

# Client Alert **Intellectual Property**

## *What Matters - Patent Marking Reminder*

This is a reminder that patented products and services must be adequately marked to receive the full benefit of damages against any infringers. Section 287 of the U.S. patent laws establishes a system by which damages for patent infringement can accrue only after an infringer is given notice of the patent or of infringement.

Section 287 provides three ways for a patent holder to give notice. The first way provides notice via patent marking, which by statute effects notice of the patent on the entire public. This is accomplished by fixing on a patented article the word "patent" or the abbreviation "pat.", together with the number of the patent. When this cannot be done due to the character of the article, patent marking can alternatively be accomplished by fixing a label, showing "patent" or "pat." together with the patent number, to the article or to a package containing the patented article. The second way to give notice is by notifying an infringer of the infringement.

A third way to give notice is provided under the new America Invents Act. For all patents that were pending on or granted after September 16, 2011, a patent holder may use a publicly available, free website to list its products and associated patent numbers. The product or package must still use the word "patent" or "pat" but it need not identify patent numbers. This can be a less expensive alternative for certain products or services since updating a website is inexpensive.

N o v  
**2011**

This Client Alert has been prepared by Sills Cummis & Gross P.C. for informational purposes only and does not constitute advertising or solicitation and should not be used or taken as legal advice. Those seeking legal advice should contact a member of the Firm or legal counsel licensed in their state. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. Confidential information should not be sent to Sills Cummis & Gross without first communicating directly with a member of the Firm about establishing an attorney-client relationship.

# Client Alert Intellectual Property

Unique issues relating to patent marking and notice may arise for method patents, distributed systems, Internet-based patents, certain products manufactured abroad, medical activity, and other situations. Any uncertainties should be addressed to us.

If you would like additional information, please contact:

**Philip Y. Braginsky, Esq.**

Co-Chair, Intellectual Property Practice Group  
pbraginsky@sillscummis.com | (646) 735-3706

**Scott D. Stimpson, Esq.**

Co-Chair, Intellectual Property Practice Group  
sstimpson@sillscummis.com | (212) 500-1550