

# European Intellectual Property Review

2016 Volume 38 Issue 1  
ISSN: 0142-0461

## Table of Contents

### Opinions

MICHEL VERLINDEN, TIMO MINNSEN  
AND ISABELLE HUYS

#### **Reconciling IPRs and Openness in Biobanking 1**

This opinion argues that carefully drafted IPR policies could be used to protect the substantial investments made by biobanks in the collection of HBM and data while still allowing scientists to share information and to seek IPRs on downstream inventions resulting from the use of such collections. At the same time it is recognised that the feasibility of IPR policies depends on the specific types, set-ups and goals of biobanks, and that some biobanks might have good reasons to refrain from being involved in IPRs. However, in many cases an appropriate balance of the IPR-user modalities will be crucial to enhance translational medicine.

### Articles

IONA SILVERMAN

#### **Optimising Protection: IP Rights in 3D Printing 5**

This article gives an overview of the intellectual property issues that arise in relation to 3D printing and discusses the rights that different industries will need to invoke in order to protect their products. The article concludes with some practical tips to help brands stay at the cutting edge.

BERND JUSTIN JÜTTE

#### **The Beginning of a (Happy?) Relationship: Copyright and Freedom of Expression in Europe 11**

The relationship between the right to freedom of expression and copyright at European level has only recently been addressed in two cases, one before the European Court of Human Rights (*Ashby Donald v France*) and one before the Court of Justice of the EU (*Deckmyn v Vandersteen*). The relationship between both fundamental rights is analysed by comparing the approaches of both European courts in striking the balance between both fundamental rights. Both courts have, so far, not given either right priority over the other, and both continue to grant Member States a wide margin of discretion to strike the balance at the national level.

DR LAVINIA BRANCUSI

#### **Designs Determined by the Product's Technical Function: Arguments for an Autonomous Test 23**

The article concentrates on the interpretation and the scope of the functional exclusion set out in art.8(1) of the Regulation on Community Designs. It analyses criteria to be applied at different stages of assessing design features solely dictated by the product's technical function. The author suggests adopting an approach independent from that developed in trade mark practice.

EZIEDDIN ELMAHJUB

#### **A Case for Flexible Intellectual Property Protection in Developing Countries: Brief Lessons from History, Psychology and Economics 31**

This paper consults a wide range of interdisciplinary research to determine the appropriate design of development-oriented intellectual property (IP) systems. It suggests that developing countries should be sceptical about importing IP models from developed countries. Conclusions drawn from this research suggest that development-oriented IP systems would benefit from a legal infrastructure that allows wide diffusion and re-use of knowledge and cultural resources.

PETTERI GÜNTHER

#### **The Plan for a Digital Single Market in Europe and Reforming EU Copyright Rules to Develop a Market-Oriented Approach to Reduce Infringement on the Internet 43**

"Piracy" still remains perceived as a "massive problem" in 2015. The European Commission intends to reform the EU copyright regulatory framework. This should be done with the aim of promoting the functioning of digital markets. Supporting the functioning of digital markets, including reducing infringement on the internet and increasing legitimate sales, appear to require both enabling legislation and enforcement measures.

## Comments

SIMON BAGGS, RACHEL ALEXANDER  
AND ELOISE PRESTON

### **Curtains Down on Popcorn Time: s.97A takes Centre Stage** 56

In April 2015, the High Court of England and Wales granted a website blocking order pursuant to s.97A CDPA 1988 directed at so-called “Popcorn Time” websites. This is the first time the court has considered the application of s.97A to this type of website. This article explains the significance of the judgment, and the order made, and considers the relevance of the case in the context of “communication to the public”.

SEBASTIAN MOORE AND ROSIE  
PATTERSON

### **High Court Sets Out Framework for Dealing with Enforcement of Second Medical Use Claims** 60

The long-awaited decision on the merits in the well-publicised case of *Warner-Lambert Co LLC v (1) Actavis Group PTC EHF, (2) Actavis UK Ltd, (3) Cadecus Pharma Ltd and (4) Pfizer Ltd and Secretary of State for Health* provides guidance on the steps that a generic company might take to avoid infringement of “Swiss form” patent claims when marketing a product with a “skinny” label.

ROBYN TRIGG AND PHILIP DAVIES

### **General Court Saddled with Figurative Marks** 63

The General Court’s judgment in *Royal County of Berkshire Polo Club v OHIM — Lifestyle Equities (T-581/13)* considered the distinctiveness of a figurative mark. While it is often taken for granted that figurative marks are likely to be distinctive, distinctiveness is assessed by reference to the goods and services claimed. This comment explores when a figurative mark will be found not to be distinctive.

## Book Reviews

66