



# PATENT MASTERS™ SYMPOSIUM

A PART OF THE IPWATCHDOG INSTITUTE

## ***Standard Essential Patents: Striking a Balance Between Competition & Innovation\****

<b>Tuesday, September 10, 2019</b>	
8:00am to 8:30am	Registration & Breakfast
8:30am to 8:45am	<b>Gene Quinn:</b> Welcome & Introductions
8:45am to 9:30am	<b>Keynote</b>  <i>Commissioner Christine Wilson Federal Trade Commission</i>
Session #1 9:30am to 10:45am	<b>Myths, Realities and Misconceptions About Standard Essential Patents</b>  <i>William Rinner, Chief of Staff and Senior Counsel at the U.S. DOJ, Antitrust Division</i>  <i>Matteo Sabattini, Director IP Policy, Ericsson</i>  <i>Kirti Gupta, Vice President, Technology &amp; Economic Strategy, Qualcomm</i>  <i>Theodore Essex, Sr. Counsel, Hogan Lovells</i>  <i>Moderated by Gene Quinn</i>  There are a variety of myths surrounding standard essential patents, including that technology becomes valuable because it is declared a standard. This opening session will explore common misperceptions and discuss the underlying tensions between innovators, who wish to be paid more, and implementers, who wish to pay less.
10:45am to 11:15am	BREAK
Session #2 11:15am to 12:30pm	<b>Disharmony Between DOJ, FTC &amp; PTO on Antitrust Enforcement of Licensing of SEPs?</b>  <i>David Kappos, Partner, Cravath, Swaine &amp; Moore, LLP, Former USPTO Director</i>  <i>F. Scott Kieff, Former ITC Commissioner</i>  <i>Moderated by John White</i>  Assistant Attorney General Makan Delrahim has withdrawn assent to the 2013 Joint DOJ-USPTO Policy Statement on Remedies for Standard Essential Patents, and signaled concern over collusion of licensees who are refusing to deal with

\* **DRAFT as of August 13, 2019.** The Agenda is subject to change.

	<p>technology innovators. Meanwhile, the Federal Trade Commission has pursued a case against Qualcomm and won a ruling in a bench trial in the Northern District of California ordering Qualcomm to license SEPs to competitor Intel. The agencies that normally proceed in lock-step seem out of sync with respect to whether the refusal to license SEPs is an antitrust violation, and whether the actions of licensees in refusing to deal with SEP owners is even problematic.</p>
12:30pm to 2:00pm	Lunch & Keynote: TBA
<p>Session #3 2:00pm to 3:15pm</p>	<p><b>Antitrust Regulation of Patentees</b></p> <p><i>Judge Douglas Ginsburg, Senior Circuit Judge, U.S. Court of Appeals, District of Columbia</i></p> <p><i>Gregory Werden, Senior Economic Counsel, Antitrust Division, U.S. DOJ (retired)</i></p> <p><i>Moderated by Gene Quinn, President &amp; CEO, IPWatchdog, Inc.</i></p> <p>Owners of standard essential patents (SEPs) are often cast as villains for engaging in “patent hold-up,” i.e., taking advantage of the fact that they negotiate royalties with implementer-licensees that already have made sunk investments in the standard. But does patent hold-up involve standard-setting misconduct or harm to any competitive process that violates antitrust laws? Relatively few litigations have been successfully brought under the antitrust laws focusing on SEPs, but there has been increasing discussion of the topic for the last 15 years, including in speeches by Assistant Attorney General Makan Delrahim. This session will discuss the role antitrust should play in regulating patentees, specifically owner of SEPs.</p>
3:15pm to 3:45pm	BREAK
<p>Session #4 3:45pm to 5:00pm</p>	<p><b>FRAND &amp; Willing Licensees: What is Fair, Reasonable and Non-Discriminatory</b></p> <p><i>Gregory Sidak, Chairman, Criterion Economics</i></p> <p><i>Theodore Essex, Sr. Counsel, Hogan Lovells, retired ALJ for the ITC</i></p> <p><i>Moderated by John White</i></p> <p>Those contributing patented technologies to the development of a standard are asked to provide a FRAND (which stands for Fair, Reasonable and Non-Discriminatory) assurance, in essence committing to providing access to patents that are</p>

