

IP'S MOST IMPORTANT FIGURES

01 July 2004

MIP presents its list of the 50 individuals with the most influence in the IP world. Join us as we reveal the MIP 50

In the modern world, influence takes many forms. While prominent legislative and corporate positions bestow influence on the office holder, wide media exposure can confer a level of prominence disproportionate to a person's position. When deciding who to include, *MIP's* editorial team had to start by defining the criteria. Senior legislators obviously have influence shaping IP policy around the globe (together with lobbyists), while business leaders not only have a voice in the lawmaking process, but also hold the largest portfolios - portfolios which, when properly handled, dictate how much of the world's technology can be used. But influence is not just confined to the governments and corporates.

Academics also feature on the list, individuals whose writings and speeches dictate the implementation of IP law. Judges, a profession that is featured prominently, have responsibility in many jurisdictions for interpreting these laws. A further category is activists, a loose term that incorporates a world-leading economist (Joseph Stiglitz), an inventor (Mandy Haberman) and a campaigner for traditional knowledge rights (Vandana Shiva).

This year's *MIP 50* comprises 21 individuals from the US and 16 from Europe. Asia is represented by nine people, from China, Japan, India and Singapore, while Canada, Uruguay, Sudan and Australia each have one person on the list. Of the 50 people mentioned, 11 are female.

The *MIP 50* is not a survey, it is based purely on the editorial judgments of the *MIP* team. No lobbying has taken place, and no one has paid for a place on the list.

Bob Armitage, Eli Lilly

While his position as senior vice-president and general counsel for Eli Lilly would almost be enough on its own to qualify him for the list, Bob Armitage's repute among the IP community is what earns him the distinction. A regular speaker and delegate at the leading IP conferences and before Congressional committees, Armitage is reckoned to be one of the leading voices of the corporate IP world. His involvement with his peers is reflected in the number of trade groups and committees that he has chaired or been president of: the American Intellectual Property Law Association (AIPLA), the Association of Corporate Patent Counsel (ACPC), the Patent Committee of the Pharmaceutical Research and Manufacturers of America (PhRMA), the National Council of Intellectual Property Law Associations (NCIPLA) and the Intellectual Property Committee of the National Association of Manufacturers (NAM). When Armitage speaks, the IP world listens.



Wubbo de Boer, OHIM

OHIM President Wubbo de Boer has successfully navigated the challenges of EU enlargement and the introduction of the Community design in the past year. Though trade mark filings are at record levels, and the Office hopes to reduce application fees, he will have to contend with some rumblings among the OHIM staff in Alicante which could undermine reform efforts.

Mitch Bainwol, RIAA

Though the Recording Industry Association of America (RIAA) launched its campaign to target internet users while Hilary Rosen was chairman and CEO, it has been under Mitch Bainwol's watch that its efforts have shifted into high gear. The RIAA's high-profile efforts to combat online users who illegally download songs have garnered much media attention in the US, and put the Association in the vanguard in the fight against online copyright theft. Since September, the RIAA has filed suits against more than 2,000 individuals. The policy has not been a total success - newspaper front pages featuring a Bronx teenager fearing for her freedom and stories of an elderly woman who has never owned a computer receiving a lawsuit have served to portray the RIAA in an unfavourable light. But despite the setbacks, the RIAA has persisted, filing more suits each month, vowing to continue its attempts to quash online infringement.



Zheng Chengsi, academic

China's most prolific IP law academic, Zheng Chengsi is a senior research fellow at the country's leading legislative think tank - the Chinese Academy of Social Sciences (CASS), part time professor at Beijing University, an arbitrator at WIPO's arbitration centre and a member of the law committee of the National People's Congress. He played a key role in drafting and amending China's Copyright Law, Trade Secret Law and Trade Mark Law and has led work writing the IP chapter of China's Civil Code. Over the past year he has advised the committee of judges drafting the Supreme Court's long-awaited guidelines on the thresholds for bringing criminal actions in IP infringement cases and taken part in negotiations with the US over China's record of IP rights violations.



Frits Bolkestein, European Commission

The EU commissioner for the internal market is probably the busiest man in the European Commission - not only is he in charge of intellectual



property issues in the internal market, but also taxation and Customs Union issues. For those in favour of a common free market, the Dutchman has been good news ever since he joined the Commission in 1999. He has been one of the strongest forces - if not the most influential force - behind the Commission's ceaseless efforts to push ahead the harmonization of international IP rules and regulations.

Without Bolkestein, any form of progress on the Community patent, such as the political agreement in March 2003, would probably be non-existent. "National pride has to take second place," said Bolkestein in 2003, enthusiastic that the 30 year project was finally moving ahead. But progress came to a halt in May this year when member states failed to progress further in their discussions on language and translation issues, due to national and political differences. A disappointed Bolkestein provided a glimmer of hope for an eventual solution, saying that the proposal would not be withdrawn immediately. But he warned: "If there is no prospect whatsoever of member states agreeing this proposal, there is no point in keeping it on the Council's table and going round in circles."

