

# CRA Educational Presentations

CRA Charles River  
Associates

## About our presentations

With every project we undertake at Charles River Associates, we gain a better understanding of the challenges our clients face across industries as diverse as consumer goods, financial services, pharmaceuticals, and energy. Whether your challenges are legal, strategic, or both, CRA's consultants provide economic support and strategic advice and in the process, we learn from you.

Our educational presentations are designed to demystify the economic or financial jargon, keep you up to date on how regulatory changes might affect how you instruct your team or advise clients. We offer insights and our experience in economics, antitrust, finance, intellectual property, employment, and transfer pricing to name a few.

Each presentation listed within can be modified to meet individual needs. We can also create tailored presentations on request. All programs are presented by our consultants and designed to be about 60 minutes in length but can be made shorter or longer as needed. Our presentations can be qualified for Continuing Legal Education (CLE) or Continuing Professional Education (CPE) credit in many states.

For more information on any of the topics, or to inquire about scheduling a presentation, please contact Mary Dickman at +1-617-425-3375 or [mdickman@crai.com](mailto:mdickman@crai.com). Also please visit our website at <http://www.crai.com/educationalpresentations>.

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## Multi-disciplinary

### Key financial concepts for lawyers

When is it appropriate to classify a client dinner as an asset or expense? This “hands-on” presentation provides a basic introduction to financial statements and terminology with practical case examples to see the concepts in action in business and litigation settings.

### Using data analyses in litigation

Geared toward both in-house counsel and litigators, this course explains how data analysis can be applied across different types of litigation. We show how to assess and compute damages involving data misuse, including complicated business valuations, evaluations of trade secrets, and computations of shareholder loss.

### Working with an expert witness

Attorneys and their experts ought to agree on a set of critical, but often overlooked, assumptions when hiring and working with an expert witness. This course will highlight areas to consider before hiring a financial expert, and how to work with the expert throughout an engagement.

### Working with a damages expert

We provide practical guidelines on how to work with a damages expert before and during discovery. We review key documents that should be requested and, crucially, how to weed out distracting and irrelevant information to support damage calculations and help prepare for depositions.

### Building a solid foundation for damages

This course is designed to enhance your knowledge and understanding of information a damages expert typically relies upon. From internal and external marketing materials to financial reporting documents, we will discuss why different types of business-related documents are typically used in litigation by a damages expert.

### Understanding a financial expert’s report

A layman’s guide to reading and understanding financial models and how an expert’s choices and assumptions can affect an outcome in transactions, valuations, and disputes.

### Challenges to class certification

Case law on class certification standards (including the *Comcast* decision) supports the importance of rigorous demonstration that issues common to the class predominate over individual issues. We discuss the analyses economists undertake to determine whether a putative class does or does not meet the necessary criterion of commonality.

### **An update on *Daubert***

Litigators and in-house counsel who work with expert financial witnesses will find this course on current case law of interest relating to *Daubert* or other challenges to an expert. We discuss the most recent challenges, what happened after the challenge, and best practices with respect to *Daubert* issues.

### **Introduction to regression analysis**

Regression analysis is a tool commonly used in forecasting and financial analysis to quantify the impact of changes in one or more explanatory variables. We introduce regression analysis with examples using Excel and show how it applies to various litigation and valuation scenarios.

# Antitrust & Competition Economics

## Antitrust basics

### Antitrust fundamentals for lawyers

An introduction to basic economic and econometric concepts, including: market power and market definition; competitive effects; efficiencies and trade-off analysis; damages from price fixing; and monopolization. We use case studies to illustrate each topic.

### Microeconomic concepts

An explanation of key microeconomic concepts such as economic models, buyers, markets, demand, surplus, the elasticity of demand, supply side, cost concepts, profits, economies of scale, and monopoly.

### Estimating damages in antitrust litigation

We will explain the principle of the “but for” world under different scenarios such as price fixing and will also cover basic techniques such as simulations, extrapolations, and econometrics.

### Competitive analysis of market share discounts

Market share discounts are an area of increasing focus by antitrust regulators. Using case examples and relevant metrics, we will demonstrate and discuss the required steps to either support or refute allegations of anticompetitive conduct.

### Merger basics

This course provides an overview of merger types, merger simulation techniques, and the role of an economist during a regulatory review. We will discuss horizontal and vertical mergers, unilateral and coordinated effects, and other key concepts.

