

The 2009 Midwest

# Intellectual Property Institute

*You'll be completely updated in all major areas of IP law and litigation!*

**Thursday & Friday, September 24 & 25, 2009**  
**Minnesota CLE Conference Center**  
Seventh Street & Nicollet Mall  
Third Floor City Center, Minneapolis

**29 All-NEW sessions taught  
by a talented faculty of  
49 world-class IP experts,  
including:**

**Hesha Abrams**

Abrams Mediation and Negotiation  
Dallas, Texas

**Judge Ron Clark**

Eastern District of Texas  
Beaumont, Texas

**Morgan Chu**

Irell & Manella LLP  
Los Angeles, California

**Stephen W. Feingold**

Kilpatrick Stockton LLP  
New York, New York

**Allan Poulter**

Field Fisher Waterhouse LLP  
London, England

**Dr. Nongfan Zhu**

China Science Patent and Trademark Agent, Ltd.  
Beijing, China

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# Great Topics, New Developments, A Terrific Faculty & Wonderful Mat

## *World-class intellectual property education*

### The Institute Keeps You on Top of the Latest Developments, Strategies and Trends

The Institute is the easiest way to make sure that you know about all the new developments in all major areas of IP law and litigation, whether it's **new cases, new legislation or new regulations**. You'll get current, practical information and analysis through session presentations, Q & A with the faculty, discussions with colleagues between sessions, and the outstanding written resources.

### We Let You Create the Program that Best Meets Your Needs – You Choose From More than 29 Sessions

Everyone comes with differing education needs. That's why we've created a conference that lets you choose the sessions most relevant and important to you. From start to finish, your custom-tailored Institute schedule promises to be jam-packed with topics you care about.

With so many sessions to choose from, we help guide you to relevant programming by labeling tracks such as **"Patent," "Trademark/Copyright," "Litigation" and "In-House Counsel."** But you're the boss – feel free to select sessions from any track at the Institute. For instance, maybe you don't litigate cases, but there's a "litigation" session that could prove helpful to your advisory practice. Or,

you're an experienced trademark practitioner, but find that you'd like to take some "patent" sessions to expand your knowledge base. Go for it! In addition, you'll receive materials from every session – both those you attend *and* those you do not – all in the Institute Course Manual in a searchable CD-ROM format.

### The Conference Will Provide You With New Tools and New Energy

A worthwhile conference provides you with new information, new ideas, new resources and new energy to do the tasks you need to do. We are confident that the Midwest IP Institute will deliver those benefits to attendees. **You will leave the IP Institute with additional insights, knowledge and practice tips that you can use to be an even better practitioner.** You also will leave with one-of-a-kind reference resources to save you time and research dollars throughout the year.

### The New 2009 IP Book – A Quick and Easy One-Stop Update

In addition to helpful update sessions, we provide every attendee with the **11-chapter 2009 edition of THE IP BOOK**, a bound collection of updates on case law in all major areas of intellectual property law. Its easy-to-read style makes it a quick read...perfect for running through the significant new intellectual property law developments in 2008-2009 and mentally checking off what changes you already knew about...and what you need to learn more about.

### The Institute Gathers Great Talent From Around the Country and Internationally, to Supplement an Outstanding Local Faculty

You'll learn from, and can compare your practices with, experienced attorneys from private practice and IP-intensive industries. This year's faculty includes:

- **Hesha Abrams**  
Abrams Mediation and Negotiation; Dallas, Texas
- **Judge Ron Clark**  
Eastern District of Texas; Beaumont, Texas
- **Morgan Chu**  
Irell & Manella LLP, Los Angeles; California
- **Stephen W. Feingold**  
Kilpatrick Stockton LLP; New York, New York
- **Allan Poulter**  
Field Fisher Waterhouse LLP; London, England
- **Dr. Nongfan Zhu**  
China Science Patent and Trademark Agent, Ltd.  
Beijing, China

#### Plus in-house counsel from:

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**AND MORE!**

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## Special Benefits:

### All Materials on a Fully Searchable CD-Rom

You'll receive the entire 250-page *Midwest IP Institute 2009 Course Manual* – plus, electronic versions of the 2009, 2008 and 2007 editions of THE IP BOOK – on a fully searchable CD-Rom. In addition, at each session you attend, you'll receive a set of materials in hardcopy form so that you can follow along. It's the best of both worlds!