Always aiming to strike the right balance between the benefits of IP rights for consumers on the one hand and business and economic growth on the other, Bolkestein remains a strong promoter of the importance of all IP rights. Besides the Community patent, he has been influential in promoting the implementation of the EU biotech directive, and successfully pushed through the EU copyright directive, the anti-piracy directive, and the computer-implemented inventions directive.

None of the directives have been without controversy. In particular, Bolkestein's efforts to include a provision in the anti-piracy directive imposing criminal sanctions on IP infringers led to strong criticisms by civil rights groups who claimed that such provisions would harm civil liberties and innovation in the EU. The provision was ultimately excluded from the final version. On the computer-implemented inventions directive, the Commissioner played go-between between the Parliament and the Council, hinting in late 2003 that he might take matters out of the Parliament's hands, after the latter had passed a text which the Commissioner described as too broad. But it was this version that open-source groups would have been happier with, criticizing the Commission for playing into large companies' hands by trying to push through a law that would allow the patenting of software and computer programs.

But despite Bolkestein's efforts, opposition to the computer-implemented inventions directive has so far stalled legislative progress, while hopes for a Community patent are fading with each failure by member states to reach agreement.

To the benefit of many IP owners though he has achieved the EU's accession to the Madrid Protocol.

Bolkestein's term will end this year. When he joined five years ago all eyes were on him to see if this person, who was unknown to the IP world, was up to the job. While he has not acted to everyone's liking or interests, the former Shell employee, member of the Dutch Parliament and Dutch minister has certainly stirred up the European IP agenda.

Todd Dickinson, GE



The new vice-president and IP counsel at GE is also one of the best-known figures in the IP world. The former USPTO commissioner is a frequent guest and speaker at IP conferences and forums across the globe, and he is highly respected by his peers. Dickinson has spent the past three years at Howrey Simon Arnold & White, where he was often the media face of the firm. He has moved in-house to claim one of IP's most powerful corporate positions, succeeding Ron Myrick (who was included in last year's list) as head of one of the world's largest IP portfolios. Dickinson's insider status in Washington DC guarantees that GE's voice will be heard on the leading IP issues, while his vice-president status reflects the increasing importance that the role of IP counsel plays in multinational corporations.



Jon Dudas, USPTO

When, in March, President Bush nominated Jon Dudas to be the next USPTO director, the decision was greeted with near-universal praise from the IP community. Some Office users believe that Dudas was doing most of the behind-the-scenes work of running the office even before the departure of his predecessor, James Rogan, in January. Unlike Rogan, Dudas has a background in IP, having been a staffer on the House IP subcommittee and also worked for the full Judiciary Committee. With a law doctorate from the highly-regarded programme at the University of Chicago, the 35 year-old Dudas is regarded as the right man to help push the USPTO into the 21st century, overcoming problems of patent quality and pendency and ensuring greater cooperation with other national offices. How much he can achieve, though, is open to question. Not only does he face hurdles over lack of funding and the understaffing of patent examiners but, as it is a political appointment, his term could be over by January 2005.



Jannelly Fourtou, European Parliament

Jannelly Fourtou serves on the Committee on Legal Affairs and the Internal Market. As a committee member, she wrote the draft report for what became the IP enforcement directive, one of the most controversial recent EU directives. During the long and difficult negotiations on the directive - the successor to the EU copyright directive - Fourtou was often criticized by opposing lobbyists for siding with the big record companies, no doubt in part because she is the wife of Jean-René Fourtou, the chairman of Vivendi. But despite lobbying efforts by civil rights groups, a slightly modified version of Fourtou's draft was adopted by Parliament on March 9. Just 10 days before EU enlargement, the Parliament's draft was adopted by the EU Council of Ministers, though it excluded the criminal sanctions that were in the Commission's original draft.



Tove Graulund, Arla Foods

Tove Graulund is head of IP at Arla Foods in Denmark and chairman of MARQUES, the European trade mark owners' association. A vocal campaigner for brand owners' rights in Europe, she and MARQUES can take much of the credit for persuading the European Commission to establish a link between the Community trade mark and the Madrid Protocol.



Robin Gross, IP Justice

The director of civil liberties group IP Justice has made a mark in the IP world on issues such as digital copyright and circumvention ever since she founded the group in 2002. Robin Gross regularly speaks at conferences and has testified before the US Copyright Office on the controversial Digital Millennium Copyright Act (DCMA), which she has been outspoken about. She became a strong supporter of Jon Johansen, the Norwegian teenager



who achieved international fame after he was acquitted of piracy charges for cracking the protection codes on his DVDs to make back-up copies. The final ruling dealt a blow to those hoping the case would set a legal precedent in Europe. Speaking for the individual consumer, Gross has been lobbying hard and successfully against EU plans to introduce a law with subpoena powers such as in the DCMA.

Mandy Haberman, inventor

Mandy Haberman, 47, is the inventor of a number of baby feeding cups and is especially known for her Anywayup cup, a non-drip feeding cup for babies. Necessity is the mother of invention - that was the case for Haberman, when in 1980 her daughter was born with a condition that made feeding difficult. She set about designing her first invention, a special feeder for babies with sucking problems. Four years later, clinical tests started on the Haberman Feeder followed by the production of patented prototypes. Today the feeder is sold to hospitals and specialist units around the world.