### Introduction to merger models

In this course we will discuss and demonstrate how merger simulation accounts for price effects of synergies, helps focus an investigation by identifying critical facts; or assumes and helps evaluate potential remedies.

### Navigating China’s M&A regulatory regime

We provide an overview of China’s regulatory structure and the challenges for multinationals seeking regulatory approval in a country transitioning from a planned to a market economy. We discuss decisions published by MOFCOM, China’s M&A regulator, since the implementation of the Anti-Monopoly Law in 2008.

## **Health care and antitrust**

### **Most favored nation (MFN) clauses in health care**

MFN clauses can reduce competition through a variety of different mechanisms. We identify several “risk factors” that affect the likelihood of harm and show how the anticompetitive and procompetitive theories played out in the DOJ’s Michigan litigation with Blue Cross Blue Shield of Michigan.

### **Contracts that reference rivals**

Vertical contracts between health care providers and payors govern the relationship as well as behavior between one of them and the other’s competitors. Exclusive arrangements are one example; most favored nations provisions are another. Balancing any anticompetitive disadvantaging of competitors with potential efficiencies and quality enhancements is required in a proper evaluation of competitive effects.

### **Health reform and pay for performance**

Patient focused incentives to increase price sensitivity are premised on retaining competition among integrated delivery systems. In what situations can vertical and/or horizontal coordination be shown to benefit patients through enhanced quality and greater efficiency and where are red flags raised?

### **Quantifying competitive prices in health care**

Identifying the competitive price levels of health care services and changes over time is complex. A thorough assessment of underlying cost, quality, and demand conditions is required to identify the appropriate “but-for” world in which to estimate damages in these matters.

### **Using benchmarks in health care litigation and mergers**

We show how data can be used to assess hospital or health plan financial performance, market concentration or definition (e.g., for hospitals, health plans, physicians), insurance penetration, or utilization levels that may be scrutinized in the context of litigation or merger.

## **Mergers involving hospitals, health plans, or physician practices**

### **Predicting the price effects of hospital mergers**

Hospital merger simulation is increasingly common, but is it a reliable tool to predict actual price effects in the antitrust analysis of hospital mergers? We look at two cases to guide our discussion of predicting price effects.

### **Hospital mergers: winning and losing antitrust arguments**

What happens when the government challenges a merger? We review the closeness of competition between merging hospitals, potential coordinated interactions, views of health insurers and consumers, financial conditions, and the importance of cost savings and improvements in quality associated with a merger.

## **Unresolved questions relating to market definition in hospital mergers**

We discuss the controversies related to both product and geographic dimensions of market definition in hospital mergers and why a traditional interpretation of hospital product markets may be inconsistent with the ongoing evolution of how health care is delivered.

## **Antitrust arguments in hospital mergers**

An overview of the types of analyses conducted by the antitrust agencies when challenging a merger — what arguments may be most compelling and which are less effective.

## **Willingness-to-pay analysis in hospital mergers**

The “willingness-to-pay” model is based on hospital discharge data commonly used by regulators to evaluate the likely competitive effects of hospital mergers. We discuss potential limitations that may weaken the reliability of its conclusions, and how to either avoid or work around such issues.

## **Financial viability**

Well-designed financial analyses can support the view that a hospital merger is the only solution to financial difficulties and support a credible efficiencies rationale for a transaction. However, certain pitfalls must be avoided in this type of analysis.

## **Credible efficiencies arguments**

Health care reform has heightened the pressure on hospitals to reduce costs as payment levels decline and payment methodologies shift from inputs to value (outcomes). We will discuss how isolating which savings are merger-specific, and demonstrating their significance, is a key input into a credible merger analysis.

## **Negotiations between multi-market provider systems and payors**

Mergers among hospitals in different geographies can tie competitive and “must-have” hospitals, allowing providers to leverage market power across geographies. This course will discuss how the potential for offsetting quality-enhancing or cost-reducing effects are often the key issues in the competitive effects analysis.

## **Managed care organization (MCO) mergers**

Antitrust authorities and state departments of insurance both review MCO mergers and often raise product market definition issues and allegations of monopsony. We review the arguments and evidence that are useful to assess these issues.

