CONTENTS

SYMPOSIUM

Resolving IP Disputes: Calling for an Alternative Paradigm
Opening Remarks, October 4, 2013.................................................................James Levin 1

Patent Prosecution as Dispute Resolution: A Negotiation Between
Applicant and Examiner.................................................................................. Jaron Brunner 7

Developing a Framework for Arbitrating Standards-Essential
Patent Disputes............................................................................................. Jorge L. Contreras
David L. Newman 23

The Intersection of Patent Infringement and Antitrust Liability in
Abbreviated New Drug Application Litigation................................................. Kevin E. Noonan 53

A Case Study in Patent Litigation Transparency.............................................. Bernard Chao
Derigan Silver 87

NOTES

Public Injunctions as a Way Around Concepcion: California’s
Continued Resistance to the Federal Arbitration Act...............Elizabeth Kiesewetter 119

The Future of Mandatory Employee Arbitration Agreements .................. Marcy Greenwade 135

Head of the Class: Oxford Health Plans and the Uncertain Future of
Class Arbitrability Determinations.............................................................. Kevin Sack 151

The Pressure to Plead: How Case-Management Mediation Will
Alter Criminal Plea-Bargaining................................................................. Taylor C. Leonard 169
SCHOOL OF LAW
UNIVERSITY OF MISSOURI

ADMINISTRATIVE OFFICERS
TIMOTHY M. WOLFE, President, University of Missouri System
BRADY J. DEATON, BS, MA, PhD, Chancellor, University of Missouri
KENNETH D. DEAN, BA, JD, Interim Provost, University of Missouri
GARY MYERS, BA, MA, JD, Dean and Earl F. Nelson Professor of Law
CHRISTINA E. WELLS, BA, JD, Associate Dean for Academic Affairs and Enoch H. Crowder Endowed Professor of Law
RIGEL C. OLIVERI, BA, JD, Associate Dean for Faculty Research and Development and Associate Professor of Law
RAFAEL GELY, BA, AM, JD, PhD, Director of the Center for the Study of Dispute Resolution and James E. Campbell Endowed Professor of Law
ELISABETH (LISA) E. KEY, BS, JD, Assistant Dean for Career Development and Student Services
RANDY J. DIAMOND, BA, JD, MLS, Director of Library and Technology Resources and Professor of Legal Research
MARK LANGWORTHY, BS, JD, Senior Director of Advancement