It was in 1990, while watching the toddler of a friend spilling juice from his feeder that Haberman got the idea to design her second invention, which would eventually secure her a successful future - a leak-proof feeding cup which would seal between sips. No cups that would automatically seal between sips were available at that time.

The Anywayup cup was patented in the UK and abroad. But before setting up her own company, Haberman Associates, Haberman fought hard, though unsuccessfully, to interest companies in licensing her product. With help from friends she made contact with the small English company V&A Marketing, who helped her organize several exhibitions that opened the door to a promising new future. Haberman's cup finally proved a huge success and money finally came in. By the late 1990s, sales were reaching seven million a year. In 1998 the tables turned. Companies with whom Haberman had failed to reach licensing agreements started copying her product. In 1998 Jackel International launched its Tommee Tippee cup, based on Haberman's technology. In a David and Goliath battle, Haberman finally succeeded in defending her infringed patents when in 2000 Jackel International settled out-of-court and paid her all the costs.

As a rare example of a successful (and female) lone inventor, who has battled hard for her rights, Haberman has proved a popular speaker and campaigner on IP issues. She sits on a number of committees representing the interests of small businesses (including the Intellectual Property Advisory Committee) and has been at the forefront of campaigning for reforms to make enforcement more accessible and cheaper for SMEs. She has also established an online forum, makesparkfly.com, to encourage debate on how to improve the patent system.



Steve Jobs, Apple Computer

Steve Jobs was one of the most influential people in IP in 1984 when he transformed the personal computer industry by co-inventing the Mac. He was again in 1998 when the iMac revolutionized computer design.

Now, thanks to iTunes and the ubiquitous iPod, he has undoubtedly earned his place on this year's list. iTunes, which allows users to download songs and albums legally over the internet, has taken the US by storm in the past 18 months. In June, iTunes was launched in the UK, France and Germany, and is set to reach the rest of Europe later this year.

More than any other legal downloading service, Apple's hardware and software has turned consumers away from pirated music sites and persuaded them to pay \$0.99 to buy a track legally. By the time you read this, it will have sold more than 100 million songs online.

Of course, Jobs did not achieve this feat single-handed. But as Apple's CEO he decided to invest in and gamble on the legal download service, at a time when many in the music business and the law were predicting that illegal downloading would kill the industry - and that no-one could do anything about it.

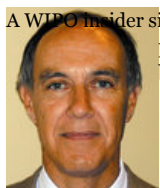
While lawyers and academics were cursing illegal downloads, spending millions on litigation and discussing whether international copyright law should be changed, consumers just carried on downloading free music from Napster. Meanwhile, Jobs and the Apple software engineers were looking further ahead. Recognizing the real demand for music online, they negotiated with record companies and found a way to deliver it. In short, they produced a business solution to a legal problem - and sold it to the world's music lovers.

Such innovation and daring is typical of Jobs. It has not always worked. With Steve Wozniak, he founded Apple in 1976 building the company up into a computer titan and one of the world's most recognizable brands. But, by refusing to license the Mac operating system, Apple committed commercial suicide - and in no time Microsoft had stepped into the void. The rest is history. Jobs left the company; successive CEOs saw it decline and by the mid-1990s Apple was widely expected to disappear altogether.

Cue the return of Jobs. In 1997 he was appointed Apple interim CEO, taking a salary of \$1 a year - having made his fortune through the computer animation studio Pixar (the company behind *Toy Story* and *Finding Nemo*). Through a combination of technical innovation, original design and canny marketing, Apple's fortunes were turned around. Jobs introduced the iMac, iBook, iPod and iTunes and put Apple back on the computer map.

Jobs has said that Apple's biggest competition for downloaded music is not its legal rivals but the pirates. The jury is still out on whether he has won that battle. Is iTunes pitched at the right price? Will its business model work? Are there enough songs? (Initial responses to the European sites indicated that the independent labels were under-represented.) iTunes has had a remarkable year, but it is still early days. Apple and the other legal download services - such as Napster and OD2 - will have to continue to innovate and promote legal downloading if they are to give the music industry the lifeline that it so desperately needs.

Francis Gurry, WIPO



A WIPO insider since 1985, Francis Gurry is now assistant director general and legal counsel. His responsibilities cover the PCT and electronic commerce, as well as policy issues over biotechnology and genetic resources. He was also instrumental in setting up the domain name dispute resolution process. He will be at the forefront of driving PCT reform and substantive patent law harmonization over the coming year.



Ian Harvey, BTG



The chief executive of technology company BTG, Ian Harvey, is one of the most prominent voices in IP in British industry. This was demonstrated in the discussions on the European Commission's revisions to the Technology Transfer Block Exemption. Harvey was vocal in criticizing the first draft of the changes, and the revised version published in May this year was much more acceptable to technology-based companies (though not perfect). Lobbying from industry was instrumental in prompting the changes. Harvey has been CEO of BTG since 1985, chair of the IP Institute since 1999 and chair of the UK government's Intellectual Property Advisory Council since 2001.



