Standards that facilitate interoperability are critical in high tech industries and increasingly raise antitrust issues, whether set through a standard setting organization, by ad hoc groups of competitors, or by a single dominant firm. Key areas of controversy relate to the nature and extent of any disclosure obligation to the members of the standard setting organization and the terms under which patents covering a standard are licensed. With increasing frequency, this is a topic of interest to the antitrust enforcement agencies. The FTC and the DOJ have explored these issues in their hearings on Competition and Intellectual Property Law and Policy in the Knowledge Based Economy (for dates and list of participants see http://www.usdoj.gov/atr/hearingp.htm). Specifically, on April 18, 2002 hearings were held on Standard Setting Practices: Competition, Innovation and Consumer Welfare (transcript available at http://www.ftc.gov/opp/intellect/020418trans.pdf). (See James Murray, “Excerpts From Selected Papers Regarding Hearing on Standards Setting Activities (April 18, 2002).”) and on November 6, 2002 hearings were held on Standard Setting Organizations: Evaluating the Anticompetitive Risks Of Negotiating IP Licensing Terms and Conditions Before A Standard Is Set (transcript available at http://www.ftc.gov/opp/intellect/021106ftctrans.pdf). On June 10, 2003, the House passed HR 1086, the "Standards Development Organization Advancement Act," by voice vote. The Bill seeks to encourage the development and promulgation of voluntary consensus standards by providing relief under the antitrust laws to standards development organizations. For text and status information on the bill, see: http://thomas.loc.gov/cgi-bin/bdquery/z?d108:h.r.01086: The proposed legislation has been forwarded to the Senate Judiciary Committee.

In May 2001, the Intellectual Property Committee of the Antitrust Section of the ABA started preparing a list of resources relevant to antitrust and standard setting. The effort started when Suzanne T. Michel identified some key articles. Since then, the list expanded with valuable contributions from a number of people, including: James Atwood, David A. Balto, Edward Biester, Peter Breckheimer, Dana Robert Colarulli, Michael Cowie, Frank Fine, Danielle S. Fitzpatrick, Brian Grube, Sean P. Gates, John Martin, James B. Kobak, Joseph Kattan, Christopher J. Kelly, Joseph P. Lavelle, Michael Lawrence, Mark Lemley,

The initial list was reworked by Michael McNeely and Patrick O’Connor, and then by Bruce McDonald for the IP Committee’s September 24, 2001 standards setting program in Houston, Texas. Howard Morse, then Chair of the Intellectual Property Committee, supplemented the list of resources for the Antitrust Section’s Fall program and then again for the Section’s June 6-7, 2002 program on “Antitrust & Intellectual Property: Competition and Innovation in High-Tech Industries. Ed Biester, John Martin, and Joe Lavelle provided explanatory notes on a number of the cases. Michael Lawrence then included hyperlinks to some of the material submitted in connection with the DOJ/FTC hearings on Competition and Intellectual Property Law and Policy in the Knowledge Based Economy along with hyperlinks to some of the cases. Danielle S. Fitzpatrick and Peter Breckheimer prepared summaries of the business review letters from the Antitrust Division of the Department of Justice and Advisory Letters from the Federal Trade Commission relating to standard setting and patent pool arrangements. Carl Schwartz helped identify some of the business review letters. Most recently, Howard Morse has added a section to this resource on the “Standards Development Organization Advancement Act,” and Chris Kelly has edited some of the summaries.

The list, of course, could also include more general boycott cases, certification mark cases and a number of related cases, but we have tried to keep the list fairly narrowly focused on standard setting and IP subject matter.

The current version of the list will be available on the Intellectual Property Committee’s webpage under “Hot Topics.”

Since my term as a Vice Chair of the Intellectual Property Committee is nearing an end, please forward any comments or suggestions to Ed Biester (Duane Morris LLP, One Liberty Place Philadelphia, PA 19103-7396 Phone: 215.979.1162 Fax: 215.979.1020 E-mail: egbiester@duanemorris.com), who will be assuming my responsibilities as Vice Chair of the Intellectual Property Committee.

