

**INTELLECTUAL PROPERTY LAW COMMITTEE
BUSINESS LAW SECTION
THE FLORIDA BAR**

MEETING MINUTES– 2019 End of Year Telephonic Meeting
December 13, 2019, 4:00 P.M. – 5:15 PM Telephonic Meeting
Dial-in/Room – 1-888-376-5050 / PIN: 9031955001

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Attendees: In person: *None*. On the phone: *See attached*.

I. WELCOME AND INTRODUCTION BY THE CHAIR

II. OLD BUSINESS

A. Adoption of Meeting Minutes. Post Labor Day Retreat Telephonic Make-Up Meeting on September 9, 2019- Adopted by vote

III. NEW BUSINESS

A. IP Certification Exam - Course Material Update – Joe Englander, Miami. Along with Janice ____, John ____, Mark ____ and Jessica Shraybman this group has been working on a comprehensive outline for the IP Board Certification Exam. This group has met several times. To date 6 outlines which can be used as study guides for the Exam have been completed and the goal is to complete 12-15 outlines for the topics covered in the Exam. More volunteers are needed to complete the remaining outlines. Cannot commit to having all outlines completed in time for the May 2020 exam, however at least some outlines will be available.

B. Legislative Update – Jim Matulis, Tampa

1. Restrictive Covenants 542.335 Task Force Update-Task Force is charged with revising Florida Statute Section 542.335 which is viewed as one of the most employer-friendly statutes in the country. In fact, other states have refused to enforce Florida's statute because it was viewed as too business- or employer-friendly. Senator Joe Gruters of Sarasota has previously proposed bills to revise this statute. The goal was to make the statute more employee-friendly, which some studies show is more encouraging to economic growth, by looking to statutes in other jurisdictions such as Washington state, which strike a better balance between the rights of employers and employees. The current version of the statute was written in 1995. The task force is

primarily composed of members of the Business law section of the bar, but there has been no input as of yet from other sections or committees, such as employment law, on the task force. Summary of proposed key revisions to-date: (1) maintain rule of construction that requires court to construe covenant in favor of protecting legitimate interests; (2) non-competition, anti-poaching, and certain non-solicitation covenants will not apply to current or former employees, independent contractors or agents who earn less than \$60,000 per year, but certain other covenants would still apply, such as NDAs based on trade secrets or confidential info, certain threshold. The idea is to remove rank and file employees from the effects of a non-compete provision on their ability to work in their field. Task Force is currently recommending the salary be \$60K per annum. There are some issues with applying this income threshold. For example, if in the first year a salesman makes \$60K and then the second year their compensation exceeds \$60K, there should be some language in the statute to allow that salesman to be subject to a restrictive covenant. Similar issues exist with former employees that had an ownership stake in the company. Another revision that may be considered concerns the ability (or requirement) of a Court to “blue pencil” or revise the restrictive covenant to make it reasonable. The Task force will present proposals for revisions to the Statute at the Winter Meeting in February 2020. Although Senator Gruters is patient and understands that the task force has not yet completed its work for this legislative session which begins in January 2020 and expects to have a proposal submitted to the EC and ultimately ready for submission during the 2021 session, he has indicated that if the task force does not have proposed revisions that are in line with his intent for the 2021 legislative session, he may propose his own revisions.

2. Uniform Commercial Real Estate Receivership Act (UCRERA) Task Force Update- This law has to do with what happens when real estate goes into receivership and what the different parties involved in the process can do / cannot do / must do in that situation. The task force proposed a Uniform Act to address these issues, with some modifications so that Courts have uniform guidance to follow throughout the State. The substance of this Act does not impact or involve IP law

3. HB 495-This bill addresses technical errors that were included in the updated and modernized version of Chapter 607, the Florida Business Corporation Act which was considered during the 2019 legislative session, was signed into law by Governor DeSantis on June 7, 2019 and takes effect on January 1, 2020. The revised act not only updates and modernizes Florida's corporate statute (the first comprehensive update and modernization of Florida's corporate statute since 1989), but also makes modifications to Florida's other entity statutes, most often to harmonize those provisions with the revised corporate statute. No substantive changes to the revised Act are included in this bill.

4. Trade Secrets – there are currently pending two House bills that would modify trade secret protections found in various statutes that involve state agencies and companies that do business with them. This is largely the same legislation that was introduced in 2017 and 2018 but was not passed. The IP committee prepared a point paper identifying several concerns with the proposed scheme in 2018. There was more opposition to these bills in prior years than there is now, so the IP committee will need to take an active role to review and advocate as appropriate. Joe Englander volunteered to work with Jim Matulis on a white paper.

IV. 11th ANNUAL INTELLECTUAL PROPERTY SYMPOSIUM Update

Samuel Lewis, Miami (not on the call) Update provided by Jacqueline Tadros, IP Committee Chair-The 11th Annual Florida Bar IP Symposium will be held on April 16-17, 2020 at the Biltmore Hotel in Coral Gables, FL. The agenda for Thursday April 16, 2020 includes

the IP Committee meeting and Dinner speaker. The agenda for Friday April 17, 2020 will include a full day of CLE presentations. The keynote speaker on Friday is the Commissioner for Patents Drew Hirschfeld.

V. IP COURSE CERTIFICATION UPDATE-Joe Englander, Miami See New Business, III. A. above.

VI. BLOCKCHAIN TASK FORCE UPDATE- Woody Pollack, Tampa. There are still appointments being made to the state wide task force. There were some appointments to the task force made in the past few weeks. Currently the task force has been more about obtaining inputs from constituents regarding blockchain and how they think it might affect or benefit them. There has not been any substantive discussion regarding laws or regulations related to blockchain.

VII. PRO BONO CHALLENGE

Contact the Florida Bar Foundation, local legal aid organizations, or Lynn Sherman (LSherman@trenam.com); Amanda Finley (AFinley@sequorlaw.com); Carlos Sardi (Carlose@sardiloaw.com) to identify a pro bono matter to tackle by January 1, 2020.

VIII. CLE EVENT:

Topic: Building Configuration Trademarks

The Current state of building-configuration trademarks and how the Trademark Office is currently applying the law.

Speaker: Miriam Richter, Esq., Richter Trademarks, P.L.

IX. ADJOURNMENT

Next Meeting, The Florida Bar Winter Meeting, February 5-8, 2020,
Hyatt Regency Orlando. 9801 International Drive Orlando, FL 32819