

IPLS PROCEEDINGS

STATE BAR OF MICHIGAN

The Experimental Use Exception to Patent Infringement Should be Expanded:

A Proposed Modified Exception Comprising a Bright-line Rule Permitting Experimental Use Upon Delivery of Express Notice of Intent

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***Editors Note:** The following article was written by Kyle R. Quigley, a 2013 graduate of the Thomas M. Cooley Law School. It was awarded First Place in the 2013 Michigan Innovation and IP Legal Writing Competition. Mr. Quigley is currently a Patent Examiner at the Elijah J. McCoy USPTO Satellite Office in Detroit, Michigan*

I. Introduction

On August 1, 2012, a federal jury awarded \$1 billion in damages to the crop biotechnology leader Monsanto Company ("Monsanto") saying that its arch rival E.I. Dupont De Nemours and Company ("DuPont") had "willfully infringed a patent covering Roundup Ready® soybeans," the "world's most widely grown genetically engineered crop."¹ "Monsanto ha[d] developed certain technologies that allow it to produce genetically-modified seed products by transferring into crop seed genes that give the resulting plants new genetic qualities, called transgenic traits."² Monsanto actively protects these technologies through use of the United States patent system.³ At issue here was Monsanto's patented Roundup Ready soybean and corn traits⁴, which Monsanto developed upon discovering a gene that makes plants resistant to a commonly used herbicide.⁵

Perhaps what is most surprising about the case and its extraordinary verdict⁶ is that DuPont never marketed nor commercially exploited any plants or plant seeds that contained the patented genes.⁷ DuPont used the patented genes, without authorization,⁸ "in developing a line of soybean seeds called Optimum GAT, which it later abandoned."⁹ DuPont had hoped to combine the traits of its existing plant lines with the traits of Monsanto's patented genes in order to produce a line with superior characteristics than either possessed individually.¹⁰ Although Monsanto was unable to establish that it lost any profits as a result of DuPont's infringing

View from the Chair

In the Spring an IP attorney's fancy lightly turns to thoughts of . . . the Supreme Court. This season, our attention turns to ponder the Court's views on laches in copyright cases (*Petrella v. MGM*), attorney fee shifting (*Octane Fitness v. Icon Health & Fitness*; *Highmark v. Allcare Health Mgmt.*), indefiniteness (*Nautilus v. Biosig*), divided infringement (*Limelight v. Akamai*), and false advertising under the Lanham Act (*Lexmark Int'l v. Static Control*). Before the end of June, we should have additional musings about patentable subject matter (*Alice v. CLS Bank*). You can learn more about the impact of these cases from distinguished national speakers and scrutinize them over a cocktail with your colleagues on the world's largest front porch at ICLE's Summer Intellectual Property Law Institute, July 17-19, 2014 at the Grand Hotel on Mackinac Island. We are very excited that our 40th Summer Institute will include the Hon. Gerald E. Rosen, Chief Judge, Eastern District of Michigan, and the Hon. Robert Holmes Bell, District Judge, Western District of Michigan, sharing their perspectives on IP litigation. **The Intellectual Property Law Section will also conduct its annual business meeting on July 19 at 8:00 a.m. at the Grand Hotel.** More information about the program and registration is available at: http://www.icle.org/modules/store/seminars/schedule.aspx?PRODUCT_CODE=2014CI4710

Like IP opinions from the Supreme Court, our Section has been prolific this season. Our annual Spring IP Law Seminar was March 24, 2014 at the Kellogg Center in East Lansing. The day-long program included patent and trademark tracks with presentations from the PTO and national

practitioners. This year, we reinstated a student track. It included a panel discussion focused on careers in the IP field, as well as reserved seats at each of our luncheon tables to promote networking between students and Section members.

