

BAXTER DISCUSSES IP LAW AND CHINA AT ACC CONFERENCE

Boyle Fredrickson attorney **Keith Baxter** recently presented "International Intellectual Property Protection" at the third annual Mini Conference for the **Wisconsin Chapter** of the **Association of Corporate Counsel (ACC)**. As part of his presentation, Baxter addressed the basic concepts behind protecting intellectual property outside the United States and paid special attention to the complexities of doing business in Chinese markets.



"There are many particulars that companies should be aware of before doing business in China."

*Keith Baxter
Boyle Fredrickson*

Baxter reminded the audience that international patents do not exist and each country has its own unique set of laws that govern intellectual property (IP) related issues. Baxter stressed the importance for companies to file patent applications before public disclosure to prevent those disclosures from barring patent protection. He also outlined several categories where patents often face international restriction including software, medical treatments and business methods.

According to Baxter, it is beneficial for corporate counsel practitioners in companies looking to invest in foreign markets to have a working knowledge of international IP law. Baxter then highlighted China as an example of a country with a legal system still in its relative infancy where specifics pertaining to IP rights and issues remain undiscovered.

"There are many particulars that companies should be aware of before doing business in China," Baxter said. "Although the potential exists for great rewards, there are important considerations in IP licensing and IP enforcement that are unique to China. As such,

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"No rule is so general, which admits not some exception."

– Robert Burton

it is not uncommon for some U.S. companies to fall victim to the subtleties of China's legal system and international business practices."

In 2006 more patent infringement cases were filed in China than in any other country. According to Baxter, IP rights owners prevail in over 75 percent of such cases in China. In contrast, Japanese courts find in favor of patentees a mere 10 percent of the time.

"Because examples of infringement seem to be so egregious in China, case outcomes are often a foregone conclusion," Baxter explained. "That seems to account for some of the discrepancy between the Chinese system and its Japanese counterpart."

Another statistical anomaly in the Chinese legal system finds foreign entities standing victorious approximately 90 percent of the time in IP disputes. Baxter notes, however, that most patent litigation in China leads to damage settlements of only \$100,000 or less. According to Baxter, these damages often make it impractical for companies to pursue legal action against offending parties as the resulting legal fees many times would offset potential damage settlements.

Boyle Fredrickson encourages companies to consult dedicated attorneys specializing in foreign IP matters before doing a heavy volume of business overseas.

Contact Boyle Fredrickson at mail@boylefred.com or 414-225-9755 with any questions. For a version of the slides presented at the ACC conference, contact Keith Baxter at kmb@boylefred.com.

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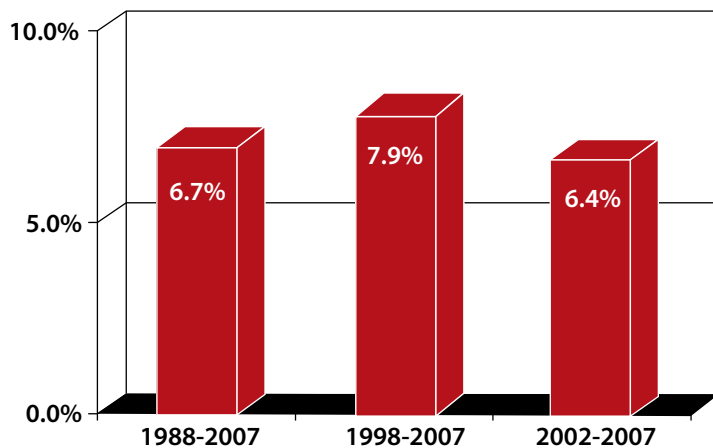


PATENT QUANTITY AND QUALITY ISSUES UP FOR DEBATE

A recent article appearing in the June issue of *Les Nouvelles*, a leading technology journal of the **Licensing Executives Society (LES)**, addressed several issues relating to patent quantity and quality that some believe plague the effectiveness of the **United States Patent and Trademark Office**

(USPTO). In the article titled “What is Patent Quality? A Merchant Banc’s Perspective” authors John Malackowski and Jonathan Barney analyze some recent trends relating to patent filing and theorize that patent application quantity may not be as exorbitant and patent application quality may not be as lacking as some might think when compared to historical data.

Percentage Increase of U.S. Patent Filing Rates Over 20 Years



Note: Filing information for 2007 is representative only of the first half of the year.

