KILPATRICK TOWNSEND

5 KEY TAKEAWAYS

Trademark Prosecution & Case Law Updates

At the 2019 Atlanta Kilpatrick Townsend Intellectual Property Seminar (KTIPS), **Ted Davis** and co-presenter **Maria Baratta** discussed recent trademark prosecution and case law updates

Key takeaways from the presentation include:

1. The Supreme Court's interest in patent issues now apparently extends to those in trademark cases, as the Court currently has before it two such disputes, namely, *In re Brunetti,* 877 F.3d 1330 (Fed. Cir. 2017) *cert. granted sub nom. Iancu v. Brunetti,* 139 S. Ct. 782 (2019), and *In re Tempnology,* LLC, 879 F.3d 389 (1st Cir.), *cert. granted in part sub nom. Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 397 (2018).

2. The proper relationship between trademark law and the First Amendment proved fertile ground for litigation in cases in addition to *Brunetti*.

3. Although two sections of the Lanham Act provide that a registration on the Principal Register that has not yet become incontestable is "prima facie evidence" of the validity of the underlying mark, courts continued to differ as to whether that evidence results in a shift in the burden of proof on the issue or just the burden of production.

4. Courts also continued to be far more receptive than the Trademark Trial and Appeal Board to claims that registrations had been fraudulently procured or maintained.

5. Unusually, the past year produced three opinions arising from enforcement actions by the International Trade Commission (two) and the Federal Trade Commission (one).

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