### Audience-Specific Alternate Plenary Sessions

David Gross's **Power IP Update** and **Chief IP Counsel on Controlling Costs in IP Protection and Defense** begin the conference. Responding to the request for customized education, each session will take place twice – once tailored to the educational needs of in-house counsel, and the other tailored to be of specific relevance to outside counsel. We are confident you'll enjoy the benefits of this teaching model.

### And Dozens of New Sessions for Prosecutors, Advisors, and Litigators

We have designed dozens of new sessions for this year's Institute including these sessions:

Searching Inside Google: Cases, Controversies and the Future of the World's Most Provocative Company • Patenting Green: Issues Relating to the Emergence of Patents Concerning Green Technologies • Pre-filing Considerations in IP Cases • Technotainment: Legal Issues on the New Virtual Frontier • Getting into the Gazette: Tips for Responding to Refusals, Requests and Requirements • A Judge's View of Patent Cases – What Works and What Doesn't • The Top 10 Mistakes Companies Make Protecting Trade Secrets and How to Avoid Them • Hot Topics in Patent Remedies and Damages • Changing the Game: Strategies for Mediating IP Deals and Disputes • Serving Up 10 Hot Topics in IP Licensing • *Inter Partes* Reexamination Panel Discussion • Trademark Monitoring and Enforcement – An In-House Counsel Panel on What Works, What Doesn't, and When to Seek Outside Help • Divided Infringement: When Multiple Actors are Required to Satisfy All the Steps of a Method Claim • Prosecuting Patent Applications to Overcome the Pro-Rejection Pattern at the PTO • How to Protect Your Marks – Both Offensively and Defensively – in the Expanded Domain Name System • How to Web 2.0: Hands-On Guidance to Social Networking and New Technologies for IP Lawyers and Businesses • Copyrights in a Digital World – The Google Booksearch Program and More • How to Resolve Trademark Disputes Through Coexistence Agreements and Consents • Best Practices after *Bilski* • And many more!

### You'll Enjoy High-Quality Conference Amenities and a Can't-Miss Networking Opportunity!

The Institute includes amenities to make the entire conference a comfortable, enjoyable affair – breakfast each morning, snacks and beverages during breaks, a chance to win great prizes, a five-star reception with gourmet hors d'oeuvres and more. **It's a fun and relaxed conference setting in which to network.** You'll have plenty of time to visit with friends, clients, potential clients and other colleagues throughout the two days.

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## MORNING PLENARY SESSIONS

8:30 – 9:00 a.m. CHECK-IN & CONTINENTAL BREAKFAST

9:00 – 10:00 a.m.

### Chief IP Counsel on Controlling Costs in IP Protection and Defense – A Session for Private Practitioners

The panel will share their insights and cost-effective strategies for private practitioners on:

- Obtaining patent protection and opposing infringement claims
- Alternatives to patent protection
- Cost effective litigation strategies, including special fee arrangements
- Use of ADR in IP disputes
- Fixed fee arrangements
- Trademark protection and defense
- Copyright registration

– Harry J. Gwinnell, Kevin H. Rhodes & Andrew Ubel  
– David A. Allgeyer, moderator

OR

### The Power IP Update for In-House Counsel – 2009

You'll learn the latest and greatest cases in each major area of IP law: patents, trademarks and copyrights. Whether you prosecute patents, register trademarks and copyrights, do transactional work or manage litigation, you won't want to miss this essential update.

– David J. F. Gross

10:00 – 10:15 a.m. BREAK

10:15 – 11:15 a.m.

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- Use of ADR in IP disputes
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- Trademark protection and defense
- Copyright registration

– Harry J. Gwinnell, Kevin H. Rhodes & Andrew Ubel  
– David A. Allgeyer, moderator

11:30 – 12:30 P.M.

## BREAKOUT SESSION A

PATENT

### 1. The Year in Patent Law: *Bilski*, the CAFC, Proposed Reform and More

Patent attorney John Dragseth reviews significant legal developments over the past year, with a focus on the latest CAFC decisions and trends, plus a "status update" on the PTO patent rules and on proposed patent reform legislation.

