Caviar detection kits; remote optical markers; automated collection boxes; and spaceship bungee cords: these are all inventions patented by museums. The DuPage Children’s Museum in Naperville, Illinois invented an airflow device to blow dollar-bill donations through tubes into a collection box. The American Museum of Natural History in New York had once patented a genetic method for detecting twenty-seven species of sturgeon to give dealers something more than smell and texture to identify incoming shipments of roe. Last New Year’s Eve, the Bloomfield Science Museum Jerusalem in Israel was awarded a U.S. patent on a new photosensitive liquid useful for optically marking objects. The Smithsonian Institution in Washington, D.C., received its first U.S. patent on a novel system for conducting space experiments. Their patent offered astronauts “new opportunities to explore the upper atmosphere on a continuous basis” using a tether tied to spaceships in order to address needs unknown before the Space Shuttle.

Caviar detection kits; remote optical markers; automated collection boxes; and spaceship bungee cords: these are all inventions patented by museums. The DuPage Children’s Museum in Naperville, Illinois invented an airflow device to blow dollar-bill donations through tubes into a collection box. The American Museum of Natural History in New York had once patented a genetic method for detecting twenty-seven species of sturgeon to give dealers something more than smell and texture to identify incoming shipments of roe. Last New Year’s Eve, the Bloomfield Science Museum Jerusalem in Israel was awarded a U.S. patent on a new photosensitive liquid useful for optically marking objects. The Smithsonian Institution in Washington, D.C., received its first U.S. patent on a novel system for conducting space experiments. Their patent offered astronauts “new opportunities to explore the upper atmosphere on a continuous basis” using a tether tied to spaceships in order to address needs unknown before the Space Shuttle.

Malcolm News & Activities

Museums & Technology Brown Bag (Webinar) | June 26, 2014

An exploration of legal issues in Museums and the Arts as institutions and artists integrate new technologies into back of house operations and the visitor experience.

Copyright Licensing Legal Lab (Webinar) | July 17, 2014

Working with Registrars Committee Professional Network of AAM, MALC is co-hosting this session on the fundamentals of copyright licensing.

Art & Scientific Evidence: Criminal Investigation & Authentication (Conference) | August 5, 2014

Co-Sponsored with Scientific Evidence Committee this program will explore forensic & scientific evidence in the context of art authentication in criminal investigation and prosecution of art crimes.

Inside This Issue

1 Make Patents Part of Your Permanent Collection, p. 1-4
2 MALC News & Activities
3 In the News, p. 2, 4, and 5.
4 About Us | Get Involved
5 Upcoming Events

The Museums & The Arts Committee is part of the American Bar Association’s Section of Science & Technology Law. Provenance aims to provide news and thoughtful, brief discussion on legal topics relevant to museology and the arts.
In fourteen hundred and ninety-two...

Barry Clifford, known for underwater exploration of archaeological sites, believes he has found the Santa Maria, lost flagship of Christopher Columbus's fleet during his expedition to find a passage to Asia. Clifford's belief that this is the Santa Maria is based on previous findings that describe a land structure built close to where the ship was last seen as well as on information from Columbus's own diary. Read more here.

Close, but no Renoir

Even at a young age, Pei-Shen Qian showed an ability to draw replicas of early Chinese art. Qian moved to New York City as an art student in the 1980s and in a scene familiar to New York streets, Qian set up a station alongside other artists to paint and to sell portraits. A man, now known as Jose Carlos, offered Qian a larger sum of money to replicate a masterpiece by a well-known artist. Qian may not have known then that continuing to recreate such works, sold for profit by Carlos and his brother, Jesus Angel Bergantinos Diaz, would involve him in one of New York's biggest art scandals. John Howard purchased one of Qian's forgeries for $4M from the Knoedler gallery, a well-known and respected institution. He and several others are now suing the gallery and related parties for the fraud. In early interviews, Qian claimed that he never intended his works to be passed as the original artists' works. However, the recently unsealed indictment alleges Qian had knowledge and knowingly participated with Carlos, his brother Bergatinos Diaz and art dealer Glafira Rosales. In 2013, Rosales pled guilty to various crimes related to the selling of the works. Read more here and here.
to authors and inventors the exclusive right to their respective writings and discoveries." This Clause is the genesis of today’s United States patent laws and its copyright laws.

In terms of intellectual property and today’s operations of museums, it is that federally-conferred copyright, along with state trademark and contract laws, that largely defines the relevant legal framework. Copyright and trademarks go hand-in-hand with legal issues relating to digitization and archiving, music and imaging licensing, authorship, ownership, and the transfer of artifacts and artworks. The legal concepts of traditional knowledge and geographic indications help protect the goodwill and reputation of indigenous communities as well as their local resources and cultural practices. The application of these intellectual property laws helps to protect works produced by those individuals and communities that our museums wish to use to educate and preserve.

