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THE Sedona ConferenceSM

VOL VI ♦ NUMBER 2
AUGUST 2004

UPDATE

FALL CONFERENCES*

The Fifth Annual Sedona Conference on Patent Litigation October 28-29, 2004

This year's patent litigation conference will cover several important and timely topics, including **initiating suit, communications with counsel** (and issues related to **proof of willfulness**, etc.), **the intersection of the patent and antitrust laws** (including a draft report from our Working Group addressing this topic), **claim construction, damages** in patent litigation, **discovery** in patent litigation, and trial practice techniques for **openings, closings and transitions**.

The Sixth Annual Sedona Conference on Antitrust Law & Litigation, November 4-5, 2004

The Sixth Annual Sedona Conference on Antitrust Law & Litigation will have two, primary foci: (1) the role of economics in antitrust; and (2) mergers. The Conference participants will dialogue the draft output of our Working Group on the Role of Economics in Antitrust addressing **economic evidence in various aspects of antitrust litigation including Rules 12, 26, and 16, class certification, Rule 56 motions, Daubert and Rule 702, injury to competition, proof of concerted action, market definition and in limine motions and trials**. Conference participants will also examine **U.S. and international merger enforcement, private merger litigation and joint ventures**.

***For the Complete Agendas, Faculty Bios and to Register,
go to www.thesedonaconference.org
or call toll-free 1-866-860-6600**

—Registration is limited to 45 participants per Conference—

Patent Litigation V Faculty October 28-29, 2004

Co-Chairs

M. Patricia Thayer, Heller Ehrman White & McAuliffe,
San Francisco, CA

Raphael V. Lupo, McDermott Will & Emery, Washington, D.C.

Faculty

Mark T. Banner, Banner & Witcoff, Ltd., Chicago, IL

Samuel F. Baxter, McKool Smith, Dallas, TX

Gregory K. Bell, M.B.A., Ph.D., Group Vice President, Charles River
Associates, Inc., Boston, MA

Juanita Brooks, Fish & Richardson, P.C., San Diego, CA

Morgan Chu, Irell & Manella, Los Angeles, CA

Michael V. Ciresi, Robins Kaplan Miller & Ciresi, Minneapolis, MN

Cecilia H. Gonzalez, Howrey Simon Arnold & White, Washington, D.C.

Sue Halverson, Medtronic, Inc., Minneapolis, MN

The Hon. Susan Illston, U.S. District Judge, N.D.CA, San Francisco, CA

William F. Lee, Wilmer Cutler Pickering Hale & Orr, Boston, MA

The Hon. Roderick R. McKelvie, Fish & Neave, Washington, D.C.

Lynn H. Pasahow, Fenwick & West, Mountain View, CA

The Hon. Susan L. Robinson, Chief Judge, U.S. District Court, D. DE,
Wilmington, DE

Robert A. Van Nest, Kecker & Van Nest, San Francisco, CA

Antitrust Law VI Faculty November 4-5, 2004

Chair

Daniel R. Shulman, Gray Plant Mooty, Minneapolis, MN

Faculty

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Robert W. Doyle, Jr., Sheppard Mullin Richter & Hampton,
Washington, D.C.

Robert L. Hubbard, New York Office of the Attorney General,
New York, NY

Charles E. Koob, Simpson Thacher & Bartlett, New York, NY

William E. Kovacic, Office of the General Counsel, Federal Trade
Commission, Washington, D.C.

Carol A. Peterson, 3M, St. Paul, MN

The Hon. James M. Rosenbaum, Chief Judge, U.S. District Court,
D. MN, Minneapolis, MN,

Douglas E. Rosenthal, Sonnenschein, Nath & Rosenthal, Washington,
D.C.

Gregory J. Werden, U.S. Dept. of Justice, Washington, D.C.

