

IU Calendar

Event Information		Maurer : All Events (Public) IUB
Title:	IP Colloquium with Sarah Burstein	
Sharing:	Public	
Start Time:	Thursday, September 14, 2017 1:15 PM	
End Time:	Thursday, September 14, 2017 3:15 PM	
Location:	Law School Room 216	
Contact:	Casey Nemecek	
Free/Busy:	busy	

Sarah Burnstein will be presenting “*The “Article of Manufacture” Today*” as part of Professor Mark Janis’ IP Colloquium in Room 216. 2 hours Indiana CLE credit pending.

Abstract:

In *Samsung v. Apple*, the Court ruled that the relevant “article of manufacture”—the thing for which the infringer’s “total profits” must be disgorged under 35 U.S.C. §289—can sometimes be a component of the defendant’s product. In doing so, the Court rejected the Federal Circuit’s determination that the relevant article was whatever the defendant “sold separately . . . to ordinary purchasers.” However, the Court declined to provide any guidance, let alone a test, for how factfinders should determine what constitutes the relevant article of manufacture.

In the briefing before the Supreme Court, the parties and amici proposed several different tests for determining what constitutes the relevant article of manufacture. These arguments, however, largely ignored the fact that, when Congress enacted the predecessor to §289 in 1887, this phrase was a term of art in U.S. patent law. It was considered to be a synonym for the word “manufacture” in the utility patent statutory subject matter provision. Both “manufacture” and “article of manufacture” were understood to refer to a tangible item—other than a machine or composition of matter—with a unitary structure made by humans and complete in itself for use or for sale. The fact that an item was manufactured separately was generally enough to show that it could be used or sold separately.

Description:

This Article argues that courts should adopt the original meaning of “article of manufacture.” Not because it was the original meaning but because it provides a workable solution that would be easier and cheaper to apply than the other tests that have been previously proposed. It would also minimize the in terrorem value of partial design patents and result in more defensible damages awards that more accurately capture the inventor’s actual contribution without providing too great of a windfall to most patentees.

Bio:

Sarah Burstein is an Associate Professor of Law at the University of Oklahoma College of Law and a recognized expert in design patent law. Prior to joining the faculty at OU, Professor Burstein clerked for the Honorable Robert W. Pratt in the United States District Court for the Southern District of Iowa and worked as an intellectual property litigation associate in the Chicago office of Kirkland & Ellis LLP. Professor Burstein has a law degree from the University of Chicago and B.A. in Art & Design from Iowa State University.

from Iowa State University.

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