	<p>or may become essential to the implementation of the standard. But what is fair, reasonable and non-discriminatory? The terms are easy to say, but difficult to parse. More difficult when licensees refuse to engage in good faith in an age of efficient infringement. This segment will discuss, among other things, the 2017 decision in <i>TCL v. Ericsson</i> that while Ericsson negotiated in good faith, their licensing offers were not FRAND rates. In addition, we will discuss <i>In re: Qualcomm Litigation</i> where Qualcomm alleges that Apple has forfeited entitlement to FRAND by not being a willing licensee.</p>
5:00pm to 5:30pm	TBA
6:00pm to 9:00pm	<p><b>Cocktail Reception &amp; Dinner (optional)</b></p> <p><i>Ruths' Chris Steakhouse</i></p>

<b>Wednesday, September 11, 2019</b>	
8:00am to 9:00am	Continental Breakfast
9:00 to 9:45am	<p><b>Error Costs and Patent Antitrust Law</b></p> <p><i>Keith Hylton, Professor, Boston University School of Law</i></p> <p>One sensible approach to choosing between two legal standards, or between proof standards with respect to evidence, is to consider the relative costs of errors. According to a recently published paper authored by Professor Hylton and Wendy Xu, patent antitrust law should err on the side of protecting innovation incentives.</p>
<p>Session #5 9:45am to 11:00am</p>	<p><b>The 5G Landscape: 5G SEP Licensing from the Innovator Perspective</b></p> <p><i>Kim Chotkowski, VP, InterDigital</i></p> <p><i>Kirti Gupta, Vice President, Technology &amp; Economic Strategy, Qualcomm</i></p> <p><i>Moderated by John White</i></p> <p>While consumers wouldn't get connected to 5G platforms without the technology implementers, 5G technology wouldn't exist for technology implementers to roll out in the first place without the significant investment of 5G innovators. While it is important not to minimize the contributions of those technology implementers across the final mile to consumers, a variety of innovators have paved the way for innovation of 5G technology from the ground up.</p>
11:00am to 11:30am	BREAK
<p>Session #6 11:30am to 12:45pm</p>	<p><b>Litigating Standard Essential Patents</b></p> <p><i>Michael Renaud, Partner, Mintz Levin</i></p> <p><i>Theodore Essex, Sr. Counsel, Hogan Lovells</i></p> <p><i>Moderated by Gene Quinn</i></p> <p>Innovators believe injunctions are necessary to address widespread patent infringement, but in <i>Apple v. Motorola</i>, 757 F.3d 1286 (Fed. Cir. 2014), Motorola was denied an injunction for a FRAND committed patent and American courts have tended to take a hostile view toward awarding injunctions against implementers. Questions of a hold-up are encountered when owners of SEPs seek an injunction or an exclusion order or cease and desist from the ITC. Meanwhile, on the</p>

