

# Innovation and Trade Law Update

Cowles & Thompson | January 2009

## Editor-in-Chief

J. F. (Jim) Chester, JD/LL.M.  
Cowles & Thompson PC-  
Dallas, Texas

## In This Issue

Siemens Penalized for Bribery  
PRO-IP Targets Counterfeiters  
Recent Export Penalty Actions  
Upcoming Seminars  
Sony Pays \$1M Penalty  
US-Colombia FTA  
USPTO Busy in 2008  
B and HTS Numbers for 2009



## By the Numbers

Behind every successful law firm you will find attorneys who love their profession, and Cowles & Thompson is no exception.

Our numbers speak for themselves. In business since 1978, we have worked with over 48 of the Fortune 100 companies (2006) as well as local middle-market companies. Our experience includes having handled more than 500 appellate matters and 20,000 litigation matters, over 2,000 business matters and more than 500 legal malpractice matters. Experience matters.

## Cowles & Thompson

Appellate  
Aviation

## International Business & Trade

### Siemens to Pay Historic \$1.6 Billion for Engaging in Worldwide Bribery

Siemens AG will pay a total of over \$1.6 billion to US and German authorities to settle charges that the Munich, Germany-based manufacturer of industrial and consumer products violated anti-bribery laws, including the U.S. Foreign Corrupt Practices Act (FCPA), by engaging in a systematic practice of paying bribes to foreign government officials to obtain business.

The SEC alleged that Siemens paid bribes on such widespread transactions as the design and construction of metro transit lines in Venezuela, power plants in Israel, and refineries in Mexico. Siemens also used bribes to obtain such business as developing mobile telephone networks in Bangladesh, national identity cards in Argentina, and medical devices in Vietnam, China, and Russia. According to the SEC's complaint, Siemens also paid kickbacks to Iraqi ministries in connection with sales of power stations and equipment to Iraq under the United Nations Oil for Food Program. Siemens earned more than \$1.1 billion in profits on these and several other transactions.

"Public companies that bribe foreign officials are confronting an increasingly well-coordinated international law enforcement effort," said SEC Chairman Christopher Cox. "The SEC has brought a record number of enforcement actions for foreign bribery during the past two years, and heightened international cooperation has been critical to those successful efforts. *Siemens paid staggering amounts of money to circumvent the rules and gain business. Now, they will pay for it with the largest settlement in the history of the Foreign Corrupt Practices Act since it became law in 1977.*"

Cheryl J. Scarboro, an Associate Director in the SEC's Division of Enforcement, said, "The day is past when multi-national corporations could regard illicit payments to foreign officials as simply another cost of doing business. *The \$1.6 billion in combined sanctions that Siemens will pay in the U.S. and Germany should make clear that these corrupt business practices will be rooted out wherever they take place, and the sanctions for them will be severe.*"

The misconduct involved employees at all levels, including former senior management, and revealed a corporate culture long at odds with the FCPA. The SEC's complaint alleges that despite the company's knowledge of bribery at two of its largest groups - Communications and Power Generation - the tone at the top at Siemens was inconsistent with an effective FCPA compliance program and created a corporate culture in which bribery was tolerated and even rewarded at the highest levels of the company. In November 2006, Siemens' current management began to implement reforms to the company's internal controls, which substantially reduced, but did not entirely eliminate, corrupt payments. All but \$27.5 million of the corrupt payments occurred before Nov. 15, 2006.

For questions regarding the FCPA or other trade laws, contact [Jim Chester](#).

Source: SEC

## Intellectual Property

### New PRO-IP Targets ® and © Counterfeiters

Congress recently passed the "Prioritizing Resources and Organization for Intellectual Property Act of 2008 ("PRO-IP") to combat copyright and trademark counterfeiting. PRO-IP, which was signed into law by President George W. Bush on October 13, 2008, beefs up current anti-counterfeiting laws by increasing civil and criminal penalties for counterfeiting, and also providing additional resources for federal agencies involved in stopping counterfeiters. While encompassing a broad range of counterfeiters in a number of industries, the new law is expected to have a particular impact on the sale of counterfeit drugs, software, movies and music.