On April 24, 2014, our Section was honored to host judges from the United States Patent and Trademark Office's Patent Trial and Appeal Board (PTAB) at a public roundtable at Thomas M. Cooley Law School in Auburn Hills. This event was one of several roundtables that the PTAB conducted nationwide. Judges from the PTAB shared information about the new America Invents Act trials (inter partes reviews, post grant reviews, covered business method reviews, and derivations) including statistics, lessons learned, and techniques for successful motions practice. More than 80 people attended. Our Section also hosted a reception with the PTAB judges afterward. Both events were free to the public.

Finally, in April, the IP Law Section Council conducted a survey of our members to evaluate what we have been doing in the past and what changes might be made as we go forward. We appreciate everyone that took the time to respond. The results will provide important assistance with planning future seminars and activities.

Please let me or any of our Council members know if you would like to assist with any programs, or have other suggestions. We hope to see you on Mackinac in July!

Adam B. Strauss

Chair, Intellectual Property Section

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use¹¹ of the genes, it was still able to recover a \$1 billion verdict based on the hypothetical reasonable royalty DuPont would have paid to enter into a license for the use.¹² Although DuPont attempted to argue that its experimentation with the patented genes fell inside the scope of the experimental use exception to patent infringement, this argument was not accepted by the trial court.¹³

II. The Experimental Use Exception to Patent Infringement

A. Background of the Exception

In contrast to the United States Copyright Act¹⁴, the Patent Act “does not provide any general exemption from patent infringement liability for uses of patented inventions that are not authorized by the patent owner.”¹⁵ Even use of an invention for mere purposes of personal convenience ordinarily constitutes infringement.¹⁶

However, there are exceptions to infringement, such as the experimental use doctrine. “The experimental use doctrine of patent law protects alleged infringers who use patented inventions solely for experimental purposes, such as testing whether a device functions as claimed or re-creating a process to observe its effects from a scientific perspective.”¹⁷

Since its first enunciation, the experimental use defense has only infrequently been applied to excuse unauthorized uses of patented inventions.¹⁸ It has been acknowledged that “[t]his has probably resulted because in the same year that it was created, it was held that users with ‘intent to use for profit’ could not avail themselves of the defense.”¹⁹ This requirement has translated into a longstanding notion that use of a patent with commercial intent should not be protected by the experimental use doctrine.²⁰ As such, courts generally have historically applied the exception restrictively²¹

This limitation has proven to be quite strict; the doctrine does not apply for experimental use which is of a commercial nature.²² Any unauthorized sale of the invention is considered to be a commercial use and will thus fall outside the scope of the defense.²³

Gradually, “the focus of the inquiry shifted from whether the alleged infringing use was for profit or financial gain, to whether it furthered legitimate business interests” – regardless of commercial gain.²⁴ More recently, the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”), which exercises “exclusive nationwide jurisdiction over patent-based appeals,” has interpreted the doctrine in such a narrow way that, “for all practical purposes, the doctrine has become a nullity.”²⁵ The Federal Circuit has stressed that “use in keep-

ing with the legitimate business of the alleged infringer does not qualify for the experimental use defense.”²⁶

B. Application of the Exception in *Monsanto v. DuPont*

How could Monsanto be awarded \$1 billion in damages when DuPont had never marketed nor commercially exploited any plants or plant seeds which contained the patented genes? Why did the experimental use exception not apply here? The answer lies in the nature of patent damages and the more recent decisions of the Federal Circuit regarding the experimental use exception.

The Patent Act guarantees to a successful claimant “damages adequate to compensate for the use made of the invention by the infringement, but in no event less than a reasonable royalty,”²⁷ meaning that a patentee can be entitled to compensation regardless of whether they have suffered actual pecuniary loss.²⁸ Although the arguments between the parties regarding the calculation of damages are currently sealed,²⁹ the award *appears* to be based on the royalties that DuPont would have paid had it negotiated a license ahead of time.³⁰ The court held that it was irrelevant whether or not DuPont intended to commercialize all of the seeds at issue since creating the seeds fell within the scope of DuPont’s legitimate business.³¹

III. A Viable Alternative for a Limited Experimental Use Exception to Patent Infringement

This section lays out an unambiguous bright-line rule which both achieves the desired results of those who advocate a broad experimental use exception doctrine, while avoiding the harms identified by those who support a narrow doctrine. The proposal is a modification of the experimental use exception to infringement which relies, in part, on an effect it would have on the calculation of infringement damages.