	<p>international stage questions about whether national courts have authority to set a worldwide FRAND rate are mounting. In October 2018 The Court of Appeals in the UK affirmed Mr. Justice Birss' decision finding that a FRAND rate may be global and that Unwired Planet was justified in offering a global license to Huawei. Essentially, the Court upheld Birss' interpretation of the requirements of <i>Huawei v. ZTE</i> and found Unwired Planet did not abuse a dominant position. But this begs the question about whether parties will (or even should) now race to an agreeable jurisdiction in hopes of obtaining favorable rulings from ideologically aligned jurists.</p>
12:45pm to 2:00pm	Lunch Keynote: TBA
<p>Session #7 2:00pm to 3:15pm</p>	<p><b>Why Changing SSO IP Policies Devalue Patents</b></p> <p><i>Professor Kristen Osenga, The University of Richmond School of Law</i></p> <p><i>Gene Quinn, President &amp; CEO, IPWatchdog, Inc.</i></p> <p><i>Moderated by John White</i></p> <p>Companies as well as commentators have been pushing SSOs to change their IP policies to be less friendly to patent holders. Based on unproven theories, like patent holdup and royalty stacking, these parties are encouraging SSOs to change their rules to disallow injunctive relief for infringement of standard essential patents. Policies are even being changed retroactively. This session will discuss recent IP policy changes made by the IEEE, as well as how the IEEE's governance structure was particularly helpful in allowing companies and commentators to encourage this shift. We will also consider efforts to make changes at other SSOs, including ANSI, as well as where similar efforts have failed, such as ETSI.</p>
3:15pm to 3:45pm	BREAK
<p>Session #8 3:45pm to 5:00pm</p>	<p><b>Using the PTAB to Challenge SEPs</b></p> <p><i>David Cohen, Kidon IP Corporation</i></p> <p><i>Jonathan Stroud, Unified Patents</i></p> <p><i>Moderated by John White</i></p> <p>Standards-declared patents have been challenged in ex parte and post-grant review for years as part of enforcement efforts and other strategies,</p>

	<p>though the volume of patents declared essential and their largely un-litigated status has limited the appeal of post-grant challenges against them. One such standard, High-Efficiency Video Coding (HEVC), promises to be the successor to the current H.264 standard used by most streaming visual media. As all parties seek to clear risk and license as they implement, developing patent pools have been utilizing new strategies for licensing standard-declared patents. Recently, Unified Patents launched an HEVC zone aimed at encouraging adoption and shedding light on the SEP landscape, and has conducted damages studies, landscape models, and analysis of the patent landscape around the HEVC standard. As part of those efforts, Unified has been challenging patents related to the standard. To date, only a handful of litigations have been filed related to HEVC patents. This panel will provide a spirited debate on the benefits and drawbacks of standards, patent pools, and evolving models of licensing in the modern age.</p>
--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

## Faculty *(alphabetically by last name)*

**Kim Chotkowski** is Vice President and Head of Licensing Strategy and Operations for InterDigital, Inc. Prior to re-joining InterDigital in January 2019, Kim was Chief Executive Officer for the Licensing Executives Society (U.S.A. and Canada), Inc., and before that was President of Brandywine Ventures LLC. Kim is an accomplished patent attorney and licensing executive with over 25 years of professional legal and business experience. She holds a degree in electrical engineering from Worcester Polytechnic Institute, a Juris Doctorate from the University of New Hampshire School of Law and an MBA in international business and finance from Sacred Heart University. She has also been named as one of the top IP strategists in the world by IAM every year since 2009.

**David Cohen** is an intellectual property strategist with experience in the offensive and defensive sides of global, intellectual property monetization. He operates on an outsourced Chief IP Officer model and provides legal services through his law firm and IP-business related services (including patent brokering and legal process and/or IP-business or M&A focused consulting) through Kidon IP Corporation. David is the former Chief Legal and IP Officer of Vringo Inc. Prior to Vringo, he was senior in-house counsel at Nokia Corporation. He worked at the law firms of Lerner David and Skadden Arps before joining Nokia. David also clerked for Chief Judge Carman of the Court of International Trade.

**Theodore Essex** served as a U.S. International Trade Commission (ITC) judge for a decade, and is now Senior Counsel at Hogan Lovells in Washington, D.C. In addition to being admitted to the bars in the District of Columbia and Louisiana, he is also a registered solicitor in England and Wales. Ted has been hailed an unofficial ambassador to intellectual property lawyers and judges throughout the U.S., Asia, and Europe, and during his time at the ITC handled some of the most important and noteworthy Section 337 intellectual

property infringement proceedings involving the world's most valuable and renowned companies. Before joining the ITC, Ted served 20 years in the U.S. Air Force as a Judge Advocate, where he had extensive international practice, gained experience working with labor, criminal and EEO law, and managed large offices of lawyers and staff. During this time Ted trained hundreds of attorneys, gave numerous lectures and published in variety of areas.