Anthony

John Anthony Chavez
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Intellectual Property Committee
Vice Chair
**Cases**

**Addamax Corp. v. Open Software Found.,** 888 F. Supp. 274 (D. Mass. 1995), later proceeding, 964 F. Supp. 549 (D. Mass. 1997), aff’d, 152 F.3d 48 (1st Cir. 1998). Unsuccessful security software company sued computer manufacturers’ joint venture, which had chosen another security software product as component of its jointly-developed operating system. On summary judgment, the court (1) found plaintiff to have adequately alleged antitrust injury, “as a seller to a collusive monopsony,” id. at 280, and (2) rejected the concept that the joint venture’s conduct was by definition unilateral and thus insulated from section 1 liability, id. at 281. The court rejected per se treatment, and applied the rule of reason. The court found triable issues as to market power, because of the group’s alleged ability to affect industry standards, id. at 284, and anticompetitive effect, based on evidence of the joint venture’s “structure, purpose and strategy” to “‘bully the market’ into adopting certain standards for computer products,” id. at 285. Ultimately, defendants prevailed at trial, after plaintiff failed to prove injury in fact. 964 F.Supp. 549. In affirming, the First Circuit assumed that Section 1 could be properly applied to the joint venture’s conduct: “How far this theory can be pressed in the case of a truly integrated enterprise, whose ‘owners’ were no more than stockholders, is a matter we need not pursue.” 152 F.3d at 52.

**Allied Tube & Conduit Corp. v. Indian Head, Inc.,** 486 U.S. 492 (1988). Efforts to affect product standard setting process of private association were not protected by Noerr-Pennington even though the code for the design and installation of electrical wiring systems was widely proffered for adoption and adopted into local laws. No damages were imposed for the incorporation of that code by any government. Where an economically interested party exercises decision-making authority in formulating a product standard for a private association that comprises market participants, that party enjoys no Noerr-Pennington immunity from any antitrust liability flowing from the effect that the standard has of its own force in the marketplace.

**American Society of Mechanical Engineers, Inc. v. Hydrolevel Corp.,** 456 U.S. 556 (1982). Standard setting organization responsible for acts of agents acting with apparent authority that violate antitrust law despite substantial agency law defenses which, the court holds, are inconsistent with the policy of vigorous enforcement. Antitrust laws apply to nonprofit professional standard setting organizations.

**In the Matter of Am. Soc’y of Sanitary Eng.,** 106 F.T.C. 324, 1985 FTC LEXIS 20
(1985) (Brought by T.J. Muris as Bureau Director). FTC Complaint alleged that
American Society of Sanitary Engineering (“ASSE”) violated section 5 of the
FTC Act by refusing to consider certification that alternative, patented, toilet
tank flush valves which offered improvements to existing devices specified by
its standard, were also compliant with ASSE standards, which were adopted
into many local codes and compliance with which was alleged to be
“essential for manufacturers of plumbing products to do business in many
markets.” ASSE entered into a consent order prohibiting ASSE from excluding
from standards a product which is patented or produced only by one
manufacturer or a limited number of manufacturers, where ASSE has issued
standards for competing products, the applicant has reasonably established
that the product adequately meets the implicit or explicit performance goals
required by the existing standard covering competing products, and ASSE
does not rely upon a justification meeting reasonable standard setting
criteria, i.e., “criteria which are consistently applied in the development or
modification of a standard and which promote the legitimate self-regulatory
goals of ASSE, such as assuring a reasonable and adequate level of safe and
effective performance for a product.”

See discussion in Timothy J. Muris, “Competition and Intellectual Property
Policy: The Way Ahead,” Prepared Remarks Before Antitrust Section Fall
Forum (Nov. 15, 2001).