## **Physician practice mergers**

Physician practice mergers raise the typical antitrust issues of market definition, entry, competitive effects, and potential consumer benefits. Expansion of Accountable Care Organizations (ACO) and “medical homes” furthers attention to these questions. Useful data, which can be difficult to obtain, are critical to assess these issues.

## **Antitrust and IP**

### **At the intersection of IP and antitrust**

This course covers the unique challenges in promoting innovation and maintaining competition. We discuss issues of defining reasonable and non-discriminatory (RAND) terms in standard-essential patents, using cases to illustrate key economic points.

### **The legal and economic issues of standard setting: SSOs, SEPs, and F/RAND**

A discussion of the unique legal and economic issues with patented technology, including the requirements of standard setting organizations (SSOs), disclosure of patents essential to the standard (SEPs), and licensing of patents on fair, reasonable, and non-discriminating terms (F/RAND).

**Please see our Intellectual Property section for additional topics.**

# Energy

## **FERC Order 1000**

Order 1000 has altered the playing field, eliminating barriers to entry for independent developers and forcing incumbent utilities to face true competition. We discuss the evolution of transmission planning in light of Order 1000 and provide case studies for how the new construct is affecting stakeholders.

## **Utility M&A trends**

The electric and natural gas utility sector continues to experience a steady string of mergers and acquisitions with expectations for more activity in 2016. We discuss the drivers of historic transactions, key trends affecting future activity, and provide some thoughts on potential tie-ups that would make sense.

## **Capacity market changes**

PJM and ISO-NE recently made changes to their capacity markets that have a range of potential impacts to different stakeholders. We discuss how a new capacity product and changes to demand response may impact different stakeholders and where potential appeals and lawsuits will likely emerge.

## **What next for the GB capacity market?**

The GB capacity market design has borrowed heavily from the US east coast capacity markets. With the prospect of further substantial reform to the GB capacity market, we outline some of the remaining significant differences between the US and GB capacity markets. This provides a possible indication of where future reforms of the GB design may be focused.

## **Utility 2.0**

The utility sector is at the beginning of what is expected to be a broad and impactful transformation. In the future, utilities may be strictly electric and communication system integrators may be forced to adapt to a new revenue model. We discuss how this transformation is unfolding and some thoughts from recent utility scenario planning exercises on where this could all lead.

## **Demand Response and Wholesale Markets**

The Supreme Court's ruling affirming FERC's jurisdiction over demand response in Order No. 745 has settled any question about its participation in wholesale markets. In this presentation, we review how demand response has participated in RTO markets, and how its participation can evolve as RTO markets continue to change with the industry. How will the net benefits test for full LMP compensation affect demand response in energy markets? And, as product definitions evolve, what role can demand response play in the capacity and ancillary services markets?

## **FERC Analytical Requirements for Mergers and Market-Based Rates**

In this hands-on session, we demonstrate our proprietary M&A model to help you advise on strategic acquisitions and mergers for multiple destination markets and potential mitigation and divestiture strategies. We also discuss how FERC's recent Order No. 816 and PNM Guidance Order will affect Section 203 applications and Market Based Rates filings.

# Finance

## Accounting and Valuation

### Fraud in the global marketplace

As corporate geographies expand, operational oversight can be more challenging. In this course we discuss The Foreign Corrupt Practices Act, how to manage fraud risks, common regulatory oversights, litigation trends, and specific industry concerns (financial services, health care, manufacturing, energy) as well as preventative measures to take.

### SEC fraud enforcement

SEC whistleblower regulations are designed to identify more situations that may increase findings of inappropriate behavior. We discuss the responsibilities of officers and directors, using recent cases to illustrate common controls to prevent fraud and discuss practical defenses.

### Fraud in the M&A environment

Companies can find themselves embroiled in post-acquisition disputes, including liability for another company's fraud and misconduct. This course explains fraud risks that can occur during transactions and due diligence procedures to help mitigate merger and acquisition fraud risk.

### Business partner fraud/vendor management

Companies can be susceptible to fraud outside the immediate firm, such as third-party vendors. Auditing such entities, before, during, and after services provided, can help mitigate fraud risk. We guide you through regulations pertaining to vendor management, how to address any findings and move forward. We discuss best practices for drafting "right to audit" clauses and how to adhere to such clauses as an auditee and auditor.