THE FACULTY OF LAW
DOUGLAS E. ABRAMS, BA, JD, Associate Professor of Law
ANNE ALEXANDER, BA, MS, JD, Associate Professor of Law
ROBERT G. BAILEY, BA, JD, Assistant Dean
ROYCE DE R. BARONDES, SB, SM, JD, Associate Professor of Law
MARY M. BECK, BSN, MSN, JD, Director of the Domestic Violence Clinic and Clinical Professor of Law
MELISSA MCGONIGAL BERRY, BA, JD, Visiting Associate Professor of Law
FRANK O. BOWMAN III, BA, JD, Floyd R. Gibson Missouri Endowed Professor of Law
MICHELLE ARNONPOL CEUCI, BA, JD, William H. Pittman Professor of Law
CARLI N. CONKLIN, BS, MA, JD, Associate Professor of Law
DENNIS D. CROUCH, BSE, JD, Associate Professor of Law
MELODY RICHARDSON DAILY, BA, MA, JD, Director of Legal Research and Writing and Clinical Professor of Law
KENNETH D. DEAN, BA, MA, JD, Deputy Provost and Associate Professor of Law
BRAD M. DESNOYER, RJ, JD, Associate Professor of Legal Research and Writing
R. LAWRENCE DESSEM, BA, JD, Timothy J. Heinz Professor of Law
RANDY J. DIAMOND, BA, JD, MLS, Director of Library and Technology Resources and Professor of Legal Research
MARTHA DRAGICH, BA, MA, JD, James S. Rollins Professor of Law
ANGELA K. DRAKE, BA, JD, Instructor and Supervising Attorney
DAVID M. ENGLISH, BA, JD, William Franklin Fratcher Missouri Endowed Professor of Law
CARL H. ESBECK, BS, JD, Isabelle Wade & Paul C. Lyda Professor of Law and R.B. Price Professor of Law
R. WILSON FREYERMUTH, BS, BA, JD, John D. Lawson Professor of Law and Curators Teaching Professor
RAFAEL GELY, BA, AM, JD, PhD, Director of the Center for the Study of Dispute Resolution and James E. Campbell Missouri Endowed Professor of Law
ERIN MORROW HAWLEY, BA, JD, Associate Professor of Law
JOSHUA D. HAWLEY, AB, JD, Associate Professor of Law
CHUCK HENSON, BA, JD, Professor of Law
KANDICE JOHNSON, BS, JD, Director of Clinical Programs, Director of the Criminal Prosecution Clinic and Clinical Professor of Law
PAUL LADENHOFF, BS, MA, JD, Director of LLM in Dispute Resolution and Director of the Campus Mediation Service
THOMAS A. LAMBERT, BA, JD, Associate Professor of Law and Wall Chair in Corporate Law and Governance
JOHN LANDE, AB, JD, MS, PhD, Isidor Loeb Professor of Law
ILHYUNG LEE, BA, MA, JD, Edward W. Hinton Professor of Law
JAMES LEVIN, BA, JD, Associate Director of the Center for the Study of Dispute Resolution and Adjunct Professor of Law
ERIKA LIETZAN, BA, MA, JD, Associate Professor of Law
PAUL J. LITTON, BA, JD, PhD, Associate Professor of Law
MICHAEL A. MIDDLETON, BA, MA, JD, Deputy Chancellor and Professor of Law
S. DAVID MITCHELL, BA, MA, JD, Associate Professor of Law
GARY MYERS, BA, MA, JD, Dean and Earl F. Nelson Professor of Law
CAROL D. NEWMAN, AB, PhD, JD, Associate Professor of Law
RIGEL C. OLIVERI, BA, JD, Associate Dean for Faculty Research and Development and Associate Professor of Law
PHILIP G. PETERS JR., BA, JD, Ruth L. Hulston Professor of Law
RICHARD C. REUBEN, BA, JD, JSM, JSD, James Lewis Parks Professor of Law
S.J. STRONG, BA, MPW, JD, PhD, DPhil, Associate Professor of Law
BELEN TRACHTENBERG, BA, MA, JD, Associate Professor of Law

Published by University of Missouri School of Law Scholarship Repository, 2014
THE EMERITUS FACULTY OF LAW

PETER N. DAVIS, BA, LLB, SJD, Isidor Loeb Professor Emeritus of Law
WILLIAM D. FISCH, AB, LLB, MCL, Dr Jur, Isidor Loeb Professor Emeritus of Law
DAVID A. FISCHER, BA, JD, James Lewis Parks and Isidor Loeb Professor Emeritus of Law
PATRICIA BRUMFIELD FRY, JD, MA, Edward W. Hinton Professor Emerita of Law
PHILIP J. HARTER, AB, MA, JD, Earl F. Nelson Professor Emeritus of Law
WILLIAM H. HENNING, BA, JD, LLM, R.B. Price Professor Emeritus of Law
EDWARD H. HUNVALD JR., AB, JD, Earl F. Nelson and John D. Lawson Professor Emeritus of Law
HENRY T. LOWE, AB, JD, C.A. Leedy and Earl F. Nelson Professor Emeritus of Law
ALFRED S. NEELY IV, AB, LLB, Edward W. Hinton Professor Emeritus of Law
GRANT S. NELSON, BA, JD, Earl F. Nelson and Enoch H. Crowder Professor Emeritus of Law
LEONARD L. RISKIN, BS, JD, LLM, C.A. Leedy and Isidor Loeb Professor Emeritus of Law
JAMES E. WESTBROOK, BA, JD, LLM, Earl F. Nelson and James S. Rollins Professor Emeritus of Law
DALE A. WHITMAN, BES, LLB, Dean Emeritus and James E. Campbell Missouri Endowed Professor Emeritus of Law

