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Licensing Executives Society Warns Supreme Court Decisions May Water Down U.S. Patent Laws

WASHINGTON, May 1 /PRNewswire-USNewswire/ — The president of the ***Licensing Executives Society (LES)*** today warned that the U.S. Supreme Court rulings yesterday regarding patent laws "may end up watering down the patent system to the point where it no longer serves the function intended to appropriately award innovation." Allen Baum, the president of ***LES***, which represents intellectual property licensing professionals, added, "Right now we have Congress, the Supreme Court, and the Patent Office all making changes to patent law in response to intense pressure from those who believe that patents have become too strong. The problem is there is no real coordination of efforts. With all of this change occurring simultaneously, we run the risk that the pendulum will swing too far and that instead of 'tweaking' the system, we will destroy the incentive for innovation." For example, he noted that patent laws don't distinguish between scientific categories of inventions. "The same obviousness test is used for drugs and software," Baum explained. "Will we inadvertently destroy the incentive to develop new medications in an effort to ensure inexpensive access to internet phone calls?" In its ruling, the Supreme Court addressed the leap from what is known to what is patentable — what would have been obvious from the prior work of others. In recognizing the challenge, the Court stated "In many fields there may be little discussion of obvious techniques or combinations and market demand, rather than scientific literature, may often drive design trends." The Court also provided new grounds for finding patent applications and issued patents obvious while observing the level of innovation necessary for obtaining patents. "We build and create by bringing to the tangible and palpable reality around us new works based on instinct, simple logic, ordinary inferences, and extraordinary ideas, and sometimes even genius," the Court said. "These advances, once part of our shared knowledge, define a new threshold from which innovation starts once more. And as progress beginning from higher levels of achievement is expected in the normal course, the results of ordinary innovation are not the subject of exclusive rights under the patent laws." In an extreme departure from prior law applied by the Patent Office, the Supreme Court stated that "...the fact that a combination was obvious to try might show that it was not entitled to patent protection..." The Court also commented that "Granting patent protection to advances that would occur in the ordinary course without real innovation retards progress and may, in the case of patents combining previously known elements, deprive prior inventions of their value or utility." This decision comes at a time when Congress recently introduced patent reform legislation in the House and Senate providing for post-grant opposition of patents as well as limitations on damages. The Supreme Court also recently issued decisions limiting the availability of injunctions in patent cases as well as giving patent licensees the ability to challenge patents while continuing to pay royalties under a patent license. The Patent Office is also expected to issue new rules substantially curtailing a patent applicant's number of "bites at the apple" in seeking patent protection. Available Topic Expert(s): For information on the listed expert(s), click appropriate link. Allen Baum <http://profnet.prnewswire.com/Subscriber/ExpertProfile.aspx?ei=61402>

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Highlights: Licensing Executives Society, LES