– John A. Dragseth

TRADEMARK & COPYRIGHT

### 2. Can't We Just Get Along? – How to Resolve Trademark Disputes Through Coexistence Agreements and Consents

Trademark owners frequently use coexistence agreements to settle trademark disputes and avoid lawsuits, oppositions and cancellation actions. Four experienced trademark lawyers share their advice on negotiating coexistence agreements in both domestic and international matters while keeping in mind future use considerations, the client's interest and the public interest. They also will discuss how to use consents in obtaining registration in the U. S. and other countries.

– Stephen W. Feingold, Laura J. Hein & Sarah Lockner  
– Barbara Grahn, moderator

LITIGATION

Attendees focusing on today's litigation track will enjoy one of the following sessions:

1. The Year in Patent Law (described above)  
or
2. Can't We Just Get Along? – How to Resolve Trademark Disputes Through Coexistence Agreements and Consents (described above)  
or
3. Serving Up 10 Hot Topics in IP Licensing (described below)

IN-HOUSE

### 3. Serving Up 10 Hot Topics in IP Licensing

Changes in technology, the current business climate, and recent judicial decisions have caused interesting changes in how practitioners approach IP licensing. This session covers ten of these changes. Topics include: *Jacobson v. Katzer*, the Open-Source Software Movement, and Copyright Protections; Unanswered Questions Following *Quanta v. LG.*; Navigating the Spectrum of Control – from Naked Licensing to Inadvertent Franchise; The Impact of Bankruptcy on Intellectual Property Licensing; Shaping IP Licenses After *MedImmune*; and much more.

– Felicia J. Boyd

12:30 – 1:30 P.M.

## INSTITUTE LUNCHEON

The Institute luncheon is being provided by Minnesota CLE and will be held at the Marriott City Center.

### SPECIAL LUNCHEON PRESENTATION:

#### Why I Love Trying Cases

presented by  
Morgan Chu



Morgan Chu is a partner of Irell & Manella LLP in Los Angeles. He has been recognized as one of the "Top 10 Trial Lawyers" in the nation and one of the "100 Most Influential Lawyers in America" by *The National Law Journal* and "The Outstanding Intellectual Property Lawyer in the United States" by Chambers & Partners. Chambers described Mr. Chu as "beyond doubt the most gifted trial lawyer in the USA," who "delivers staggering results for clients."

1:45 – 2:45 P.M.

BREAKOUT SESSION B

**4. Patenting Green: Issues Relating to the Emergence of Patents Concerning Green Technologies**

With the ever increasing emphasis on implementation of technology with "green" considerations, there can be advantages in considering relevant factors when crafting claim sets for many types of inventions, whether or not the invention is initially perceived as "green." Session topics include: how to identify the key to patentability, how to draft the specification and claims in anticipation of future obviousness rejections (particularly for claims dealing with topics such as substitution of materials or repurposing of existing materials), and possible strategies for accelerating prosecution of "green" inventions. We also will explore the potential for taking advantage of related government regulations in defining claim scope, as well as some international issues.

– Julie R. Daulton & Randy A. Hillson

**5. The Year in Trademark Law – Search Engines, Counterfeit Goods and Other Compelling Topics Tackled by the Courts**

Trademark attorneys Stephen Baird and Stephen Feingold will analyze the practical implications of this year's most significant trademark decisions, including *Tiffany Inc. v. eBay*, *Rescuecom Corp. v. Google*, *Pro Football v. Harjo* and more.

– Stephen R. Baird & Stephen W. Feingold

**6. Pre-filing Considerations in IP Cases**

Nationally renowned IP litigator Morgan Chu discusses legal and strategic considerations including: Strategy secrets and pre-filing considerations in IP cases; Pitfalls and problems for a proper infringement analysis under Rule 11; Strategic issues, including venue selection; New pleading potholes to avoid.

– Morgan Chu

**7. Technotainment: Legal Issues on the New Virtual Frontier**

The evolution of the Internet into a mainstream communications and promotional toolbox means that once-fringe applications and practices have created new legal concerns involving privacy, misuse of trademarks, unauthorized use of creative works, user generated content, defamation and fraud. This session will examine the emerging legal issues raised for each.