Research indicates that from 2003-2007, U.S. patent filing rates have increased annually at an average of 6.4 percent. Partial numbers from the first half of 2007 show a filing rate increase of 7.1 percent. While at first glance, the numbers may seem high, when compared to historical averages from the last decade (1998-2007), the average annual growth rate of patent applications filed has actually slowed. The average growth rate over the past 10 years is 7.9 percent, noticeably higher than the recent 5-year averages. Looking back even further, the average annual growth rate from the past 20 years (1988-2007) stands at 6.7 percent, suggesting recent filing rates are increasing at approximately the same pace as they have been for the last two decades. Taking these figures into account lightens some of the criticism arguing that the USPTO has seen a recent onslaught of patent applications, thus affecting the review process.

Additionally, Malackowski and Barney argue that utility patents issued in 2007 show significantly more prior art than those filed a mere 5 years ago. According to data, there has been a 41 percent increase in prior art citations in U.S. patent documents. Although this data does not prove that

searches have been more thorough or necessarily of a higher quality, the authors believe it makes a fair argument that patent searches have not floundered over the past several years as some critics may suggest.

“The USPTO and patent quality are sometimes lightning rods for critics,” said **James Boyle**, Boyle Fredrickson attorney and shareholder. “Although it is a more involved process to secure patents than it has been in the past, by making appropriate use of available tools and communication channels, I am confident that properly prepared documents and applications will be treated fairly under the current patent system. We just need to be mindful that applications may take a little longer to navigate through the process.”

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CLIENT SPOTLIGHT: KRUEGER INTERNATIONAL, INC.

Krueger International, Inc. (KI) has established itself as a leader in innovative furniture production and according to Boyle Fredrickson President and KI counsel representative **Andrew McConnell**, they show no signs of slowing down. KI is a pioneer in their industry and at the rate they have been developing new products, they seem to be well positioned for future success. Research and innovation have always been stalwarts of their success and have lead to several new patents over the years.



“I’ve been working with KI for 15 years and I’ve had the privilege of helping them file and successfully obtain dozens of patents,” said McConnell. “It is easy to see how KI’s commitment to their engineers and

designers has translated into corporate success. Their research efforts truly provide a solid foundation for future development and growth.”

Founded in 1941 and headquartered in Green Bay, Wisconsin, KI is the sixth largest contract furniture manufacturer in the industry. They employ nearly 3,000 workers dispersed amongst their 10 manufacturing facilities and offices.

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TRADEMARK SCAMS INCREASE, BECOME HARDER TO DETECT

As companies continue to spread their identity to other parts of the world, they are becoming increasingly susceptible to fraudulent trademark scams. Companies are increasingly targeted by scammers using official looking emails and documents that threaten loss of intellectual property rights unless the company pays an invoiced fee to “protect” it through the scammer’s phony company, agency or organization.

“Trademark scams are becoming quite common,” said **Adam Brookman**, Boyle Fredrickson attorney and shareholder. “Unfortunately for many, scammers and their means are more sophisticated than ever before, making it harder to tell the difference between official communications and things that are fraudulent. You have to look very closely and read the fine print. Most scams rely on looking official, but falling within the law by tiny disclaimers. If a trademark application was filed by a law firm, all communication will be to the law firm. Anything that you receive directly is almost certainly a scam.”

According to the article “Beware the Many Faces of a Trademark Scam” published by **Portfolio Media**, there are four distinct categories of trademark scammers that companies should remain alert to:

- *Masqueraders* – those impersonating officials, government agencies and licensing organizations. They use communications that use official looking logos, typefaces and letter templates to encourage payment of phony invoices.

- *Misrepresenters* – those that present false information requesting companies to register similar domain names and/or trademarks in foreign countries to avoid confusion with existing U.S. intellectual properties.
- *Overchargers* – although not illegal, these groups offer services such as trademark watching for well above normal going rates, sometimes for as much as two or three times the average fee with the hope that targeted companies will not do appropriate research into average costs.
- *Poachers* – those attorneys/firms that troll the public trademark office records and offer services for those that recently received (or are about to receive) an action or rejection letter from the **United States Patent and Trademark Office (USPTO)**. Though legal, these groups will often nickel-and-dime clients by misrepresenting fees and consultation costs for further service.

Those with additional questions concerning trademark scams are encouraged to contact **Boyle Fredrickson** for additional information and assistance.

