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Taylor Swift Trademarks

Taylor Swift ("Swift") is seeking trademark protection for phrases derived from *1989*, the fifth studio album by the American singer-songwriter, released on October 27, 2014. Swift filed sixteen trademark applications for "*PARTY LIKE IT'S 1989*" in the United States Patent and Trademark Office ("USPTO") in October of 2014. If Swift's trademark applications for "*PARTY LIKE IT'S 1989*" are approved for registration, others would not be prevented from using "1989" and phrases including "1989", but there may be limitations to commercial use of phrases using "1989" as it relates to goods and services contained in Swift's "*PARTY LIKE IT'S 1989*" applications.

In addition, Swift filed three separate trademark applications in the USPTO for "NICE TO MEET YOU. WHERE YOU BEEN?", sixteen trademark applications filings for "THIS SICK BEAT", sixteen trademark applications for "T.S.", and thirty-three trademark applications for "TAYLOR SWIFT". Swift also filed four trademark applications for the songs "SWIFTMAS", four applications each for "1989", "A GIRL NAMED GIRL", and "BLANK SPACE". If approved by the USPTO, Swift will have presumptive rights to use these trademarks on a wide range of products and services, including accessories and clothing.

Although Swift could have filed a single trademark application for each of the marks above and included all of the goods and/or services listed in the multiple applications, filing separate applications for the same mark can be advantageous. First, if Swift filed a single application for all of the goods and services to be used with her marks, a prior trademark registration owned by another party for the same or similar mark, for use with any of the goods or services in any class listed in Swift's application, may be cited by the USPTO against Swift's application thereby preventing registration of Swift's mark for all of the goods and services listed in the application. However, by filing separate applications for each class of goods and/or services to be used with the marks, if a prior trademark registration is cited against one of Swift's applications for one class of goods or services, her other applications for the same mark for other goods and services in other classes may proceed to registration.

In addition, if Swift files for trademark registration of the marks in other countries, she may base such registrations on her USPTO trademark registrations for the same mark. If Swift had filed a single USPTO trademark application for all goods and services, a prior trademark registration for the same or similar mark for use with any of the goods or services, in any class contained in Swift's application, could prevent registration of Swift's mark in the USPTO and, by extension, other countries. However, as noted above, by filing separate USPTO applications for the same mark, even if one of her USPTO applications is refused based on a prior registration, her remaining applications for the same mark may be registered for other classes of goods and services and serve as the basis for the corresponding non-U.S. registrations in those classes.

For Swift's purposes, filing separate applications for each class of good and service to be used with her marks may prove to be an effective filing strategy by maximizing the chances of successfully registering her marks for as many of her goods and services as possible.

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Did you know?

Only U.S. Patent ever awarded to a U.S. president: U.S. Patent No. 6,469 "Manner of Bouying Vessels," issued to Abraham Lincoln on May 22, 1849.

"The patent system added the fuel of interest to the fire of genius."
- Abraham Lincoln

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Appellate Court Review Standards for Patents

Earlier this year, the Supreme Court of the United States ruled that claim construction is no longer solely a question of law. Questions of law are strictly legal interpretations that require use of relevant principles of law, and determining questions of law is a task entrusted only to judges. When a determination of a question of law is made, it previously could be challenged only under *de novo* review. A *de novo* review means that an appeals court will hear a case without reference to the legal conclusions or assumptions made by a lower court, thereby granting no deference to a lower court's findings. This standard of review was the only standard until January 20, 2015, when the Supreme Court decided Teva Pharmaceuticals USA, Inc. v. Sandoz, Inc.

According to Teva, appellate courts can now review a lower court's claim construction under both the *de novo* standard and also the *clearly erroneous* standard, which was previously reserved only for findings of fact. Findings of fact, unlike question of law, do not take into account any legal principles at all. Instead, a judge must make a determination using only the evidence and factual assumptions presented to him or her. Under the clearly erroneous standard, a lower court's decision will only be reversed if its conclusion was implausible or completely wrong in light of all the evidence presented. This is a huge alteration with regard to how patent claims are interpreted.

When a district court reviews only evidence inherent to the patent, e.g., the patent's contents and prosecution documents, the judge's determination becomes a determination of law—a legal interpretation using legal principles—as opposed to a determination of fact based on all the evidence presented, and the court of appeals will review that construction *de novo*. However, when a district court needs to consult non-inherent evidence—e.g. evidence outside of the patent such as expert testimony or peer-reviewed articles regarding the scientific field of endeavor—in order to understand the background science or meaning of a scientific term, supplementary factual findings must be made regarding the credibility of that evidence. It is in this respect that an appellate court must apply the *clearly erroneous* standard in order to overturn a lower court's conclusions.

This decision will play an important role in reducing the amounts of claim construction reversals on appeal. The hope is that both litigators and judges alike will make greater efforts to rely on non-inherent evidence in justifying their desired readings of claim language.

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