

DIPLANEWS

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**Join us this Friday, November 18, 2011, at the Engineers Club of Dayton to hear Sarah Otte Graber, Esq., present a CLE seminar on IPIssues in China
Lunch from 11:30-12:15; Speaker 12:15-1:15**

DUES REMINDER

If you have not sent in your dues payment yet, please do so as soon as possible. If you have any questions, contact Treasurer Matt Molloy at Matthew.Molloy@dinsmore.com.

DIPLA WEBSITE UPDATE

The DIPLA website has a new face and is up and running now at <http://www.dipla.org>. Additional content is being added gradually.

NOVEMBER GUEST ARTICLE

The Last Words of Great Inventors

By BREANNE PARCELS
University of Dayton School of Law,
Juris Doctor Candidate, 2012

With the death of Steve Jobs on October 5, the patent world lost a prolific inventor who had more than 300 patents registered in his name. The day before his death, the USPTO issued Pat. No. [8,032,843](#), on the Mac OS X Dock, and several applications with him as the listed inventor are still pending. To read more, click [here](#).

According to the eulogy delivered by Jobs's sister at his memorial service on October 16, his last words were "[OH WOW. OH WOW. OH WOW.](#)"

As the *Wall Street Journal's* Christopher John Farley noted, famous inventors have a knack for poignant deathbed declarations.

Thomas Edison allegedly woke briefly from a coma to pronounce, "[It is very beautiful over there](#)" before he died October 18, 1931.

In honor of the 70th anniversary of the Wizard of Menlo Park's passing and the legacy of Jobs, here are some more quips and quotes from famous inventors in their last hours:

- As Alexander Graham Bell lay dying, his deaf wife reportedly whispered "Don't leave me." Bell responded by signing the word, "No."
- Although some joke that George Washington Carver's last words were, "All my life I worked for nothing but peanuts," more credible sources report his final statement was, "I think I'll sleep now."
- As Benjamin Franklin was in discomfort from respiratory distress, his daughter suggested that if he rolled on his side, he would be able to breathe easier. His response? "A dying man can do nothing easily."

As for practical concerns, what do you do as a patent attorney if your inventor dies while prosecution is pending, or even before the application is filed? Refer to [MPEP 409.01](#) and [37 C.F.R. § 1.422](#). Even though the American Invents Act overhauled most sections of the patent code, it left [35 U.S.C. § 117](#) intact on this point: "Legal representatives of deceased

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inventors and of those under legal incapacity may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor.” ▪

Secretary's practice pointer : Breanne's article brings to mind my personal experience of handling an inventor who decided to die before signing a declaration. [MPEP 409](#) and following do well explaining that the signature of the inventor's executor likely is the one you ultimately need or, if the inventor happens to be German, that the "heir-at-law" according to German law is the person who signs. See [MPEP 409.01\(d\)](#). Then comes the issue of how to fill out the right paperwork, a process *not* abundantly clear from the MPEP. It turns out that the procedure is relatively painless.

When submitting a declaration for an application that includes a dead inventor, first fill out a normal declaration form [PTO/SB/01](#) listing all inventors, *including the dead one*, and entering the last known address and citizenship of the dead inventor. For obvious reasons, the signature line for the dead inventor will be left blank. Then, append form [PTO/SB/02LR](#) to the declaration as a supplemental sheet. Form PTO/SB/02LR is filled out with the contact information and citizenship of the legal representative and is signed by the legal representative. Problems solved!

PATENT NEWS

Patent Commissioner Robert Stoll is stepping down at the end of 2011 after 29 years with the USPTO, according to an announcement made Nov. 2. Current Deputy Commissioner Margaret "Peggy" Focarino, who has 34 years experience, will take the helm in January. Click [here](#) to read the announcement.

TRADEMARK NEWS

The Occupy Wall Street movement has prompted a slew of applications for trademark protection of the three-words slogan and related

phrases the past few weeks. While many of the protestors may not be fans of capitalism, a few in the crowd view the movement as a marketing boon. As CNN reported: "The goal of OWS is not to become a profitable business," said Tyler Combelic, an Occupy Wall Street spokesman. "Anything that misconstrues it as such, such as trademarking for the sake of profiting, is missing the point of protest." To read more, click [here](#).

COPYRIGHT NEWS

The Stop Piracy Online Act, introduced on Oct. 26 in the U.S. House of Representatives, has generated quite a bit of criticism on First Amendment grounds from groups such as the NetCoalition, Consumer Electronics Association, and the Computer & Communications Industry Association. The proposal would require Internet providers to engage in monitoring of cloud services and would effectively end some DMCA's "safe harbor" provisions. The bill is a companion to the PROTECT IP Act introduced earlier this year in the Senate. To read more, click [here](#) and [here](#).

UPCOMING EVENTS

Several nearby [Ohio State Bar Association CLEs and events](#) with IP-related topics are available:

- **Friday, December 2**, Dayton, Supreme Court Year in Review
- **Wednesday, December 14**, Dayton, Stress Management for Lawyers
- **Thursday, December 15**, Dublin, Legal Technology Conference