Key elements of the new law include:

- Creates a cabinet-level post of "IP Czar," officially known as the "Intellectual Property Enforcement Coordinator" ("IPEC"), to oversee and manage the protection of the nation's intellectual property. The IPEC will be appointed by, and report directly to, the President.
- Provides for treble damages and attorneys fees in civil suits against counterfeiters.
- Doubles the statutory damages for trafficking in goods bearing counterfeit trademark, up to \$2 million for willful violations.
- Harmonizes and increases forfeiture provisions for both civil and criminal acts of counterfeiting.

Bankruptcy  
Commercial  
Construction  
Corporate  
Healthcare  
Hospitality & Lodging  
Insurance  
Intellectual Property  
Int'l Business & Trade  
Labor & Employment  
Public Law  
Negligence & Torts  
Oil & Gas  
Premises Liability  
Product Liability  
Professional Liability  
Real Estate  
Transportation  
Toxic Tort/ Environmental  
Estate Planning  
Worker's Compensation

- Increases the realm of the types of activities that would be considered "felony" criminal counterfeiting.
- Clarifies that a copyright need not be registered prior to initiation of a criminal action against an alleged counterfeiter.
- Prohibits the transshipment or exportation of counterfeit goods or services.
- Provides for additional resources to assist various agencies in investigating and combat counterfeiting.

As the PRO-IP bill meandered its way through Congress, it was the subject of significant controversy and friction between IP-owner groups and consumer groups and electronic freedom advocates. Although opposition from various groups ultimately resulted in the removal of several key provisions from PRO-IP by the time President Bush signed it into law, the impact of PRO-IP could be significant. Most likely, however, PRO-IP will be neither as successful, nor as apocalyptic as the various interests groups would assert. That said, PRO-IP signals an important declaration from the United States government regarding the importance of IP rights. In addition to providing additional financial incentives for private companies to haul counterfeiters into court, PRO-IP lays the organizational framework for a coordinated, structured assault on IP counterfeiters.

If you have questions regarding protecting or enforcing your trademark, copyright, or other IP rights, contact [Jim Chester](#).

Sources: *US Congress; Public Laws*

### **International Business & Trade**

## **Recent Export Penalty Actions from Commerce Department's Bureau of Industry and Security (BIS)**

### **Iowa-Based Company Settles Export Allegations on Crime Control Items**

Syrvet, Inc., a veterinary supply wholesaler based in Waukee, Iowa, has agreed to pay a \$250,000 civil penalty to settle allegations involving sixteen unlicensed exports of electric cattle prods, from the United States to Mexico, Chile, South Africa, Dominican Republic, Columbia and El Salvador in violation of the Export Administration Regulations. These items are listed on the Commerce Control List for crime control reasons. Syrvet and the BIS have agreed to suspend \$150,000 of the fine provided that no additional violations occur and payment of the remaining \$100,000 is made in accordance with the agreed upon payment schedule.

### **Houston Firm Settles Export Allegations related to the BIS Entity List and Iran**

Engineering Physics Software Inc., also known as COADE Inc., a provider of plant design and engineering software for the process industries, has agreed to pay a \$130,000 civil penalty to settle allegations that it exported certain software to Iran and to companies on the BIS Entity List, all in violation of the Export Administration Regulations.

"This case demonstrates the need for appropriate training and compliance procedures to address exports and reexports of U.S. goods, technology and software," said Mario Mancuso, the Under Secretary of Commerce for Industry and Security. "Implementing an effective compliance program can stop violations such as these before they occur."

The allegations involved 16 exports of software to Iran via the United Arab Emirates, and six exports of software to Indian and Pakistani end-users listed on BIS's Entity List. The United States government maintains a comprehensive embargo on Iran. The BIS Entity List maintains a listing of foreign end-users involved in proliferation activities that require a BIS Export License prior to shipment. The violations occurred between 2003 and 2006. The company voluntarily disclosed the violations and cooperated fully with the investigation.

### **Illinois-Based Manufacturer of Scientific Equipment Settles Charges of Export Violations**

Buehler Limited of Lake Bluff, Illinois has agreed to pay a \$200,000 civil penalty to settle allegations that it made 81 unlicensed exports of a lubricant containing Triethanolamine (TEA) in violation of the Export Administration Regulations. Buehler Limited is a global manufacturer of scientific equipment and supplies for use in materials research and analysis.

"Targeted and effective controls on materials that could be used in biological and chemical weapons are critical to preserving U.S. national security," said Mario Mancuso, the Under Secretary of Commerce for Industry and Security. "Companies should be mindful of the chemical make-up of their exports."