The Patent Act authorizes courts to increase the damages found during a patent infringement suit by up to three times the actual calculated value.³² A finding of willful infringement is the most common basis for increasing damage awards in patent infringement suits.³³ An increase is appropriate when the infringer fails to mount “a good faith and substantial challenge to the validity of the patent or the existence of infringement.”³⁴

Willful damages must be clearly and convincingly proven by the evidence.³⁵ In order “to establish willful infringement, the patentee must show . . . that the infringer acted despite an objectively high likelihood that its actions constituted

Continued on next page

infringement of a valid patent.”³⁶ One key factor in determining whether an infringer acted recklessly is “whether the infringer, once he knew of the other’s patent protection, investigated the scope of the patent and formed a good-faith belief that it was invalid or that it was not infringed.”³⁷ “Many decisions have awarded a trebling increase without significant further analysis once it has been found that the infringer’s activities were sufficiently willful and wanton.”³⁸

The proposal is for a modification to the experimental use exception to patent infringement which both rewards inventors in complex technology industries for their contributions, while allowing society to fully realize the disclosure of the invention to the public. This could be accomplished by judicial reinterpretation of the doctrine, which is appropriate as the doctrine itself was judicially created.³⁹ After all, the common law experimental use exemption “is premised on a judicial interpretation of the statutory prohibition of unauthorized ‘use’⁴⁰ of a patented invention” under the federal statute which defines patent infringement.⁴¹

The modified rule would take the following form: An experimental use which does not result in a commercial detriment to a patentee does not constitute infringement, so long as the patentee was put on express notice of the intended experimental use beforehand. The phrase “does not result in a commercial detriment to the patentee” is used in place of “results in a commercial benefit to the user” in order to avoid complications regarding the involvement of third parties. For purposes of this rule, a failure to collect licensing fees for the initial experimental use would not constitute a commercial detriment to the patentee.

The substantive rights provided by the Patent Act will all remain in place under the modified experimental use doctrine.

This new, bright-line approach to the experimental use doctrine is advantageous in every conceivable way. The rights of the patentee will still be adequately protected and it is anticipated that the licensing income generated by patents will actually *increase*. As such, the goal of the patent system in stimulating investment in patent-yielding research and development will also be well served. The previously mentioned benefit to the public of being able to fully understand and learn from patents will be enhanced. Most important, society will benefit from the race-to-the-top system which will exist

once impediments to experimentation are removed, resulting in a technological boom.

How might these expectations be realistic? Although the benefits of the new rule in promoting the understanding of new technologies and in incentivizing academic research may seem straightforward, the assertion that the pecuniary value of a patent will increase might be seem to be counter-intuitive. The answer revolves around the actual effect of the new rule in changing the behavior of both patentees and experimental users.

The substantive rights provided by the Patent Act will all remain in place under the modified experimental use doctrine. In fact, there is only one situation under the new rule in which a patentee would be adversely affected – when the experimental use at issue yields nothing of any commercial interest. In such a situation, the patentee would lose its ability to collect a licensing fee. As explained below, the lack of a mandatory licensing fee in such a situation provides extensive benefits to society and the public, while being the more equitable arrangement.