Registration Details

◆ Patent Litigation V: Oct. 28-29, 2004 ◆

◆ Antitrust Law VI: Nov. 4-5, 2004 ◆

REGISTRATION. The registration fee is still only \$1095; \$995 if 2 or more people register at the same time (no more than three people per firm, please). Registration includes the Notebook, two continental breakfasts, two luncheons, Thursday's champagne reception with the faculty and a list of Conference participants. Academic and government discounts available. Full refund, less a \$75 administrative fee, for cancellations received at least 45 (forty-five) days prior to the Conference. Refunds cannot be given after that time, but you will receive a credit for another Regular Season Conference of choice (credit good for 3 years) for cancellations received at least 72 hours before the Conference. Substitutions permitted at anytime. If you have any questions call toll free: 1-866-860-6600, or 928-284-2698.

PLEASE NOTE:

To ensure the maximum opportunity for meaningful dialogue, registration is limited to 45 persons on a first-come, first-served basis, based on date of receipt of paid registration(s).

WRITTEN MATERIALS/DIALOGUE. Conference materials are made available to registrants through our website *before* each Conference, allowing participants to rapidly focus their dialogue on the leading-edge issues *at* the Conference. Conference Notebooks are also provided at the Conference, and are separately available for those who cannot attend for \$95 (postage included).

PARTICIPANT EXPERIENCE LEVEL. We look for an experienced group of participants to facilitate an enlightening dialogue for all.

MANDATORY CONTINUING LEGAL EDUCATION. Advance accreditation will be applied for, seeking 12-13 Mandatory Continuing Legal Education credits in 60-minute credit-hour states, and 14.40-15.60 credits in 50-minute credit-hour states, depending on the Conference and pursuant to each state's rules. Certificates of Accreditation and Attendance are provided at the end of each Conference. For further details call us at 1-866-860-6600.

SCHEDULE/GUESTS/ATTIRE. Our Conferences begin with Continental Breakfast at 8:00 am Thursday, and end Friday at approximately 2:30 pm. A champagne and hors d'oeuvres reception with the faculty follows Thursday's session (5:15-7:00pm), and lunch is provided on both days (complete agenda on the website). Your guests are invited to join us for Continental Breakfast on Thursday and Friday, and the Thursday evening Champagne Reception with the faculty. Casual attire is recommended.

LODGING. We have reserved a block of discounted rooms at the Radisson Poco Diablo Resort **until 45 days before each Conference** (see photos & link on our website under "Conference Sites"). Call the Radisson reservation line (1-800-333-3333 or 928-282-7333) for a room; identify yourself as a participant with The Sedona ConferenceSM for the discounted rate (\$145-\$169/night; we recommend the resort's top-tier rooms).

—Go to www.thesedonaconference.org or call 1-866-860-6600 to Register

Working Group Series (WGSSM) Update

WORKING GROUP 1 (Electronic Document Retention & Production)

WG1 published its post-public comment version of Best Practices Addressing Electronic Document Production (*The Sedona Principles*) in early 2004, and in June the *2004 Annotated Sedona Principles* was published by Pike and Fischer. Guidelines on the *retention* of electronic information will be published for public comment at the end of this summer. A spin-off of WG1 is currently developing a standard-form RFI, RFP and related decision-matrix for use in connection with the selection and retention of electronic discovery and related service providers. (See RFP+ section of our website.)

WORKING GROUP 2 (Protective Orders, Confidentiality & Public Access)

WG2 had its first meeting in early April, and is currently working on a set of guidelines, commentary and recommendations for best practices in the area of protective orders, confidentiality and public access. At this point, the draft work product is organized into three sections: 1) an introduction and background identifying the basic issues, conflicting policies, historical context, and analytical constructs; 2) a section divided into the phases of litigation where the issues can arise; and 3) a section addressing the impact of the move to e-government and the use of technology in litigation. A public comment version will be posted on our website this fall.

WORKING GROUP 3 (The Role of Economics in Antitrust)

WG3 had its first meeting in mid-May, and it too is currently working on its draft work product, focusing on the use of economic evidence throughout litigation including in connection with Rules 16, 12, and 26, class certification motions, Rule 56 motions, *in limine* motions and during trial, *Daubert* and Rule 702 considerations, market definition, proof of injury to competition, and proof of concerted action. A public comment version of this WG's output will also be posted this fall, and extensively critiqued during our fall Antitrust Conference (Nov. 4-5, 2004).