BIS alleged that between November 2001 and July 2006, Buehler Limited made 80 exports of a product called "Coolmet," a mixture containing TEA that is used as a lubricant with cutting tools, to various destinations including China, Hong Kong, Thailand, India, Brazil and Israel without the required BIS licenses. Additionally, on one occasion in August 2005, the company's German affiliate re-exported Coolmet from Germany to Iran without the required U.S. Government authorization. TEA is a Schedule 3 chemical precursor and is controlled for Chemical/Biological, Anti-Terrorism, and Chemical Weapons reasons.

Buehler Limited voluntarily disclosed the violations and cooperated fully in the investigation - otherwise, the penalties would likely have been much greater.

If you have questions regarding export compliance or other trade matters, contact [Jim Chester](#).

Source: *BIS*

## Upcoming Trade & Innovation Seminars

### Key Differences Between Domestic and International Contracts

Sponsor: Inst. Of Supply Chain Management- San Antonio  
Date: April 23, 2009  
Time: 6:00 pm - 8:00 pm  
Place: Petroleum Club of San Antonio  
Speaker: Jim Chester  
Contact: [Bob Wolfe](#)

### *Business Law*

## Sony BMG Music to Pay \$1 Million Penalty for Violating Children's Online Privacy Protection Act

Sony BMG Music Entertainment (Sony Music) has agreed to pay \$1 million as part of a settlement to resolve Federal Trade Commission charges that it violated the Children's Online Privacy Protection Act (COPPA) and the Commission's implementing Rule. The Commission's complaint alleges that, through its music fan Web sites, Sony Music improperly collected, maintained and disclosed personal information from thousands of children under the age of 13, without their parents' consent. The civil penalty to be paid by Sony Music matches the largest penalty ever in a COPPA case.

Sony BMG Music Entertainment, a subsidiary of Sony Corporation of America, represents hundreds of popular musicians and entertainers, including numerous artists popular with children and teenagers. The company operates over 1,000 Web sites for its musical artists and labels. Sony Music requires users to submit a broad range of personal information, together with date of birth, in order to register for these sites. On 196 of these sites, Sony Music knowingly collected personal information from at least 30,000 underage children without first obtaining their parents' consent, in violation of COPPA. Many of these sites also enable children to create personal fan pages, review artists' albums, upload photos or videos, post comments on message boards and in online forums, and engage in private messaging. In this way, children were able to interact with Sony Music fans of all ages, including adults.

"Sites with social networking features, like any Web sites, need to get parental consent before collecting kids' personal information," said FTC Chairman William E. Kovacic. "Sony Music is paying the penalty for falling down on its COPPA obligations."

COPPA prohibits unfair or deceptive acts or practices in connection with the collection, use, or disclosure of personally identifiable information from and about children under 13 on the Internet. The law requires operators to notify parents and obtain their consent before collecting, using, or disclosing children's personal information.

The FTC's complaint alleges that Sony Music violated COPPA by failing to provide sufficient notice on the Sony Music Web sites of what information the company collects online from children, how it uses such information, and its disclosure practices; failing to provide direct notice to parents of Sony Music's information practices; failing to obtain verifiable parental consent; and, failing to provide a reasonable means for parents to review the personal information collected from their children and to refuse to permit its further use or maintenance.

The FTC's complaint also charges Sony Music with violating Section 5 of the Federal Trade Commission Act by falsely stating in its privacy policy that users who indicate that they are under 13 on its Web site registration pages will be restricted from participating in Sony Music's web page activities. In fact, Sony Music accepted registrations from children who entered a date of birth indicating that they were under 13.

The Commission's consent order calls for Sony Music to pay a \$1 million civil penalty. In addition, the order specifically prohibits Sony Music from violating any provision of the Rule, and requires it to delete all personal information collected and maintained in violation of the Rule. The company is required to distribute the order and the FTC's "How to Comply with the Children's Online Privacy Protection Rule" to company personnel. The order also contains standard compliance, reporting, and record keeping provisions to help ensure the company abides by its terms.

To provide resources to parents and their children about children's privacy in general, and social networking sites in particular, the order requires Sony Music to link to certain FTC consumer education materials for the next five years. The company must include a link to the children's privacy section of the Commission's [www.ftc.gov](#) Web site on any site it operates that is subject to COPPA. In addition, Sony Music must include links to the social networking section of the Commission's [www.onguardonline.gov](#) web site on any of its sites that offer users the opportunity to create publicly viewable profiles.