How can the exclusion of a category of users from having to enter into licensing arrangements result in an increase in licensing fees collected by the patentee? The mechanism by which this will occur is the simple and elegant result of the new bright-line rule. Because an experimental user is required to provide express notice of their intent to use the invention to the patentee, the user will have subjected themselves to the danger of a finding of willful infringement and an award to the patentee of treble damages. The express notice which the patentee receives from the experimental user will serve as powerful evidence during any eventual litigation that the user was both aware that their activity infringed upon the patent and that they believed the patent to be valid – thus making a strong case to support an allegation of willful infringement.⁴² Additionally, receiving express notice that the experimental use of a patentee’s invention is intended will greatly assist in monitoring that use and policing its results.

In the event that a development occurs during the experimental use of the invention that could result in a commercial detriment to the patentee, the threat of litigation coupled with a fear of a finding of willful infringement will serve as a figurative Sword of Damocles hanging over the user’s head. The result of such peril is clear – it will serve as an impetus to the experimental user to enter into a license agreement with the patentee.⁴³

It is anticipated that permitting initial experimental use of a patentee’s invention will result in the patentee being able

to license to an even greater number of potential users than they would if experimental use was illegal; not only will the patentee still be able to seek out and obtain licenses from those interested in commercial applications for the invention, but those seeking to use for experimental purposes will themselves seek out the patentee. The only way in which the patentee will end up licensing to a smaller pool of licensees under the new rule is when there is an insufficient number of experimental users who are able to advance their research to the point at which it becomes of commercial interest.

Further, regarding those known experimental users who later seek to license the patentee's invention, the patentee will know at the outset that they are in a superior bargaining position. After all, the experimental user will be seeking out the patentee for a license because it has developed something of commercial interest; the experimental user may already have crossed the line and begun infringing the patent. This places the patentee in a position to maximize the pecuniary value of their patent.

Regarding experimental users who go on to infringe the patentee's patent without attempting to obtain a license, there are two points to consider. First, there is nothing preventing infringers from doing so currently. According to *Monsanto*, this behavior is exactly the type in which DuPont engaged.⁴⁴ Even in the scenario where a user neither puts the patentee on notice of an intent to use the invention nor seeks out a license before making a commercial use of it, the patentee is in no worse a position than it is under the current rule for experimental use.

Second, assuming that DuPont had given express notice of its intent to experiment with Monsanto's invention under the new rule, Monsanto would have at least had that knowledge beforehand. This knowledge would have made it easier for Monsanto to police DuPont's use of its invention. Monsanto would know that it would need to closely monitor the products that DuPont brought onto the market to see if there was any indication that its patent had been used for commercial purposes. This would make it much less likely that DuPont would be able to escape with any unscrupulous use of Monsanto's invention without being detected. Further, DuPont would have been much more hesitant to engage in any infringing use, because its knowledge of the patent might subject it to willful infringement damages.

It can be plainly seen that if the new rule had been in effect during the events leading up to the Monsanto lawsuit, Monsanto both would have retained the vast majority of its patent rights and been in a superior position to enforce those rights. The only situation in which Monsanto would no longer be in a position to maximize the pecuniary value of its patent would be if DuPont's experimentation did not result in anything of commercial value. However, as was the case here, a potential user of an invention may be hesitant to

enter into a costly licensing scheme when there is no guarantee of ultimate success. After all, who would risk paying a \$1 billion licensing fee for the right to engage in commercially worthless experimentation?⁴⁵

IV. Conclusion

It is clear that a broadening of the experimental use exception to patent infringement is sorely needed. The *Monsanto* case is a perfect example of the flaws in the doctrine as it now stands: A party has been found liable for \$1 billion in royalty-based damages for engaging in experimentation which was commercially worthless. It is urged that appellate courts use this case as an opportunity to adopt a modified experimental use exception – one comprising a bright-line rule permitting experimental use, but coupled with an express notice requirement. ?

