

Schedule of Events:

5:00pm
Doors Open to the Public

5:10pm
Welcome Address
*Jonathan August, Editor in Chief,
Hastings Constitutional Law Quarterly*

5:15pm
Introductory Remarks
Professor Robin Feldman, UC Hastings

5:20pm
—First Half of Panel—

*Alex Kozinski, U.S. Court of Appeals for the Ninth Circuit
Vern Norviel, Wilson Sonsini Goodrich & Rosati
James Mullen, Morrison & Foerster
Wesley Overson, Morrison & Foerster
David Winickoff, University of California, Berkeley
Megan Allyse, Stanford University*

6:20pm
—Break—

6:30pm
—Second Half of Panel—

7:30pm
Audience Q&A

7:55pm
Closing Remarks
*Annie Moskovian, Executive Symposium Editor
Hastings Constitutional Law Quarterly*

8:00pm
Doors Close to the Public

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Hastings Constitutional Law Quarterly

Proudly Presents

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**PATENT PENDING:
CORPORATIONS, THE CONSTITUTION,
AND THE HUMAN GENE**
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A Symposium Panel Discussion

Featuring:

Chief Judge Alex Kozinski, *U.S. Court of Appeals for the Ninth Circuit*
James Mullen, *Morrison & Foerster*
Wesley Overson, *Morrison & Foerster*
Vern Norviel, *Wilson Sonsini Goodrich & Rosati*
Professor David Winickoff, *University of California, Berkeley*
Megan Allyse, *Stanford University*

Moderated by:

Professor Robin Feldman
UC Hastings College of the Law

Louis B. Mayer Lounge
University of California, Hastings College of the Law
Wednesday, February 20, 2013

The Quarterly's Outlook & Objective

Hastings Constitutional Law Quarterly was established in 1974. The *Quarterly* was the first scholarly legal journal solely dedicated to exploring the national Constitution, as well as state and foreign constitutions. Since its inception, the *Quarterly* has earned an outstanding reputation in the legal community, living up to United States Supreme Court Justice Tom C. Clark's prediction that it would be a "first class, authoritative publication that . . . serve[s] as a constitutional avant-courier, as did the illustrious *Federalist Papers* nearly two centuries ago."

The *Quarterly*, published four times yearly, seeks to provide a ready forum for a broad and interdisciplinary discussion of all aspects of constitutional law. Not only does the *Quarterly* publish scholarship written by legal academics and practitioners, but also social scientists, public officials, and other academic voices with contributions to the constitutional discourse.

Today, the *Quarterly* is proud to host a distinguished panel to discuss a rapidly expanding field of intellectual property – *the legality of patenting of human genes*. This panel, which contains scholars, practitioners, members of the federal judiciary, and bioethicists, will serve as a forum to exchange ideas and critiques about this important issue and how it affects both the field of intellectual property as well as our interpretation of this nation's constitution. The *Quarterly's* goal is to offer a balanced inquiry into currently developing law and social policy that will undoubtedly affect all our lives.

We appreciate your attendance and encourage you to participate during the open microphone period. The *Quarterly* hopes today's symposium creates a dialogue among your colleagues, friends, and families.

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Hastings Constitutional Law Quarterly would like to thank the symposium participants, Morrison & Foerster LLP, the Hastings Foundation, our faculty advisors, Hastings facilities and events staff, P'Nosh Catering, and the O'Brien Center for Scholarly Publications for their generous support of this event.

The Moderator

Robin Feldman, *Professor of Law and Director of the Law & Bioscience Project, UC Hastings College of the Law*

Professor Robin Feldman received a bachelor's degree from Stanford University and a J.D. from Stanford Law School, graduating the Order of the Coif and receiving the Urban A. Sontheimer Award for graduating second in the class. She also served in the Articles Department of the *Stanford Law Review*. After graduation, Professor Feldman clerked for The Honorable Joseph Sneed of the U.S. Court of Appeals for the Ninth Circuit.

Professor Feldman specializes in Law and Science and is the Director of UC Hastings' Law and Bioscience Project (LAB Project). Professor Feldman is also the Co-Director of the Privacy and Technology Project.

Professor Feldman's first book, *The Role of Science in Law*, was published by the Oxford University Press in 2009. Her second book, *Rethinking Patent Law*, was published by the Harvard University Press in 2012. Her articles have appeared in journals at law schools including Georgetown, Stanford, Texas, USC, UCLA and Virginia. Professor Feldman has received the Rutter Award for Teaching Excellence. Her piece, *Patent and Antitrust: Differing Shades of Meaning*, was judged one of the best intellectual property articles published in the United States in 2008. Professor Feldman has chaired the Executive Committee of the Antitrust Section of the American Association of Law Schools. In 2007, she served as the Herman Phleger Visiting Professor of Law at Stanford Law School.