If you have questions regarding federal regulations, privacy policies, or other trade laws, contact [Jim Chester](#).

Source: *FTC*

### ***International Business & Trade***

## **U.S.-Colombia FTA**

As of January 1, 2009, nearly 800 Days have passed since the U.S.-Colombia free trade agreement (FTA) was signed, and still awaits Congressional approval. Almost \$1.5 billion in tariffs have been imposed on U.S. exports to Colombia since the FTA was signed. The FTA would eliminate these tariffs. By contract, Colombian goods entering the US wer generally already duty free.

To keep track of the money lost by US exporters as each day passes before Congress ratifies the FTA, visit: <http://www.export.gov/fta/Colombia/index.asp?dName=Colombia>

If you have questions regarding trade agreements or other trade matters, contact [Jim Chester](#).

Source: *export.gov*

### ***International Business & Trade***

## **2009 Schedule B and HTS Numbers - Effective Date January 1, 2009**

Effective January 1, 2009, the Schedule B and Harmonized Tariff Schedule (HTS) tables in the AES were updated to accept the changes to the 2009 codes. AES will accept shipments with outdated 2008 codes during a grace period for 30 days beyond the expiration date of December 31, 2008. Reporting an outdated 2008 code after the 30 day grace period will result in a fatal error.

The 2009 Schedule B and HTS tables are available for downloading at: <http://www.census.gov/foreign-trade/aes/documentlibrary/index.html#concordance>

For further information or questions, contact the U.S. Census Bureau's AES Branch at 1-800-549-0595, menu option 1 or at [askaes@census.gov](mailto:askaes@census.gov).

If you have questions regarding HTS classification or other import or trade matters, contact [Jim Chester](#).

Source: *US Census Bureau*

### ***Intellectual Property***

## **USPTO Busy in 2008**

The U.S. Department of Commerce's United States Patent and Trademark Office (USPTO) recently released the USPTO's FY 2008 Performance and Accountability Report.

Some highlights include:

#### Patents

- Patents increased production by an additional 14 percent over FY 2007 by examining 448,003 applications- the highest number in history. Production has increased by 38.6 percent over the past four years, compared to a 21.3 percent increase in application filings during the same period.
- Patents received a record number of utility patent applications filed electronically (332,617), and achieved a record rate (72.1 percent) of applications filed electronically as well.
- Patents achieved an average first action pendency of 25.6 months and an average total pendency of 32.2 months.
- Patents received 1,765 patent application filings through the Accelerated Examination Program, 173 percent more than in the program's introductory year of FY 2007. A 12-month or less pendency rate was also maintained for every application, with an average time to final action or allowance of 186 days.

## Trademarks

- Trademarks ended its year with first action pendency at three months. Trademarks has maintained its first action pendency within the 2.5 to 3.5 month range for more than 18 months, a historic first. Disposal pendency was also maintained at record low levels, ending the year with 11.8 months pendency for cases without inter partes or suspended cases and at 13.9 months for all disposals. This disposal pendency is the lowest in 20 years.
- This year saw a record number of applications filed electronically--approximately 268,000 applications comprising 390,000 classes. This represented a record rate of filing; 96.9 percent of all applications were filed electronically.
- Quality remained high throughout the year with a first action compliance rate of 95.8 percent and a final action compliance rate of 97.2 percent. Both measures exceeded performance expectations.

Full results of the agency's progress can be found in USPTO's FY 2008 Performance and Accountability Report at <http://www.uspto.gov/web/offices/com/annual/2008/2008annualreport.pdf>.

If you have questions regarding protecting or enforcing your trademark, copyright, or other IP rights, contact [Jim Chester](#).

Source: USPTO

**Jim Chester | 214-672-2114 | [jchester@cowlesthompson.com](mailto:jchester@cowlesthompson.com)**

## **Cowles & Thompson**

Dallas Office: 901 Main Street Suite 4000 Dallas, TX 75202 214-672-2000  
Tyler Office: 100 East Ferguson Street Suite 1202 Tyler, TX 75902 903-596-9000  
[www.cowlesmarketing.com](http://www.cowlesmarketing.com)