an “interested party” may challenge patent validity through an Invalidation Trial, but there is no limitation on who may challenge patent validity through the Opposition System.
- **Supreme Court Ruling Narrows Scope of Product-by-Process Claims**
    - The Supreme Court reversed a Grand Panel Judgment of the IP High Court for the first time since its inception in 2005 in a ruling that severely restricts the scope of permissible product-by-process (PBP) claims. The Supreme Court held that PBP claims should be evaluated according to the product-identity rule, such that the technical scope of PBP claims should be construed to cover all identical products, regardless of whether they were made using the claimed process. Further, the Court held that PBP claims are invalid due to lack of clarity (Article 36.6(b) of the Patent Act) unless defining a product by its structure or characteristics is impossible or largely impractical at the time of filing the patent application.

- **The JPO’s Revised Guidelines re: PBP Claims**
  - In light of the Supreme Court’s decision, the JPO released new guidelines for examining PBP claims that became effective July 6, 2015. The guidelines provide that:
    - The examiner will determine whether

the product claim includes its method of production by using the knowledge of an ordinary person in that field in addition to the specification, the scope of the claimed invention, and drawings.

- If the examiner finds that the product claims include the method of production and issues an Office Action on the ground of lack of clarity, the examiner may provide the applicant with opportunities to prove, rebut, or correct its application.
- The examiner will also consider the knowledge of an ordinary person in that field when determining whether defining a product by its structure or characteristics would have been impossible or largely impractical at the time of the filing. The examiner decides that defining a product by its structure or characteristics is not impossible or largely impractical (i.e., the PBP claim at issue would be denied due to lack of clarity by the examiner) only when the examiner finds a reasonable and concrete question on the applicant's proof that defining a product by its structure or characteristics is impossible or largely impractical.

## What to Watch in 2016

- **Effects of PBP Supreme Court Decision and Revised JPO Guidelines**
  - The Supreme Court's decision and revised JPO Guidelines present a much greater hurdle for patentees pursuing PBP claims, as such claims may now be rejected due to failure to meet the clarity requirement. Patentees should watch to see what impact these major developments will have on challenges to patent validity in Japan. The changes may lead to fewer attempts to patent PBP claims, and may result in more invalidity actions and challenges to PBP claims that were granted before the guidelines were tightened.

- **Possible Revision to JPO Guidelines re: Patent Term Extension**
  - The JPO has announced that by spring 2016, it will consider revising JPO Guidelines in response to a Supreme Court decision regarding patent term extensions. In *Genentech v. JPO* (2015), the Supreme Court affirmed a pharmaceutical company's right to extend a patent term because of the time taken to obtain approval from the Ministry of Health, Labour and Welfare (MHLW) for a change to the dosage and administration of a patented drug. The JPO granted a patent term extension on the basis of the MHLW's initial approval of the dosage and administration, but rejected an extension for the subsequent change to the dosage and administration. The Supreme Court held that the JPO should have granted the extension. Changes to the JPO Guidelines could give pharmaceutical companies greater assurances about permissible grounds for obtaining patent term extensions.

## WHERE TO FIND US

- **January 24, 2016**  
Personalized Medicine World Conference, Mountain View, CA – **Catherine Polizzi**.
- **February 24, 2016**  
ACI's 8th Annual Advanced Forum on ITC Litigation & Enforcement, Washington, D.C. – **Brian Busey**
- **February 23, 2016**  
ACI Life Sciences Patents, New York, NY – **Cary Miller**

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Tracking Patent  
Litigation at the ITC

Morrison & Foerster is pleased to announce the launch of **MoFo@ITC**, a new blog reporting on the latest news, legal developments, trends, and statistics on patent infringement and other intellectual property-based actions (Section 337 investigations) at the U.S. International Trade Commission.

We invite you to follow MoFo@ITC at <http://mofoatitc.mofo.com/> or on Twitter at [@MoFoITC](https://twitter.com/MoFoITC). We look forward to bringing you timely and informative ITC-related updates for your business.

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