



**Monday, October 1, 2012**

**2:30 PM - 4:00 PM**

**1002 – It's More than a Time Zone Change:  
When Litigation Goes Global**

**Daniel Lim**

*Vice President, Deputy General Counsel*  
Guidance Software, Inc.

**David Steele**

*Senior Counsel*  
The Home Depot

**Meredith Stone**

*Vice President, General Counsel, Americas*  
NACCO Materials Handling Group, Inc.

**Alison Tucher**

*Partner*  
Morrison Foerster

## Faculty Biographies

### **Daniel Lim**

Daniel Lim is vice president and deputy general counsel for Guidance Software, Inc., a leading digital investigations software provider based on Pasadena, CA. Mr. Lim manages Guidance's AGC team, which consults with corporate and government clients on e-discovery, privacy, and digital investigations. He and the AGC team provide support to Guidance on corporate strategy, sales, product development, marketing, and legal issues relating to the company's software and services offerings. He speaks and publishes frequently on legal issues pertaining e-discovery, privacy, and security.

Mr. Lim joined Guidance Software as assistant general counsel. Prior to joining Guidance, he was an attorney in Jones Day's Trial Practice group and part of the firm's E-Discovery Committee. He also practiced litigation at McGlinchey Stafford, and Beck, Redden & Secrest. He served as a law clerk for the Honorable Vanessa Gilmore, U.S. District Court, Southern District of Texas, Houston Division.

Mr. Lim is chair of the ACC's Litigation Committee and a council member of the Texas Bar's computer and technology section. He participates in several industry thought-leadership forums, including the Sedona Conference Working Group 1, Georgetown Law Institute, and E-Discovery Institute. He serves on the executive leadership of New Life Fellowship Church of Houston.

Mr. Lim is a graduate of Columbia Law School (JD) and Southern Methodist University (BA english, BS in economics with finance applications). He has completed courses in computer forensics.

### **David Steele**

David Steele joined The Home Depot in Atlanta, GA and is currently senior counsel. His is responsible for managing Home Depot's commercial litigation group, whose work includes class actions, IP litigation, business claims, regulatory matters, subpoena compliance, and customer litigation. He also has responsibilities involving e-discovery, business counseling, and investigations.

Before joining The Home Depot, Mr. Steele had a litigation practice at Alston & Bird in Atlanta, handling a wide variety of domestic and international disputes. Mr. Steele received a BBA and a BA from Southern Methodist University, and graduated from Vanderbilt University School of Law.

**Meredith Stone**

Meredith B. Stone, vice president, general counsel Americas for NACCO Materials Handling Group, Inc. is responsible for the legal compliance of the company's Americas Division activities in North, South and Central America, including providing advice on and representing the company on corporate transactions, litigation, import/export, government sales and corporate compliance, dealer/distributor relationships, negotiating, drafting and approving contractual commitments, advising and counseling the corporation on employment law issues, and providing preventative legal training to employees.

Prior to joining NACCO Materials Handling Group, Inc., Ms. Stone was the vice president, general counsel and secretary of Konica Business Technologies, Inc.; a general attorney for the Long Island Railroad Company in Jamaica, New York; an associate attorney with Levine & Robinson, P.C. in Mitchel Field, New York; and an assistant corporation counsel for the Law Department of the City of New York.

Ms. Stone is a member of the American Bar Association (Business Law and International Law Sections), the New York State Bar Association, and the North Carolina Bar Association, where she was a council member of the corporate counsel section and is a former chairperson of its membership committee and CLE committee; she previously served as the chairperson of the Small Law department committee of ACC and as president of ACC's Connecticut chapter.

Ms. Stone earned her Bachelor of Arts degree from the University of Vermont and JD degree, cum laude, from St. John's University School of Law in Jamaica, New York.

**Alison Tucher**


Alison Tucher is a litigation partner at Morrison & Foerster in San Francisco, where she handles intellectual property and other complex commercial matters. Ms. Tucher litigates in U.S. courts on behalf of foreign and domestic clients. She has also tried multinational disputes before arbitral tribunals and has coordinated across international boundaries litigation occurring in multiple jurisdictions.

Before joining Morrison & Foerster, Ms. Tucher served as law clerk to United States Supreme Court Justice David H. Souter and to Ninth Circuit Judge William A. Norris. She then tried cases for three years as a Deputy District Attorney in Santa Clara County, CA.

Ms. Tucher has an active and varied pro bono practice, including in two different cases having won the freedom of a man wrongfully imprisoned for a murder he did not commit. She also serves on the board of governors of the Northern California chapter of the Association of Business Trial Lawyers.