Orrin Hatch, US Senate

Orrin Hatch has the legislative power in the IP world, chairing the Senate Judiciary Committee, and effectively controls the IP agenda for the US's upper house. Though ranking Democrat Patrick Leahy is known and respected for his IP efforts, Hatch is the final arbiter and will remain so unless control of the Senate changes following November's elections.



Kamil Idris, WIPO

Kamil Idris, who is serving his second term as WIPO director general, may be said to have more power over IP policy than anyone else. He has used his time at WIPO - he has worked there since 1982 and been director general since 1997 - to promote IP in developing countries and to address areas where tensions exist over IP - such as traditional knowledge. Widely respected among WIPO staff, he is due to remain in his post until 2009.



Jiang Zhipei, Supreme People's Court

As Chief Justice of the Intellectual Property Rights Tribunal of the Supreme People's Court, Judge Jiang Zhipei has overseen the drafting of a series of vital judicial rulings issued by the top court on the way lower courts should interpret China's civil IP laws and handle cases. After China's IP legal regime was overhauled in preparation for WTO membership, Judge Jiang provided guidance on a range of IP issues from patent, trade mark and copyright to the way disputes over domain names should be dealt with. In addition to his judicial role, Judge Jiang is an enthusiastic exponent of the value of IP rights and their protection. He has his own legal website and is a prolific conference speaker and author.



Mike Kirk, American Intellectual Property Law Association

As the voice of an organization that has a membership of 15,000 IP practitioners, Mike Kirk wields enormous influence in Washington DC. Together with the other leading IP groups, it was AIPLA's determination to end USPTO fee diversion that saw the introduction and passage through the House of Representatives of HR1561, the bill that increased the agency's funding while removing lawmakers' power to divert its revenues to other government departments.

Ilias Konteas, UNICE



UNICE is the voice of European industry and as the body's only legal counsel specialized in all IP-related issues, Ilias Konteas is a busy man as the main link between IP owners and Brussels policy makers. Just 28 years old, the Greek lawyer is the youngest person on the top 50 list. Since joining UNICE in October 2002, Konteas has represented European industry's interests before the EU institutions on heated issues such as the software patent directive and national searches for Community trade marks. He has been particularly vocal on the Community patent and the EU's plans to make translated claims legally binding, describing such a move as unacceptable. It was mainly over this point that discussions finally broke down.

RC Lahoti, Chief Justice of India

Justice Ramesh Chandra Lahoti became India's 35th Chief Justice of India on June 1 this year. His promotion to the top job is a reflection of the respect he garnered during his career as a lower court judge. Justice Lahoti has a strong track record in handing down precedent-setting IP cases and he is described as having a sound and balanced judicial approach marked by common sense. He is also an enthusiastic exponent of alternative dispute resolution as a means of relieving India's overburdened court system and of allowing parties to resolve their disagreements as efficiently as possible.



Michael Leathes, BAT

As general manager of BATMark, the world's second biggest trade mark owner, Michael Leathes has responsibility for some 110,000 trade marks worldwide. The challenge of managing these rights has led him to become an evangelist for mediation as a means of resolving trade mark disputes. He is a trained mediator, a member of INTA's ADR committee and of the CPR Institute for Dispute Resolution and is passionate in persuading sceptics of the benefits of considering alternatives to litigation. If - as many predict - mediation grows in popularity among trade mark owners - it will be people such as Leathes who drive that growth.



Mr Justice Hugh Laddie, Royal Courts of Justice

Mr Justice Laddie is one of the most respected and provocative IP judges in Europe. As one of five patents judges in the England and Wales Patents Court, and one of just two with any real IP experience, he has decided on many cases that have set precedents in the UK and throughout the EU.

Laddie's judgments have often been controversial, and he has frequently handled cases that have been referred to the ECJ. He is not afraid to criticise the ECJ on occasion, memorably writing that the ECJ ruling in the *Silhouette* parallel imports case had "bestowed on a trade mark owner a

parasitic right to interfere with the distribution of goods which bears little or no relationship to the proper function of the trade mark right". He also challenged the ECJ in the *Arsenal* case, claiming that the Luxembourg court had overstepped its jurisdiction by ruling on the facts of the case rather than just the law. Applying the ECJ's reading of the law to the facts as he saw them, Laddie found for the defendant. However, the Court of Appeal later reversed that decision.

The UK courts receive far fewer IP cases than those in (for example) Germany. But the importance of many of the disputes in the UK, as well as the thorough nature of litigation, give the judges a higher profile. The specialized patent judges - Laddie, Lord Justice Jacob (who is now the patent specialist in the Court of Appeal, and was included in the *MIP 50* last year) and the latest addition, Mr Justice Pumfrey - are therefore known throughout Europe. All were experienced and respected barristers specializing in IP before being appointed High Court judges - Laddie and Jacob (and also the Patents County Court Judge Michael Fysh) practised at the elite IP chambers of 8 New Square.

Practitioners in the UK regard the judges as taking a sceptical attitude towards patent rights, and some say they are too willing to find for defendants. The judges counter accusations of being anti-patent by saying that they rule based on the facts of each case, and only invalidate weak patents. However, all agree that the UK needs to raise its game in IP enforcement for justice to be served properly and to discourage litigants from going overseas. Apart from the disputed accusations of being anti-patentee, the main complaint is the expense of litigation in the UK, compared to continental jurisdictions.