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MILWAUKEE-WAUKESHA AMONG NATION'S FASTEST GROWING AREAS FOR NEW PATENTS

A recent study conducted by **George Mason University** suggests that the Milwaukee-Waukesha area is ranked fifth in the nation for growth in important new patents. According to Professor Philip Auerswald, the report was requested by the **United States Department of Commerce** as a way to draw attention to cities that have potential for economic and technological growth amongst private investors and federal granting agencies.

"Our firm has long believed there is great potential for invention and technological development by businesses in Southeastern Wisconsin," said **John Fredrickson**, Boyle Fredrickson attorney and shareholder. "It is encouraging that this study shows businesses are capitalizing on that potential and

protecting their advancements with patents. For this region to be in the top tier in growth in the country for important patents speaks volumes about our area companies and their commitment to innovation.”

THE NATION’S TOP 10 FASTEST GROWING AREAS FOR NEW PATENTS


1. Columbus, Ohio
2. Santa Fe, New Mexico
3. Palm Beach County, Florida
4. Houston, Texas
5. Milwaukee-Waukesha, Wisconsin
6. Pittsburgh, Pennsylvania
7. Boise, Idaho
8. Iowa City, Iowa
9. Lake Charles, Louisiana
10. Yuma, Arizona

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BOYLE FREDRICKSON EARNS AWARDS AND RECOGNITION

Already recognized as Wisconsin’s largest intellectual property (IP) law firm, Boyle Fredrickson was recently named by the ***Business Journal*** as one of 25 largest law firms in the Milwaukee area. In addition, during the past few months Boyle Fredrickson has also received two prestigious awards recognizing the firm’s recent success.

 The logo for the Future 50 award, featuring the text "MMAC • COSBE" in a small font above "FUTURE 50" in a large, bold, sans-serif font. A stylized white line graphic resembling a rising graph or a path is positioned behind the text.	Boyle Fredrickson is named as a FUTURE 50 award winner for 2008.
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Earlier this spring, the **Metropolitan Milwaukee Association of Commerce’s (MMAC)** Council of Small Business Executives (COSBE) announced Boyle Fredrickson amongst its list of Future 50 award winners for 2008. The Future 50 program recognizes privately-owned companies in Southeastern Wisconsin that have been in business for at least three years and have shown significant revenue and employment growth.

"The Future 50 list is often a harbinger of what's around the corner for the region's economy," said Tim Sheehy, president of the MMAC. "We're seeing encouraging signs that local, innovative manufacturers can, and will continue to, thrive here. The fact that much of their business is conducted outside the region means they are attracting outside investment into the region, growing the economic base for everyone."

On the heels of the Future 50 announcement, Milwaukee Mayor Tom Barrett presented the firm as a **winner** of the 2007 Mayor's Urban Design Awards for their building at 840 North Plankinton Avenue. Now in its eleventh year, the Mayor's Urban Design Awards program honors exceptional examples of design, facade improvements, landscaping and signage within the city.

Attorney and shareholder **Jay Durst** led the way for the purchase and renovation of the property. Durst led collaborative efforts with the builders at BTB Construction and Design and with interior designer Maria Cieslek to completely renovate the property. Boyle Fredrickson's offices occupy a turn-of-the-century Cream City brick building on the west bank of the Milwaukee River. At 13,000 square feet, the space houses over 20 intellectual property attorneys and additional support staff.

"We are proud of the new offices and especially proud of all the hard work and planning that Jay Durst put forth in turning our vision for the building into a reality," said Boyle Fredrickson President **Andrew McConnell**. "We are also grateful to the city of Milwaukee for supporting us in our growth and helping Boyle Fredrickson remain a fixture of the downtown business community."

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BY THE NUMBERS: BOYLE FREDRICKSON AMONG TOP TRADEMARK FIRMS

In 2007 Boyle Fredrickson had 114 trademarks issued by the **United States Patent and Trademark Office (USPTO)**. According to *Intellectual*

Property Today, that tally places Boyle Fredrickson as the trademark leader among Wisconsin's intellectual property (IP) law firms. The next closest IP law firm in Wisconsin issued 65 trademarks last year. Even among Wisconsin's general practice firms, Boyle Fredrickson ranks fifth in the state, beating several of the area's most recognized names in the legal community.

"While we are pleased with the increase in the number of trademarks our firm issued in 2007, I am more proud of the firm's collective effort to provide quality service to our clients," said Boyle Fredrickson Vice President and shareholder **Michael Gratz**. "Because we focus exclusively on intellectual property law, Boyle Fredrickson provides the specialized resources and level of personal attention that is not only among the best in Wisconsin, but among the best in the country."

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