**Bond Crown & Cork Co. v. Federal Trade Comm’n, 176 F.2d 974 (4th Cir. 1949).**

**Brant v. United States Polo Assoc., 631 F. Supp. 71 (S.D. Fla. 1986).** Polo player
in the process of starting rival league is suspended from long-standing league
for arguing with umpires. Applying **NCAA v. Board of Regents of the
University of Oklahoma**, 468 U.S. 85 (1984), court rejects plaintiff’s per se group
boycott analysis. Under rule of reason, court denies preliminary injunction
because conduct-based suspension is not anticompetitive.

**Brookins v. Int’l Motor Contest Assoc., 219 F.3d 849 (8th Cir. 2000).** Race
sanctioning body set standard for transmissions that excluded plaintiff.
Summary judgment granted because no market power and no concerted
action.

**Clamp-All Corp. v. Cast Iron Soil Pipe Institute, 851 F.2d 478 (1st Cir. 1988), cert.
denied, 488 U.S. 1007 (1989).**

**Consolidated Metal Prods., Inc. v. Am. Petroleum Institute, 846 F.2d 284 (5th
Cir. 1988).** On summary judgment, court refuses to treat as a per se unlawful
group boycott a trade association decision which has no compulsory effect
on others. Applying rule of reason, court finds no unlawful conduct because evidence shows that decision was a good-faith attempt to apply appropriate standards with no anticompetitive intent.

**DM Research, Inc. v. College of Am. Pathologists**, 170 F.3d 53 (1st Cir. 1999). Affirms dismissal of complaint alleging that effect of trade association guidelines harmed plaintiff’s business and caused owners to sell at a loss. Court rejects “implausible conclusory allegation” of conspiracy to “adopt faulty standard where main effect would be to raise costs” for certain competitors in the industry.

**ECOS Elecs. Corp. v. Underwriters Labs., Inc.**, 743 F.2d 498 (7th Cir. 1984), cert. denied, 469 U.S. 1210 (1985).


**ESS Tech., Inc. v. PC-Tel, Inc.**, No. C-99-20292 (N.D. Cal. Nov. 2, 1999) (order granting in part and denying in part defendant’s motion to dismiss). Plaintiff alleged that it cannot produce modems that comply with International Telecommunication Union (“ITU”) standards without infringing defendant’s patents, and that defendant refuses to license its patents on fair and reasonable terms. Court dismissed the plaintiff’s Sherman Act §2 claim and related state unfair competition claim for failure to allege antitrust injury. Plaintiff also asserted a claim for specific performance, arguing that it was a third-party beneficiary to defendant’s agreement with ITU to license on fair and reasonable terms. Court rejected defendant’s argument that its agreement with the standard-setting organization was too vague to support a claim for specific performance.

**ESS Tech., Inc. v. PC-Tel, Inc.**, No. C-99-20292 (N.D. Cal. July 3, 2000) (order denying defendant’s motion to dismiss). Plaintiff alleged that defendant refused to license its patents on fair and reasonable terms after representing to a standard-setting organization that it would do so. Defendant argued that a patent holder may unilaterally refuse to license its patents without being subject to antitrust liability. Court denied defendant’s motion to dismiss plaintiff’s antitrust, patent misuse, and state unfair competition claims, stating that defendant’s “alleged acts amount to more than just legitimately exercising a right to refuse to license patented technology.”


**Foundation for Interior Design Educ. Research v. Savannah College of Art &**
Design, 244 F.3d 521 (6th Cir. 2001). Analyzed refusal to accredit under rule of reason, no antitrust injury.

Hyundai Elecs. Indus. Co. v. Rambus, Inc., C 00-20905 (N.D. Cal. Jan. 19, 2001) (order granting in part and denying in part defendant’s motion to dismiss). Court dismissed plaintiff’s claim under section 1 of the Sherman Act, holding that it is insufficient to allege unilateral conduct in a collaborative standard-setting process. Court concluded that plaintiff stated a claim under section 2 of the Sherman Act and section 17200 of the California Business and Professions Code.

