



**MEETING RECAP FOR
THE PAULINE NEWMAN
IP AMERICAN INN OF COURT
TUESDAY, FEBRUARY 25, 2014**



The second Inn meeting of the 2014 calendar year again took place in the Auditorium below the Atrium in the Madison Building of the headquarters of the U.S. Patent & Trademark Office (“PTO”) in Alexandria, Virginia. It was jointly attended by members of the George Mason Inn. There was an initial reception beginning at 5:30 p.m. at which drinks only were served. The presentation began after 6:00 p.m.

Inn President Judge Liam O’Grady could not be present, as he had surgery on his knee. Judge Pauline Newman was also absent, as she was feeling “under the weather.” The fact pattern and saga involving Dr. Rube Goldberg was continued. The focus of the program was on trademarks. Dr. Goldberg seeks to trademark the phrase RUBE GOLDBERG’S COLD FUSION MACHINE.

The leader of the pupillage team giving the presentation was Cheryl Butler, Senior Counsel to the Trademark Trial and Appeal Board (“TTAB”). Chief Judge Gerard Rogers of the Trademark Trial and Appeal Board was the guest speaker. Other members of the pupillage team were P.Jay Hines of Muncy, Geissler, Olds & Lowe, P.C., Jeffrey Karceski of Thomas & Karceski, P.C., Judge Linda Kuczma of the TTAB, Judge Anthony Masiello of the TTAB, Tammy Pham of the PTO, Allison Strickland Ricketts of Fross Zelnick Lehrman & Zissu, P.C., Judge Gerard Rogers of the TTAB, Judge Thomas Wellington of the TTAB, Charles Wieland III of Buchanan Ingersoll & Rooney PC, and Elizabeth Winter of the TTAB.



Judge Rogers gave an overview of the night’s scenario, and recent development of procedures before the TTAB. The TTAB issues about 40 to 50 precedential decisions a year. It is updating its procedural manual. It tries to get “buy-in” for rule changes from various stakeholders.



Dr. Goldberg invented an “in-home fusion reactor.” With Sal Corr, he forms Endless Energy, LLC to commercialize the invention, which announces its intention to manufacture and sell an “in-home nickel-hydrogen fusion reactor” under the mark RUBE GOLDBERG’S COLD FUSION MACHINE. He receives cease and desist letters from: Adobes Systems, Inc. (which has registered COLDFUSION as a trademark for “software programs for control and management of power plants”), Cold Fusion Gelato (which has filed a trademark application for COLD

FUSION MACHINE for “electric gelato making machines”), and the Rube Goldberg Foundation (which has registered RUBE GOLDBERG MACHINE in Germany and the United States for a wide variety of goods and services). Endless Energy files an Intent-to-Use trademark application for RUBE GOLDBERG’S COLD FUSION MACHINE for “reactors.”

Issues discussed with regard to Adobe Systems’ letter included likelihood of confusion given different products and different consumers, whether “cold fusion” is descriptive, and declaratory judgement. Issues discussed with regard to Cold Fusion Gelato’s letter included priority of filing, classes and descriptions of goods, amendment of trademark applications, abandonment, and likelihood of confusion. Issues discussed with regard to the Rube Goldberg Foundation’s letter included specimens of use, foreign registrations, and cancellation of registrations for abandonment or lack of a bona fide intent to use.



Endless Energy receives an Office action refusing registration on the grounds of likelihood of confusion, seeking a disclaimer of “cold fusion”, and asking whether “Rube Goldberg” identifies a living individual. It files a response amending the identification of goods and disclaiming “cold fusion.”

When Endless Energy’s application is again rejected, it file an ex parte appeal to the Trademark Trial and Appeal Board. The TTAB is “fairly liberal” about accepting evidence from the Internet.

The TTAB reverses the Trademark Examining Attorney’s refusal, and Endless Energy’s trademark application is published for Opposition. Oppositions are filed by Farenheight University (which claims ownership via an employment contract with Dr. Goldberg), Adobes Systems (which claims likelihood of confusion with its COLDFUSSION mark), and the Rube Goldberg Foundation (with claims both likelihood of confusion with, and dilution of, its RUBE GOLDBERG MACHINE mark). Topics discussed by the panel included scope of assignment in



the employment contract, assignment of intent-to-use trademark applications, and types of evidence that can be submitted to the TTAB. Logs of calls from confused consumers should be kept, if it is desired to use such calls as evidence of confusion. Lack of evidence of actual confusion does not prove that there is no likelihood of confusion.

Endless Energy files a counterclaim to cancel Adobes' COLDFUSION registration as generic and/or descriptive. This is time-barred, because COLDFUSION had become incontestible after five years of registration.

Endless Energy files a counterclaim to cancel the Rube Goldberg Foundation's registration of RUBE GOLDBERG MACHINE for lack of a bona fide intent to use at the time of filing, abandonment and fraud. Business plans and other evidence of intent-to-use can be requested in discovery. Abandonment may be easier to prove than lack of a bona fide intent-to-use. An ex parte appeal may be suspended while a petition to cancel a mark cited against the appellant is pending. A registration will be cancelled on grounds of fraud only for those classes of goods/services for which fraud is proven.

The program concluded after 7:15 p.m. After the program, members socialized at the main reception, with both food and drink, until about 8:30 p.m. Catering was by Geppetto Catering, Inc. Social Co-Chairs Judge Hung Bui and John Williamson handled the purchasing and stocking of wine and beer, negotiated the contract with the caterer, and supervised the caterer.



*Photographs were taken by Doug Pearson
Assistant Secretary-Treasurer*

Respectfully submitted,

Stephen Christopher Swift
Secretary-Treasurer