



## **INTELLECTUAL PROPERTY RIGHTS UP FOR GRABS IN CASES OF BANKRUPTCY**

Intellectual property has become an increasingly important part of a business's recognized assets. Never has this been more apparent than in today's down economy. As the number of companies in economic peril continues to climb, the status of intellectual property (IP) rights and how IP assets impact the marketplace can be called into question. When a business is in jeopardy of declaring bankruptcy, it is important for potentially affected parties to know their IP rights should the struggling entity indeed fail. For example, specific issues pertaining to IP oftentimes remain unresolved as the various parties jockey for control of the IP assets.

"Whether a business files for Chapter 7 or Chapter 11 bankruptcy, the manner in which the courts view their IP assets, their licenses and other existing IP agreements can vary greatly," says Boyle Fredrickson Vice President **Michael J. Gratz**.



**"If a business has valued IP assets or maintains important IP licensing agreements, it is critical to understand the consequences a bankruptcy filing can have on IP rights and obligations."**

*Michael Gratz  
Boyle Fredrickson*

"Depending upon the exclusive or non-exclusive nature of the existing license and the course of action sought by the debtor or its creditors, there are several possible scenarios that could either prohibit or allow the assignability and assumption of IP assets."

Under some circumstances it is entirely possible for an IP licensee to retain the IP rights, so long as they continue to pay any royalties to the debtor due under the licensing agreement. In these scenarios the debtor-licensor is required to:

### **Inside this issue...**

Intellectual Property Rights Up For Grabs In Cases Of Bankruptcy

Attorney Adam Brookman To Present On IP Practices In A Down Economy At ACC Conference

Client Spotlight - Gauthier Biomedical

Playing The Name Game - New Domain Names May Impact IP Rights

Inside The Numbers - Boyle Fredrickson Establishes New High For Patent Applications Filed

Accepting The Gavel - Attorney Peter Stomma Begins Term As Boyle Fredrickson President

Guitar Hero - Attorney Keith Baxter Featured In Popular Science Magazine

**"Laws too gentle are seldom obeyed; too severe, seldom executed."**

**- Benjamin Franklin**

- Provide the licensee with access to the IP in question
- Not interfere with the use of the licensee's existing IP rights under the license
- Comply with any exclusivity provision in the license agreements

"If a business has valued IP assets or maintains important IP licensing agreements, it is critical to understand the consequences a bankruptcy filing can have on IP rights and obligations," says Gratz. For more information on the intersection of IP and bankruptcy law, contact Michael J. Gratz or your Boyle Fredrickson attorney.

top



### **ATTORNEY ADAM BROOKMAN TO PRESENT ON IP PRACTICES IN A DOWN ECONOMY AT ACC CONFERENCE**

**Adam L. Brookman**, a Boyle Fredrickson shareholder, will present ***Block or Tackle? Putting Up Your Best IP Defense During the Economic Downturn*** at the Mini Conference for the **Wisconsin Chapter of the Association of Corporate Counsel (ACC)** on Thursday, May 14 at the **Osthoff Resort** in Elkhart Lake, Wisconsin. The presentation will focus on strategies to preserve and enhance IP portfolio performance in the current economic climate. Brookman will discuss:

- Assessing the value of existing and pending IP assets
- Maintaining and augmenting intellectual property portfolios
- Managing pending IP applications
- Innovating for the upturn

The ACC Mini Conference is a two-day program to be held Thursday and Friday, May 14-15. The program is open to both ACC members and non-members. Registration information is available on the Wisconsin Chapter of ACC website or by contacting Mary Pat Fenton, executive director of the Wisconsin Chapter.



**Adam Brookman will present *Block or Tackle? Putting Up Your Best IP Defense During the Economic Downturn* on May 14.**

If you are interested in attending another session of this presentation, or if you are interested in having the talk hosted at your location, please contact Adam Brookman or your Boyle Fredrickson attorney.

top



## CLIENT SPOTLIGHT - GAUTHIER BIOMEDICAL

"We're no stranger to innovation," says Michael Gauthier, president of **Gauthier Biomedical**.

"Gauthier Biomedical has a long history of customizing instruments for our clients. That often means relying on Matt Corr and the folks at Boyle Fredrickson to make sure our intellectual property remains 'our intellectual property.' There are a lot of imitators, but Matt helps protect our designs and secure our place in the industry."



**Matthew Corr recently helped Gauthier Biomedical patent multiple designs for the company's ratcheting screwdrivers and torque instruments.**

Located in Grafton, Wisconsin, Gauthier Biomedical employs a staff of 50 dedicated professionals and has been in business for eight years. A Boyle Fredrickson client since 2000, they manufacture high-quality tools in the handheld orthopedic and spinal instrumentation industry. During that time, they have worked closely with Boyle Fredrickson Attorney **Mathew E. Corr** on several matters pertaining to intellectual property. Corr routinely helps Gauthier Biomedical with their patent prosecution needs.

Corr recently helped Gauthier Biomedical patent multiple designs for the company's ratcheting screwdrivers and torque instruments. The tools' unique designs limit axial and side-to-side movement between the shaft and handle resulting in a smooth, precise and strong feel. The instruments are an asset to spinal orthopedic surgeons who are placing long pedicle screws in patients' vertebrae. These instruments allow surgeons to quickly implant existing screw designs without sacrificing bone

purchase and pull-out strength associated with double-lead screws.