The **Hon. Douglas H. Ginsburg**, Senior Circuit Judge for the U.S. Court of Appeals for the District of Columbia. Judge Ginsburg was appointed to the Court of Appeals in November 1986. He served as Chief Judge from July 16, 2001 until February 10, 2008 and took senior status on October 14, 2011. Judge Ginsburg is the Chairman of the International Advisory Board of the Global Antitrust Institute at the Antonin Scalia Law School, George Mason University. He also serves on the Advisory Boards of: Competition Policy International; the Harvard Journal of Law and Public Policy; the Journal of Competition Law and Economics; the Journal of Law, Economics and Policy; the Supreme Court Economic Review; the University of Chicago Law Review; The New York University Journal of Law and Liberty; and, at University College London, both the Center for Law, Economics and Society and the Jevons Institute for Competition Law and Economics. He was graduated from Cornell University (B.S. 1970) and from the University of Chicago Law School (J.D. 1973). Following law school, he clerked for Judge Carl McGowan of the U.S. Court of Appeals for the D.C. Circuit and for U.S. Supreme Court Justice Thurgood Marshall. From 1975 to 1983, he was a professor at Harvard Law School. He then served as Deputy Assistant Attorney General for Regulatory Affairs, Antitrust Division, U.S. Department of Justice, from 1983 to 1984; Administrator, Information and Regulatory Affairs, OMB, from 1984 to 1985; and Assistant Attorney General, Antitrust Division, U.S. Department of Justice, from 1985 to 1986.

**Dr. Kirti Gupta** is Vice President for Technology and Economic Strategy at Qualcomm. She is responsible for leading the substantive direction of the global intellectual property and competition policy efforts of Qualcomm, and for conducting original research on issues related to IP and competition law and economics. Dr. Gupta holds a Master's degree in Electrical Engineering from Purdue University, and a Ph.D. in Economics from the University of California, San Diego.

**Keith Hylton** is a William Fairfield Warren Distinguished Professor of Boston University and Professor of Law at Boston University School of Law. Professor Hylton joined the BU Law faculty in 1995 after teaching for six years and receiving tenure at Northwestern University School of Law. He is a prolific scholar who is widely recognized for his work across a broad spectrum of topics in law and economics, including tort law, antitrust, labor law, intellectual property, civil procedure, and empirical legal analysis. He has published five books and more than 100 articles in numerous law and economics journals and serves as an associate editor of the *International Review of Law and Economics*, a contributing editor of the *Antitrust Law Journal*, co-editor of *Competition Policy International*, and editor of the Social Science Research Network's *Torts & Products Liability Law eJournal*. He has served as president of the American Law and Economics Association (2017–2018 term) and is a former director of the American Law and Economics Association.

**David J. Kappos** is a partner at Cravath. He is widely recognized as one of the world's foremost leaders in the field of intellectual property, including intellectual property management and strategy, the development of global intellectual property norms, laws and practices as well as commercialization and enforcement of innovation-based assets. From August 2009 to January 2013, Mr. Kappos served as Under Secretary of Commerce and Director of the United States Patent and Trademark Office (USPTO). Prior to leading the

USPTO, Mr. Kappos held several executive posts in the legal department of IBM, the world's largest patent holder. From 2003 to 2009, he served as the company's Vice President and Assistant General Counsel for Intellectual Property.

