The Global Fellows Series — Bridging the IP Gap Between the US and Europe (Washington, DC Program)

- **Day 1** (Tuesday, September 11)
  - **Morning**
    - Welcoming remarks
      - Terence Stewart (President, FCBA)
    - Overview of Global Fellows program
      - James Brookshire (Executive Director, FCBA)
      - Nicholas Groombridge (Partner, Paul, Weiss, Rifkind, Wharton & Garrison)
    - Discussion of the Executive branch functions in the US patent system
      - Sharon Barner, Esq. (former Deputy Undersecretary of Commerce for Intellectual Property at the USPTO and now General Counsel of Cummins Inc.)
    - Discussion of the role of the patent system in promoting innovation
      - Daniel McCurdy (CEO, Allied Security Trust)
  - **Afternoon**
    - Basics of fact pattern
      - Plaintiff (“Braun”) - German medical device company; innovator and market leader; sells system for use in hernia repair surgery; substantial sales in US and Europe.
      - Defendant (“Wiggins”) - US medical device company; newcomer to the market; selling similar but improved product; taking significant market share from Braun.
      - Braun holds patents in the US and Europe; it wishes to develop a transnational patent enforcement strategy.
      - The fact pattern involves issues of claim construction, lack of novelty, remedies (Braun’s main objective is an injunction) and FRAND or standards-essential patents.
    - Discussion of US and European Patent Litigation Systems
      - Essence of civil v common law systems
      - Overview of court hierarchy and jurisdiction
        - US system
          - District courts
          - Federal Circuit
          - Supreme Court
        - German system
          - Landgericht, Oberlandesgericht
          - Bundespatentgericht
          - Bundesgerichtshof
        - Other major European jurisdictions
          - UK
          - Netherlands
          - France, Italy, Belgium, Spain
        - Effect of bifurcating validity and infringement
        - Single European patent court
      - Practical considerations
        - Timing
        - Cost
        - Cost shifting
    - Access to courts, choice of forum, choice of jurisdiction
    - Structure and specialization of profession
    - Pros and cons of each system
• **Day 2** (Wednesday, September 12)
  o Morning
    ▪ Discussion of the Judicial branch functions in the US patent system
    ▪ Visit to Federal Circuit and meeting with Chief Judge Rader
    ▪ Visit to Supreme Court and meeting with Justice Alito
  o Afternoon
    ▪ Evidence preservation and gathering
      • US discovery
      • E-discovery issues
      • Seizure/border seizures
      • Other evidence gathering procedures in Europe
      • Blocking statutes
      • Hague convention issues
      • Protective order issues
      • Privilege issues
      • Practical problems that will confront Braun
    ▪ Discussion of patent enforcement strategy for Braun
      • How can Braun accomplish its worldwide goals?
      • Where should it file?
      • What relief can it obtain?
      • Shall Wiggins be put on notice with a warning letter?
      • How long will it take to reach resolution?
      • How will Wiggins respond?
  ▪ Introduction to mediation

• **Day 3** (Thursday, September 13)
  o Morning
    ▪ Discussion of the Legislative branch functions in the US patent system
      • Herbert Wamsley (Executive Director, Intellectual Property Owners Association)
      • Robert Stoll (former Commissioner of Patents and head of USPTO’s legislative staff; currently Partner, DrinkerBiddle)
    ▪ Visit to Rayburn House Office Building for meeting with senior congressional IP staff
  o Afternoon
    ▪ Relief
      • Availability and standards for interim relief
      • The German “protective letter”
      • Permanent relief
        o Standards for injunction
        o Damages
        o Recall and removal from distribution channels
      • Litigation costs; “value under dispute” concept
    ▪ Settlement
      • Mediation
      • Mock mediation in breakouts
    ▪ Appeals
      • Discussion of potential appellate issues
      • Demonstration argument

• **Day 4** (Friday, September 14)
  o Morning
Discussion on strengths and weaknesses of the US patent system from the standpoint of sophisticated users
- Natalie Bogdanos (Associate General Counsel, Memorial Sloan Kettering Cancer Center)
- Meredith Addy (partner, Steptoe & Johnson)
- Robert Hart (General Counsel, Ultrawave Labs)
- Bart Newland (Vice President and Chief IP Counsel, BiogenIdec)

Afternoon
- Appeals
  - Mock arguments
- Debrief and preview of issues for Munich session