

2018 Phoenix Issues

The Naples Roundtable

Phoenix Issue I.

Has the AIA strengthened the patent system and decreased the cost of removing invalid patents? Has AIA gone far enough? What can and should be done to improve the process?

Phoenix Issue II.

Is the existence of the IPR and PGR procedures beneficial to the strength of the patent system and if they are held by the Supreme Court to be unconstitutional in *Oil States vs. Greene's Energy Group* then what is the impact and what if anything should be done to replace these procedures?

Phoenix Issue III.

Is the current level of implementation of Section 101 supportive of having a strong patent system or has it gone too far? If it should be changed then what judicial and legislative actions regarding patent eligibility under Section 101 would best serve the patent system?

Phoenix Issue IV.

How best should venue issues be determined following the Supreme Court's recent decision in *TC Heartland v. Kraft*?

Phoenix Issue V.

What are the economic and legal consequences (both in the U.S. and internationally) of the Supreme Court's recent decision in *Impression Products v. Lexmark*, and what, if any, judicial or legislative action is needed to best address those consequences?

Phoenix Issue VI.

What actions, if any, are needed to protect the U.S. patent system and U.S. patent holders in light of Brexit and ongoing developments relating to a European Unitary Patent/Unified Patent Court?

Phoenix Issue VII.

To what extent is the patent system well-served by the extra-territorial enforcement of unfair competition and intellectual property laws?

Phoenix Issue VIII.

What more needs to be done following the Supreme Court's decision in *Halo v. Pulse Electronics* to properly determine whether a case is sufficiently egregious to warrant an award of enhanced damages? Has *Halo* resurrected the need to obtain an opinion of counsel, and if so, should that need be restricted to a subset of cases?

Phoenix Issue IX.

Has the Supreme Court's decision in *Octane Fitness v. Icon Health* adequately addressed the award of attorney fees in exceptional cases?

Phoenix Issue X.

Would an exchange of an early set of Patent Damage Contentions, such as now provided for in the NDCA, aid in settling litigation and making proportionality determinations?