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The Panelists

Alex Kozinski, *Chief Judge, United States Court of Appeals for the Ninth Circuit*

The Honorable Chief Judge Kozinski graduated from the University of California, Los Angeles, receiving an A.B. degree in 1972, and from the UCLA School of Law, receiving his J.D. degree in 1975. Chief Judge Kozinski clerked for future Supreme Court Justice Anthony Kennedy on the Ninth Circuit from 1975 to 1976, and then for Chief Justice Warren Burger from 1976 to 1977. From June 5, 1981 to August 1982, Chief Judge Kozinski served as the first U.S. Special Counsel appointed by President Ronald Reagan.

In 1982, Chief Judge Kozinski was appointed chief judge at the newly formed United States Court of Federal Claims. In 1985, at the age of 35, Chief Judge Kozinski was appointed to a new seat at the U.S. Court of Appeals for the Ninth Circuit by President Reagan, making him the youngest federal appeals court judge in United States history. On November 30, 2007, he was appointed the tenth chief judge of the Ninth Circuit.

Chief Judge Kozinski has authored numerous notable opinions and has been praised by admirers across the political spectrum who applaud his "common sense" decisions, his libertarian instinct, and his sense of humor. In addition to his work on the bench, Chief Judge Kozinski is a prolific writer. His scholarly articles have appeared in such journals as *Harvard Law Review*, *Yale Law Journal*, *Columbia Journalism Review*, *Michigan Law Review*, *Texas Law Review*, *ABA Journal*, *Stanford Law Review*, and *Washburn Law Journal*, while his popular writings have been published in *Slate*, *New Yorker*, *Wall Street Journal*, *New York Times*, *Forbes*, *New Republic*, *Wilson Quarterly* and *National Review*.

James J. Mullen, *Partner, Morrison & Foerster; Managing Partner – San Diego Office*

Dr. Mullen's practice includes strategic patent procurement, general counseling on infringement issues, and intellectual property due diligence studies. He also provides counseling on interference issues and reexamination practices and periodically participates in patent litigation.

Dr. Mullen counsels clients pursuing inventions in a variety of biotechnology-related areas, including cleantech, cancer therapeutics and diagnostics, infectious disease therapeutics, small molecule screening protocols, and those seeking protection for novel nucleic acid and amino acid sequence protection.

Prior to graduate school and law school, Dr. Mullen worked in various laboratories at Hybritech, Inc., a pioneer in the development of monoclonal antibodies, and at the Research Institute of Scripps Clinic.

In 2008, *San Diego Daily Transcript* named Dr. Mullen as a Top Attorney in Intellectual Property (Transactional). In addition to his practice, Dr. Mullen is a frequent speaker nationwide on matters of Patent and Environmental law. Dr. Mullen has spoken on multiple occasions to the American Conference Institute, Cleantech, and at the Hatch-Waxman Boot Camp.

Dr. Mullen received his undergraduate degree from the University of California, San Diego, his Ph.D from the University of Texas, Houston, and his J.D. from the University of California, Hastings College of the Law. While earning his J.D., Dr. Mullen was an Associate Production Editor for the *Hastings College of the Law Communications and Entertainment Journal*.

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Wesley E. Overson, *Partner, Morrison & Foerster*

Wes Overson is the head of the 160-attorney Litigation Department in Morrison & Foerster's San Francisco office. His practice focuses on patent litigation and other commercial litigation involving complex issues. His clients include international pharmaceutical and biotechnology organizations, for which he has crafted winning strategies for both the courtroom and arbitration proceedings.

Mr. Overson and a MoFo team achieved a complete defense victory for Bayer in a patent case brought by Abbott Laboratories. Bayer won at trial on invalidity and inequitable conduct. This "rare instance" of winning an inequitable conduct defense resulted in the case being listed in *San Francisco Daily Journal's* Top Defense Wins of 2008. The Federal Circuit affirmed the invalidity ruling, but then remanded the inequitable conduct case after establishing new higher standards of proof. On remand in 2012, Bayer won again in the district court under the higher standard for inequitable conduct.

Mr. Overson scored a complete victory for a multinational corporation in the medical field, which was accused of infringing a number of its competitor's patents. In addition to the direct product competition at the heart of the dispute, the potential damages were well into the nine-figure range. After a two-week hearing, our client prevailed on either non-infringement or invalidity on every patent.

He represented Chiron Corp. in an arbitration asserting its patent on a diagnostic test for HIV. The case settled after closing arguments, with Chiron receiving payments of more than \$100 million.

Mr. Overson is a graduate of the University of California, Hastings College of the Law.

