

## Q&A With Gray Plant's Laura Hein

*Tuesday, Nov 06, 2007* --- Given the present state of the law, it's not realistic to expect to develop a deep expertise in all areas of intellectual property, says Gray Plant's Laura Hein in our series of chats with high-profile IP lawyers.

### **Q. What's the most challenging IP case you've worked on, and why?**

A. Not to cop out on the question, but there really isn't a single case that I would define as the most challenging. Every case has its challenging aspects. The law is rarely crystal clear on any IP issue, the client's case might be weak, the judge (or opposing counsel) might be difficult to deal with, the client's resources might be strained — any or all of these can present a challenge in presenting the client's best case.

### **Q. What's the most ridiculous IP lawsuit you've defended a client against?**

A. I am currently defending trademark infringement claims involving a mark that my client has been using openly and extensively for more than 30 years. The plaintiff has known about my client's use for at least 15 years. It's a textbook case of laches, but that doesn't seem to have dampened the plaintiff's enthusiasm for its claims.

### **Q. Which aspects of IP law do you think are in need of reform, and why?**

A. In my view, continually expanding theories of trademark protection (e.g., anti-dilution statutes, initial interest confusion, very low standards of proof in the preliminary injunction phase) are reinforcing the notion that trademarks are property rights in gross, rather than identifiers of source. This makes litigation more likely and competition more difficult, especially for new market entrants.

### **Q. If you were the head of the USPTO, what changes would you make?**

A. It's a tall order, but I would strive to ensure consistency among examiners in their application of Sections 2(d) and 2(e).

### **Q. Where do you see the next wave of IP cases coming from?**

A. As I mentioned in my response above, continually expanding theories of trademark protection are reinforcing the notion that trademarks are property rights in gross, rather than identifiers of source, and I believe this will make

litigation more likely.

**Q. Outside your own firm, can you name one IP lawyer who's impressed you and tell us why?**

A. Chris Schulte at Merchant & Gould has great instincts, formidable technical skills and a refreshingly practical outlook.

**Q. What advice would you give to a young lawyer who's interested in getting into IP?**

A. I would advise him/her to choose patents OR choose trademarks/copyrights as the focus of his/her practice. It's not realistic, given the present state of the law, to expect to develop a deep expertise in ALL areas of intellectual property.

**Q. I'm a general counsel with a Fortune 500 company facing a major patent lawsuit. Why should I hire your firm?**

A. Gray Plant Mooty has deep legal expertise, but we never lose sight of what makes business sense for the client.

*Laura Hein is a principal at Gray Plant Mooty and co-chair of the firm's intellectual property and technology practice group.*