In fact, some representatives of industry are pushing for more radical change. The Patent Reform Group wants a broad-based review of the patent system, and is promoting radical solutions such as compulsory technical arbitration to make enforcement more accessible to small businesses.

All this means that pressure on the UK judges is increasing - both from above (from the ECJ in particular) and from below (from the users of the court system). And you can be sure that Laddie, as the senior Patents Court judge, will be at the centre of the action.



Jacqueline Leimer, Kraft Foods

As this year's INTA President, Jacqueline Leimer, Kraft's chief trade mark counsel, has been travelling the globe preaching the trade mark gospel. Among her duties in the first six months of her term, Leimer has hosted a joint INTA-ASIPI conference in Argentina and testified before Congress about recommended changes to the Federal Trademark Dilution Act, a sign of INTA's political clout. One of the world's largest IP organizations, INTA is working to create greater harmonization between national systems, and is trying to encourage greater participation in its affairs by trade mark academics and students.



Judge Fidelma Macken, European Court of Justice

The European Court of Justice is arguably the most important judicial forum in the EU, with more than 30 non-patent IP cases referred from national courts across the EU every year, as well as appeals from OHIM in Alicante. Of the 25 judges, however, few have a background in IP. One who does is Fidelma Macken from Ireland - and she has lately taken on the role of explaining and discussing the Court's activities in seminars and conferences. As the ECJ faces a growing backlog and more and more referrals, rights owners will hope that her voice is heard loudly in the judges' chambers.



The Right Honourable Beverley McLachlin, Supreme Court of Canada

The Chief Justice of Canada's Supreme Court Beverley McLachlin wrote the decision in the country's biggest IP case of the year, *CCH Canadian v Law Society of Upper Canada*. In a unanimous ruling, the Court affirmed the doctrine of fair use in Canada, granting libraries the continued right to allow users to photocopy extracts from books. "Research must be given a large and liberal interpretation in order to ensure that users' rights are not unduly constrained, and is not limited to non-commercial or private contexts," wrote McLachlin in her ruling. While Mr Justice Ian Binnie, who notably wrote the dissenting opinion in the Harvard oncomouse case, is viewed as a champion of IP rights on the Court, McLachlin's status and her authorship of the *CCH Canadian* decision mark her out.



Stephen Merrill, National Academies

Stephen Merrill has been executive director of the National Academies Board on Science, Technology and Economic Policy (STEP) since its formation in 1991. He has played a key role in the development of two landmark IP reports in the past year, editing and directing the development of both. *Patents in the Knowledge-Based Economy*, published at the end of 2003, was followed by April's pre-publication of *A Patent System for the 21st Century*, which made several far-reaching recommendations for reform of the US patent system, including a post-grant opposition procedure at the USPTO and a switch to first-to-file rather than first-to-invent, a contentious issue in a country where the rights of small inventors are held to be of utmost importance. Such has been the impact of *A Patent System for the 21st Century* that the American Intellectual Property Law Association has convened its own committee to study the report and make its own reform recommendations. In the coming year, Merrill will again be focusing on IP, taking charge of the Intellectual Property in Genomic and Protein Research and Innovation report, due to be published in April 2005.



Alexander von Mühlendahl, OHIM

Regarded by many as the godfather of the Community trade mark, Alexander von Mühlendahl has done more than any other individual to explain and develop the EU-wide registration system. He is likely to retire as vice-president of OHIM next year, after 10 years in the post, and will be difficult to replace.

The Honorable Justice Pauline Newman, Court of Appeals for the Federal Circuit

From the moment that she became director of the IP department for FMC in 1969, Pauline Newman has been known to the IP community as a champion of strong patent rights. As the leading patent specialist on the Court of Appeals for the Federal Circuit - while at FMC she was an active member of trade groups before joining the bench, and was even vice-president of the USTA - she has maintained that reputation, and is frequently referred to, even by her critics, as "pro-patent". Along with Randall Rader, Newman is the Federal Circuit judge who is most often seen and heard at conferences, speaking up for the rights of patent holders.



Lucy Nichols, Nokia

Lucy Nichols manages Nokia's trade mark, designs, anti-counterfeiting and domain names teams. It is the latter topic in particular for which she is best known, speaking on the issue during her frequent appearances at talks and conferences worldwide. She is one of industry's most outspoken voices against the introduction of additional registrar services and against the need for companies to take out defensive domain names, despite the pressures to do so. Nichols rarely misses important IP conferences and when there she ensures that trade mark owners are heard. Nichols was a private practitioner in trade mark and internet-related issues in Washington DC and New York for 10 years before joining Nokia.

David Nimmer, academic

David Nimmer is the foremost authority on copyright law in the world's most copyright-intensive country. Rarely do court opinions and judgments not refer to his works, particularly the seminal treatise *Nimmer on Copyright*, which was first published in 1963 by his father, Melville Nimmer. Nimmer also speaks frequently at conferences and seminars in both the US and overseas. He is Professor at UCLA Law School, a Distinguished Scholar at the Berkeley Center for Law and Technology, and serves as of counsel at the firm of Irell & Manella.