In re: Dell Computer Corp., 121 F.T.C. 616, 1996 FTC LEXIS 291, 1996 WL 350997 (May 20, 1996). Dell had certified that it did not have intellectual property rights interfering with a “VL-bus” standard for the bus between a computer’s CPU and peripheral devices. The Video Electronics Standards Association (VESA) adopted the standard. After the standard was adopted and implemented, Dell sought to assert a patent interfering with the standard. Where VESA arguably would not have adopted the standard if it had been aware of the Dell patent, the FTC asserted that Dell’s conduct violated section 5 of the FTC Act, and Dell entered into a Consent Judgment precluding its assertion of the patent against use in compliance with the standard. See FTC Press Release.

In the Matter of Rambus Incorporated, FTC Docket 9302

FTC Press Release

Administrative Complaint (filed June 18, 2002 and available at http://www.ftc.gov/os/caselist/d9302.htm) (allegations that the failure to license on reasonable and non-discriminatory terms following a failure to disclose existing intellectual property violated Section 5 of the FTC Act and Section 2 of the Sherman Act).


See Statement of M. Sean Royall, Deputy Director FTC Bureau of Competition and Trial Counsel, In the Matter of Rambus Incorporated (January 29, 2003)
**In re: Union Oil Co.**, Docket 9305 (complaint filed Mar. 4, 2003) (allegations that enforcement of patents incorporated into regulatory standard as a result of a false statement to regulator violated Section 5 of the FTC Act and Section 2 of the Sherman Act) (available at http://www.ftc.gov/os/2003/03/unocalcmp.htm).

**Intel Corp. v. VIA Techs., Inc.**, 2001 WL 777085 (N.D. Cal. 2001). Denies motion to dismiss antitrust counterclaim in patent infringement action. Holds that allegation of sham patent litigation is properly pleaded where a license was allegedly given to practice some of patents in suit and fraud on PTO alleged for another. Court declines to decide whether Noerr-Pennington applies where good-faith claims are mixed with sham claims in a single suit.


**Milk and Ice Cream Can Institute v. Federal Trade Comm’n**, 152 F.2d 478 (7th Cir. 1946). Affirms FTC cease-and-desist order which found that standard setting organization engaged in price fixing.


**Motorola, Inc. v. Rockwell Int’l Corp.**, No. 95-575 (D. Del. 1995).

**Multivideo Labs, Inc. v. Intel Corp.**, 2000-1 Trade Cas. (CCH) ¶ 72,777, 2000 U.S. Dist. LEXIS 110 (S.D.N.Y. Jan. 7, 2000). After Intel made statements that plaintiff’s personal computer peripheral device did not comply with standards that it had promoted, plaintiff sued for monopolization and attempted monopolization. Court granted summary judgment for Intel because, regardless of market power in CPU’s, Intel did not compete with
the plaintiff in the market for the products at issue. Holds that claim of
“monopoly leveraging requires a threshold showing a threat of higher price
or reduced output in the secondary market.”

**National Assoc. of Review Appraisers & Mortgage Underwriters v. Appraisal
Found.,** 64 F.3d 1130 (8th Cir. 1995), cert. denied, 517 U.S. 1189 (1996).


**National Macaroni Mfrs. Assoc. v. Federal Trade Comm’n,** 345 F.2d 421 (7th
Cir. 1965). Affirms FTC order finding that standards set by Macaroni/Spaghetti
Trade Association calling for blended, rather than pure, form of durum wheat
had effect of depressing price of that input to below market levels.

**Nat’l Camp Ass’n Inc. v. Am. Camping Ass’n Inc.,** S.D.N.Y. No. 99 Civ. 11853
(Dec. 15, 2000). Applying rule of reason to refusal to accredit claim, no
market power, no evidence of concerted action.