– Stephen R. Bergerson

3:00 – 4:00 P.M.

BREAKOUT SESSION C

**8. Best Practices After *Bilski***

A discussion on the drafting lessons learned from the *In re Bilski* case, including a brief review of the Federal Circuit's decision and the subsequent opinions that have analyzed and interpreted *Bilski*. We will consider claim drafting strategies that give the best chance to overcome statutory subject matter attacks in light of these existing decisions and the potential approaches to the issue that may be taken in the upcoming U.S. Supreme Court decision.

– Daniel A. Tysver

**9. Getting into the Gazette: Tips for Responding to Refusals, Requests and Requirements**

A panel of three former trademark examining attorneys gives you the inside scoop on how best to respond to trademark office actions. Learn what arguments and evidence are the most persuasive in overcoming refusals based on likelihood of confusion, descriptiveness, surnames, and the failure to function as a mark. The panel will also discuss the importance of honesty and candor in your dealings with the Trademark Office and the consequences of fraud.

– Scott M. Oslick & James F. Voegeli  
– Danielle I. Mattessich, moderator

**10. A Judge's View of Patent Cases – What Works and What Doesn't**

Even experienced litigators can make costly errors in patent trials. Judge Ron Clark will discuss common mistakes he sees in his court and provide suggestions for successful presentation of your case, including tips on trying a case in the Eastern District of Texas. Plus, you'll have the opportunity to ask Judge Clark your questions about patent practice.

– Judge Ron Clark  
– Jake M. Holdreith, moderator

**11. Can You Keep a Secret? The Top 10 Mistakes Companies Make Protecting Trade Secrets and How to Avoid Them**

From access to zero tolerance, from creation to obsolescence, learn the importance of developing a strong trade secret protocol and enforcing it consistently. Two in-house counsel with decades of trade secret experience share their best tips with you.

– Renee L. Jackson & Scott Piering

4:15 – 5:15 P.M.

BREAKOUT SESSION D

**12. How to Position a Patent for Success in China**

This session is formatted to provide practical information and real-world context regarding the differences in prosecuting patents in China v. the United States. What issues frequently arise in prosecuting patents in China? And what are concrete ways to overcome those problems?

– Nongfan Zhu  
– Edna Vassilovski, moderator

**13. Copyrights in a Digital World – The Google Booksearch Program and More**

The Google Booksearch program may be the greatest literary salvage operation in history – if the settlement is approved, Google may rescue from oblivion millions of orphan works that have gone out of print but remain protected by copyright. It also may be the death knell for "traditional" literary works copyrights, bestowing on a single owner a virtual worldwide monopoly over not only orphans but works in the public domain. Learn how the collision of technological innovation and copyright laws struggling vainly to harness the Worldwide Web is expected to affect authors, academics, publishers, journalists, and libraries worldwide.

– Bruce H. Little

**14. Hot Topics in Patent Remedies and Damages**

Review of the hottest case law developments and trends related to these issues: Apportionment of damages; Developments in reasonable royalty calculations; Impact of the proposed Patent Reform Act on damages; The district courts' gatekeeper role in allowing evidence related to the calculation of damages.

– Professor Thomas F. Cotter & Devan V. Padmanabhan

**15. The Client's IP Portfolio: Better Understanding the Business Issues to Better Align Your Legal Advice to Business Needs**

A client's development strategies, cost concerns and business plan affect the role that IP plays in its business choices. As an IP attorney, it's important to understand these business needs and the client's own perspective regarding its IP portfolio. This panel, moderated by an IP attorney, will provide insight into how "the business" views the role of the IP portfolio in its operations, how they have worked successfully (or not so well) with legal counsel in leveraging those assets, and what trends they have seen with respect to IP matters in today's economic climate.

– Michele Earney, Sam Herrmann & Eran Kahana  
– Tricia A. Olson, moderator

5:15 – 6:00 p.m.

**Five-Star Reception**

Join your colleagues for:

- \* Gourmet hors d'oeuvres
- \* Fine wines
- \* Local beers
- \* Networking in a relaxed setting
- \* A chance to win great prizes!