“As an intellectual property attorney, it’s easy to get excited about working with a client like Gauthier Biomedical,” says Corr. “Not only are they constantly pushing the envelope with new and unique medical tool designs, but Mr. Gauthier and his staff truly understand the value of IP protection within their industry.”

top



## **PLAYING THE NAME GAME - NEW DOMAIN NAMES MAY IMPACT IP RIGHTS**

The Internet Corporation for Assigned Names and Numbers (ICANN) - the organization responsible for managing the internet - has indicated their intent to sell an unlimited number of new top-level domain (TLD) names in the second quarter of 2009. No longer will companies and individuals be restricted to the common web address endings such as .com, .edu and .biz. For example, it is conceivable that later this year Boyle Fredrickson could register .boylefredrickson as its new domain name.

ICANN says the new domain names will help businesses better identify themselves in cyberspace. However, many believe the expansion of TLDs may cause additional trademark violations. In an attempt to curtail some of the concern over domain squatters, each new TLD application will have to include a proposed “Rights Mechanism Protection.” This is a draft policy setting forth how procedures will be put into place in the proposed new TLD to protect legal rights including trademark rights, human rights, and freedom of expression. Additionally, either ICANN or independent third parties will conduct examinations of the applications for (among other things) string confusion - which gauges similarity to other TLDs. Interested third parties will also have the right to object to new TLD applications. Finally, it is also important to note that new TLD applications are likely to cost at least \$50,000 and potentially as high as \$200,000.

"The application requirements and high costs of new TLDs will limit most intentional infringements on existing brands and trademarks to a certain degree," says Boyle Fredrickson Attorney James F. Boyle. "However, ICANN's decision to open up TLDs could conceivably dilute the strength of certain unprotected trademarks. If these new TLDs become available, it will become very important for owners of distinctive names to monitor for the creation of any new domain names that interfere with their existing intellectual property and address any uncovered concerns."

top



### **INSIDE THE NUMBERS - BOYLE FREDRICKSON ESTABLISHES NEW HIGH FOR PATENT APPLICATIONS FILED**

Boyle Fredrickson, Wisconsin's largest intellectual property law firm, recently announced its patent and trademark numbers for 2008. Annually among the nation's leading firms for patent and trademark applications filed, 2008 proved to be a productive year for Boyle Fredrickson's patent attorneys. The firm filed 670 total patent applications and received 289 patents on behalf of its clients for the previous year. The filing of 670 patent applications sets a new high mark for Boyle Fredrickson.

Boyle Fredrickson's 2008 trademark numbers also remain consistent with the firm's strong recent history. Over the last year, the firm filed a total of 223 trademark applications and was responsible for registering 176 trademarks on behalf of its clients. The chart below shows the firm's strong track record for patents and trademarks over the past three years:

<b>YEAR</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
<b>Patent Applications Filed</b>	617	620	670
<b>Patents Issued</b>	335	306	289
<b>Trademarks Applications Filed</b>	230	252	223
<b>Trademarks Registered</b>	151	156	176

top



**ACCEPTING THE GAVEL - ATTORNEY  
PETER STOMMA BEGINS TERM AS BOYLE  
FREDRICKSON PRESIDENT**

Boyle Fredrickson recently named **Peter C. Stomma** as the firm's new president, succeeding **Andrew S. McConnell**. Stomma first joined Boyle Fredrickson in 2001 as a shareholder. He has experience in all facets of intellectual property law, including the preparation and prosecution of patent and trademark applications both domestically and abroad.

McConnell began his term in 2006 and continues his full-time practice at Boyle Fredrickson with an emphasis in intellectual property prosecution, counseling and pre-litigation dispute resolution.

"Andy has done a wonderful job guiding the firm over the past two years," says Stomma. "Under his watch, Boyle Fredrickson has been very successful in helping clients manage their intellectual property assets. During my tenure, the firm will continue to provide the strategic client counsel and legal services needed in today's challenging economic times."



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*Peter Stomma  
Boyle Fredrickson*

Stomma studied electrical engineering at both Vanderbilt University and Marquette University. He earned his law degree from Drake University and is admitted to practice in Wisconsin, several federal courts and before the United States Patent and Trademark Office. Stomma has also made multiple appearances before the U.S. Court of Appeals for the Federal Circuit, various U.S. district and state courts, and the Board of Patent Appeals. Stomma also guest-lectured at the University of Wisconsin-Milwaukee, the University of Wisconsin-Whitewater and Marquette University. He is a past president of the **Marquette University Engineering Alumni Association**, and he also serves as a member of the board of directors of St. Thomas More High School.

In addition to naming a new president, Boyle Fredrickson also recently elected to continue the terms of board members **Michael J. Gratz** (vice

president) and **Timothy E. Newholm** (secretary). Succeeding Stomma in his former position as treasurer is newly appointed board member **Keith M. Baxter.**

top



## **GUITAR HERO - ATTORNEY KEITH BAXTER FEATURED IN POPULAR SCIENCE MAGAZINE**

The April issue of ***Popular Science Magazine*** features Boyle Fredrickson Attorney Keith Baxter and his invention, the **Servo-Electric Guitar**. The Servo-Electric Guitar is a self designed playable instrument that is half computer, half guitar. Baxter rigged a prototype that connects a self-built three-string guitar frame, complete with circuit board and numeric keyboard, to his personal computer through a USB cable.



**The Servo-Electric Guitar**

To translate his keyboard strokes into actual guitar cords, Baxter wrote a special piece of software that matches each button press to a specific tension on the guitar strings. The result is an automated rock experience. Baxter plans to continue modifying his design and hopes to one day perfect a version with an onboard computer for easier pick-up-and-play ability.

“I found that playing a standard guitar was too much work,” jokes Baxter. “I just didn’t have the dexterity to make the chord transitions I wanted at the speed I wanted. So, I decided to take things in another direction. I came up with a new design that uses computer technology and basic motors to play those chords that were previously out of my reach. Now I can produce Jimmy Hendrix inspired riffs or Hawaiian slide guitar with only a slight change in the program.”

top