**NDC Health/IMS Health,** Case COMP D3/38.044, European Commission’s
Decision of July 3 2001. The IMS decision, now the subject matter of an
appeal by IMS to the Court of First Instance, was subsequently suspended by
an ex parte order of the President of the Court of First Instance in IMS Health v.
Commission (Case T-184/01R [2001] ECR II-2349), then suspended by the
same judge following a hearing of both parties (Case T-184/01R2 [2001] ECR
II-3193 2002). The President of the Court affirmed the latter order in NDC
Health Corp. v. IMS Health Inc (Case C-481-01PR 1 [2002] ECR I-3401). In
parallel copyright litigation before the Frankfurt trial court (“Landgericht”),
the latter court suspended main proceedings against NDC pending a
preliminary ruling from the European Court on issues of both copyright and
the applicability of Article 82 in IMS Health GmbH v.NDC Health GmbH, Case
C-418/01.

Dist. LEXIS 14348 (E.D. Va. Mar. 25, 1980), aff’d, 641 F.2d 190 (4th Cir. 1981),

Complaint states a claim where it alleges arbitrary and capricious standards
for approval of gas burners together with conspiracy between utilities and
standard setting organization not to provide gas for use in unapproved
burners.

**Rambus, Inc. v. Infineon Techs,** AG, 318 F.3d 1081 (Fed. Cir. 2003, vacating in

In patent infringement action, defendant counterclaimed alleging that plaintiff defrauded it by failing to disclose patent applications in meeting of standard setting body of which both were members and where standards covering the patented technology were developed. Court allowed jury verdict finding fraud in the SDRAM standard setting activity to stand.

The Federal Circuit reversed the trial court (1) on claim construction, thereby vacating the JMOL of noninfringement in Infineon’s favor, and (2) on the denial of JMOL that allowed the jury verdict of fraud in connection with the SDRAM standard-setting process to stand.

Regarding the fraud issue, the Federal Circuit reviewed the evidence of record and held that a reasonable jury would conclude that Rambus’s duty of disclosure as a JEDEC participant (1) applies only to patents containing claims that might reasonably be necessary to practice the proposed standard, and (2) arises only when work formally begins on the proposed standard. It further held that the duty of disclosure did not cover a participant’s future plans or intentions (i.e., to file or amend patent applications). The court criticized JEDEC’s patent policy for its “staggering lack of defining details,” thereby leaving members with “vaguely defined expectations as to what they believe the policy requires” in the way of a duty of disclosure. Having framed the duty of disclosure in the above terms, the court concluded that Rambus did not breach its duty as to the SDRAM standard because none of the claims in its patents and pending patent applications reads on that standard.

The Federal Circuit affirmed the grant of JMOL setting aside the verdict of fraud as to the DDR-SDRAM standard-setting process. Importantly, Rambus had withdrawn from participation before any proposals directed to the DDR-SDRAM standard had been submitted, and before formal consideration of the standard had begun. No duty of disclosure therefore had yet arisen.


SanDisk Corp. v. Lexar Media, Inc., No. C 98-01115 (N.D. Cal. Oct. 17, 2000) (order granting in part and denying in part plaintiff’s motion to dismiss and for summary judgment). Court denied plaintiff’s motion for summary judgment on defendant’s fraud claims, finding that there was a genuine dispute as to
whether plaintiff had a duty to disclose a pending patent application arising from unwritten agreements among members of standard-setting organizations. Court also denied plaintiff’s motion for summary judgment with respect to the unfair competition claim under California law, which proscribes conduct that is “unlawful,” “unfair,” or “fraudulent.”

Sessions Tank Liners, Inc. v. Joor Mfg., Inc., 1986-1 Trade Cas. ¶ 66,989 (C.D. Cal. 1986), aff’d in part, 827 F.2d 458 (9th Cir. 1987), vacated, 487 U.S. 1213 (1988); judgment entered in favor of the plaintiff on remand, 786 F. Supp. 1518 (C.D. Cal. 1991), rev’d, 17 F.3d 295 (9th Cir. 1994), cert. denied, 513 U.S. 813 (1994). In first appeal, 9th Circuit held that Noerr-Pennington immunity applies to lobbying of private model code association, but that there is an exception for “sham” conduct. Sham claims pleaded where standards were passed due to false representation made to standard setting body. On remand, deliberate misrepresentation is proved, but in subsequent appeal, 9th Circuit holds that Noerr-Pennington applies because harm results entirely from government conduct in enforcing model code and because no harm is alleged in jurisdictions where the model code was not enforced by the government body.

