

TSIRCOU | NEWSLETTER

April 2014



April 2014 Newsletter



In *Lexmark v. Static Control*, the Supreme Court resolved a three-way split in the Federal Circuit courts regarding the standing requirements to bring a suit for false advertising under the Lanham Act.

After considering the three tests used in the Federal Circuit courts, the

Supreme Court found none of them to be appropriate and instituted a new "zone of interests" test. To have standing in a false advertising claim under the Lanham Act, a claimant must allege an injury to a commercial interest in reputation or sales, and the injury must have been proximately caused by the violation of the statute.

We also discuss the enforceability of patents for space-based technologies. As a general matter, patents are territorial and unenforceable beyond the nation in which they are issued. In the case of space-based technology, a patent attaches to a country if it is made or launched there, or is otherwise under the jurisdiction or control of that country. However, there are several loopholes that could allow infringing users to render a patent unenforceable. We discuss these loopholes and how to avoid them.

Additionally, we discuss the new pilot program launched by the USPTO, the Glossary Pilot Program to promote patent claim clarity.

The USPTO will accept 200 petitions under the pilot program. Participation is completely optional, but incurs the benefit of accelerated examination. To

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participate, an applicant must file a new utility patent application with a glossary defining claim terms.



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Lexmark v. Static Control: Supreme Court Resolves Lanham Act Standing Split

In *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, the Supreme Court resolved an inter-circuit split regarding who may bring a suit for false advertising under the Lanham Act. Declining to adopt any of the three tests that the Federal Circuit courts have been using, the Supreme Court adopted a new test. In the new test, standing is determined by a two-fold inquiry: the alleged interests must fall within the "zone of interests" protected by the Lanham Act, and the alleged injury must be proximately caused by violation of the statute.

The outcome of this case will simplify the standing determination in false advertising claims, eliminating the need to consider the three old tests. It is significantly broader than the "actual competitor" test of the Seventh, Ninth and Tenth Circuits, and significantly more straightforward to apply than the five-factor test used in the Third, Fifth, Eighth, and Eleventh Circuits.

For more information, please click below:

- [*Lexmark v. Static Control*](#)

Patent Enforceability of Space-Based Technologies

The concept of territoriality is fundamental to patent law-- generally, patent laws do not extend beyond national borders. As a result, certain space-based technologies are out of the reach of United States patent law. Although objects in space are generally outside of the jurisdiction of any country, the law has carved out certain "floating islands" where a country may enforce its patent laws. In particular, the United States has jurisdiction over space-based technologies launched or registered in this country. This rule is subject to several exceptions that may preclude a finding of infringement of a U.S. patent.

International treaties assign jurisdiction to the country in which a space object is registered. As a result, it is possible to escape jurisdiction of one country by registering an object in another. Further, the temporary presence doctrine can exempt an invention from a nation's jurisdiction if it is only there temporarily. As a result, it is important to broadly obtain international protection for space-based technologies using a PCT application.

For more information, please click below:

- [*Patent Enforceability of Space-Based Technologies*](#)

USPTO Launches Glossary Pilot Program

In a March 26, 2014 press release, the USPTO announced the launch of the Glossary Pilot Program to promote patent claim clarity. The program is designed to test the benefits of requiring a glossary in certain patent applications. Participation is voluntary and incentivized by expedited examination.

The program arises from a June 2013 executive action, one of five such actions in the White House Task Force on High-Tech Patent Issues. Primarily aimed at "patent trolls," the executive actions are designed to reduce frivolous litigation and improve the quality of issued patents. Executive action two, "Tightening Functional Claiming," is designed to improve patent quality and the examination process by restricting overly broad claims in software patents-- "The PTO will . . . develop strategies to improve claim clarity, such as by use of glossaries in patent specifications to assist examiners in the software field."

For more information, please click below:

- [Glossary Pilot Program](#)

Please feel free to contact us if you would like additional information. We look forward to assisting you with your intellectual-property matters.

Sincerely,



Kyriacos Tsircou
Tsircou Law, P.C.

This e-mail and any attachments are not intended to be and should not be relied upon as legal advice.