

2021 Phoenix Issues

Phoenix Issue I. Alice and Mayo -- What issues are amenable to dispositive motion versus those that should go to trial (or an evidentiary hearing) to fully consider the relevant facts; and should these issues go to the jury? Section 101 after *Cardionet*, *Uniloc*, *American Axle v Neapco*. What can and should the Federal Circuit do to offer guidance to applicants and litigants for the future?

Phoenix Issue II. Does the current US Patent System meet its primary objectives of encouraging innovation and competition?

- Is the current System providing a sufficient incentive for capital-intensive R&D to take place in the United States?
- Have uncertainties in the System negatively impacted the willingness of Venture Capitalists to invest?
- Does the current System incentivize investment in the advanced diagnostics, vaccines and products we will need for the *next* pandemic?
- Has the current system created any barriers to addressing the current pandemic?
- Does the current System provide adequate protection for AI developments and biopharmaceutical drug developments?
- What major changes are needed to meet these objectives?

Phoenix Issue III. Suppose that you were given the challenge to simplify and streamline U.S. patent law and practice, with the objective of enhancing predictability and certainty, reducing costs, and speeding determinations of patentability and liability for patent infringement. Further assume making such simplifying and streamlining changes was absolutely essential for patent rights to operate as effective property rights, in order for the U.S. patent law to fulfill its constitutional mandate to promote progress in useful arts. Thus, there would be no reason to be timid about proposing needed reforms. Finally, assume that there were no “givens” in terms of what you would need to maintain from the current patent laws in a new simplified, streamlined patent act. *Put another way, knowing what we now know, what would a “fresh start” patent law look like?*

Phoenix Issue IV. Antitrust – Patent Interface and Conflict in view of *FTC v. Qualcomm*: How has this case impacted the developing area of law surrounding antitrust and SEPs? Should FRAND disputes focus on the antitrust laws? Is a “no license, no chips” policy better characterizes as a “no license, no problem” policy? Are fair licensing policies simply contract disputes?

Phoenix Issue V. What laws/causes of action/outcomes can litigants and courts use to decrease nuisance lawsuits? Does the system have control over frivolous litigation? Are there ways to more meaningfully focus discovery to reduce litigation cost and duration? Are amendments to the Fed. R. Civ.

P. necessary (e.g., pleading standards) or can courts adequately address frivolous litigation through Rule 11 and 12 motions?

Phoenix Issue VI. The future of SEP litigation – Should whichever country decides the rate first be controlling (Unwired v. Huawei (UK Supreme Court sets global FRAND rate))? Are FRAND rates really a global issue? Has Germany Solved the Dilemma of Balancing Interests in Licensing of SEPs?

Phoenix Issue VII. Should Patent Injunction Standards be Revised to make it easier to obtain an injunction? Is Germany moving in the direction of making it harder to obtain injunctions in its Patent Modernization Law? Where is the proper balance to encourage innovation and competition?

Phoenix Issue VIII. Cross-border disputes and multinational litigation: Issues pertaining to strategic use of international post-grant proceedings, harmonization, discovery disputes, and global settlement/licensing.

Phoenix Issue IX. The PTAB Playing Field – Impact of the Recent Changes