Schachar v. Am. Academy of Ophthalmology, 870 F.2d 397 (7th Cir. 1989). In an appeal from jury instructions at trial where verdict was for defendant, Judge Posner rejects out of hand plaintiff’s contention that labeling of certain ophthalmological treatment as experimental was an antitrust violation. Posner remarks that antitrust is about competition and not a code of medical ethics.

Silver v. N.Y. Stock Exch., 373 U.S. 341 (1963). New York Stock Exchange requires disconnection of wire lines between member firms and nonmember firms. Court holds that this conduct presented a clear case of a per se unlawful group boycott, and that this conclusion was not altered by the duty of self-regulation imposed on such firms by the Securities Exchange Act.


**Standard Sanitary Mfg. Co. v. United States**, 226 U.S. 20 (1912). Court affirms an injunction barring agreement between a group of defendants comprising 85% of the manufacturers of enameled iron ware from entering into agreements purportedly designed to permit widespread use of patented technology, but which also included fixing of prices through a pricing committee.

**Sun Microsystems, Inc. v. Kingston Tech. Co.**, No. C 99-03610 (N.D. Cal. Feb. 7, 2000) (Kingston’s Answer, Affirmative Defenses, and Counterclaims to First Amended Complaint for Patent Infringement). Defendant argued that the patent holder’s infringement claims were barred by the doctrines of misuse and estoppel based on the patent holder’s conduct in JEDEC standard-setting proceedings.

**Townshend v. Rockwell Int’l Corp.**, 55 U.S.P.Q.2d (BNA) 1011, 2000 U.S. Dist. LEXIS 5070 (N.D. Cal. Mar. 28, 2000). In patent infringement suit, defendant argues that plaintiff patent holder and company to whom he had licensed technology unlawfully caused a trade association to adopt an industry standard which embodied the technology without disclosing trade secret litigation and prospective patent litigation. Court dismisses Section 1 claim for failure to plead sufficient injury to competition because conduct is a lawful incident of the patent monopoly and because patent holder offered licenses on reasonable terms. Regarding section 2 claim, court finds that patent holder’s conduct before trade association was not anticompetitive.

**U.S. v. Am. Bar Assoc.**, Civil Action No. 95-1211 (CRR) (D. D.C. June 25, 1996)(consent decree). DOJ Antitrust Division challenged ABA’s law-school accreditation process. Complaint charged that process had become the captive of one interested constituency, legal educators, inflating professional salaries among U.S. law schools, and discriminating against state-accredited law schools that did not comply with ABA standards. (See also Massachusetts School of Law at Andover v. Am. Bar Assoc., above.)


**Right to Engage in Joint Discussions,** Letter from Anne K. Bingaman, Assistant Attorney General, Antitrust Division, Department of Justice, to Bennett M. Lincoff, Esq., Marvin L. Berenson, Esq., & Laurie Hughes, Esq. (July 21, 1995), available at http://www.usdoj.gov/atr/public/busreview/ascapltr.htm. Review of various musical rights societies’ proposal to hold a series of meetings to discuss proposed legislation concerning the licensing practices of musical rights societies. Justice Department declined to challenge provided that societies do not discuss pricing and other competitively sensitive issues such as market allocation or service restrictions.

**Electric Power Standard,** Letter from Joel I. Klein, Assistant Attorney General, Antitrust Division, Department of Justice, to Joseph C. Bell, Esq., & Mary Anne Mason, Esq., available at http://www.usdoj.gov/atr/public/busreview/2497a.htm. Review proposal of Western Systems Coordinating Council under which it would establish a system of electric power reliability standards to be enforced by financial sanctions. Justice Department declined to challenge because the standards are: open to all interested parties; provide for representation for all segments of the industry; do not give any segment a competitive advantage; and do not appear to raise significant risks to competition.