Endnotes

- 1 Andrew Pollack, *Monsanto Wins Big Award in a Biotech Patent Case*, N.Y. TIMES (Aug. 1, 2012), http://www.nytimes.com/2012/08/02/business/monsanto-wins-big-award-in-a-biotech-patent-case.html?_r=0.
- 2 *Monsanto Co. v. E.I. DuPont De Nemours and Co.*, 4:09CV00686 ERW, 2010 WL 234951, at *1 (E.D. Mo. 2010).
- 3 *Monsanto Co. v. Scruggs*, 459 F.3d 1328, 1332 (Fed. Cir. 2006). Monsanto owns U.S. Patent No. 5,352,605 (“the ‘605 patent”), which is directed toward insertion of a synthetic gene consisting of a 35S cauliflower mosaic virus (“CaMV”) promoter, a protein sequence of interest, and a stop signal, into plant DNA to create herbicide resistance. Monsanto also owns U.S. Patent Nos. 5,164,316; 5,196,525; and 5,322,938 (collectively “the McPherson patents”), which are directed toward insect resistant traits.
Id.
- 4 U.S. Patent No. RE 39,247E (filed July 18, 2003).
- 5 *Monsanto*, 2010 WL 234951, at *1.
- 6 *Id.* (“The verdict was the fourth-largest jury award in a patent trial in U.S. history . . .”).
- 7 Susan Decker & Jack Kaskey, *DuPont Seeks New Trial in \$1 Billion Monsanto Patent Victory*, BUSINESSWEEK (Sept. 27, 2012), available at <http://www.businessweek.com/news/2012-09-27/dupont-seeks-new-trial-in-1-billion-monsanto-verdict> (“Wilmington, Delaware-based DuPont, which generated \$38 billion in revenue last year, never commercialized its product combining Roundup Ready and GAT.”).
- 8 Jack Kaskey & Susan Decker, *Monsanto's \$1 Billion Patent Claim Against DuPont Nears End*, BUSINESSWEEK (Aug. 1, 2012), available at <http://www.businessweek.com/news/2012-08-01/monsanto-s-1-billion-patent-claim-against-dupont-to-go-to-jury> (“Adding a second glyphosate-tolerance gene to Roundup Ready crops is prohibited by the companies' licensing agreement, U.S. District Judge Richard Webber previously ruled.”).