Erik Nooteboom, European Commission

A favourite of IP owners, Erik Nooteboom has headed the industrial property unit in the European Commission's internal market directorate-general since 1998. A lawyer in copyright, industrial property and media law by education, Nooteboom is respected for his continued efforts to achieve progress on the Community patent. Before discussions stalled in May this year, Nooteboom had expressed his frustrations about member states' continued failures to reach a final agreement on the Community patent. Nooteboom has also been instrumental in the EU's accession to the Madrid Protocol and the discussions on trade mark searches, a debate which in the end led to a change in the rules for national searches by the EU Council of Ministers.



Shuji Nakamura

Shuji Nakamura was a career engineer at a medium-sized company called Nichia in Tokushima. But in the early 1990s his fortunes, and those of his employer, changed forever when years of painstaking research led to the invention of the blue LED, a breakthrough development in semiconductor engineering.

Nakamura was paid a bonus of \$180 for assigning his patent rights to the discovery to his employers - as he was legally required to do. In contrast, Nakamura's discovery is expected to bring Nichia \$1.13 billion over the lifetime of the blue diode's patent. But while the company enjoyed a boom, the high profile lawsuit that the scientist launched against his former employers brought things back to earth.

In February 2004, a judge in the Tokyo District Court awarded Nakamura \$180 million, putting the inventor on front pages and IP temporarily at the top of the country's agenda. Newspaper editorials either championed Nakamura as an undervalued engineering hero or lamented Nichia's plight as a well-meaning corporation punished for making a profit on a product that it rightly owned. The media attention surrounding the award triggered a debate about the rightful ownership of IP rights and on Japanese corporate culture. Many accused Japan's hierarchical corporations of rewarding employees more for their loyalty to the business than for their creative contributions. Within months of the Nakamura ruling, ex-employees at Toshiba and Sharp launched their own legal actions, aggrieved at the way they had been compensated for their scientific breakthroughs.

Many companies and their lawyers blamed Japan's fuzzy patent legislation for the controversy over employee awards and the court orders for record payouts. Article 35 of the country's Patent Act required companies to hand over "reasonable compensation" to employees in return for assigning their patent rights. But it gave no guidance about what constituted "reasonable," effectively giving judges complete discretion to set any amount they saw fit.

The government had already pledged to reform the controversial provision even before the Nichia ruling. But Nakamura's windfall brought squeals of protest from company bosses and their lawyers who said the new draft law did not restrict judges' powers enough. After intensive lobbying from businesses predicting that Japan would lose its status as a regional R&D hub if it retained its ambiguous laws on employee compensation, politicians made limited compromises.

Companies and their legal advisers have already criticized the reform, saying it still gives too much discretion to judges. In addition, the law will not apply retrospectively. Because former employees will be able to bring legal actions up to 10 years after their invention was commercialized, the old law will apply to inventions commercialized as early as 1994. There may be many more Shuji Nakamuras in the future.



Marshall Phelps, Microsoft

In his first year at the world's richest company, Marshall Phelps has made his presence felt. So far in 2004, the company has reached settlements and cross-licensing agreements worth more than \$2 billion with InterTrust, Sun Microsystems, Siemens and SAP. The shift in strategy is not entirely Phelps's work, but as a world-famous advocate of licensing, it is easy to see his influence in such deals.



Alain Pompidou, European Patent Office

The son of the former French president, Alain Pompidou will be closely watched by the IP community as he succeeds Ingo Kober as the new president of the European Patent Office in July. His appointment has led to IP specialists and his nomination to succeed Kober has caused the



president of the European Patent Office on July 1. His name was not known to IP specialists and his nomination to succeed ROBER, who leaves the Office after more than eight years, was a surprise. After months of political lobbying, Pompidou was selected together with Alison Brimelow, former head of the UK Patent Office, who will take over from Pompidou after three years. Patents will be new to Pompidou, who has been a professor at the medical faculty Cochin Port-Royal in France as well as a member of the Académie des Technologies.



Ernesto Rubio, WIPO

As WIPO's assistant director general of trade marks, Ernesto Rubio has made the Madrid Protocol more attractive to trade mark owners, with the recent accession of the US and EU and the introduction of the Spanish language. Despite these developments, though, the Uruguayan national has yet to convince any Latin American countries to join the international trade mark system - leaving a hole in protection that many want to see filled.



Yasuo Sakuta, Hitachi

Yasuo Sakuta symbolizes the new breed of IP managers at Japanese corporations who have pursued a far more aggressive approach to intellectual property management than many of their predecessors. After qualifying as a patent attorney, Sakuta joined Hitachi in 1972, becoming managing director of the company's IP group in 1999. His time at the top has been characterized by a shift in the company's IP strategy from a primarily defensive style to a revenue-raising one, involving a series of technology licensing deals and a more combative line in domestic and international disputes over IP infringement. As president of the Japan Intellectual Property Association, Sakuta has had a big input into government consultations on the overhaul of Japan's IP regime.