Vern Norviel, *Partner, Wilson Sonsini Goodrich & Rosati; Adjunct Faculty, Santa Clara University School of Law; Guest Lecturer, UC Berkeley School of Law*

Vern Norviel is a partner at Wilson Sonsini Goodrich & Rosati, where he leads the patents and innovation counseling practice. Mr. Norviel has more than two decades of experience in formulating successful strategies for life science companies and the development of their IP programs. He represents a wide variety of companies, as well as venture capital firms, in areas such as therapeutics, diagnostics, nanotechnology, genomics, proteomics, and personalized medicine. Mr. Norviel's interest in the field of personalized medicine prompted him to become one of the first attorneys ever to have had his or her entire genome sequenced and made available in a public database. In addition, Mr. Norviel recently served as a patent expert for Brigham Young University in connection with the school's settlement of a long-running, multibillion-dollar lawsuit with Pfizer's drug Celebrex.

Before joining WSGR in 2003, Mr. Norviel was the general counsel and corporate secretary of Perlegen Sciences, Inc., a start-up biotechnology company that scans the entire human genome for important therapeutic and diagnostic products. Previously, as senior vice president and general counsel, he was an early employee of Affymetrix, the biotechnology company that pioneered and developed DNA chip technology. He also had been a partner at Townsend and Townsend and Crew in Palo Alto.

During his career, Mr. Norviel has authored or prosecuted more than 15 patents that have been litigated in the United States and abroad, and has overseen intellectual property lawsuits throughout the world.

Mr. Norviel teaches a seminar in biotechnology law at Santa Clara University School of Law and is a guest lecturer on the same topic at Boalt Hall.

David Winickoff, *Associate Professor of Bioethics and Society, UC Berkeley School of Law*

Professor Winickoff analyzes the role of science and expertise in environmental law and politics, and explores biotechnology and medicine from an ethical, legal and social perspective. His focus is on questions of biological resources, property rights, and the commons; the role of expert communities in governing institutions; the politics of risk assessment; food safety standards; climate change and geoengineering. To do this, he draws questions and methods primarily from the fields of science and technology studies (STS), bioethics, and law. Professor Winickoff is involved in policy work at state, Federal and international scales.

Professor Winickoff is currently the Associate Director of the Berkeley Science, Technology and Society Center and serves on the Governing Council of the Science and Democracy Network. He is also a Greenwall Faculty Scholar in Bioethics.

Currently, one of Professor Winickoff's primary focuses is on the ethics and governance of biotechnology. Specifically, he analyzes the imagination, emerging practices, and regulation of new biotechnologies from a socio-legal and normative perspective. In doing so, Professor Winickoff seeks to generate understandings of the larger patterns in the relation of science and society. He applies these understandings by developing new social architectures for these technologies in ethics, law, and politics. Work in this stream has focused on genomics, biobanks, GM food, patenting policies, stem cell research, and the science commons.

Professor Winickoff's research has been featured in *Science & Public Policy*, *Social Science & Medicine*, *Science, Solutions*, *Journal of Law Medicine & Ethics*, *Yale Journal of International Law*, *Jurimetrics*, and the *New England Journal of Medicine*.

Megan Allyse, *Postdoctoral Fellow, Center for the Integration of Research on Genetics and Ethics, Center for Biomedical Ethics, Stanford University*

Ms. Allyse is a post-doctoral fellow at the Center for the Integration of Research on Genetics and Ethics, an NIH-funded initiative located within the Stanford Center for Biomedical Ethics. Her research focuses on the political stabilization of technology, comparative civil ideology and forms of constructive technology assessment. Ms. Allyse is particularly interested in inter-cultural normative dialogue and the socio-cultural impacts of emerging technologies. In recent years, she has carried out field research in China, Japan, Hong Kong, the US and the UK. Ms. Allyse is currently working on the socio-legal implications of research into genetic contributions to violent and anti-social behavior.

Ms. Allyse is the past recipient of a Wellcome Trust Biomedical Ethics Studentship Grant and member of BIOS, a Chinese-European collaboration on the ethical governance of biological and biomedical research. In 2009 - 2010 she was a visiting scholar at the Center for the Study of Law and Society at Berkeley Law School. Ms. Allyse conducted her Doctoral and Masters research at the University of Nottingham in England and received her undergraduate degrees in International Relations and Communications from Stanford University.

Her scholarly works have been printed in such notable publications as *Nature*, *Genetics in Medicine*, *Genome Medicine*, *Ethics & Human Research*, *Oxford Journal of Human Reproduction*, and *Science and Public Policy*. Ms. Allyse has spoken to the International Society of Prenatal Diagnosis, ELSI Congress, Law and Society Association, and the Cambridge Conference on Regulation, Inspection, and Improvement.

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