- 9 *Jury awards Monsanto \$1B in patent case vs DuPont*, *supra* note 8.
- 10 Kaskey & Decker, *supra* note 14 (“DuPont claimed during the trial that Monsanto sued only after it was shown data that the two genes work better than either GAT or Roundup Ready alone. DuPont argues there was nothing wrong with making the combination because Monsanto’s Roundup Ready patent is invalid and unenforceable.”).
- 11 35 U.S.C.A. § 271(a) (West 2012) (“Except as otherwise provided in this title, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.”).
- 12 Mark A. Lemley, *Distinguishing Lost Profits from Reasonable Royalties*, 51 WILLIAM & MARY L. REV. 655, (2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1133173.
- 13 *Monsanto Co. v. E.I. DuPont De Nemours & Co.*, 2010 WL 518087, at *10 n.9 (E.D.Mo.).
- 14 17 U.S.C.A. § 107 (West).
- 15 Janice M. Mueller, *The Evanescent Experimental Use Exemption from United States Patent Infringement Liability: Implications for University and Nonprofit Research and Development*, 56 BAYLOR L. REV. 917, 923 (2004).
- 16 D. CHISUM, PATENTS § 16.03[1] (2012).
- 17 Tom Saunders, *Renting Space on the Shoulders of Giants: Madey and the Future of the Experimental Use Doctrine*, 113 YALE L.J. 261, 261 (2003).
- 18 Israelsen, *supra* note 24, at 458.
- 19 Saunders, *supra* note 23, at 264; *Sawin v. Guild*, 21 F. Cas. 554, 555 (C.C.D. Mass. 1813) (Story, J.).
- 20 Saunders, *supra* note 23, at 263.
- 21 Jordan P. Karp, *Experimental Use As Patent Infringement: The Impropriety of A Broad Exception*, 100 YALE L.J. 2169, 2170 (1991).
- 22 CHISUM, *supra* note 22, § 16.03[1].
- 23 Israelsen, *supra* note 24, at 461.
- 24 Elizabeth A. Rowe, *The Experimental Use Exception to Patent Infringement: Do Universities Deserve Special Treatment?*, 57 HASTINGS L.J. 921, 926 (2006).
- 25 Mueller, *supra* note 21, at 918; *Madey v. Duke Univ.*, 307 F.3d 1351, 1362 (Fed. Cir. 2002), *cert. denied*; 539 U.S. 958 (2003); *Integra Lifesciences I, Ltd. v. Merck KGaA*, 331 F.3d 860, 867 (Fed. Cir. 2003), *vacated sub nom Merck KGaA v. Integra Lifesciences I, Ltd.*, 545 U.S. 193 (2005); *Roche Products, Inc. v. Bolar Pharm. Co.*, 733 F.2d 858, 863 (Fed. Cir. 1984) (“[U]nlicensed experiments conducted with a view to the adaption of the patented invention to the experimenter’s business is a violation of the rights of the patentee to exclude others from using his patented invention.”).
- 26 CHISUM, *supra* note 22, § 16.03[1][c]; *MADEY*, 307 F.3d at 1362.
- 27 35 U.S.C.A. § 284 (West 2012).
- 28 Karp, *supra* note 29, at 2177.
- 29 Bernard Choa, *Non-Public Litigation: The Hidden Story of Monsanto v. DuPont*, PATENTLYO (Aug. 11, 2012), <http://www.patentlyo.com/patent/2012/08/non-public-litigation-the-hidden-story-of-monsanto-v-dupont.html> (“Monsanto’s damages theory is hidden from the public view.”).
- 30 *Id.*
- 31 *Id.*
“[U]se is disqualified from the defense if it has the slightest commercial implication” or if it is “in keeping with the legitimate business of the alleged infringer.” [I]t is clear that the creation of genetically-modified seed products by corporations in the business of selling such products likewise does not qualify.
- 32 CHISUM, *supra* note 22, § 20.03[4][b]; 35 U.S.C.A. § 284 (WEST 2012).
- 33 CHISUM, *supra* note 22, § 20.03[4][b].
- 34 *Id.* § 20.03[4][b].
- 35 *Id.* § 20.03[4][b][v][I].
- 36 *Id.* (citing *In re Seagate Tech., LLC*, 497 F.3d 1360, 1371 (Fed. Cir. 2007)).
- 37 *Id.* § 20.03[4][b][vi][B] (citing *Read Corp. v. Portec, Inc.*, 970 F.2d 816, 827 (Fed. Cir. 1992)).
- 38 *Id.* § 20.03[4][b][vi].
- 39 *But see*, Rowe, *supra* note 32, at 949 (“Congress should only step in to chip away the rights of patent-holders when it determines that a compelling need has been established in a particular area.”).
- 40 35 U.S.C.A. § 271 (West 2012).
- 41 Strandburg, *supra* note 56, at 120.
- 42 *i4i Ltd. P’ship. v. Microsoft Corp.*, 598 F.3d 831, 860 (Fed. Cir. 2010), *aff’d*, 131 S. Ct. 2238 (2011).
- 43 Jason Rantanen, *Slaying the Troll: Litigation As an Effective Strategy Against Patent Threats*, 23 SANTA CLARA COMPUTER & HIGH TECH. L.J. 159, 163 (2006) (“In many cases, the mere threat of litigation may allow the patent holder to achieve its goal - especially when that goal is to force a license of its patent.”).
- 44 MONSANTO, <http://www.monsanto.com/Documents/the-real-facts-on-dupont-submission.pdf> (last visited Nov. 25, 2012).
- 45 Whittington, Harris & Kaskey, *supra* note 8.