### Ten ways to make a contract compliance investigation more effective

Contract compliance investigations can vary, but the function is essentially the same: to test the compliance of a certain party against specific, agreed-upon contractual terms. Some of the topics we will discuss include understanding relevant professional standards, how to identify and document audit risks and procedures, reliability of documents, confirming bases and methodologies for claimed extrapolations, and auditing to the contract not GAAP.

### Entertainment industry profit participation valuations

This course is designed to give litigators and transaction attorneys insight into the valuation of contingent compensation for various talent (e.g., actors, directors, and producers) from the distribution of motion picture and television content, otherwise known as profit participations. We discuss how the unique nature of benefit streams and underlying content affect the income approach valuation model, including growth and discount rates.

## **Entertainment industry accounting**

We review unique generally accepted accounting principles (GAAP) that apply to various business units of the entertainment industry, including filmed, broadcasted, and recorded entertainment. We also review how to track the accounting for these operations for multiple stakeholders.

## **Cash flow lifecycle of a motion picture**

This course is for attorneys who need an introduction to how motion pictures are financed, produced, and distributed. It covers how cash flows from theatrical distribution and other windows help recoup the respective investment in production and marketing costs.

## **Understanding accounting documents for forensic investigations**

When performing a forensic investigation of an entity's books and records, the investigation rarely stops at the financial statement level. This course explains how accounting sub-ledgers, reports, and other source documents can be used to perform various investigation steps and address investigation objectives.

## **Financial Markets**

### **Big data efforts by the SEC**

In recent years, the SEC has increased its efforts to detect accounting and investment fraud through quantitative methods. Examples include the Accounting Quality Model (commonly known as Robocop) and the Aberrational Performance Model. Based on academic and field research, we describe signals that the SEC is likely to follow to detect alleged fraud by investment advisers, fund managers, and corporate issuers. We also discuss the potential dangers of inferring intent from statistically significant tests and propose related defenses against investigations and charges based on such analyses.

### **Successful and unsuccessful challenges to class certification in Section 10b-5 cases**

We review arguments concerning the presumption of reliance under Rule 23, examining economic perspectives and evidence on challenges to the presumption of reliance and to materiality. In this context, we cover arguments against market efficiency (covering each of the Cammer and Krogman factors) as well as other arguments based on Rule 23(a)'s requirements of commonality, adequacy, and typicality. We illustrate each of these points with examples from prior cases.

### **Defenses related to price impact and the 5<sup>th</sup> Cammer factor**

Courts have recognized that the most important factor in establishing the efficiency of a market is the presence of a cause-and-effect relationship between news releases and stock price reactions, the 5<sup>th</sup> Cammer factor. While it is the most important, the 5<sup>th</sup> Cammer factor is also the least well defined one, thus becoming the most hotly contested between experts. We discuss the methods most widely used by experts to examine the 5<sup>th</sup> Cammer factor. We also outline the pros and cons of each method from an economist's perspective and whether the method has gained traction with the Courts.

### **Price impact based on contemporaneous forward-looking information**

Parties to securities litigation often rely on analysis of the price impact of particular news through an event study in connection with class certification and arguments on loss causation and damages. In an event study, the economic expert typically uses a statistical model to assess the portion of the stock price

reaction due to such news and not due to market factors or noise. We describe a novel way to implement this statistical model that more readily incorporates investors' forward-looking views, while maintaining a solid basis in economic theory.

### **Recent trends in securities class actions**

We discuss current trends in securities class actions and recent decisions. We also discuss how a forward-looking methodology can produce results that diverge from the results of traditional approaches to argue claims regarding class certification, loss causation, or damages.

### **Securities litigation primer**

A demonstration of our proprietary analysis and discussion of event studies and efficient markets theory as they apply to securities litigation, estimation of aggregate shareholder damages using "plaintiff-style" trading models, and explanatory factors of securities class action settlements.

### **Event studies and intraday analysis**

It is typical to evaluate stock price reactions between two days' prices at close of trading, however prices can adjust faster than over the course of a trading day. We discuss the use of intraday prices in the analysis of a disclosure event.

## Financial Economics – Credit and Lending

### **Balancing access to credit and credit risk in mortgage underwriting**

Regulators and industry participants have been forced to consider how to balance mortgage credit risk without unduly restricting access. Our research finds that modern automated underwriting systems (AUS) offer a potentially valuable tool for balancing the tensions of extending credit at acceptable risks.