Ms. Tucher holds a BA in economics from Williams College, an MA in engineering from Cambridge University, and a JD from Stanford Law School.


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**Panelists**

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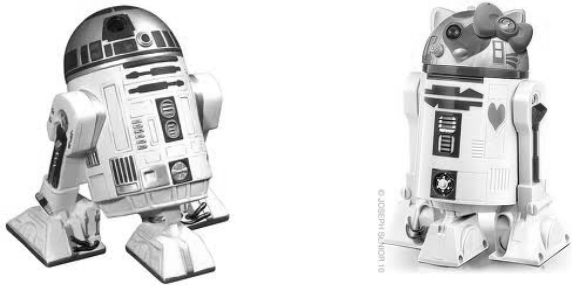
# Agenda

- I. Hypothetical
- II. Discussion
  - A. Plaintiff Considerations
  - B. Defendant Considerations
  - C. Specific Issues
- III. Q&A

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# Hypothetical



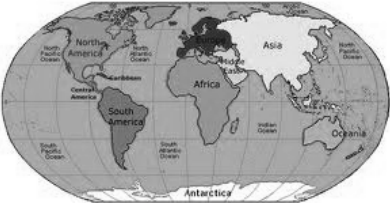
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## Plaintiff Considerations




- What are key considerations in developing your litigation strategy?
- Since Robotica is based in the US, is your best strategy to file in the US?



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## Civil v. Common Law Jurisdictions

Civil Law Jurisdictions	Common Law Jurisdictions
<ul style="list-style-type: none"> <li>- Case decided by judge or judges</li> <li>- No discovery (or very little)</li> <li>- Court plays an active role in fact-finding</li> <li>- Rounds of hearings; no trial</li> <li>- Experts may be appointed by court</li> <li>- Case is developed largely through briefing</li> <li>- Statute-based law; no transcripts</li> <li>- Facts reviewed <i>de novo</i> on appeal</li> <li>- Cases proceed to final judgment more often</li> </ul>	<ul style="list-style-type: none"> <li>- Trial by jury (in U.S.)</li> <li>- Considerable discovery</li> <li>- Litigants drive fact-finding and present evidence to the court</li> <li>- Case management toward a trial</li> <li>- Experts are selected by the parties</li> <li>- Case is developed through witness-based testimony and oral advocacy</li> <li>- Precedent-based law; transcripts</li> <li>- Facts not <i>de novo</i> on appeal</li> <li>- Cases proceed to final judgment less often</li> </ul>
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## Overview: Litigation Planning


- Where is my opponent most vulnerable? Where am I?
- Where are my claims strongest?
- What are my litigation goals – Damages? An injunction? Freedom to operate?
- Which court systems are attractive for speed, cost, and predictability?
- How will I enforce my judgment?
- Do I need extensive discovery? Expert testimony?
- What are the reputational risks and benefits?
- Will confidentiality be adequately protected?
- Do I want to be in court or in arbitration?

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## Defendant Considerations

- Galactica has just sued Robotica for a declaratory judgment of non-infringement in the Northern District of Texas (neither party's home state).
- How does this impact your litigation strategy?
- What changes should you make?






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## Defendant Considerations

- Later that day, your Chief IP Counsel returns to provide you with a copy of the complaint filed by Galactica in China alleging that Robotica's suppliers were infringing Galactica



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## Remedies

- You have confirmed that your primary distributors in the US, the EU and Brazil have begun selling the Galactica products.



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## Trademark Issues

- You have learned that your local distributors, in certain countries, have registered the Robotica name as a trademark in their country.

Trademark: TM


Registered Trademark: ®

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## Additional Developments

- Your CEO is now very angry and wants to terminate the distribution relationship with any company that is also marketing the Galatica product.




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## Additional Developments


- The Company sends notice of termination to its distributors who are also selling the Galatica product, and you learn that, in a few different countries, the local distributor has gone to court to get an injunction against the importation of Robotica products.



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## United States

**Discovery in aid of foreign litigation:**

- 28 U.S.C. § 1782** permits participants in foreign proceedings to ask federal district courts for assistance in obtaining discovery
  - Applies to documents and testimony
  - No need to first request the discovery from the non-U.S. tribunal
  - In some cases, discovery can be obtained before a lawsuit is commenced outside the U.S.
- Intel v. Advanced Micro Devices*, 542 U.S. 241 (2004), spells out statutory requirements and discretionary factors

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# Questions?