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ArtServe Michigan Launches “Lawyers For The Creative Economy” Program To Address Unmet Need For IP Representation

The last issue of *Proceedings* highlighted efforts by the IPLS to organize a regional patent pro bono program under the USPTO’s pro bono initiative under the America Invents Act. In this issue, we highlight a new pro bono program designed to serve the IP needs of Michigan’s creative industry.

About LCE

Lawyers for the Creative Economy (LCE) is an ArtServe Michigan initiative establishing a statewide network of attorneys committed to delivering pro bono to low fee intellectual property and creativity-related legal resources to artists, creative practitioners, businesses and non-profit organizations.

LCE was developed by ArtServe Michigan with support from the Arts, Communications, Entertainment and Sports (ACES) section of the State Bar of Michigan; Clark Hill, PLC; Miller Canfield; the Detroit Creative Corridor Center (DC3); and the National Endowment for the Arts.

LCE at a Glance

LCE will not only provide IP practitioners with an opportunity to fulfill their pro bono responsibilities as an attorney, but will also allow them to share a stake in Michigan’s vibrant creative sector.

LCE serves individuals, small businesses, and non-profits in fields including, but not limited to: dance, theater, music, literary arts, visual arts, film/video, creative technology, design, and architecture. Each prospective client will go through an application process to determine eligibility for pro bono or low fee legal assistance.

LCE will provide pro bono or low fee creativity-related attorney referral services to eligible clients in the creative industries for legal matters including, but not limited to:

- Intellectual Property (copyright, patent and trademark)
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- Entity formation (for profit)
- Entity formation (non-profit)
- Insurance
- Immigration

- Labor relations
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- Wills, estates and trusts
- Constitutional rights/First Amendment issues

Informed Clients and Legal Readiness

LCE strives to ensure that all clients are “legal ready” before their matter is referred to an LCE volunteer attorney by implementing a structured screening process. Additionally, ArtServe Michigan provides the following programs and resources:

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- **Code - Creative Industries, Technology, and the Law** – Code offers quarterly dialogue and networking events that bring together the creative and legal sectors. Code events in Detroit and Grand Rapids will feature talks by local/national artists and legal professionals discussing timely issues, especially the impacts of technology on aspects of intellectual property affecting the creative industries.
- **Website** – LCE services, applications and resources are coordinated through the LCE section of the ArtServe Michigan website. The LCE section is designed to be an accessible and comprehensive online resource that is relevant to a wide audience. Additional resources are being developed to include podcasts, FAQs, RSS Feeds, videos, factsheets, industry-insight articles, case studies, guides and a glossary of creativity-related legal terms.

Benefits to Volunteering:

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- Grow professionally through ongoing professional practice opportunities provided by ArtServe Michigan

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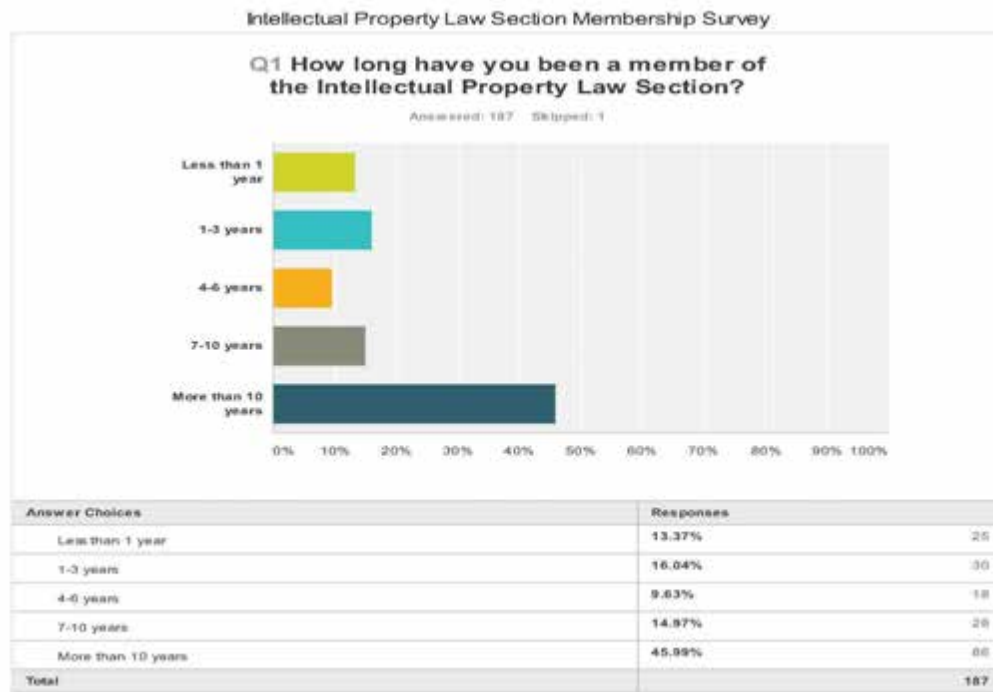
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To register as a volunteer attorney please visit the Programs & Services section of our website: www.artservemichigan.org