The **Hon. F. Scott Kieff** is the Fred C. Stevenson Research Professor of Law at GW Law School in DC. He specializes in international trade and business; intellectual property; antitrust; finance and securities regulation; bankruptcy; biotechnology and medicine; governance and compliance; cyber; privacy; and security. A former Commissioner of the U.S. International Trade Commission from 2013-17 in a Republican seat, he was nominated by President Obama and confirmed unanimously by the Senate during Democrat control. He has served as an advisor to high-level government offices during the Bush, Obama, and Trump Presidential Administrations on national security and economics. He previously held secondary faculty appointments for several years as a professor in the Washington University School of Medicine's Department of Neurological Surgery, and the Munich Intellectual Property Law Center at Germany's Max Planck Institute, as well as a senior fellow at Stanford University's Hoover Institution. He also has held visiting faculty appointments in the law schools at Northwestern, Chicago, and Stanford, and in the Olin Program on Law and Economics at Harvard. In the private sector, he works through Kieff Strategies LLC to bring together fellow academics, former government officials, and business practitioners to collaboratively engage complex challenges facing firms in technology, finance, business, and law. This work includes strategic consulting, conducting investigations and crisis management, and providing expert litigation advice and testimony, as well as neutral services as mediators, arbitrators, and compliance monitors directly for private parties or on appointment by courts and other tribunals. A former law clerk to US Circuit Judge Giles S. Rich, and graduate of MIT and Penn Law School, he was recognized as one of the Nation's "Top 50 under 45" by the magazine *IP Law & Business* in 2008. He was elected to the European Academy of Sciences and Arts in 2012.

**Kristen Jakobsen Osenga** is a Professor of Law at The University of Richmond School of Law. Professor Osenga teaches and writes in the areas of intellectual property, patent law, law and language, and legislation and regulation. Her scholarship focuses on the intersection between law and linguistics in patent claim construction as well as other aspects of patent law, including Standard Setting Organizations (SSOs) and the IEEE amended guidelines. Professor Osenga is a frequent speaker at symposiums on patent law and intellectual property and has made numerous presentations to academics and practitioners on these topics. Prior to joining academia, she practiced patent law at Finnegan Henderson and clerked for Judge Richard Linn of the Court of Appeals for the Federal Circuit. She is also a Senior Scholar at the Center for the Protection of Intellectual Property.

**Gene Quinn** is a patent attorney and a leading commentator on patent law and innovation policy. He is the Founder and Publisher of IPWatchdog.com. IPWatchdog.com has been recognized multiple times by the American Bar Association as a top 100 legal blog, multiple times as the top IP blog, and in 2014 was inducted into the *ABA Blawg Hall of Fame*. Gene has twice (2017 & 2018) been recognized by *IAM Magazine* as one of the top IP strategists in the world. He has also been recognized by *Managing Intellectual Property* as one of the 50 Most Influential People in IP (2014). Regarded as an expert on software patentability and U.S. patent procedure, Gene's particular specialty is in the area of strategic patent consultancy, portfolio building, and patent prosecution strategies.

**Mike Renaud** is Division Head for the Intellectual Property Section at Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. and serves as a member on the firm's Policy Committee. He is an experienced litigator with a background in mechanical engineering and 25 years of



experience practicing law, he has the combination of technical and legal skills essential to a strategic patent practice. Mike has significant experience litigating Section 337 matters before the International Trade Commission (ITC) and has also achieved significant success in Federal District Courts. Michael's technology experience includes electromechanical systems, digital cameras, embedded microprocessors, telecommunications and network software, cellular phones, and e-commerce, among others.

**William Rinner** is Chief of Staff and Senior Counsel at the U.S. Department of Justice, Antitrust Division. Among other responsibilities, he has advised the Assistant Attorney General on matters in the Appellate, Healthcare and Consumer Products, and Competition Policy and Advocacy sections, as well as on policy issues involving technology and intellectual property. Before joining the Division, Bill was an antitrust litigator in private practice in Washington, D.C. Bill previously clerked for the Honorable Richard Posner of the United States Court of Appeals for the Seventh Circuit. Bill is a graduate of Yale Law School and University of Notre Dame.

