

WIGGIN AND DANA

Counsellors at Law

Poster Presentation at Conference Determined to be a Printed Publication under the US Patent Laws

Poster presentations at scientific meetings are now viewed as "printed publications" that may be used as prior art references to prevent patenting the information contained in the presentation.

On August 18, 2004, the Court of Appeals for the Federal Circuit (CAFC) upheld the USPTO's rejection of a patent application because the claimed invention was made publicly accessible in the poster presentation more than one year prior to the filing date. *In re Carol F. Klopfenstein and John L. Brent, Jr.*, Slip Op. No. 03-1583 (Fed. Cir. August 18, 2004).

In October 1998, three inventors presented a posterboard containing 14 printed slides at two scientific meetings. In October 2000, the inventors filed a patent application on the material described in the posterboard. In affirming the PTO's rejection of the application, the CAFC based its decision on determining whether a poster presentation is a "printed publication" by analyzing whether the presentation was made "publicly accessible".

According to the court, factors that should be considered in this analysis include: (1) the length of time the display was exhibited; (2) the expertise of the target audience; (3) the existence (or lack thereof) of reasonable expectations that the material would not be copied; and (4) the simplicity or ease with which the material could have been copied.

In this case, the court found that about two years before the patent application filing date, the poster was prominently displayed to the public for approximately three days. The poster was shown to a wide variety of viewers, including experts in the particular area of technology, and without any stated precautions or expectations that the information would not be copied or reproduced by those viewing it. There was no disclaimer discouraging copying, and any viewer was free to take notes from the displayed material, or even photograph it. Finally, the court found that much of the information depicted in the poster was already known in the field, and that copying only a small amount of the displayed information was necessary to capture the novel information presented in the poster. Based on this analysis, the court concluded that the poster was sufficiently publicly accessible to count as a printed publication under the patent laws.

IMPLICATIONS

As a practical matter, universities and biotech companies should take steps to preserve their patent rights prior to publicly disclosing any proprietary information. The most effective means of achieving this is to file a United States provisional patent application prior to any type of public presentation. Although the court acknowledged that an entirely oral presentation that includes neither slides nor copies of the presentation is

Poster Presentation at Conference Determined to be a Printed Publication under the US Patent Laws

continued

WIGGIN AND DANA

Counsellors at Law

not a printed publication, and that a presentation that includes a transient display of slides is likewise not necessarily a printed publication, filing a patent application prior to any public presentation will best preserve both domestic and international patent rights in the technology. In addition, it may be advisable to take steps to prevent the public from copying or gaining access to temporarily posted information, such as a removing the information from public display as quickly as possible, including disclaimer forbidding copying or note-taking, and not posting copies of presentations on publicly accessible websites. It is also advisable to review posters in conjunction with collaborative partners prior to any public display.

This document is intended as an informational reminder and does not constitute legal advice. If you have any questions or would like to discuss a particular situation, you should contact your regular Wiggin and Dana attorney, or one of us.

Todd Garabedian, Ph.D.
860.297.3716
tgarabedian@wiggin.com

Jim Farrington
203.363.7614
jfarrington@wiggin.com

Mert Gollaher
203.498.4362
mgollaher@wiggin.com

Patti Melick
203.363.7615
pmelick@wiggin.com

For more information about the Firm and our Biotechnology and Life Sciences Practice Group, please visit www.wiggin.com.

One Century Tower
P.O. Box 1832
New Haven CT
06508-1832
Telephone 203.498.4400
Telefax 203.782.2889

400 Atlantic Street
P.O. Box 110325
Stamford CT
06911-0325
Telephone 203.363.7600
Telefax 203.363.7676

450 Lexington Avenue
Suite 3800
New York NY
10017-3913
Telephone 212.490.1700
Telefax 212.490.0536

One CityPlace
185 Asylum Street
Hartford CT
06103-3402
Telephone 860.297.3700
Telefax 860.525.9380

Quaker Park
1001 Hector Street, Ste. 240
Conshohocken PA
19428-2395
Telephone 610.834.2400
Telefax 610.834.3055