**Register for a Chance to Win!**

Register for a chance to win a **Herman Miller Aeron Chair** or a **32-inch LCD Television**. The prize drawing will take place at the reception on Thursday, September 24, and you must be present at the reception during the prize drawing to win. Any person may receive an entry slip on Thursday, September 24, at the Institute registration desk until the reception begins at 5:15 p.m. Registration for the 2009 Midwest IP Institute is *not* required. The following individuals are not eligible to win: Institute faculty, planners and IP Book authors; employees of Minnesota CLE, and the Minnesota State Bar Association, as well as family members of those employees.



**Special thanks to our Sponsoring Firms for making the reception a truly five-star affair.**

## MORNING PLENARY SESSIONS

8:30 – 9:00 a.m.

CONTINENTAL BREAKFAST

9:00 – 10:00 a.m.

### Changing the Game: Strategies for Mediating IP Deals and Disputes

Hesha Abrams is a nationally acclaimed private negotiator/settlement counsel and mediator known for crafting highly creative settlements in very difficult cases. She specializes in creating innovative solutions for complex commercial cases and intellectual property matters. She also coordinates “Deal Mediations,” in which she drives a complex business deal to successful signing. In this session, Ms. Abrams shares her game-changing strategies for finding common ground among parties, encouraging creative problem-solving, and overcoming impasse so that the parties involved can resolve disputes and get the deal done.

– Hesha Abrams

10:00 – 10:45 a.m.

### Searching Inside Google: Cases, Controversies and the Future of the World’s Most Provocative Company

For a company whose motto is “Do No Evil” Google certainly has its share of detractors. The company is at the center of numerous controversies that will determine how people use the Internet, find information, and communicate with each other.

Professor Jon Garon explores the cases that will shape Google’s future and the implications for copyright and trademark owners, including: The latest AdWords’ case *Rescuecom v. Google*, the proposed *Book Search* settlement, the *Viacom v. YouTube* copyright infringement case, and looming antitrust investigations. He also will speculate about the future of Google as it consolidates its control over online search and advertising and expands into telecommunications, mobile devices and cloud computing.

– Professor Jon M. Garon

10:45 – 11:00 a.m.

BREAK

11:00 – 12:00 P.M.

## BREAKOUT SESSION E

### PATENT

#### 16. Inter Partes Reexamination Panel Discussion

Not long ago, patent attorneys hesitated to file an *inter partes* reexamination request because of concerns about estoppel issues and expectation of success of the reexamination. Times have changed and interest in *inter partes* reexaminations has never been higher. The *KSR v. Teleflex* decision and a host of other decisions have changed the way examiners and patent attorneys view *inter partes* reexamination practice. Our panel includes attorneys experienced with the use of *inter partes* reexamination in both prosecution and litigation, and will cover strategies in filing *inter partes* reexamination requests from both a prosecution and litigation perspective. The panel also will discuss recent trends and events affecting *inter partes* reexamination requests

– Greg H. Gardella, Brad D. Pedersen & Becky R. Thorson  
– Timothy E. Bianchi, moderator

### TRADEMARK & COPYRIGHT

#### 17. Extending Your Trademark Rights into the U.K. and the Rest of Europe – A Practical “How To” Discussion Via a Mock Counseling Session

Come watch and participate in a mock trademark counseling session in which a U.S. attorney and a U.K. attorney discuss a U.S. client’s expansion of its business into Europe and cover all the trademark and related issues that the client must consider to make sure it protects its rights in the U.K. and the rest of Europe.

– Timothy M. Kenny & Allan Poulter

### IN-HOUSE

#### 18. Use It or Lose It: Preventing Privilege Waivers and the Ethical Duty to Protect Client Confidences

##### 1.0 ethics credit applied for

Attorneys have an ethical obligation to protect their clients’ privileged information. Learn the different types of waivers and how to avoid inadvertent waivers.

– Eric T. Cooperstein

1:15 – 2:15 P.M.

