



# Intellectual Property Law Section Newsletter

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## UPCOMING SECTION REMINDERS:

- **March 12, 2021  
11 a.m.  
Section Meeting  
Teleconference**

THE INTELLECTUAL  
PROPERTY LAW SECTION  
NEWSLETTER is an  
electronic publication of  
the Intellectual Property  
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The NEWSLETTER is  
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**Design/Production**  
Gretchen Lychuk  
State Bar of Nevada

## News and Notes from the Intellectual Property Section

### FEDERAL LEGISLATIVE UPDATES

#### SIGNIFICANT LEGISLATION AFFECTING IP OWNERS

#### TRADEMARKS – THE TRADEMARK MODERNIZATION ACT

- Restores the rebuttable presumption of irreparable harm when a Lanham Act violation has been proven, allowing brand owners to more easily obtain injunctions.
- Provides two new ex-parte post-registration proceedings to cancel unused trademarks, including proceedings to expunge or reexamine a registration for a trademark that either has never been used in commerce or was not used in commerce before a particular relevant date.
- Addresses Fraudulent Trademarks by codifying third parties' existing right to submit evidence during the examination of trademark applications, including evidence that the applicant is not actually using the mark in the claimed goods and services, and provides examiners more flexibility to extend deadlines and review the evidence.

#### COPYRIGHTS – THE COPYRIGHT ALTERNATIVE IN SMALL-CLAIMS ENFORCEMENT ACT (CASE ACT)

- Establishes a Copyright Claims Board within the Copyright Office to adjudicate disputes valued at under \$30,000; and
- Includes the Protecting Lawful Streaming Act, which gives the Department of Justice authority to bring felony charges against for-profit, digital streaming services that knowingly offer copyrighted works without permission.

#### SUPREME COURT CASES TO WATCH

- *U.S. v. Arthrex Inc.*: Appointments Clause – whether administrative patent judges of the USPTO are principal officers who must be appointed by the president with the Senate's advice and consent.
- *Minerva Surgical Inc. v. Hologic Inc.*: Assignor Estoppel – whether a defendant in a patent infringement action who assigned the patent, or is in privity with an assignor of the patent, may have a defense of invalidity heard on the merits.

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## PLEASE JOIN US!

NEXT INTELLECTUAL PROPERTY LAW  
SECTION MEETING

FRIDAY: MARCH 12, 2021 AT 11 A.M.  
Teleconference  
See agenda for teleconference information

## Intellectual Property Law Section Newsletter

### STATE BAR OF NEVADA RESOURCES

The following CLE programs are available on the State Bar of Nevada's website. Each program is \$45.00 and includes one CLE credit.

#### PROTECTING CLIENT INFORMATION DURING REMOTE LAWYERING

NEW! "Remote lawyering" is a concept that many attorneys are familiar with but likely few embraced until the COVID-19 pandemic shuttered our brick-and-mortar offices and found us writing briefs in our sweatpants. The pandemic prompted a swift change in how attorneys practice law, demanding a working familiarity with platforms like Zoom, Microsoft Teams and LogMeIn. Before COVID-19, about 20 percent of attorneys worked solely from home. After the pandemic, 88 percent of firms now offer remote access, 47 percent of attorneys report using their laptop as their primary workstation, 79 percent rely on the cloud to store client information and 67 percent offer electronic share-and-sign software in lieu of meeting clients in the office.

#### LAWFUL ESTABLISHMENT AND OPERATION OF CLIENT TRUST ACCOUNTS

NEW! This seminar focuses on setting up and properly managing trust accounts. Assistant Bar Counsels Phil Pattee and Bruce Hahn discuss the issues often seen by the state bar in disciplinary matters, including issues which attorneys routinely encounter involving their trust accounts. Common sense ways to manage trust funds and avoid common mistakes are also covered.

#### ADA WEBSITE COMPLIANCE: IS YOUR WEBSITE LAWSUIT PROOF?

NEW! This program addresses some of the most critical issues pertinent to website ADA compliance as stipulated by Section 508 of ADA. It is designed to help members and their clients to understand the significance and effects of increased accessibility and its relationship to the Americans with Disabilities Act (ADA). The class provides you with the data, tools and resources website owners need to not only understand the importance of making their websites and other digital products compliant with the Website Content Accessibility Guidelines (WCAG) but also aids them to be compliant.

# Thomas L. Jennings: 200<sup>th</sup> Anniversary of First African American Inventor to be Granted a Patent

By Cynthia Burham

March 3, 2021 marks the 200<sup>th</sup> anniversary of the first patent recognized to have been granted to an African American inventor. Thomas L. Jennings received U.S. Patent x3306 for a dry scouring process he developed in response to customer concerns about the difficulty in successfully removing grime from soiled clothing without damaging them. His process for removing stains from soiled clothing was the precursor to the dry-cleaning methods in use today.

Jennings was born free in New York City in 1791. He was apprenticed to a prominent tailor in his youth and established himself as a tailor, clothier, and business owner prior to developing his invention and applying for his patent. On at least one occasion, Jennings sued for infringement of his patent. He won this case before the New York City Marine Court. Jennings kept a copy of his patent letter in a gilded frame above his bed as evidence of his U.S. citizenship and in recognition of the benefits he derived from having patented his invention.



Jennings used the proceeds earned from his patented invention to purchase the freedom of his wife and eldest children. He became a community leader and founding member of the Abyssinian Baptist Church, Freedom's Journal (the nation's first recognized African American newspaper), and the Legal Rights Association, among others. He used proceeds from his invention to fund abolitionist causes and served as a representative at early National Conventions of the People of Color.

Jennings' children became respected community leaders through their pursuit of careers in dentistry, journalism, philanthropy, education, abolitionist causes, and women's rights. His youngest daughter (Elizabeth Jennings Graham) was an educator in New York City. After being forcibly removed from a street car in 1854, she was represented by Chester A. Arthur in a desegregation case (*Jennings v. Third Avenue Railroad*) before the Brooklyn Circuit Court. The court found in Graham's favor. She was awarded \$250 and the decision served as an early step toward desegregation of public transportation in New York City. Jennings founded the Legal Rights Association to assist his daughter and others in pursuing antidiscrimination cases.

## NOTE

Although U.S. patent law in force when Jennings received his patent did not mention ethnicity and free African American inventors were not prohibited from applying for and receiving patent protection for their inventions, many found filing and attorney's fees prohibitive and feared latent discrimination in the patent process. The inventions of enslaved African American inventors were not patentable at the time because the patent law required applicants to be citizens of a country and enslaved African Americans were not considered citizens of the United States.

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## SOURCES

A Bold Man of Color: Thomas L. Jennings and the Proceeds of a Patent, Jerry Mikorenda, The Gotham Center for New York City History, January 21, 2016. ([A Bold Man of Color: Thomas L. Jennings and the Proceeds of a Patent — The Gotham Center for New York City History](#))

The First African-American to Hold a Patent Invented 'Dry Scouring,' Emily Matchar, Smithsonian.com, February 27, 2019. ([The First African-American to Hold a Patent Invented 'Dry Scouring' | Innovation | Smithsonian Magazine](#))