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Possible Impact of the Unitary Patent Regulation and the Unified Patent Court Agreement on Poland 545

After the rejection of both Spanish actions C-146/13 and C-147/13 by the ECJ on May 5, 2015, the focus is now on Italy (for joining the Enhanced Cooperation on the EPUE) and on Poland (for ratifying the UPCA). A Deloitte Opinion had turned Poland from an ardent supporter to someone sitting on the fence. However, that Opinion is far from convincing, and will be discussed in this piece. Moreover, according to A.G. Bot's Opinion in the Spanish cases, Poland is obliged under Union law to ratify the UPCA, since that is a pre-condition for the EPUE Regulation entering into force in Poland.

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The Federal Circuit's recent *Ericsson* decision, and the IEEE's new, expanded policy of prescribing added specificity for the patent licensing assurances it requires before agreeing to embody patented technology into an IEEE standard, provide different ways to address the plague of litigation over what terms and conditions are reasonable and non-discriminatory in the licensing of patents essential to implementing a standard. The Federal Circuit's after-the-fact patch-up of contract failure in the *Ericsson* case and the IEEE's pre-contract clarification efforts in its new policy have their limitations, however, and difficult problems still remain.

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Applications to allocate .wine and .vin as gTLDs have created a furore among winemakers and winemaking nations. Their concerns derive from the relatively weak protection afforded to wine appellations in the online context. This article examines the law governing online terroir and how the battle to protect it is unlikely to be easily won.

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Regulation 542/2014 of May 15, 2014 amending Regulation 1215/2012 as regards the rules to be applied with respect to the Unified Patent Court and the Benelux Court of Justice is not only a piece of mechanics technically needed for the entry into force of the Unified Patent Court Agreement signed on February 19, 2013. It also creates rules giving jurisdiction to the new court vis-à-vis defendants domiciled outside the EU for acts of infringement committed within the EU. Finally it creates in the Brussels I Regulation an entirely new long-arm jurisdiction that deserves attention.

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Arnold J in the Patents Court has found that Novartis’ patent covering its Exelon rivastigmine transdermal patch to treat Alzheimer’s disease is invalid. To establish infringement by the generic defendants (Focus, Actavis, and Teva), Novartis proposed a broad claim construction, covering any patch which delivered the same starting dose as a defined reference patch. While the court accepted the broad construction, this led to the conclusion that the patent was invalid because it included added matter over the application as filed and because it was obvious over a prior US patent. In other European jurisdictions, courts hearing disputes over the equivalent Novartis patents have made divergent findings, particularly with respect to infringement by generics.

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The EU General Court has upheld the decision of OHIM’s Fourth Board of Appeal, *Skysoft Computersysteme GmbH v OHIM* (T-262/13) EU:T:2014:884, on an opposition brought by BSKyB against the registration of the mark SKYSOFT. The Board found that there was a likelihood of confusion between the marks SKYSOFT and SKY in relation to maintenance services for data processing equipment, and data processing equipment and computers.

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