



ASSOCIATION OF PATENT LAW FIRMS

Roundtable Series

"Not Your Father's Patent Interference": (How Creation Of The Trial Section Has Improved Interference Practice)

Presented by

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- **Historical – the old ways** (Mike – 4 min)
 - Each Interference Examiner had discretion as to procedure
 - Imprecise substantive standards
 - Indeterminate time frame – unstructured scheduling
 - Abuses in papers and in depositions
- **QUESTIONS** (2 MIN)
- **Advent of the Trial Section** (Herb – 4 min)
 - Uniform procedures
 - Uniform orders
 - Standing Order - detailed procedures for handling all types of issues
 - Forms readily available on the PTO web site
 - Standard pendency times
 - Two distinct phases
 - Motions
 - Priority
 - Substantive decisions by three-judge panel
- **QUESTIONS** (2 MIN)



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- **New procedural and substantive rules** (Mike – 5 min)
 - Fewer judges – handle only interferences
 - Tight timetables
 - Form, content, and length of papers strictly controlled
 - Strict adherence to rules of evidence
 - Strict guidelines for depositions

- **QUESTIONS** (3 MIN)

- **Motions phase** (Herb – 5 min)
 - Evidence filed with motions
 - Opportunity to object
 - Opportunity to cross-examine
 - Hearing and decision
 - Extremely rare to leave a motions issue for decision at final hearing

- **QUESTIONS** (3 MIN)

- **Priority phase** (Mike – 5 min)
 - Testimony by declaration
 - No intermingled evidence about patentability issues



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- Evidence filed with motions
- Opportunity to object
- Opportunity to cross-examine
- Hearing and decision
- **Observations** (as follows:)
 - Just a priority contest involving an issued patent (Herb – 3 min)
 - Not re-grant opposition
 - Not post-grant cancellation
 - No more application versus application interferences
 - Rarely more than two parties
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 - How it's better (Mike – 3 min)
 - Predictable timetables
 - Predictable procedures
 - Curbs on abuses
 - Focused written decision on motions and on priority
 - Motions decision can end the case
 - How it's not (Herb – 2 min)
 - Compressed time for settlement
 - Unpublished opinions

● **QUESTIONS& WRAP UP**