



IN THE NEWS – SUITS FILED AGAINST COMPANIES WITH EXPIRED PATENTS

A patent lawyer from Washington D.C. has filed two separate false patent markings lawsuits – the first against **Solo Cup Company** and the second against Gillette (and its parent company **The Procter & Gamble Company**). These actions, if successful, could cost each company millions of dollars in damage settlements.

According to Matthew Pequignot’s “qui tam” lawsuits, the two companies are marking their products or packaging for the products with expired patent numbers. The suit argues these to be examples of knowingly passing fraudulent claims before the United States government. Qui tam law allows private individuals to prosecute on behalf of the U.S. government, and under the false marketing statute in patent law, it is possible to sue for up to \$500 in damages per offense. Recently, U.S. District Judge Leonie Brinkema ruled that Pequignot’s suit against Solo could proceed because the United States has in fact been damaged as a result of its patent laws being broken.

“This is a fairly significant instance where not maintaining accurate patent records for product marking purposes could cost two companies millions of dollars in damages,” says Boyle Fredrickson shareholder **Mathew E. Corr**. “I encourage patent holders to check with their attorneys and make sure the current patent markings on their products are up to date.”

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TRADEMARK GUIDANCE IN A NUTSHELL – BOYLE FREDRICKSON WRITES THE BOOKLET

Boyle Fredrickson has created *A Guide to Obtaining and Protecting Trademarks*, as a reference tool for those seeking basic brand protection information. The booklet highlights several key concepts for trademark owners and potential trademark owners, including how to select a strong mark and how to prevent a mark from losing value.

The booklet discusses what makes a trademark strong, why clearance searching is critical, and why certain marks are simply not registrable. It also provides general information on the registration process, search and application costs, and estimates for associated attorney fees.



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*Mollie Newcomb
Boyle Fredrickson*

“The booklet was created with business people and marketing departments in mind,” says Mollie Newcomb. “Trademark law isn’t always intuitive. This is something that can be used for quick trademark information. These concepts help guide the development and maintenance of a truly valuable trademark portfolio.”

To obtain a copy of the booklet, or for more information on trademarks, **contact Newcomb** or any Boyle Fredrickson attorney.

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BROOKMAN PROVIDES ADVICE FOR MANAGING IP IN A RECESSION

The current economic climate has companies and their attorneys working harder than ever to protect intellectual property without breaking the bank.

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Indeed, companies must work more closely than ever with their IP counsel to manage their IP during these trying times. **Adam L. Brookman** recently joined **Briggs & Stratton** counsel Ken Lemke in a May presentation to the **Wisconsin Chapter** of the **Association of Corporate Counsel** to address these issues.

"This has been the most challenging economic time during my working career," says Brookman. "Companies are looking for any way possible to reduce costs. But when it comes to intellectual property matters, it's best to use a scalpel, not a hatchet."

Brookman and Lemke provided a range of advice to many of Wisconsin's leading corporate attorneys. Among their tips:

- **Consider alternate filing strategies.** This may include more targeted foreign filings or approaching them differently. It may also mean using different strategies, such as seeking a design patent instead of a utility patent, or relying on trade secrets instead of pursuing patent protection.
- **Focus on the *quality* of protection, not the *quantity*.** If you must reduce your IP portfolio, ensure that your most important innovations, brand names or creations are protected. Lesser innovations and secondary trademarks may have to go unprotected or become the subject of less secure protection schemes.
- **Don't be short-sighted.** It's easy to think short term when the pressure mounts to cut costs. But it is important to remember that intellectual property rights are long term assets whose true worth is often not realized until years later. As such, care must be taken to analyze not only the current value of the products or services which are the subject of the protection, but also their long term potential before a decision is made to curtail the associated intellectual property right.

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Brookman encourages companies to continue to focus on innovation. Some of the most successful companies, including **Apple**, **IBM** and **Southwest Airlines**, launched or created new products or programs during previous recessions that gave them extraordinary momentum when the recession ended. To discuss other ways to manage IP in a down economy or to see the full presentation, **contact Brookman** or any other Boyle Fredrickson attorney.

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CAN PROCESSES BE PATENTED? NEWHOLM BREAKS DOWN BILSKI

The **U.S. Supreme Court** recently agreed to hear an important case concerning the scope of patentable subject matter. After reviewing **Bilski v. Doll**, the nation's highest court agreed to consider whether the Court of Appeals for the Federal Circuit erred by holding that a "process" can be patented only if it is tied to a particular machine or apparatus, or if it transforms a particular article into a different state or thing. According to Boyle Fredrickson shareholder **Timothy E. Newholm**, the decision will clarify whether and to what extent computer programs and Internet-based inventions can be patented.