### **A survey of mortgage industry practices**

We discuss our survey results, confirming that discretionary pricing remains pervasive in the mortgage industry and how many lenders find it necessary to compete in the marketplace and accommodate customer preferences and needs.

### **Automating control and detection of fair lending risks**

We discuss pricing engines and origination systems to help lock down pricing, enforce limits on discretionary adjustments, enforce approval authorities for granting concessions or exceptions, limit the potential for errors, monitor fair lending risk, and respond to regulatory inquiries.

### **Fair lending in the indirect automotive finance market**

During this course we will discuss the complexities of indirect automobile financing and evaluate current regulatory fair lending practices observed in the industry.

### **Fair lending compliance under the CFPB**

This course offers a look at statistical analyses that can be performed by lenders to evaluate their fair lending compliance in terms of underwriting, pricing, or potential redlining. It incorporates up-to-date methodologies reflective of Consumer Financial Protection Bureau (CFPB) supervision guidance.

### **Loss mitigation and servicing**

This course discusses approaches that can be taken with respect to evaluation of Home Affordable Modification Program (HAMP) and non-HAMP compliance issues. It will discuss issues that have emerged in the litigation context, approaches to the evaluation of HAMP or non-HAMP modification data, and best practices with respect to modification approaches.

## Health Care and Life Sciences

### Pharmaceutical manufacturer merger issues

Product pipelines, “innovation markets,” the nature of price and non-price competition, and the role of informed intermediaries raise interesting issues in the context of pharmaceutical mergers. Economic analysis can address these market factors even within the limitations of available pricing data and is also relevant to antitrust and contract disputes involving pharmaceuticals.

### Bundled discounts

Health care firms such as hospitals, pharmaceutical manufacturers, or group purchasing organizations may offer reduced prices or other favorable terms when customers purchase multiple products together. Such “bundled discounts” may reflect procompetitive cost reductions accruing from volume purchasing or they may indicate an anticompetitive exercise of market power to exclude a rival that does not offer all components of the bundle. We review how to determine which explanation may apply.

### Causation in liability and damages analysis

Commercial disputes pertaining to health care products or services often involve issues related to complex production, sales, marketing, and distribution systems, as well as interactions across the production and distribution chain. We discuss the economic tools used to examine causation and distinguish it from benign correlation as well as in *Daubert* challenges to opposing experts’ methodologies and underlying assumptions.

### What providers need to know about new reimbursement methodologies

Federal payment initiatives, such as “value-based purchasing,” bundled payments, “excess” hospital readmission and “never event” penalties, are intended to change provider incentives. As private payors also pursue similar initiatives, we reflect on the economic context of disputes within this new market landscape.

### Unique characteristics of biosimilars

Understanding the regulatory, approval, and competitive environments in which biosimilars operate is necessary to properly assess allegations that may arise in litigation. With the first FDA approval of a biosimilar in 2015, we provide an overview of the competitive landscape and potential legal hurdles.

### Issues on the health care horizon

We discuss the pressures that private and public health care reform initiatives are creating, and their implications for competitive dynamics and commercial practices and provide insight into what disputes are likely to arise in the next two to three years.

### The competitive consequences of “consumer-centric health care”

Health care reform and associated budgetary considerations can affect the delivery of patient-focused therapies like biologics or botanically-derived products, often including complex manufacturing or delivery models. The intellectual property protections for these tailored therapeutic interventions can affect competition in a variety of ways.

### **Economic insights in class certification**

We review the key arguments at certification stage and discuss industry complexity and determining a common impact. We discuss the challenges that the traditional vertical structure of the pharmaceutical industry creates as suppliers and customers can have countervailing interests.

### **Evaluating “commercially reasonable efforts” in pharmaceutical collaborations**

As collaborations in the pharmaceutical industry become more common (research organizations with pharmaceutical manufacturers, for example), disagreements arise when one firm may feel the other has not made best efforts to market a product, keep up with manufacturing expectations, etc. We discuss the economic factors that come in to play in these kinds of disputes.

### **Assessing fraud and false claims allegations**

We discuss the data-driven statistical analyses to help rebut the claims of government investigators and private plaintiffs including alleged fraudulent Medicare/Medicaid billing practices, pharmaceutical pricing practices, and false health claims.

