ABA House of Delegates adopts three ABA-IPL Section resolutions as ABA policy


110A –
RESOLVED, That the American Bar Association supports legislation creating the establishment of a program within the U.S. Copyright Office with authority to adjudicate copyright small claims as a lower-cost, less-time-consuming alternative to federal court litigation of copyright claims, provided that participation in the program is voluntary for all parties to the dispute, the claim is limited to seeking the types of monetary relief permitted by the Copyright Act (including statutory damages, actual damages, and disgorgement of profits) and excludes injunctive relief, and the monetary relief is no more than a maximum set in accordance with the legislation (“Copyright Small Claims Program”); and
FURTHER RESOLVED, That the American Bar Association supports, in principle, that such legislation and any Copyright Small Claims Program reflect appropriate procedures and requirements, including:
(a) Requiring that adjudicators in the Copyright Small Claims Program have experience with copyright law and training in resolution of disputes;
(b) Allowing claims and responses to be submitted electronically, and to the extent a proceeding may require a hearing, using videoconference and teleconference technology, rather than requiring personal appearances; and allowing but not requiring parties to be represented by an attorney;
(c) Allowing parties to bring counterclaims in a Copyright Small Claims Program proceeding;
(d) Authorizing the Copyright Office to adopt appropriate rules and procedures to prevent abuse of the Copyright Small Claims Program;
(e) Allowing adjudicators in the Copyright Small Claims Program to consult with the Register of Copyrights on general issues of law; and
(f) Permitting the Register of Copyrights to review decisions of adjudicators in the Copyright Small Claims Program in appropriate circumstances.

110B –
RESOLVED, That the American Bar Association supports an interpretation of the phrase “where the defendant has committed acts of infringement” in the patent venue statute, 28 U.S.C. § 1400(b), for cases involving infringement under 35 U.S.C. § 271(e)(2) by submitting Abbreviated New Drug Applications (“ANDA”), that includes all of the acts (i.e., makes, uses, offers to sell, sells or imports) that would constitute patent infringement under 35 U.S.C. § 271(a); and
FURTHER RESOLVED, That the American Bar Association supports an interpretation of the phrase “where the defendant has committed acts of infringement” in 28 U.S.C. §1400(b) such that venue in a patent infringement case involving an ANDA submission under 35 U.S.C. § 271(e)(2) is proper in a district in which the defendant who filed the ANDA submission is anticipated to commit acts of infringement.

110C –
RESOLVED, That the American Bar Association supports the principle that a patentee may recover lost profits under 35 U.S.C. § 284 resulting from foreign activity incidental to domestic infringement of a patent pursuant to 35 U.S.C. § 271(f).