THE ADJUNCT FACULTY OF LAW

MICHAEL CARNEY, BS, MA, JD, Adjunct Associate Professor of Law
NIMROD T. CHAPEL, JR., BA, JD, Adjunct Professor of Law
JOSEPH P. DANDURIAND, BS, BA, JD, Adjunct Professor of Law
SANDRA DAVIDSON, BA, MA, JD, PhD, Professor of Journalism and Adjunct Professor of Law
C.J. DYKHOOSE, BS, JD, Adjunct Associate Professor of Law
ROGER C. GEARY, BS, JD, Adjunct Associate Professor of Law
RONALD R. HOLLIGER, BS, JD, Adjunct Professor of Law
MISSOURI SOLICITOR GENERAL JAMES R. LAYTON, BS, JD, Adjunct Professor of Law
LOUIE I. LEVINE, BS, JD, Adjunct Associate Professor of Law
JENNIFER McGARR, BA, MA, JD, Adjunct Associate Professor of Law
SARAH R. MAGUFFEE, BA, JD, Adjunct Associate Professor of Law
LARRY L. MCMULLEN, BA, JD, Adjunct Professor of Law
DAVID D. NOCE, BA, JD, Adjunct Professor of Law
WALTER RAY PHILLIPS, BA, JD, LLM, Adjunct Professor of Law
JOEL POOLE, BA, JD, Adjunct Professor of Law
SARAH J. READ, BA, JD, Adjunct Professor of Law
JAYNE SALNARDI, BA, JD, Adjunct Associate Professor of Law
LESLIE A. SCHNEIDER, BA, JD, Adjunct Professor of Law
TROY K. STABINOW, BS, JD, Adjunct Associate Professor of Law
SANDRA R. STIGALL, BBA, JD, Adjunct Professor of Law
KATIE D. WHITMAN, BA, JD, Adjunct Associate Professor of Law
JAYNE T. WOODS, BS, JD, Adjunct Associate Professor of Law
THE CENTER FOR THE 
STUDY OF DISPUTE RESOLUTION 
SCHOOL OF LAW 
UNIVERSITY OF MISSOURI

The Center for the Study of Dispute Resolution (CSDR) was established in 1984. The mission of the CSDR is to develop and promote:

1. Appropriate methods for understanding, managing and resolving domestic and international conflict.
2. The use of dispute resolution techniques to enhance informed decisionmaking.

In furtherance of that mission, the CSDR fosters comprehensive approaches to lawyering and decisionmaking and promotes the appropriate use of alternative processes of dispute resolution through engagement in:

Legal and Interdisciplinary Scholarship
The CSDR's faculty -- the largest, most diverse collection of full-time law school faculty who focus on dispute resolution -- has published many leading articles, texts, and videotapes on dispute resolution. Areas of scholarship include:

- Mediation
- Arbitration
- Negotiation
- Group Facilitation
- Public Policy and Group Decisionmaking
- Democracy and Dispute Resolution
- International Dispute Resolution
- Mindfulness in Law and Dispute Resolution
- Government Dispute Resolution
- Behavioral Psychology and Dispute Resolution
- Cross-cultural Negotiations

Law School Teaching and Curriculum Initiatives
Since its inception, CSDR has provided national leadership in developing law school curricula in dispute resolution. The keystone of this focus was a ground-breaking project in which dispute resolution instruction is integrated into all first-year courses. See Symposium: Dispute Resolution in the Law School Curriculum: Opportunities and Challenges, Part I., 50 Fla. L. Rev. 583 (1998). That project has evolved into a required, small section first-year course, Lawyering: Problem-Solving and Dispute Resolution.