## BREAKOUT SESSION F

#### 19. Divided Infringement: When Multiple Actors Are Required to Satisfy All the Steps of a Method Claim

There can be no cause of action for infringement unless each and every step of a claimed process is performed by a single actor or a “mastermind” that directs or controls the entire process. In this presentation, we will discuss recent Federal Circuit decisions addressing divided infringement and the “mastermind” requirement to establish direct or vicarious infringement liability. We also will discuss claim drafting techniques to ensure a claimed process can be satisfied by a single actor even though actual performance of the invention involves multiple parties.

– Thomas J. Oppold

#### 20. The Year in Copyright Law

Copyright law expert Cal Litsey discusses the practical implications of recent copyright developments including the new PRO-IP Act and cases such as *Capital Records v. Thomas*, the grant of cert in *In re Literary Works in Electronic Databases Copyright Litigation*, and more.

– Calvin L. Litsey

#### 21. Trademark Monitoring and Enforcement – An In-House Counsel Panel on What Works, What Doesn’t, and When to Seek Outside Help

Learn how senior legal counsel at companies representing a range of industries, and of diverse size, help their clients acquire and protect their valuable trademarks. This is no small feat given the explosion of social networking sites, as well as limited budgets and headcount. Hear what steps these attorneys take – from setting strategies and budgets, to leveraging internal and external resources – to help protect their clients’ portfolios. You’ll get candid insight on what these experienced in-house attorneys spend their time doing to construct and manage effective trademark and enforcement efforts, and which tools they consider ineffective uses of their resources.

– Michael Blum, Christopher A. Curry & Sarah L. Nelsen  
– Kari J. Wangenstein, moderator

12:00 – 1:15 P.M. LUNCH (on your own)

# FACULTY & PLANNERS

## 22. Prosecuting Patent Applications to Overcome the Pro-Rejection Pattern at the PTO

For the last several years, the allowance rate at the USPTO has been decreasing. Applicants have found that several rounds of RCEs are often necessary to make progress in prosecution. This session will deal with substantive and procedural practices that can, in some cases, reduce the delay and/or expense of prosecuting applications in the current climate at the USPTO.

– Alan M. Koenck

## 23. How to Protect Your Marks – Both Offensively and Defensively – in the Expanded Domain Name System

Come and learn how ICANN intends to protect the rights of trademark owners in an expanded domain name system. This session will provide you with an update on the status of the new gTLD rollout, as well as a discussion on key issues regarding the application process and the mechanisms that may be available to protect your marks both offensively and defensively in the new gTLD space.

– Caroline G. Chicoine

## 24. How to Web 2.0: Hands-On Guidance to Social Networking and New Technologies for IP Lawyers and Businesses

Hundreds of thousands of lawyers are creating online profiles on sites like LinkedIn, Legal OnRamp, JD Supra and Martindale-Hubbell Connected. They are downloading business applications to iPhones and Smartphones. They are blogging, texting and even tweeting. In-house counsel are using these new “Web 2.0” technologies to vet providers, hire law firms, research opposing counsel, update their contact lists, reconnect and collaborate with colleagues, generate trusted referrals, and get suggestions for best practices and insights into compliance issues in their industries. Come to this workshop to learn which of these new technologies can address your existing professional needs and are worth your time and energy. All ability levels and legal specialties welcome.