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inventions since the early 1980's," says Newholm. "Technologies have evolved since then that were undreamed of at that time. The Internet and all of its supporting hardware and software are great examples. Many attorneys feel that the lower courts' efforts to contort their analyses of these technologies into the outdated framework of the Supreme Court's decades-old decisions have led to results that do not reflect modern technological and economic realities. The Supreme Court's decision to take a fresh look at this important issue is a fantastic opportunity to conform this critical aspect of patent law to the realities of the 21st century."

Newholm also notes the nomination of Judge Sonia Maria Sotomayor has been of interest to many intellectual property attorneys, as she has hands-on experience in the field. Sotomayor practiced international business law at the New York-based firm of Pavia & Harcourt LLP. There, she was exposed to a variety of intellectual property issues, including copyright and international trade issues. For more on this issue, **contact Newholm** or your Boyle Fredrickson attorney.

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PATENT OFFICE GROWS...AND SLOWS, ACCORDING TO REPORT

The U.S. Patent and Trademark Office (USPTO) has grown in the past 20 years, yet added dollars and staff at the agency charged with managing the patent system has not lessened the time required to receive a patent. In fact, the average pendency has increased substantially, according to attorney Robert Fieseler, writing in the April 2009 issue of **Intellectual Property Today**.

Year	Agency Budget (millions)	Patent Examiners	New Applications Filed	Total Backlog	Average Pendency to First Action (months)	Average Pendency (months)
2008	\$1,915	5,960	464,000	751,000	26	32
2003	\$1,193	3,060	355,000	675,000	18	27
1998	\$567	2,590	240,000	481,000	13	24
1993	\$471	2,050	190,000	307,000	8	20
1988	\$144	1,540	148,000	268,000	8	20

For advice on navigating the USPTO and devising your intellectual property protection strategy, contact your Boyle Fredrickson attorney.

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The author prescribes a variety of ways in which the Obama administration might remake the ailing U.S. patent system, asserting that rarely have so many stakeholders been so open to bold change. While views differ on how to improve the workings of the patent system, it is undeniable that the waiting line has increased even as the USPTO's resources have increased.

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CLIENT SPOTLIGHT – THE LANG COMPANIES

The Lang Companies, a Delafield, Wisconsin-based business, sets the standard in calendars, cards and home décor products based around exceptional Americana and folk-oriented art, has received intellectual property support from Boyle Fredrickson shareholders **John P. Fredrickson, Mathew E. Corr** and others since 2002. According to Fredrickson, it's rewarding to serve a client that has such clear business goals.

"I have had many clients over the years with differing levels of appreciation for what we do, but The Lang Companies really understands the value of protecting its intellectual property," explains Fredrickson. "We aim to provide legal advice that supports, not complicates, what they are trying to achieve."

According to Cheryl Datka, executive assistant at The Lang Companies, protecting intellectual property is important because its artists and their signature styles have been the foundation for the company's sustained growth and success. The Lang Companies has recently broadened its product lines through acquisition to include sports-logoed items, increasing the need for smart IP advice and strategy.



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“Having well-defined trademarks, patents, and license agreements with our talented artists are important components of our legal strategy,” Datka continues. “But we also benefit from Boyle Fredrickson’s help in relation to our acquisitions. They help us make informed decisions as we enter the sports licensing of calendars and assorted gift merchandise.”

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BOYLE FREDRICKSON ADDS STAFF

Boyle Fredrickson is proud to welcome Kyle Costello (law clerk), Kevin Kreger (law clerk) and Tanya Mathis (support staff) to Wisconsin’s largest intellectual property law firm. The new employee additions help bolster Boyle Fredrickson’s commitment to superb client service. Including Costello, Kreger and Mathis, Boyle Fredrickson now boasts 21 attorneys and 40 total employees specializing in a variety of intellectual property matters.

Year	2000	2003	2006	2009
Employees	12	24	26	40

“We have grown steadily since our founding 10 years ago, largely because we have attracted some of the best patent lawyers and support staff in Wisconsin,” says Boyle Fredrickson president **Peter C. Stomma**. “We are also blessed to call some of the most innovative companies in Wisconsin and beyond as clients. We are grateful to them for allowing us to truly partner with them, get to know their businesses and provide good counsel.”

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