**MPEG-2 Patent Pool,** Letter from Joel I. Klein, Acting Assistant Attorney General, Antitrust Division, Department of Justice, to Garrard R. Beeney, Esq. (June 26, 1997), available at http://www.usdoj.gov/atr/public/busreview/1170.htm. Review various licensors’ proposal for MPEG-LA to pool patents which are essential for compliance with the video and/or systems parts of the MPEG-2 standard. Justice Department declined to challenge stating that pooling is likely
to provide significant cost savings to licensors and licensees alike, and features in the proposal mitigate potential anticompetitive dangers.

**Information Sharing for Wireless Communication Antenna Sites**, Letter from Joel I. Klein, Assistant Attorney General, Antitrust Division, Department of Justice, to John B. Wyss, Esq. (March 25, 1998), available at [http://www.usdoj.gov/atr/public/busreview/1613.htm](http://www.usdoj.gov/atr/public/busreview/1613.htm). Review of proposal by trade association Personal Communications Industry Association to create an information exchange system to identify opportunities for the joint acquisition, construction and/or operation of wireless communications antenna sites. Justice Department declined to challenge due to the limited nature of the information exchanged through the proposed system, and the fact that PCIA will not be involved in any specific discussions or negotiations between carriers which reduces the risk of anticompetitive exchanges of information.


**Robotic Welding Standard**, Letter from Charles A. James, Assistant Attorney General, Antitrust Division, Department of Justice, to Douglas W. Macdonald, Esq. (October 7, 2002), available at [http://www.usdoj.gov/atr/public/busreview/200310.htm](http://www.usdoj.gov/atr/public/busreview/200310.htm). Review of proposal of American Welding Society to adopt a standard that include specifications for assuring the interoperability of various devices that make up a robotic welding cell. Justice Department declined to challenge, indicating that the society and its varied membership have likely determined the standard that best serves consumer interests, but cautioned that it does not enough information to determine the net anticompetitive effect of the standard.

systems ("3G"), whereby licenses would be facilitated by a 3G Platform comprising five distinct entities, one for each of the alternative 3G radio interface technologies. Justice Department declined to challenge, indicating that, as modified in response to Justice Department concerns, the proposed regime was likely to facilitate availability of complementary patent rights related to each of the five 3G standards, and therefore lower search and transaction costs for manufacturers and service providers.

**Right to Create Industry Database**, Letter from R. Hewitt Pate, Acting Assistant Attorney General, Antitrust Division, Department of Justice, to William Jibilian, Esq. (May 13, 2003), available at http://www.usdoj.gov/atr/public/busreview/201017.htm. Review of chemical company BroChem’s proposed creation of a Chemical Information System searchable computer database to provide chemical wholesalers with information from chemical producers for a fee. Justice Department declined to challenge because BroChem ensures that sensitive pricing information is not accessible to competitors or others who should not have access to it.

**FTC Advisory Opinions**

GTW Associates has prepared summaries of some of the Advisory Opinions from the Federal Trade Commission, which are available at http://www.gtwassociates.com/answers/FTCOpinions.htm.


accreditation system for entities involved in medical or laboratory practice related to hemotopoietic progenitor cell therapy. Commission declined to challenge because it determined that the Foundation did not appear to impose its standards on the market, and a number of procedural protections are built into the Foundation’s accreditation process.

**Articles, Speeches, Treatises and Testimony**


David A. Bagwell, “Keeping Antitrust Simple: ‘Your Momma’s Rules’ For Attending Meetings,” 48th Annual Spring Meeting, Section of Antitrust Law, Joint Committee Program of the Trade Association Committee and the Corporate Counseling Committee (Apr. 7, 2000).


David A. Balto, “IP disclosure rules should be spelled out fully” Electronic Engineering Times, October 6, 2002.


David T. Beddow and Gregg H. Vicinanza, “FTC Charges Rambus With Abuse


Susan A. Creighton, Antitrust and Intellectual Property (Newsletter of the Intellectual Property Committee of the Antitrust Section of the ABA) (Fall 2000).