Thank you to those that participated in the IPLS Membership Survey!



The IPLS Council would like to thank all those Section members that participated in our recent survey for helping us gather information regarding our seminar activities. The survey results are now posted to the Section's website at <http://www.michbar.org/ip/>. We had nearly 190 members respond to the survey, with those responding representing a broad cross section of years of membership in the Section. The results are being used by the Council to evaluate what we have been doing in the past and what changes may be made as we go forward. More discussion regarding the survey will be presented at the Summer Institute on Mackinac Island. ?

ArtServe Michigan's Lawyers for the Creative Economy (LCE) program is seeking a Director of LCE Services to administer the program.

ARTSERVE MICHIGAN

ArtServe Michigan is the statewide nonprofit advocacy and public policy organization for the creative sector in Michigan. Our mission is to cultivate the creative potential of Michigan's arts and culture sector to enhance the health and well-being of Michigan, its people and communities.

LAWYERS FOR THE CREATIVE ECONOMY

ArtServe Michigan's - Lawyers for the Creative Economy (LCE) program has established a statewide network of volunteer attorneys committed to delivering pro bono and low-fee intellectual property (IP) and creativity-related legal resources to artists, creative practitioners, businesses and nonprofit organizations. The referral-based program connects prospective clients with our volunteer attorneys through a comprehensive application and review process. The initiative also provides networking events among the legal and creative fields and professional development seminars for artists and other creative practitioners to help them develop essential knowledge about creativity-related areas of law (under the leadership of the Director of Creative Industries).

Job responsibilities include:

1. reviewing applications for legal assistance and pro bono eligibility;
2. handling general program inquiries and requests for legal resources and assistance beyond the scope of program services;
3. pairing qualified applicant's with the best suited attorney among our volunteers;
4. acting as liaison with attorneys, creative practitioners and organizations, creative business owners and community leaders;
5. providing regular updates to the LCE advisory board and conducting quarterly meetings of the board;
6. recruiting volunteer attorneys and administering attorney orientations;
7. marketing the LCE program to prospective applicants throughout Michigan's creative sector;
8. planning and developing LCE programs and services;
9. participating in and assisting with ArtServe Michigan's Creative Many programs to provide "Protecting Your Practice" seminars aimed at informing the creative community of the legal rights and issues affecting their work and how to identify when they need legal assistance;
10. maintain and update a comprehensive online database of legal resources for the creative community; and
11. fundraising.

Ideal candidate has legal experience, particularly in the field of intellectual property. Experience and work in the areas of non-profit administration, grant writing and fundraising is preferred. Familiarity with the local creative and legal communities is also preferred.

Contact ice@artservemichigan.com for full job description. Send resume, cover letter and references to ice@artservemichigan.com. **Applications will be received until the position is filled.** For more information about ArtServe Michigan or LCE, please visit the ArtServe website at www.artservemichigan.org.