WORKING GROUP 4 (The Intersection of the Patent & Antitrust Laws)

WG4 had its first meeting in late June, and is currently assembling its teams and beginning the draft outline process. The initial areas of focus are: 1) background and policy issues; 2) settlements of patent disputes; 3) continuation patents and "captured" products; 4) standard-setting; 5) post-grant review and process considerations; 6) abusive licensing practices; and 7) inequitable conduct. The Group will be reporting on its progress and inviting comment at this fall's Patent Litigation Conference (Oct. 28-29, 2004).

WGSSM MEMBERSHIP PROGRAM

We established the WGSSM Membership Program during the summer of 2003 to provide a vehicle for interested jurists, attorneys, academics, consultants and others to provide early input to Working Group output, and to enjoy access to the "Member's Only" area of the Working Group's website where drafts are posted, with interactive Bulletin Boards for comment on the Group's work and recent events. *For further details on the WGSSM Membership Program and how to join one or more Working Groups, go to our website and click on "Working Group Series".*

About Us

The Sedona ConferenceSM was founded in 1997 as a nonprofit, 501(c)(3) research and educational institute dedicated to the advancement of law and policy in the areas of complex litigation, antitrust law and intellectual property rights. Initially focused on advanced, dialogue-based, restricted attendance seminars, The Sedona ConferenceSM has successfully developed into a multi-faceted, open and neutral think-tank generating important and authoritative contributions on significant and timely legal issues. Already our Conferences and Working Groups have attracted participants from 47 states and the District of Columbia in with the U.S., and from six other countries around the world.

The Sedona ConferenceSM **Regular Season Conferences** continue to provide a stimulating forum for ongoing dialogue among leaders of the bench and bar through intense, restricted-size conferences in private, retreat-like settings. Check the "Raves" section of our website to learn first-hand from past Conference attendees how our dialogue-based Conferences are different, and far more intellectually stimulating, than any you have ever attended before.

The **Sedona ConferenceSM Working Group Series (WGSSM)** proposes solutions—principles, guidelines and best practices recommendations—that are designed to help harmonize disparate policies, decisions, regulations and viewpoints and to provide considered and fair guideposts for the just and reasoned evolution of the law. Consistent with our mission, Working Group output is available for free download from our website; in some circumstances a commercial version is developed as well, such as the *Annotated Version of The Sedona Principles*. The WGSSM Update to the left describes our current Working Groups and how you can get involved through the **WGSSM Membership Program**.

The Sedona ConferenceSM and Judicial Education

The Sedona ConferenceSM presented its first "Mini-Sedona" during the Federal Judicial Conference's National Workshop for U.S. Magistrate Judges in Chicago, IL, in early July. During one of the Workshop afternoons, interested Workshop attendees and nearby state and federal judges attended a "Mini-Sedona" on Electronic Discovery, with a terrific faculty of 12 and a participant group of judges from over 25 states. *Pike and Fischer* contributed to our ability to make WG1's *2004 Annotated Sedona Principles* available to all attendees, and our new Judicial Education Fund provided the financial resources to enable the program. The event was a success, and future Mini-Sedona's in conjunction with other judicial gatherings are currently under consideration as an efficient way to bring Working Group output and related expertise and educational programs to a broad judicial audience on a regular basis.

"Very high-end, interactive and honest."

Leora Ben-Ami, Clifford Chance, New York, NY

"Excellent; discussion was pointed and in-depth."

Ford F. Farabow, Finnegan Henderson Farabow Garrett & Dunner, Washington, D.C.

"Superb: an excellent format for dialogue on important issues."

Robert P. Taylor, Howrey Simon Arnold & White, Menlo Park, CA

ter or for further information about our Conferences & Working Groups—



The Sedona ConferenceSM
180 Broken Arrow Way South
Sedona, AZ 86351-8998
Toll Free: 866-860-6600
www.thesedonaconference.org
tsc@sedona.net or sedonaconference@earthlink.net

FALL CONFERENCES

October 28-29: Patent Litigation V

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November 4-5: Antitrust Law VI

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the Sedona ConferenceSM

announces it's Fall Conferences:
Patent Litigation V
October 28-29, 2004
and
Antitrust Law VI
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