### **Reverse payment agreements – post *Actavis***

Pharmaceutical patent disputes resolved through “reverse payments” from brand to generic manufacturers, licensing agreements, or other side deals continue to be contentious. We discuss the litigation landscape post *Actavis*.

# Intellectual Property

## Intellectual property basics

### Intellectual property and damages overview

Through case law and examples, this course will provide an introduction to the economic theories relating to patents, copyrights, trademarks, and trade secrets.

### Key financial concepts for IP attorneys

Throughout this course we will discuss key financial concepts used by experts in intellectual property matters such as discounting and compounding, discount rates, and DCF analysis. Examples of how such concepts are used in business and litigation settings will also be presented.

### Fundamentals of appraisal report writing

We discuss best practices for writing appraisal reports and some common deficiencies in those reports as it relates to intellectual property. We provide tips on how to phrase your findings as well as how to ensure your report is consistent throughout and free of hypotheticals, opinions, and jargon.

## Litigation-related courses

### How Mayo, Myriad and Alice may impact patent valuations

We review recent high-profile court decisions addressing the issue of patentable subject matter and their effect on patent examination at the US Patent and Trademark Office. We discuss how the changing scope of patent-eligible subject matter may impact intellectual property valuations and transactions in the life sciences sector.

### Monetary relief in trademark infringement actions

Using case studies, this course will cover the concepts damages experts use to calculate damages in trademark infringement actions. We cover concepts such as unjust enrichment, actual business damages and losses, lost profits, and punitive damages.

### Monetary relief in copyright infringement actions

This course covers practices that damages experts use to calculate damages in a copyright infringement action from the perspective of both the plaintiff and the defendant.

### Monetary relief in trade secret misappropriation actions

While federal law on the subject is still languishing, state statutes and case law have provided experts with guidance to regulate the appropriate measure of damages in trade secret misappropriation actions. This course will discuss the different practices allowed, depending on the state.

### Monetary relief in false advertising actions

We review recent case decisions related to damages and surveys in false advertising cases and discuss how *Walmart v. Dukes* changed the landscape for false advertising consumer class actions.

### **Monetary relief in patent infringement actions**

Damages in patent infringement actions generally fall into lost profits, reasonable royalties, and other damages. Depending on the situation, other damages can include price erosion, convoyed sales, increased costs, future lost sales, and prejudgment interest. This course will cover how to choose the right damage theory, the methods of proving and recovering damages, and guidance provided by case law and statutes.

### **Calculating damages in a patent infringement action: A case study**

This case study covers concepts and practices damages experts use and issues that may come up in a hypothetical patent infringement case. The attendees will have the chance to review damages expert reports and exhibits, financial documents, license agreements, and other documents; prepare questions, and take a mock deposition of the damages expert. This presentation is more appropriate for a 2-3 CLE credit hour presentation.

### **Recent decisions and trends in patent infringement litigation**

The Supreme Court, Court of Appeals for the Federal Circuit, and district courts are continuing to clarify the standards for obtaining monetary and/or injunctive relief. This course will discuss the latest case decisions on patent damages and discuss what is on the horizon for patent litigation.

### **Admissibility of license agreements and settlement negotiations**

After the decision in *ResQnet v. Lansa*, decisions on the admissibility of license agreements and settlement agreements have varied and have influenced how parties litigate cases and economic experts determine a reasonable royalty in patent infringement actions. This course will cover case law, and how economic experts use license agreements and material regarding settlement negotiations in formulating their opinions.

### **The entire market value rule: the influence of recent case law on recovering damages on the value of the entire product**

Recent decisions have demonstrated courts are increasingly willing to restrict a plaintiff's ability to rely on the entire market value rule to enlarge the base of the accused products on which it may recover damages for patent infringement. This course will cover case law relating to the rule, and economic approaches to determining damages that may be suitable when the patented feature is claimed to be the basis for customer demand.

## **Apportionment: Measuring damages when the patent is only part of the whole**

When a patent covers only one part of a multi-component system, or when the product exemplifies many patents, valuation or damages analysis is difficult. This course will discuss different approaches to this problem using examples of patents for different industries. This session will address related issues of royalty stacking, the entire market value rule, and the effect of apportionments on reasonable royalty determinations, and proposed changes to the damages section of the patent law.