– Leora Maccabee



### Hesha Abrams

Abrams Mediation and Negotiation, Inc.  
Dallas, Texas

### David A. Allgeyer

Lindquist & Vennum PLLP  
Minneapolis



### Stephen R. Baird

Winthrop & Weinstine, P.A.  
Minneapolis

### Stephen R. Bergerson

Fredrikson & Byron, P.A.  
Minneapolis



### Timothy E. Bianchi

Schwegman Lundberg & Woessner, P.A.  
Minneapolis

### Michael Blum

SUPERVALU INC.  
Eden Prairie



### Hildi Bowbeer

3M Innovative Properties Company  
Saint Paul

### Felicia J. Boyd

Faegre & Benson LLP  
Minneapolis

### Caroline G. Chicoine

Fredrikson & Byron, P.A.  
Minneapolis



### Morgan Chu

Irell & Manella LLP  
Los Angeles, California



### Judge Ron Clark

United States District Court  
Eastern District of Texas  
Beaumont, Texas

### Eric T. Cooperstein

Law Office of Eric T.  
Cooperstein, PLLC  
Minneapolis

**Professor**  
**Thomas F. Cotter**  
University of Minnesota  
Law School  
Minneapolis

**Christopher A. Curry**  
Gage Marketing Group, LLC  
Minneapolis

**Julie R. Daulton**  
Merchant & Gould, P.C.  
Minneapolis



### John A. Dragseth

Fish & Richardson, P.C.  
Minneapolis

### Michele Earney

Wolf Springs Ranches, Inc.  
Edina



### Frank S. Farrell

F.S. Farrell, LLC  
Edina



### Stephen W. Feingold

Kilpatrick Stockton LLP  
New York, New York

### Greg H. Gardella

Fish & Richardson, P.C.  
Minneapolis

### Professor Jon M. Garon

Hamline University  
School of Law  
Saint Paul

**Barbara Grahn**  
Oppenheimer Wolff &  
Donnelly LLP  
Minneapolis



### David J.F. Gross

Faegre & Benson LLP  
Minneapolis

**Harry J. Gwinell**  
Cargill, Incorporated  
Minneapolis

**Laura J. Hein**  
Gray Plant Mooty  
Minneapolis

**Sam Herrmann**  
Environmental Control  
Systems, Inc.  
and JobSmith, LLC  
Pelican Rapids



### Randy A. Hillson

Merchant & Gould, P.C.  
Minneapolis



### Jake M. Holdreith

Robins, Kaplan,  
Miller & Ciresi, L.L.P.  
Minneapolis

**Renee L. Jackson**  
Fair Isaac Corporation  
Minneapolis

**Eran Kahana**  
DataCard Corporation  
Minnetonka



### Timothy M. Kenny

Fulbright & Jaworski LLP  
Minneapolis



### Alan M. Koenck

Kinney & Lange, P.A.  
Minneapolis



### Michael M. Lafeber

Briggs and Morgan, P.A.  
Minneapolis



### Calvin L. Litsey

Faegre & Benson LLP  
Minneapolis

**Bruce H. Little**  
Lindquist & Vennum PLLP  
Minneapolis

**Sarah Lockner**  
3M Innovative  
Properties Company  
Saint Paul

**Leora Maccabee**  
2009 Fall Associate  
Maslon Edelman  
Borman & Brand, LLP  
Minneapolis

**Danielle I. Mattessich**  
Merchant & Gould, P.C.  
Minneapolis



**Adonis A. Neblett**  
Fredrikson & Byron, P.A.  
Minneapolis

**Sarah L. Nelsen**  
Hormel Foods Corporate  
Services, LLC  
Austin



### Terrance C. Newby

Leffert Jay & Polglaze, P.A.  
Minneapolis



### Rita A. O’Keeffe

Attorney at Law  
Minneapolis



### Tricia A. Olson

Morrison Fenske  
& Sund, P.A.  
Minnetonka



### Thomas J. Oppold

Larkin, Hoffman,  
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Minneapolis

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Minneapolis

**Scott Piering**  
Cargill, Incorporated  
Minneapolis



### Allan Poulter

Field Fisher Waterhouse LLP  
London, England

**Kevin H. Rhodes**  
3M Innovative  
Properties Company  
Saint Paul



### Ruth Rivard

Leonard Street and Deinard  
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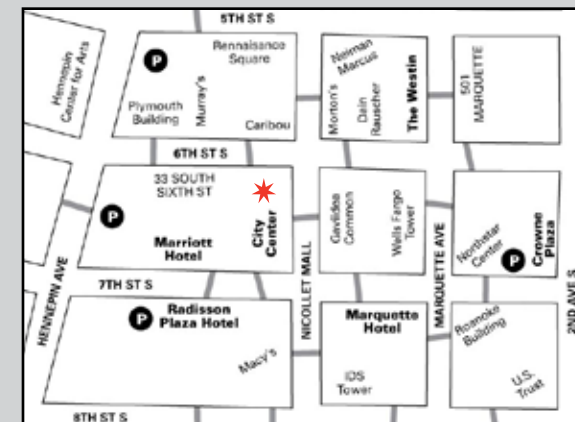
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