

Philadelphia

Bar Reporter®

The Monthly Newspaper of the Philadelphia Bar Association

Vol. 39, No. 7

July 2010



Retired Federal Circuit Chief Judge Paul R. Michel addresses nearly 200 people at The Union League on June 8.

Nation's Economic Security at Risk, Retired Judge Says

By Kim R. Jessum

IN HIS FIRST PUBLIC APPEARANCE SINCE HIS RETIREMENT FROM the Federal Circuit, former Chief Judge Paul R. Michel spoke on June 8 to a packed room of members of the intellectual property bar about his plans to become an advocate for legal institutions.

Following an introduction by Chancellor Scott F. Cooper, Judge Michel explained that he left so he could be an advocate for the federal courts and the U.S. Patent & Trademark Office (PTO). Judge Michel said he has concluded the economic

security of the country is being threatened in a way Congress has yet to recognize and it is necessary for the U.S. to increase its innovation by investing in research and development.

To support his conclusion, Judge Michel explained that the U.S. has already lost jobs, revenue and technical leadership to foreign entities and, without investments in our own innovation, foreign inventive activity will continue to exceed that in the U.S., as evidenced by the higher number of patent application filings with the PTO by foreign entities than filings by U.S. entities. He also stated that the average delay at the PTO is currently at three

continued on page 17

Judge Michel

continued from page 1

years and some applications do not issue for six or seven years at which point the once-new technology becomes obsolete and thus the patent is worthless.

With the PTO grossly underfunded and delays in examination and lengthy patent litigations in the federal courts, Judge Michel told the audience of nearly 200 at The Union League that the patent system must be improved. The U.S. government must first furnish public funding for hiring of patent examiners and federal judges for the nearly 100 vacant spots, providing office space and modern computer systems for the examiners, and guaranteeing by law that any PTO fees will no longer be diverted. Specifically, Judge Michel suggested that the PTO needs \$1 billion, which is basically equivalent to the \$900 million that the government has already diverted from the PTO. In context, \$13 billion has been spent on pet projects of members of Congress and much more has been spent on bailouts on Wall Street, etc.

With regard to the courts, Judge Michel said that discovery should be narrowed to evidence that will be used at trial, more magistrate judges should be available for Markman hearings and



Intellectual Property Committee Co-Chairs Nicole D. Galli (from left) and Michael J. Berkowitz join Alan S. Nadel, Judge Paul R. Michel and Chancellor Scott F. Cooper prior to Judge Michel's June 8 remarks at The Union League.

Photo by Jeff Lyons

discovery issues, and there could be some sort of presumption that losers in litigation have to pay litigation fees. These suggestions would decrease the costs and time associated with expensive, lengthy patent litigation.

Without investment by the government, Judge Michel concluded, private investors will not invest in research and development. However, investment of public funding in the patent system will not only promote activity by private investors, but will create jobs and raise the level of health and the standard of living through the United States.

With his parting words, Judge Michel

reinforced his desire to improve the U.S. patent system and to welcome any help from interested organizations and individuals.

The event was co-sponsored by the Philadelphia Bar Association's Intellectual Property Committee and the Philadelphia Intellectual Property Law Association.

Sponsors for the program included Akin Gump Strauss Hauer & Feld, LLP; Ballard Spahr LLP; Benjamin Franklin American Inn of Court; Caesar Rivise Bernstein Cohen & Pokotilow, Ltd.; Connolly Bove Lodge & Hutz LLP; Cozen O'Connor; Dechert LLP; Dilworth Paxson; DLA Piper LLP; Drinker Biddle & Reath LLP; Duane Morris LLP; Eckert Seamans Cherin & Mellott, LLC; Feldman Gale, P.A.; Fish & Richardson, P.C.; Flaster Greenberg P.C.; Fox Rothschild LLP; Harding, Earley, Follmer &



**Podcast
Spotlight**

Visit philadelphiabar.org to listen to the podcast from this meeting.

Frailley P.C.; Mannino Law Firm; Morris, Nichols, Arsht & Tunnell LLP; Panitch Schwarze Belisario & Nadel LLP; Pepper Hamilton LLP; Potter Anderson & Corroon LLP; RatnerPrestia; Saul Ewing LLP; Schnader Harrison Segal & Lewis LLP; Volpe and Koenig, P.C.; Woodcock Washburn LLP; and Young Conaway Stargatt & Taylor, LLP.

Kim R. Jessum (kjessum@stradley.com) is of counsel to Stradley Ronon Stevens & Young, LLP.