James Sensenbrenner, US House of Representatives

As chairman of the House Judiciary Committee, James Sensenbrenner's influence is due to the level of control he exerts over his Subcommittee's chairs. Sensenbrenner and his staff work closely with Lamar Smith on the timetable for presenting IP bills in both the full Committee and before the House.

Vandana Shiva, Research Institute for Science, Technology and Ecology

One of India's foremost IP activists, Vandana Siva has focused the campaigns of her Research Institute for Science, Technology and Ecology on the issues of traditional knowledge and plant variety rights. In more than 20 years of campaigning, the Institute has challenged many multinational companies, taking on Monsanto over what it called wheat biopiracy and RiceTec over its claims to Basmati rice.



Lamar Smith, US House of Representatives

The chairman of the House's Subcommittee on Courts, the Internet and Intellectual Property, Lamar Smith has had a busy year supporting IP legislations. Among the bills that his committee have marked up are the USPTO Fee Act, which ends diversion of Office funds and increases the agency's revenue, and the CREATE Act, which allows for the sharing of research information.



Michael Robertson, CEO Lindows/Linspire

Michael Robertson, founder and chief executive of Linspire (formerly Lindows), is not only the man who could invalidate Microsoft's Windows trade mark. The outcome of his legal battle against the software giant could also change international rules about generic and non-generic names.

Microsoft may come to regret its decision to sue US-based rival Linspire in December 2001 for infringing its Windows trade mark by marketing its products under the names Lindows, Lindows.com and LindowsOS. Microsoft succeeded in putting the Linux-based software distributor out of business in the Benelux countries, Sweden and Finland in a series of court cases in early 2004 based on trade mark infringement, trade mark dilution and unfair competition. It even managed to force Lindows to change its name to Linspire in April. But Microsoft failed in its appeal before a Dutch court to stop the company's continued use of Lindows as its corporate name and in the small print on its website. The ruling put Linspire back in business in the Netherlands, Belgium and Luxembourg. And despite its limited success in Europe, Microsoft has so far failed to win injunctions against Linspire in the US, where the case originally started.

At the heart of the debate is Linspire's claim that the Windows trade mark is invalid because it is a generic name - an issue that the US courts have not yet clarified. Microsoft claims that its trade mark ceased to be generic since the launch of the Windows brand and the word's subsequent global association with Microsoft products. But Robertson is confident that "the mountains of evidence" his legal team has collected will prove him right.

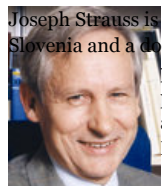
A US jury trial will decide the issue later this year. And Robertson may win after a US district court ruled in February 2004 that the jury must consider the word's use before Microsoft released its Windows products in 1985. The judge added that once a court declared a word generic, it would continue to be generic no matter how much a company had invested in marketing the word. Such a decision would invalidate Windows as a trade mark and could affect similar marks in the US and possibly beyond.

Robertson founded his software company Lindows.Inc with the goal to make the Linux operating system the most wanted mass market consumer product in the world, and pose the most serious threat to the dominance of the Windows operating system. Between 1998 and 2001, Robertson was the founder and chairman of MP3.com, one of the world's largest digital music distribution portals, with more than 1 million downloadable MP3 files. MP3.com was eventually bought by Vivendi Universal for about \$350 million. With enough money in his pocket, Robertson founded Lindows.Inc and embarked on his most important mission yet: to take on Microsoft.

Joseph Stiglitz, economist

Joseph Stiglitz is a former chief economist and senior vice-president of the World Bank and economic adviser to President Clinton. But in recent years he has come to believe that the spread of neo-liberal economic policies is hurting developing countries' attempts to progress economically. Stiglitz has in particular criticized the provisions of the TRIPs Agreement, arguing that imposing strict IP regimes on emerging economies only helps to protect western interests. It is not often that a member of the financial elite dissents from commonly held economic principles and, as such, Stiglitz's views have made him a hero to those on the left. His stature as one of the world's foremost economists demands that his views are heard and debated by IP professionals.

Joseph Strauss, Max Planck Institute



Joseph Strauss is the head of the patent department at the Max Planck Institute for Intellectual Property, Competition and Tax. Strauss holds a law degree from Slovenia and a doctorate from Germany and worked in private practice for nine years before joining the Max Planck Institute in 1977. In the past 30 years the professor of European and German patent law has earned a reputation as one of the continent's most respected academic sources on IP law, particularly in the field of biotechnological inventions. His other fields of research are employee inventions law, international protection of IP rights as well as technology transfer and IP arbitration. Strauss also serves as a consultant to several international bodies, including WIPO and the European Commission.



Paul Twomey, ICANN

The bursting of the dot-com bubble and the success of domain name dispute resolution policies may have lessened the threat to IP owners from the internet. But many problems remain. ICANN and its new president and CEO, Paul Twomey (appointed in March last year) are in charge of making sure the domain name system works. Twomey, an Australian, came to ICANN with both public and private experience in the internet and consulting fields. Already, he has had to address the proposed introduction of new generic and sponsored top level domains, controversy over WHOIS records and, recently, a lawsuit from Verisign. If the domain name system continues to run smoothly, and you do not hear too much about ICANN, that probably means Twomey is doing a good job.



