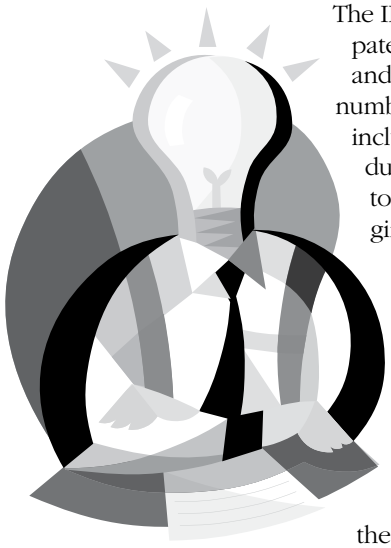
WILLIAM H. HOLLANDER

New Intellectual Property Database is a Powerful Tool

Those studying trends in intellectual property law now have a powerful new tool in a database created at Stanford University Law School. According to Stanford, "[t]he primary goal for this exciting project is to address the critical need for a comprehensive, online resource for scholars, policymakers, industry, lawyers, and litigation support firms in the field of intellectual property litigation."

The Stanford Law School Intellectual Property Litigation Clearinghouse (IPLC) (lexmachina.stanford.edu) is a searchable online database that contains information on cases involving patent, trademark, and copyright law and plans to include trade-secret filings in the future. The IPLC was developed by the Law, Science & Technology Program at Stanford University Law School with support from a number of corporations and firms active in the computer technology and intellectual property fields.

The database has attracted the most attention for the statistical information it contains on patent case filings and outcomes since 2000. Similar information on other types of intellectual property litigation is coming. The IPLC is modeled after the school's successful online securities litigation database, which provides detailed information relating to the prosecution, defense, and settlement of federal class action securities fraud litigation. The securities litigation database was started in 1996 and has since become a resource for legal scholars, journalists, and lawyers.



The IPLC contains information on 23,000 patent suits filed since 2000; copyright and trademark cases bring the total number to around 78,000. The database includes real-time data summaries, industry indexes, and trend analyses, together with a full-text search engine, providing detailed and timely information that the creators claim cannot be found elsewhere in the public domain. Researchers have already used the database to determine that patent infringement case filings dropped last year by about 8 percent from 2007 and that the biggest drop came in the last five months of the year, at the height of the credit crisis and recession fears. Joshua Walker, executive director of the IPLC, said that the system's statistics weed out false filings that often appear in regular searches by district courts and claimed that a comparable search of PACER had produced erroneous information. Mark Lemley, a professor of intellectual property law at Stanford, has also reported that the system reveals that federal judges in Delaware have been even less likely to grant summary judgment in patent cases than judges in the Eastern District of Texas, which was a surprise to many.

Professor Lemley hopes that the database will allow companies, inventors, and lawyers to make more rational decisions—before they litigate—by having better access to outcomes in previous litigation. He also says that the database should allow judges "to define what patent terms mean based on past cases and interpretations and to rely on data to inform settlement negotiations." However, Lemley continued—

> We also built this tool so that scholars and policymakers could help Congress reform the patent system in rational ways, based on what's really happening rather than our perception of what's happening. For example, today there are patent reforms under consideration in Congress focused on the problem of litigation abuse which floods the courts with unnecessary litigation and holds up the true innovators. One of the most talked about examples of this abuse is the phenomenon of "patent trolls." But no one can agree on how many trolls there are out there. … The IPLC offers us the data we need to do empirical analysis and develop the best possible reforms.

Several features of the database have drawn positive comments. One blogger, a law firm shareholder, noted that he could simply search "trademark" in a particular judicial district and determine how many cases were filed last year and how many remain active. According to his blog, "You can click on a case and see its docket (though you can't access the underlying filings). While this information clearly comes from PACER, and to date is patent-centric, Stanford organizes it well and—best of all—offers it up for free."

Well, the part about free use is not exactly true—the database is not free to everyone. As of the end of January 2009, use of the database was limited to "non-commercial" users. Noncommercial terms of use, which must be accepted before gaining access to the

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system, allow use by academicians and government attorneys at no charge. Stanford's press release announcing the IPLC stated that "all three branches of government—judicial, executive, and legislative—may use the IPLC to track, manage, analyze, and debate IP litigation in real time."

Commercial uses—both direct and indirect—were initially prohibited, but Walker expects that a pay-for-use system for commercial users will be available in a few weeks (most likely by the publication date for this column or shortly thereafter). Such uses will be subject to different terms—including an up-front charge for each firm as well as hourly usage charges—which Walker says will be lower than those levied by other commercial services. As of this writing, the terms of use define commercial uses as those used by private attorneys defending, managing, or prosecuting litigation; by litigation consultants; by any for-profit legal entity; and by those who need to analyze the purchase, sale, licensing, commercialization, or valuation of any intellectual property. According to Walker, the charges are necessary to support the continued operation of the IPLC, which, like every other party, pays the federal government for access to PACER. However, Lemley says that he believes some commercial uses of the IPLC may be free in the future.

If the database works as well as expected, Lemley believes that it could lead to similar efforts in other fields, such as bankruptcy or antitrust law. **TFL**

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means employees who may reasonably be expected to experience an employment loss as a result of the plant closing or mass layoff. 29 U.S.C. § 2101(a)(5). It is important to note that, even though part-time employees are not included when considering whether the WARN Act will apply, they are entitled to notice if the act does apply.

[15]29 U.S.C. § 2102(a).
[16]20 C.F.R. § 639.7.
[17]29 U.S.C. § 2104.
[18]*Id.*
[19]*Id.*
[20]29 U.S.C. § 2102.
[21]*Id.*; 20 C.F.R. § 639.9.
[22]*Id.*
[23]29 U.S.C. § 2101.
[24]*See generally Association of Western Pulp and Paper Workers v. Grays Harbor Paper Co.*, No. C93-5226B, 1994 U.S. Dist. LEXIS 13094 (W.D. Wash. Mar. 14, 1994).
[25]*See* U.S. Department of Labor, *The WARN Act: Employers Guide*, available at www.doleta.gov/layoff/pdf/EmployerWARN09_2003.pdf (last visited Feb. 3, 2009).