



U.S. PATENT TERMS MAY BE EXTENDABLE

The recently decided case of *Exelixis v. Kappos* held that the USPTO has been erring in the manner that it calculates patent term adjustments that extend the life of certain patents. The adjustments in question arise out of rules that were promulgated in connection with a change in U.S. law several years ago. One of the rules calls for a day-for-day extension for delay attributable to the USPTO in cases that have been pending at least 3 years. However, the USPTO did not count any days in that post 3-year window if a Request for Continued Examination was filed. Exelixis successfully sued the Director of the USPTO, Davis Kappos, in federal district court to challenge this practice. A copy of the decision can be found [here](#). What does this mean for other patent holders? Many things, chief among them being that some very valuable patents may be entitled to term extensions so long as a well-drafted petition is timely submitted to the USPTO. We welcome the opportunity to discuss how this recent development may increase the term of patents in your patent portfolio.

A DIFFERENT TAKE ON THE ROLE OF PATENTS

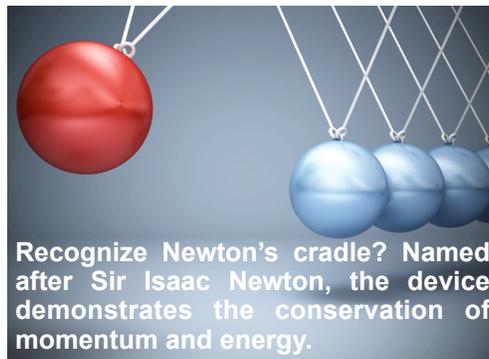
The October 7, 2012 issue of The New York Times published an article lamenting the problems of Michael Phillips of Vlingo, who labored for three decades on software to allow computers to understand human speech, only to find himself the defendant in a patent infringement action. The article posited that the patent system is so flawed that it often stymies innovation. While the system is far from perfect, Phillips did not take advantage of it by obtaining his own patents. A better example of proper use of the patent system is Dean Kamen, the inventor of the Segway. Kamen became successful by patenting his ideas, while Phillips worked in secret. The chief benefit of patenting is disclosure of the technology to all, which encourages others to invent improvements or design around it. Thus, Kamen did not only further his own goals in the course of protecting his inventions but also society as well. The IP Hall of Fame, sponsored by IAM magazine, was founded in an attempt to educate the public as to the value of the patent system. See www.iphalloffame.com for more information.

NEWS, MEDIA, AND UPDATES:

[David Leason](#) was quoted extensively in an article titled "The Pros and Cons of Patents" in 914INC., a business publication of Westchester Magazine. According to David, patent protection is tantamount to a monopoly, a legal barring of all competitors from taking a part of your market. David also pointed out that the deterrent value of patents to potential competitors is immeasurable. The article is available online at the following link: <http://goo.gl/iFaYI>.

[Peter Sloane](#) moderated a panel titled "Initiatives to Address Trademark Bullying" at the Intellectual Property Law Section Fall Meeting of the New York State Bar Association. The speakers on the panel were Susan Douglass of Fross Zelnick Lehrman & Zissu, PC and Erik Pelton of Erik M. Pelton & Associates.

[Marty Schwimmer](#) appeared again on CNBC's Squawk Box (Asia) program recently. According to Marty, China is the new front line for patent wars. The segment can be seen at the following link: bit.ly/PLxsmV.



Recognize Newton's cradle? Named after Sir Isaac Newton, the device demonstrates the conservation of momentum and energy.

[Leason Ellis](#) is now a member of the International Biopharmaceutical Enterprises Strategic Alliance (IBESA) with Wuhan National Bio-industry Base (Biolake) in Wuhan, China. IBESA plans to build an international alliance which covers the full biopharmaceutical industry chain from the early state of drug development through to commercialization. Biolake is a state level bio-industry zone which strives to provide first class incubation and industrialization facilities as well as supporting services to domestic and international companies. More information about IBESA and Biolake is available at www.biolake.org.

[Rachel Weiss](#) and [Jonathan Thomas](#) have joined Leason Ellis as Associates. [Rachel](#) is a trademark and copyright attorney who counsels clients regarding all aspects of clearance, prosecution, enforcement, and portfolio management in the U.S. as well as internationally. Rachel is a graduate of Brooklyn Law School and Cornell University. [Jonathan](#) is a litigator whose practice involves resolving a variety of intellectual property and business disputes in state and federal court. Jonathan received his J.D. from The Ohio State University College of Law, graduating *cum laude*, and his B.A. from the University of Kentucky, graduating *magna cum laude*.

