KIRKLAND & ELLIS=
NINTH ANNUAL TECHNOLOGY & LAW SEMINAR
Friday, May 10, 2002
Program Agenda

9:00 - 9:30 a.m. **Registration and Continental Breakfast**

9:30 - 9:45 a.m. **Introduction and "Technology and the Law" Year in Review**
Speaker: William A. Streff, Jr.

9:45 - 10:30 a.m. **Patent Strategy in Light of Recent Legal Developments - Tab 1**
Speakers: David K. Callahan and Paul R. Steadman
Recent changes in patent law will affect your IP portfolio and that of your competitors. Several pronouncements from the Federal Circuit have narrowed the scope of patent protection by curtailing the doctrine of equivalents. The Supreme Court has taken the *Festo* case for review, but there are concrete steps to take in the meantime to coordinate patent prosecution and litigation to put your company in the best position regardless of the Supreme Court=s ultimate resolution. Another Federal Circuit pronouncement, reviving the defense of prosecution laches, further underscores the importance of coordinating prosecution and litigation activities. Opinions from a prominent District Court in Delaware make such coordination even more important to avoid waivers of privileged material. This presentation will offer strategies for technology companies seeking to update their IP strategies and protect themselves in an IP-rich environment.

10:30 - 11:00 a.m. **Copyright v. Technology? - Tab 2**
Speaker: Seth Traxler and Barry F. Irwin
Emerging digital technologies continue to challenge copyright law, and copyright law continues to respond to the challenges. This past year saw important decisions relating to digital copyright from the Supreme Court (*Tasini*), the Second Circuit (*2600*), and the Ninth Circuit (*Napster*). More developments are on the way. Although the controversial Digital Millennium Copyright Act ("DMCA") has been upheld in several key decisions, it increasingly faces constitutional attacks. Some members of Congress have vowed to amend the DMCA, while others have introduced copy-protection legislation that could have important implications for media, computer, and consumer electronics companies. In the background is the upcoming *Eldred v. Ashcroft* case, in which the Supreme Court has granted certiorari on an issue relating to Congress= power under the Copyright Clause of the Constitution. This presentation will survey these and other aspects of the burgeoning field of digital copyright law.

11:00 - 11:15 a.m. **Break**

11:15 a.m. - 12:00 p.m.   **Simultaneous Local Break-out Sessions**

<u>*IN CHICAGO*</u>
Nuts and Bolts of Initiating Litigation Against Internet Defendants - Tab 3A
Speakers: Roger Bartos, Paul D. Collier and Marc J. Zwillinger
With over 36 million websites on the Internet, the challenges of initiating effective litigation against Internet actors are increasing. Whether dealing with online copyright infringers or anonymous defamers, evaluating litigation options can be difficult. This presentation will focus on: how to quickly identify, track and investigate potential defendants; basic jurisdictional issues affecting where to file suit; service of process issues, including the recent 9th Circuit decision allowing service by email; and strategies for pursing other potentially-liable parties, such as Internet service providers.

Business Continuity - Tab 3B
Speakers: Neil S. Hirshman and Gregg Kirchhoefer
War, terrorism, recession, bankruptcy, strikes, computer viruses, system failures -- events such as these have dominated recent news reporting. One need only glance at the headlines to understand why parties to outsourcing and technology services agreements are focusing on the provisions in their contracts that deal with business continuity. This interactive session will explore some of the legal and practical considerations (including their limitations) of these provisions (<u>e.g.</u>, disaster recovery, *force majeure,* termination, escrow, remedies, insurance and risk allocation).