Trademarks and copyright are critical for protecting a museum’s brand and identity, but patent law may offer a museum more direct opportunities to identify and protect its own innovations. A patent portfolio can help museums compete, promote the progress of science, and… generate money. Patents are, after all, the currency of commerce. The U.S Department of Commerce two years ago released their “Intellectual Property and the U.S. Economy: Industries in Focus” report that found that “[t]he entire U.S. economy relies on some form of [intellectual property], because virtually every industry either produces or uses it.” The authors stressed that “[s]trong and sustained economic growth results from several factors, but among the most important is innovation, ‘the process by which individuals and organizations generate new ideas and put them into practice’ and create ‘new and better ways of producing goods and services’.” AAM’s Facts page notes that museums directly contribute $21 billion to the U.S. economy each year, and that 3.2 percent of the nation’s entire economy, or $502 billion, lies in the arts and cultural production. It is unclear to what extent, if at all, patents and patent licensing could be used to further buttress such revenues in the commercial reality of museum business.

Committee encourages its attorney members to work with their clients (arts organizations and other cultural institutions) to turn their attention to producing written policies for their employees and volunteers on internet and digital technology uses; to consider trainings for employees and volunteers on proper usage of the internet and digital technologies on the institution’s behalf; and to monitor their online presence more closely in order to catch potential issues before they become problematic.

This article did not discuss the entirety of the survey results and there are many other findings which our audience may find interesting. We encourage you to check out the survey and the full report here to find out more on how arts organizations are using and dealing with the internet and digital technologies, including topics on funding and specifics on social media platforms used and web trafficking.

Aside from commercialization, patents are also a convenient metric by which to record innovation. They can be easily listed and documented, and, if the applications are granted, provide 20 years of exclusivity stemming from the application’s filing date. But the quid pro quo to exclusivity is the advancement of science by virtue of disclosing in detail to the public how to make and use the patented invention. Accordingly, a patent’s specification is a rich source of scientific literature, which may go unnoticed and unrealized in the shadow of the granted monopoly.

The aforementioned application filing date marks a critical moment in time under today’s new patent laws. The Leahy-Smith America Invents Act replaced what used to be the “first-to-invent” concept with a “first-to-file” requirement. So now, generally speaking, whoever first files a patent application with the United States Patent and Trademark Office now officially “wins” the priority date of invention. It is therefore necessary for museums to strategically and routinely evaluate their research activities and be able to identify when a technology or process is sufficiently advanced that it may be beneficial to file at least a “provisional” patent application to secure a priority filing date.

(Patents, Cont. from p. 2)
In certain situations, patents can also be useful in securing tax credits and tax deductions for costs and expenses associated with patenting research activities. The Qualified Research component of the Research & Experimentation Tax Credit of the Internal Revenue Code (which expired last December but should be renewed this year) is complex, as are the various accounting procedures for valuing intangible assets. However, these are important potential benefits that should be evaluated in every patent portfolio.

Another benefit of patents is the generation of goodwill. Patent donations, patent pools, and dedication to the public, are some ways in which the intellectual property monopoly is dissipated. Since intellectual property is personal property, it is the patent owner who decides whether or not to enforce its rights. And, often times, sharing for nominal fee, or for no fee at all, or in exchange for a cross-license with someone else’s patent, may generate collaboration and goodwill among peers. Commercial exploitation does not necessarily have to follow, but recognition, public dissemination, and advancement of science are inherently free and required aspects of our patent system.

Along those lines, Boston’s Museum of Science has an interesting and welcome initiative to help bridge the gap between a museum’s traditional objectives, commerce, and raising awareness: for the past three years the Museum has partnered with the Boston Patent Law Association to create “Invented Here!” – an initiative that recognizes and rewards New England’s “newest and most innovative technologies.” Recent awardees include inventors of digital pulse recognition systems, real-time imaging, and bone stabilizing materials. This is a refreshing way in which a museum is firmly embedded in innovative aspects of the public, research, and legal communities.

Boston’s Museum of Science is only one of over 17,500 museums AAM estimates to exist in the U.S. It would be important to understand what role, if any, patents have among them. This is why the American Bar Association’s Museum & the Arts Law Committee created the Patents in Museum and Arts Working Group to better explore these issues. I am the chair of that Working Group and we would like to hear from museum staff, researchers, and executives about their interests and concerns with the patent system and whether it can be exploited for business and innovation without undermining the traditional objectives of the museum. We would especially like to hear from science museums and museums with strong research facilities and those who partner with universities and others to conduct museum-related research.

Interestingly, the word “museum” is derived from the Greek Mouseion – a temple dedicated to those patron goddesses of the arts – the Muses. The Mouseion or Musaeum in Alexandria, Egypt, originally built over two thousand years ago, was an institution that brought together researchers and philosophers and scholars from various fields to study, conduct research and to explore and advance their disciplines. There is something symbolic in Finley’s rescue of the Old Patent Office Building and repurposing it as a gallery: it inherently reflects the union of innovation and art. Conversely, the goal of our Working Group is to determine to what extent, if any, do our modern-day mouseions house hidden patents waiting to be uncovered and put to work advancing the business of our country’s museums.