## **Future damages and ongoing royalties**

This course examines cases post-*eBay* to current guidelines in the calculation of post-verdict royalties. After *eBay v. MercExchange*, attention must be paid to broader issues, such as whether anything less than a permanent injunction will undermine the value of the intellectual property at issue, and if ongoing royalties or other monetary relief will be an appropriate substitute to an injunction. We will offer knowledge needed to navigate challenges including how financial experts aid in proving or disproving irreparable harm and ongoing royalties, compulsory licenses, and other financial settlements.

## **Intellectual property litigation – Trends by industry**

This course is tailored to provide those with an industry specialty with information about recent trends in litigation, damages, and intellectual property management, and what lessons can be gleaned for the future. We can create a presentation around your industry.

## **Working with your damages expert to build a solid foundation for damages**

We discuss the information a damages expert typically relies on to quantify lost profits and reasonable royalties. We also present effective strategies and approaches to working with your damages expert.

## **The use of trademark surveys in litigation and valuation**

During this course we will discuss how surveys are used in both litigation and valuation engagements, demonstrate well-accepted survey research approaches, and provide examples of how surveys are used in different settings, such as to determine the value of a patented feature or benefit, or to determine consumer confusion.

## **Financial and economic issues in ITC Section 337 proceedings**

This course offers a review of historical and potential trends in economic, accounting, and financial issues as addressed by parties to International Trade Commission (ITC) Section 337 proceedings.

## **Strategy and intellectual property management**

### **IP strategy**

We describe the methods and approaches to categorize and evaluate patent portfolios for the purposes of putting the IP to its best uses.

### **Strategic patent portfolio due diligence and valuation**

A discussion of the benefits to be realized from conducting patent portfolio due diligence and valuation earlier for M&A, JV and other transactions, including strategic targeting intelligence, identification of incremental value drivers, and smoother post-deal IP integration.

### **Valuation of intellectual property and intangible assets**

This practical course is designed to give litigators and transaction attorneys a basic grounding in valuation terminology and methods used to value intangible assets and intellectual property. We will discuss and review the cost, income, and market approaches to valuation and how they are used in different settings.

### **Licensing valuation**

We review the preparation and the financial analyses necessary to get ready for and successfully undertake an intellectual property license negotiation. We cover key concepts such as the cost, market, income, and relief from royalty approaches, using case examples to illustrate.

### **Administration of licensing relationships**

Licensing relationships that involve intellectual property assets need not be adversarial, as the licensor and licensee enter such agreements with an expectation of mutual appreciation and success. This course discusses best practices for licensors and licensees to minimize adversarial energy and maximize financial results.

# International Arbitration

## **A primer on quantum**

We provide an overview of the main approaches to calculating damages, with special attention to topics relevant to international arbitration. We cover the discounted cash flow method and the use of comparables to ascertain value. We also provide an overview of revenue and cost forecasts, and a variety of risks relevant to assessing lost value. Topics with particular relevance to international arbitrations include interest rates, inflation, and country/political risks in cross-border disputes.

## **The impact of country risk on damages: Types of risks, measurement, and relevance**

Country risk is often central to measuring damages in international arbitration. However, it encompasses different risks, not all of which should necessarily affect damages. We disaggregate country risk into its main components and review quantitative and qualitative methods to measure them. We discuss common arguments for and against reflecting country risk into damages calculations, and provide an overview of empirical evidence on how and whether those risks are important to investors in their investment decisions.

## **The importance of prejudgment interest: Methods, their implementation, economic rationale, and merits**

Given the time between the alleged harm and a final award, prejudgment interest is often a key issue in ascertaining damages. There are, however, various methods proposed to calculate it. In this session, we review the pros and cons behind those methods. We also cover issues that may arise in the practical implementation of each method.

# Labor & Employment

## **Trends and techniques in employment discrimination litigation**

We discuss major developments in employment class actions including specific areas where labor economics can assist in understanding common patterns that arise in employment data.

## **Labor and Employment: a case study approach**

This practical session is designed to give lawyers and industry associates a good grounding in the wage and hour issues facing companies, and how expert analyses can be used to address data issues associated with understanding a company's exposure. The ability to understand risks in the context of litigation or to help management make decisions is essential to companies doing business in California. We will provide a basic introduction to the issues with case examples to allow participants to see the concepts in action.