Open Source Software: Is it Safe to Enter the Water? - Tab 3C
Speaker: Jeffery S. Norman
Open source software programs such as Apache and Linux are used in many Fortune 500 companies to run mission-critical web servers, firewalls and databases. Open source software promises greater stability and arguably greater security, and reduces costs by eliminating licensing fees and enabling customization at the source code level through a community development process that is often free of development expenses. Despite the terms often used to describe these programs ("free software," "open source"), most are subject to fairly detailed licensing schemes. In the past year, a number of serious concerns have been raised in the trade press about the implications of open source licensing schemes. In particular, some have argued that a company's involvement in the development of open source software or products that use open source software could threaten the viability of intellectual property rights in other proprietary software products owned by the company.   Many of these concerns appear

unjustified and demonstrate a lack of understanding of the purpose and terms of open source software licenses. This presentation will analyze the most popular open source licensing schemes and clarify the detriments and benefits of the open source license from the perspective of licensee and licensor.

IN NEW YORK
Privacy Compliance and Technology - Tab 3D
Speaker: David MacDonald
Fast-moving privacy legislation, regulations and enforcement initiatives in the United States and abroad have significant implications for companies. This presentation will track the most up-to-date privacy issues that require consideration of immediate technological and contractual compliance planning.

Controversy and Reform with Business Method Patents - Tab 3E
Speaker: Sandra A. Bresnick
Business method patents continue to generate controversy but have also generated some reform. This presentation will cover recent initiatives of the courts, Congress and the U.S. Patent & Trademark Office in response to calls for change.

IN LOS ANGELES
Antitrust Law vs. The Patent "Monopoly": When an Irresistible Force Meets an Immovable Object - Tab 3F
Speakers: Boaz M. Brickman and Lindsay Dinn
Patent owners can exclude others from making, using, and selling patented inventions, whereas antitrust laws generally disfavor taking advantage of monopoly power and restricting competition. This presentation will analyze how courts have addressed the collision between these two paradigms in the context of patent licensing and litigation.

Protection and Distribution of Information in the Digital Millennium Tab 3G
Speakers: Eric R. Lamison and Michelle I. Schultz
Over the past few years, lawmakers have proposed several domestic and international laws and rules to regulate the ways companies protect and distribute information. In this break-out session, the speakers will outline the current legal landscape that has developed, providing concrete and current information on timely topics such as privacy protection and "spamming."

12:00 - 12:30 p.m.	**Lunch**

Return to General Sessions

12:30 - 1:15 p.m.   **Incident Response Live! - Tab 4**
Speakers: Marc J. Zwillinger and Rodger Heaton
This will be a live-action demonstration of a response to a potential electronic theft of trade secrets. In this presentation, two former computer crime prosecutors will demonstrate successful and unsuccessful responses to internal computer crime investigations, emphasizing the importance of sound information security policies in limiting and recovering losses from cybercrime.

1:15 - 2:00 p.m.   **Technology Aspects of Strategic Alliances and Joint Ventures - Tab 5**
Speakers: Jeffery S. Norman and Adam V. Petravicius
Strategic alliances and joint ventures are important aspects of many technology-based businesses. Such alliances and joint ventures enable sharing of long-term development expenses and risks and may create synergy among complementary technologies and expertise. Moreover, strategic alliances and joint ventures are often used to develop a new technology standard or to attempt to displace an existing standard. This presentation will address the intellectual property relationships that are characteristic of strategic alliances and joint ventures involving technology. Practical advice will be given on structuring intellectual property contributions and licenses among the parties and the alliance or joint venture, as well as how to resolve other hotly negotiated issues.

2:00 - 2:45 p.m.   **When IT/IS Projects Go Wrong: Effective Transactional and Litigation Strategies - Tab 6**
Speakers: Christian C. Taylor and William E. Devitt
In the past decade, companies have spent trillions of dollars on software, computer and communication equipment and consulting services to install new information technologies and systems (IT/IS). Although current economic conditions have temporarily slowed this spending, most predict continued heavy corporate spending on IT/IS in the foreseeable future. Unfortunately, these complex IT/IS systems often underperform, exceed budgets, and at worst, fail altogether. Sometimes the only certainty will be a difficult renegotiation of the underlying agreement or litigation. This presentation will discuss both transactional and litigation strategies for core issues.

2:45 - 3:00 p.m.   **Conclusion and Upcoming Technology Issues**
Speaker: William A. Streff, Jr.

3:00 p.m. **Reception**