Jack Valenti, MPAA

Though he is soon to retire after 38 years as President and CEO of the Motion Picture Association of America (MPAA), Jack Valenti's efforts to combat piracy have earned him the unending appreciation of copyright holders in the US. As spearhead for the US film industry, he created an anti-piracy division in the MPAA as far back as 1975. In 2001 he set up a digital strategy department, charged with finding ways to deliver films to internet users in a safe and secure fashion, believing that one day piracy will be defeated by an effective form of digital rights management. Valenti is a resident of Washington DC, and speaks frequently on Capitol Hill - he has testified before various House and Senate committee on four occasions in the first six months of 2004. Valenti will be replaced on September 1 by Dan Glickman, former US Secretary of Agriculture under President Clinton.



Herb Wamsley, Intellectual Property Owners' Association

Herb Wamsley leads an organization that was formed in 1972 by corporations seeking a greater say in US IP policy. More than 30 years later, the IPO maintains its function as the forum where rights holders have their voices heard - a powerful constituency that lawmakers cannot afford to ignore.



Wang Jingchuan, State Intellectual Property Office

As head of China's State Intellectual Property Office, Wang Jingchuan leads one of the fastest growing IP offices in the world. Last year patent applications rose by more than 22% and Wang plays a key role in the drive to persuade more Chinese companies to value IP, both by protecting their own rights and by respecting those of others.



John Ward, US district court judge

Appointed in 1999, John Ward has set about making his court in the Eastern District of Texas one of the most popular forums for patent cases in the US. Lawyers travel from across the country to the city of Marshall to have their cases heard quickly and favourably - local juries are known for awarding for high damages - under a system that Ward has designed. Ward is strict with discovery rules and holds parties to trial dates that he sets. As a result, he has created another rocket docket in the US, comparable to the original rocket docket court in the Eastern District of Virginia.



Philip Yeo, Singapore's Economic Development Board

Singapore's ambition to position itself as the investment location of choice for international biotech and pharmaceutical companies doing business in the region has already met with considerable success. In 2003 manufacturing output by its biomedical sciences industries grew by almost 16%. Much of this success can be attributed to the strategy of Singapore's Economic Development Board (EDB) and the vision of its co-chair, Philip Yeo. The EDB has spearheaded an aggressive drive to attract R&D investment by boosting levels of scientific education, offering grants and incentives and coordinating with the Intellectual Property Office to ensure a business-friendly IP regime - setting standards that regional rivals may have to match if they want to lure hi-tech and biotech investment to their own jurisdictions.



Robert Zoellick, US Trade Representative



It has been a busy 12 months for Robert Zoellick. As well as issuing the annual Special 301 Report, which names the countries that are the worst offenders in protecting IP rights, he has negotiated several free trade agreements, notably with Australia and Chile, that have substantial IP requirements which will change the IP protection framework in those countries.

Wu Yi, Chinese vice-premier

As Sino-American trade issues begin to dominate the US domestic economic agenda and China's dismal record on IP infringement comes under increasing attack from the US, China chose to put one of its big political hitters in charge of potentially sensitive negotiations with its trans-pacific trading partner. Wu Yi, who took control of the Sars crisis when China was struck down by the epidemic in 2002, is a highly respected politician with a reputation for getting things done.

In October 2003 the Chinese government created an "IP leading group" of officials from 36 departments that would coordinate intellectual property policy and enforcement in China, to be chaired by Wu Yi. A month later she announced that "a country's protection of intellectual property is indispensable to its economic development and technological advancement," and pledged that China would work with "consistent determination" to solve its IP enforcement problems and to penalize those who infringe IP laws.

The decision to appoint the high-profile Wu Yi - who is more of a figurehead than a policy maker - to oversee China's implementation of IP laws was meant to show that the country is serious about tackling its reputation as one of the worst jurisdictions for IP infringement and the source of much of the world's counterfeit goods.

In April this year, shortly before the US Trade Representative published its 301 list, an annual naming and shaming of countries deemed to have inadequate IP law enforcement, Wu Yi promised that China would take a series of concrete actions to reform its ways. She pledged that the country would strengthen its anti-piracy laws, carry out more raids on counterfeiting factories, implement new rules to give Customs more anti-piracy powers, and ensure that the government uses only legitimate software.

Wu Yi will be aware that she has a tough job ahead of her. The counterfeiting business in China is worth millions of dollars and both organized criminal gangs and the thousands of small-time operators who produce counterfeit goods in China have a big interest in seeing her fail. Persuading the numerous bodies in charge of enforcing China's IP laws - the police, the national and local administration bureaus in charge of tackling trade mark infringement, the copyright authorities - to cooperate more effectively, will take a deft political touch. And outside of Beijing, Shanghai and Guangdong, IP protection is a more hit and miss affair, where local authorities may or may not be enthusiastic about closing down infringing factories, and the police and the courts may or may not fully understand or enforce IP laws. Wu Yi may find that getting a grip on China's rampant counterfeiting industry could prove more difficult than bringing the country's Sars crisis under control.

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