The CSDR also provides many learning opportunities for upper level students. In recent years, course offerings include courses in Mediation, Negotiation, Arbitration and International Dispute Resolution, Client Counseling, Conflict Theory, Cross-Cultural Negotiation, Public Policy Dispute Resolution, and Damages: A
Case Study, an innovative seminar based on an in-depth case study and taught by seven faculty members. Second and third year students also are eligible to enroll in a mediation clinic or serve on the editorial board of the Journal of Dispute Resolution.

The MU School of Law also offers a Master of Laws (LL.M.) program in Dispute Resolution. This program -- the first of its kind in the nation -- provides practitioners and scholars from around the world an opportunity for advanced study of dispute resolution that includes specialized courses, such as Understanding Conflict, Methods for Program Evaluation and Design, and courses offered by the School of Public Affairs, such as Group Dynamics and Conflict Resolution, Organizational Analysis and Change, and Organizational Dynamics and Leadership.

For further information, contact:
James Levin
Associate Director
Center for the Study of Dispute Resolution
206 Hulston Hall
University of Missouri School of Law
Columbia, Missouri 65211
(573) 882-1630
Levinj@missouri.edu

or visit the Center’s web page at: www.law.missouri.edu/csdr

Center Faculty

ROBERT G. BAILEY, BA, JD, Assistant Dean and Academic Counselor
CARLI N. CONKLIN, BS, MAE, MA, JD, Associate Professor of Law
DENNIS D. CROUCH, BSE, JD, Associate Professor of Law
RAFAEL GELY, BA, JD, PhD, Director of the Center for Dispute Resolution, James E. Campbell Missouri Endowed Professor of Law
PAUL LADEHOFF, BS, MA, JD, Director of LLM in Dispute Resolution and Director of the Campus Mediation Service
JOHN M. LANDE, AB, JD, MS, PhD, Isidor Loeb Professor of Law
ILHYUNG LEE, BA, MA, JD, Edward W. Hinton Professor of Law
JAMES LEVIN, BA, JD, Associate Director of the Center for the Study of Dispute Resolution and Adjunct Professor of Law
RICHARD C. REUBEN, BA, BA, JD, JSM, JSD, James Lewis Parks Professor of Law
S. I. STRONG, BA, MA, JD, PhD, DPhil, Associate Professor of Law
RODNEY J. UPHOFF, BA, JD, MS, Elwood L. Thomas Missouri Endowed Professor of Law and Director of the University of Missouri South Africa Educational Program
JAMES E. WESTBROOK, BA, JD, LLM, Earl F. Nelson and James S. Rollins Professor Emeritus of Law
The Journal of Dispute Resolution is a publication of the University of Missouri School of Law in conjunction with the Center for the Study of Dispute Resolution. The Journal is published on a semi-annual basis. Annual subscriptions to the Journal can be obtained for $35.00 domestic and international.

Subscribers must report non-receipt of an issue within three months of its scheduled mailing or within one month of receipt of a succeeding issue, whichever is shorter, in order to receive that issue at no additional charge.

All notifications of change of address should include old and new addresses, including zip code. Notice of a change of address must reach the Journal one month in advance of publication of the next issue to ensure delivery. The United States Post Office will not forward issues to a new address. The Journal will forward issues missed due to address changes only upon written claim of non-receipt and pre-payment of $3.50 to cover the cost of postage and processing.

Complete sets and odd volumes or issues of the Journal can be obtained by ordering directly from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, NY 14209.

Published by the University of Missouri School of Law, Columbia, Missouri 65211. Editorial and General Offices: University of Missouri School of Law, Columbia, Missouri 65211, telephone: (573) 882-9682. The Journal of Dispute Resolution (ISSN 1052-2859). Postmaster: Send change of address to Journal of Dispute Resolution, University of Missouri School of Law, Columbia, Missouri 65211.

© Copyright 2014 by the Curators of the University of Missouri

The opinions and conclusions of the articles published in this issue are those of the authors and do not necessarily reflect the position of the Journal of Dispute Resolution.