Maurits Dolmans, “Standards for Standards,”


Mark A. Lemley and David McGowan, “Legal Implications of Network


Amy A. Marasco, Vice President and General Counsel, American National Standards Institute, Testimony before the Federal Trade Commission (Dec. 1, 1995).


James Murray, “Excerpts From Selected Papers Regarding Hearing on Standards Setting Activities (April 18, 2002).”


Richard H. Stern, “Inviting Participants in Standard Setting,” IEEE Micro (May-


George T. Willingmyre, P.E. “Approaches to influence the IPR policies and practices in US and Global standards setting,” (June 14, 2002).


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**Pending Legislation**

The House Report is at
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_reports&docid=f:hr125.108.pdf (vol 1) and
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_reports&docid=f:hr125p2.108.pdf (vol 2)
or if those do not work, you can follow the links from
http://thomas.loc.gov/cgi-bin/cpquery/R?cp108:FLD010:@1(hr125):

The transcript of the April 9 Judiciary hearing on HR1086 is available at
http://www.house.gov/judiciary/86408.pdf OR

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The bills are at:
If you have trouble with these links, you can get there, by going to http://thomas.loc.gov/, plugging HR 1086 into the bill number space, and then following the links to the bills, and the GPO .pdf versions of the bills.

Contributors:

Joining the Intellectual Property Committee
If you are interested in the intersection of antitrust and intellectual property, we strongly urge you to join the Intellectual Property Committee. If you are a member of the Antitrust Section of the ABA, you can become a Member of the Intellectual Property Committee by completing a simple on-line clicking here. If you are a member of the Antitrust Section, there is no additional charge to join the Intellectual Property Committee. If you are a Member of the ABA, but not a member of the Antitrust Section, you can easily join the Antitrust Section by completing another on line application. It is only $45.

Joining the AT-IP Listserv
If you are not a member of the AT-IP Listserv, you can join by sending a note to Ed Biester at EGBiester@duanemorris.com with your email address followed by your name in the body of the note. For example, “jsmith@acme.com Jane Smith.” That will facilitate adding you to the AT-IP Listserv.

Posting Information on AT-IP Listserv
After you join, you can post questions, comments, or any information that would be of interest to our members by sending a note to AT-IP@mail.abanet.org or if you wish to preserve anonymity, you may forward your note to Ed Biester at EGBiester@duanemorris.com and the item will be posted. We believe that it is particularly helpful to inform our members about new matters (enforcement actions, court decisions, speeches, press releases, and news articles) relating to antitrust and intellectual property by simply sending a note to AT-IP@mail.abanet.org with the matter described in the subject line and a hyperlink to where the matter can be located on the internet.

Articles
You may send us any articles that you believe should be published in our electronic newsletter. For our electronic newsletter, timely succinct analysis is more important than detailed academic review. For example, a concise article (2-10 pages) simply explaining the administrative complaint and providing a little background on recent enforcement initiatives would be most valuable if it could be promptly distributed after the administrative complaint. You can even contact EGBlester@duanemorris.com before you write anything and describe what you would like to prepare and the expected timeframe (ideally completed within a few days of the event).

**Intellectual Property Committee Website**
The Intellectual Property Committee Website starts with the Mission of the Committee. The Intellectual Property Committee’s website also has contact information for the Committee Leadership; information on past and future Programs; descriptions of Committee Publications; Committee Newsletters; and a large number of hyperlinks to Internet Resources relevant to antitrust and intellectual property.

AT-IP Report is the electronic Newsletter of the Intellectual Property Committee of the American Bar Association, Section of Antitrust Law. The views expressed in the AT-IP Report are the authors’ only and not necessarily those of the ABA, the Section of Antitrust Law or the Intellectual Property Committee. If you wish to comment on the content of this Electronic Newsletter, please write to the ABA, Section of Antitrust Law, Attention: Intellectual Property Committee, 750 North Lake Shore Drive, Chicago, Illinois 60611. Copyright 2003 American Bar Association.