**Matteo Sabattini** is a Director of IP Policy for Ericsson. In addition to his duties with Ericsson, Sabattini also serves as Senior Vice President of Standards for the Licensing Executives Society (USA and Canada), is a Member of the Intellectual Property Committee of the IEEE-USA and is Technical Policy Coordinator for IEEE Region 2. Previously, Sabattini was the Chief Technology Officer for Sisvel Group and he also served as President and CEO of Sisvel technology. Sabattini holds an M.S. in Electrical Engineering from the University of Bologna, a Ph.D. in Communication Theory and Systems from the University of California, San Diego, and an MBA in Business Administration from The George Washington University.

**J. Gregory Sidak** is Chairman of Criterion Economics, LLC. Greg has extensive experience in matters concerning antitrust, patents, and regulation of network industries (including the Internet, telecommunications, media, content, and energy). studied law and economics at Stanford University and served as Judge Richard Posner's first law clerk. He has served as a senior staff member of the President's Council of Economic Advisers and Deputy General Counsel of the Federal Communications Commission. He currently edits the Journal of Competition Law & Economics for the Oxford University Press, and has held academic positions at Yale, Georgetown, Tilburg, and the American Enterprise Institute for Public Policy Research. His books and articles have been cited by the Supreme Court of the United States, the Supreme Court of Canada, the European Commission, and other courts and regulatory agencies. He has testified before the U.S. Congress on multiple occasions, and he has written extensively on the topic of Standard Essential Patents.

**Jonathan Stroud** is Chief IP Counsel at Unified Patents. Jonathan manages litigation, appeals, PTAB proceedings, licensing, and settlement negotiations, legal strategy, and prior art analysis, and prepares, drafts, and files proceedings for Unified. Previously, he litigated at Finnegan, Henderson, Farabow, Garrett & Dunner LLP, before the PTAB, in district court litigation, and on appeal, and prior to that he examined implantable medical device patents at the USPTO for 5 years. He interned at the U.S. International Trade Commission (ITC) for Judge Robert K. Rogers and earned his J.D. with honors from American University Washington College of Law; his B.S. in biomedical engineering from Tulane University; and his M.A. in print journalism from the University of Southern California.

**John White** is a patent attorney and lecturer. He is an Adjunct Law Professor at the University of Virginia School of Law and is the principal lecturer in the PLI Patent Bar Review Course. John also teaches a patent practice course for new practitioners. Since John began teaching in 1995, he has personally taught at least 50% of all practicing patent attorneys and

patent agents. John has also taught numerous U.S. Patent Examiners at the USPTO in the “Law and Evidence Course” necessary for them to advance to Partial Negotiation authority as Examiners. John serves as an expert witness in patent litigations and is regarded as a leading authority on patent practice and procedure in the United States. He maintains a selective patent practice with Berenato & White, LLC, largely aimed at assisting start-up technology companies increase and monetize their patent portfolios.

**Christine S. Wilson** was sworn in on September 26, 2018 as a Commissioner of the Federal Trade Commission. President Donald J. Trump named Wilson to a term that expires on Sept. 25, 2025. Wilson previously served at the FTC as Chairman Tim Muris’ Chief of Staff during the George W. Bush Administration, and as a law clerk in the Bureau of Competition while attending Georgetown University Law Center. In between her periods of service at the FTC, Wilson practiced competition and consumer protection law both at law firms and as in-house counsel. When nominated, Wilson was serving as Senior Vice President — Legal, Regulatory & International for Delta Air Lines. Prior to joining Delta, Wilson was a member of the Washington DC antitrust practice groups of Kirkland & Ellis LLP and O’Melveny & Myers LLP. Early in her career, Wilson worked with former Assistant Attorney General James F. Rill at Collier Shannon Rill & Scott on a variety of competition law and policy initiatives, including the final report of the International Competition Policy Advisory Committee commissioned by Attorney General Janet Reno. Wilson graduated *cum laude* from Georgetown University Law Center and she graduated Phi Beta Kappa from the University of Florida.

**Page Intentionally Left Blank**