## **Developing a metric-based scorecard to track diversity progress**

This session will demonstrate how to monitor the diversity of a company or various horizontal or vertical segments within the organization. The creation of a scorecard that tracks movements into and out of the population as well as the overall change in the diverse representation will aid in creating accountability within the organization. We will discuss the various benchmarks that will be useful in tracking progress toward your client's diversity goals.

## **Considerations in determining appropriate internal and external benchmarks**

Using applicant flow data as well as external labor market data, we explore how to determine the potential pool of candidates for hire. A staged analysis of the applicant flow data may reveal where diverse candidates are falling out of the recruitment process. Considerations in implementing external labor market data include the industries in which the company operates, occupation, and geographic recruitment area. Finally, we will discuss how to use historical movements through the internal pipeline to develop a measure of the diverse internal availability. This internal availability can be used to determine if it is in alignment with the actual representation of diverse employees.

## **Applying statistical and survey techniques to FLSA wage and hour litigation**

In this seminar we examine how, through the use of sampling and surveys, we can help identify unpaid overtime hours. We also explain the importance of statistics in evaluating payroll, timekeeping, and personnel records, along with assessing time allocation across various job duties.

## **Compensation equity studies**

Employers who do business with the federal government or wish to do business with the federal government need to understand the OFCCP reporting requirements. In this session, we show how to identify relevant influences on compensation and provide a critique of OFCCP reporting requirements and pay equity analyses. We also demonstrate how to interpret statistical evidence of pay disparities, and how to identify employees who may be eligible for concrete remedial action.

### **Pattern and practice employment litigation**

We review the basic statistical techniques used in class action employment litigation (t-test, regression analysis, chi-square statistics) and demonstrate how statistics can help identify an appropriate class.

### **What labor and employment attorneys need to know about evaluating economic loss**

In this seminar we discuss economic damages and how to measure opportunities for mitigation. Among the topics we cover are valuing employee stock options, incorporating income tax gross-ups, and assessing potential damage periods.

# Transfer Pricing

## **An introduction to transfer pricing**

This presentation covers the basics of transfer pricing, including its importance, the key regulations, hot topics, and the purpose of transfer pricing documentation.

## **An overview of transfer pricing methods**

This course builds on the basics and provides a detailed overview of the transfer pricing methods outlined in transfer pricing regulations to determine arm's length pricing.

## **Planning opportunities using transfer pricing**

It is almost impossible to do tax planning without transfer pricing because transfer pricing determines the appropriate returns for functions, risks, and assets as well as how tax authorities decide whether the taxpayer's actual facts match the claims. This presentation addresses the interaction of tax planning and transfer pricing.

## **How to comply with BEPS and the new OECD Guidelines related to transfer pricing**

The OECD released its package of final reports under the OECD/G20 BEPS Project on October 5, 2015. The BEPS measures were developed to make sure countries have the tools to ensure that profits are taxed where economic activities generating the profits are performed and where value is created. Our experts provide an update on the regulations and how to comply with them.

## **IP rights: licensing versus cost sharing**

This presentation compares and contrasts forms of IP migration and ownership and covers when to use licensing models versus cost sharing structures. We will use case examples to illustrate the key concepts.

## **Cost sharing regulation and IP valuation: US & Europe**

This course contrasts the US and European approach to cost sharing and IP valuation. Specifically, the OECD guidelines and US cost sharing regulations are used as the framework to discuss IP cost sharing arrangements and IP valuation. Participants are provided with details on complying with both frameworks.

## **Intellectual Property centralization**

This presentation discusses how to identify, categorize, and analyze IP data to facilitate strategic management, transaction, and competitive business decisions. It covers various factors such as tax law and IP ownership considerations.

## **Post-acquisition transfer pricing harmonization**

This course covers the transfer pricing implications of acquisitions, including the benefits and challenges. Participants will learn what key steps to take, such as proper due diligence and identifying IP, as well as the common pitfalls. Case studies will be presented to further illustrate the issues.

### **Effectively dealing with transfer pricing for financial transactions**

We discuss the different types of intra-group financial transactions and their related issues. We cover policy development, operational aspects, documentation, and the typical steps of analysis. Court cases such as GE Capital Canada, Diligentia AB, and ConocoPhillips are used to illustrate the key concepts.