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TIMOTHY YOUNG

The Patentability of GUIs: Moving Goalposts at the EPO 409

Graphical user interfaces (GUIs) often cross the tricky boundary of what the European Patent Office considers "technical" and therefore patentable. The 2012 Guidelines for Examination at the EPO offered pointers as to what would represent an allowable GUI-related patent, but they were ignored as soon as they were released, and the 2013 Guidelines will make it more difficult to obtain such patents in Europe.

Articles

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Fighting Online Copyright Piracy: Are There Any Alternatives to Traditional Litigation? 413

The topic of this article is one of the biggest problems of the enforcement of intellectual property rights—the online copyright piracy issue. Namely, despite very strict and precise rules of the procedure of the World Intellectual Property Organization (WIPO) dispute settlement system, one thing has remained unresolved so far—how to design a mandatory alternative dispute resolution mechanism in the sphere of online copyright piracy, mandatory in the sense that a complainant can initiate a procedure which can run its full course even if the counterparty refuses to participate. Who would be the subject to contract with on resolving the disputes on copyright infringement through an alternative to litigation? In order to present the aforementioned problem, this article will demonstrate the main features of the existing mechanisms for those who seek protection of their intellectual property rights, reforms to traditional copyright protection that have been already proposed, and finally, the author's proposals to reform current enforcement procedures in order to stop copyright infringement.

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Law and Economics of Unitary Patent Protection in the European Union: The Rebels' Viewpoint 418

With the adoption of the unitary patent regulation under enhanced co-operation, a new patent regime is currently being established in the European Union. However, the system is not supported by all Member States.The article is divided into two parts. In the first, legal developments leading up to the adoption of this new system and their implications are explored. The enhanced co-operation procedure, its questioned legality and the introduction of the so-called "unitary patent package" are described. The second part analyses the predominantly economic consequences stemming from the entry into force of the unitary patent protection regulation, as well as the regulation on the language arrangements.

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The shift to digital technologies has increased the ease of capturing and commercialising photographs of public art by reducing the costs and increasing the quality of photography. The article examines the new uses of photography introduced to consumers by new technologies, and assesses the copyright position of photographs of public art under the artistic work exceptions in Australia's Copyright Act 1968 (Cth). It argues that the exceptions are of limited relevance to public art photographs in the digital environment and should be replaced with a fair use exception.

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In an earlier issue of the European Intellectual Property Review, the author challenged readers to name the individuals mentioned in his article, The Copyright Comedy. The answers are published here.

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The article seeks to explore the issue of patent protection for diagnostic testing for Down's syndrome in the United States and in Europe. It explores decisions of the TBA, applying the learning of the EBA in *CYGNUS/Diagnostic* method, that have accepted that a claim relating to a screening method for determining if a pregnant woman was carrying a foetus with Down's syndrome does not offend art.53(c) EPC. The article also considers decisions of the Federal Circuit, in particular, *PerkinElmer v Intema*, that have applied the decision of the United States Supreme Court in *Mayo Collaborative Services v Prometheus Labs* to invalidate the patent for a method of diagnosis for Down's syndrome.

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A Name of Thrones: Why Domain Names Should Now Be a Separate Intellectual Property Right 452

This article evaluates the controversial practice of applying existing trade mark legislation, common laws and dispute resolution policies to the domain name system. After analysing the major limitations of grouping domain names under the purview of trade mark law, during which vital differences between the trade mark and domain name systems are exposed, the article concludes that this practice is inappropriate, unsuccessful and a gross extension of the law. The writer instead proposes reform in the form of an international harmonising domain name treaty, which establishes a domain name as its own separate intellectual property right.

Comments

TRISTAN SHERLIKER

No Liens over Electronic Data: Court of Appeal Keeps Equity out of the Digital World: *Your Response Ltd v Datateam Business Media Ltd* 465

In *Your Response Ltd v Datateam Business Media Ltd* the UK Court of Appeal considered whether a lien could be exercised over intangible property (a database). It was held that no lien could arise. Despite this, the court expressed sympathy for the view that modernisation was required to bring the law up to date, and called for parliamentary intervention. The thorough analysis provides lessons for contracts and disputes governing IP rights, as well as for the legal profession itself.

JOEL SMITH, ANDREW MOIR AND RACHEL MONTAGNON

ISPS and Blocking Injunctions: *UPC Telekabel Wien v Constantin Film Verleih GmbH and Wega Filmproduktionsgesellschaft mbH* 470

The CJEU finds a blocking injunction in general terms acceptable in relation to an ISP's freedom to do business, but ISPs must achieve effective blocks which balance the interests of internet users and right holders.

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