

The IP Beacon, October 2018

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PRACTICES Patent Litigation, Patents, Trademark and Advertising, Copyright, Intellectual Property

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Jason Bloom Co-Authors SCOTUS Amicus Brief for INTA in Key Copyright Case

The International Trademark Association (INTA) tapped Haynes Boone Partner Jason Bloom to co-write an amicus brief in *Fourth Estate Public Benefit Corporation v. Wall-Street.com, LLC*, a pending U.S. Supreme Court case that will address a key issue regarding when copyright owners can sue for infringement.

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Reliance on Inherently Disclosed Embodiments in Prior Art is Dangerous

Prior art disclosures, and particularly non-patent literature, can be relied on for more than what they explicitly disclose. For example, many prior art references may be interpreted as including inherent disclosures. However, reliance on inherent disclosures does not come without a large amount of risk, requiring a careful analysis of the inherent yet undisclosed characteristics of the reference. The strict test for inherent disclosures was apparent in [Endo Pharmaceuticals Solutions, Inc. et al., v. Custopharm Inc.](#), (Appeal Number 2017-1719, Fed. Cir. July 13, 2018) ("[Endo Pharms.](#)"), where a showing that an undisclosed (but actually used) formulation in the prior art was insufficient to find an inherent disclosure.

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Oracle v. Google – Redefining the Applicability and Scope of The Fair Use Defense for Software

On March 27, 2018, in [Oracle America Inc. v. Google LLC](#), No. 17-1118 (Fed. Cir. 2018), the Court of Appeals for the Federal Circuit held that Google's use of Oracle's software code did not constitute a fair use and remanded for a trial on damages.

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