**In the News**

**Museums Advance in Story Telling Techniques**

Museums are continuing to look for ways to increase patron numbers and to engage visitors during their museum experience. While audio and video tours may keep the attention of older audiences, museums are also looking for ways to enhance the visitor experience for all ages in an increasingly digital environment. The British Museum has had great success using augmented reality and a tablet application in which the visitor follows a story through the museum by finding clues to the next statue or exhibit. The Chess project, short for Cultural Heritage Experiences through Socio-personal interactions and Story-telling, is funded by the EU and is the next step in the evolution of the museum experience. Based on visitor surveys and studies, the project “matches visitors to predetermined personas” and the experience continues to adapt to the visitor’s preference, even taking into account how much time visitors spend at any given work or exhibit. [http://tinyurl.com/p2w7gxa](http://tinyurl.com/p2w7gxa)
About Us

The Museum and Arts Committee is within the Section of Science & Technology Law, one of 22 sections within the American Bar Association. http://tinyurl.com/scitechmac010

Our committee undertakes a variety of projects related to all types of museums and all types of art that are being affected by new developments. Naturally, this requires an appreciation for how those institutions and communities function in general. The Committee thus welcomes active participation from those involved in museums or the arts. In addition to attorneys and law students, membership is also open to non-attorneys who may join as Associates at: http://tinyurl.com/scitechmac011

Current projects the Committee is exploring include authenticating artwork, collecting digital forms of art, digitization for archival and commercial purposes, and copyright issues in ownership, derivative use, and online distribution.

In the News

Technology sheds more light on Egyptian mummies' lives

Scientists and archaeologists at the British Museum and other museums around the world have been using X-rays to study mummies in their collection since the 1960s. However, with CT scanners, museum professionals are now able to achieve more detailed images of the mummies and their possessions. Scientists even discovered an embalmer's tool remaining in one of the mummy's skulls. Through these detailed images, scientists were able observe amulets adorning a female's body as well as plaque in her arteries without disturbing or opening the casket. Using additional technology, this month the British Museum will display the mummies with “three dimensional images of their insides and 3-D replicas of some of the items buried with them” to provide more insight into these individuals during their lives. http://tinyurl.com/pndfnxp
Upcoming Events

MALC EVENTS

Museums & Technology Brown Bag (Webinar) | June 26, 2014 (Time TBD)
Science & Technology Section, American Bar Association

Exploration of legal issues as museum and arts organizations integrate new technologies into back of house operations and the visitor experience. As new immersive exhibitions and comprehensive customer management platforms become increasingly common new legal considerations in areas of privacy, employment and intellectual property, and more are increasingly relevant.

Copyright Licensing Legal Lab: Giving and Receiving (Webinar) | July 17, 2014 1:30-3:00 P.M. EST
American Alliance of Museum, Alliance Registrar’s Professional Network

The Museum and Arts Law Committee and the Registrars Committee Professional Network (RC) of the American Alliance of Museums are joining forces to co-host a webinar on the fundamentals of copyright licensing. Whether you are granting or receiving image, media or content licenses this 90-minute webinar will address the top ten must-have’s in your copyright license. We will present practical, real life licensing examples to demonstrate the legal significance and importance of each stage of the copyright license. Additionally, attorneys with expert experience in this area will participate in the webinar to provide legal insights into common licensing questions, as well as some of the more uncommon ones.

Art & Scientific Evidence: Criminal Investigation & Authentication
August 8, 2014, 3:30-4:45 P.M. EST Boston, MA

Boston is the unfortunate location of one of the world’s most notorious art theft crimes: the Rembrandt, Vermeer and Degas thefts from the Isabella Stewart Gardner Museum. The paintings have never been recovered, but the story remains strong in the hearts and minds of the art and legal community. This panel will address some of the new scientific evidence methods and techniques that have developed in recent years and how they have been applied in the art and museum world to authenticate art, identify forgeries, and litigate art crime cases.
http://tinyurl.com/m7sthcv

Beyond MALC

Association for Research into Crime Against Art (ARCA)’s 6TH Annual Interdisciplinary Art Crime Conference, June 27 – 29, 2014 | Amelia, Terni, Italy

This year’s speakers will include professors, attorneys and law enforcement from around the world and will cover topics such as protection of art and ownership rights, remedies, and collection practices.
http://tinyurl.com/ke6qo9f

Seventh International Conference on the Inclusive Museum “Shared Visions and Share Histories”
August 4-6, 2014 | Los Angeles, CA

Through a series of speakers, this event focuses on the evolving role of museums in the ever changing social climate. The conference is still accepting abstracts for presentation. http://onmuseums.com/the-conference