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Table of Contents

Opinions

CHRISTOPHE GEIGER, OLEKSANDR BULAYENKO, THÉO HASSLER, ELENA IZYUMENKO, FRANCISKA SCHÖNHERR AND XAVIER SEUBA

The Resolution of the European Parliament of July 9, 2015: Paving the Way (Finally) for Copyright Reform in the European Union? 683

This Opinion is based on the Reaction of the Centre for International Intellectual Property Studies (CEIPI) at the University of Strasbourg to the Resolution on the Implementation of Directive 2001/29 on the Harmonisation of Copyright in the Information Society adopted by the European Parliament on July 9, 2015. It was sent to the European Parliament at the end of July 2015.

Articles

PAMELA SAMUELSON

Three Fundamental Flaws in CAFC's *Oracle v Google* Decision 702

The CAFC's *Oracle v Google* decision is deeply flawed and at odds with more than two decades of copyright precedents applying copyright law to computer programs. This article shows that the CAFC erred in its interpretation of §102(b), in its overbroad conception of interfaces as protectable structure in programs, and in misconstruing and misapplying the merger doctrine to program interfaces.

ALICE BLYTHE

In Search of Mr Average: Attempting to Identify the Average Consumer and his Role within Trade Mark Law 709

Following the CJEU ruling in *Google France* and the Court of Appeal decision in *Interflora v Marks & Spencer*, it has become necessary to re-evaluate the role of the average consumer, especially in relation to art.5(1)(a) of Directive 2008/95: specifically his characteristics, the burden of proof and possible future uses.

ADRIÁN CRESPO

The (Blurred?) Definition of Product under the Supplementary Protection Certificate Regulation in the Wake of the *Forsgren* Judgment 716

In this article, the author explores the rationale of the judgment of the Court of Justice of the EU in the *Forsgren* case, where it tackled the notion of product under the Supplementary Protection Certificate Regulation, and its future implications for patent holders. In the author's opinion, the CJEU has not sufficiently clarified this notion. On the contrary, *Forsgren* has drawn a blurred line between active ingredients and adjuvants that will necessitate subsequent references for a preliminary ruling.

MYRIAM OTAOLA ALLENDE

A Comparative Study of the "Reproduction by Natural Persons for Private Use" Exception to Copyright in the UK and France 721

The "reproduction by natural persons for private use" exception to copyright was intended to be harmonised in the EU in 2001, but since then many differences have arisen among the Member States in its regulation. In this article the main elements of this exception as introduced in the UK and France will be studied, following the communitarian framework and developments in recent case law. This comparative investigation will serve to point out the differences, strengths and weakness of the singular systems in place in these two countries, and to identify the areas of future development that this exception could potentially experience, as upcoming legislative adjustments are expected in both countries in this matter.

JIE WANG

Not All ISP Conduct is Equally Active or Passive in Differing Jurisdictions: Content Liability and Safe Harbour Immunity for Hosting ISPs in Chinese, EU and US Case Law 732

This article considers how the courts in the US, EU and China decide whether a defendant is a competent hosting ISP as defined in the "safe harbour" provision. Through comparison, it finds out that while the US courts set a low threshold, the courts in the EU and China always consider a defendant to be an unqualified hosting ISP because of its lesser degree of passivity. This article concludes that, in Web 2.0, it is inappropriate to require hosting ISPs to remain purely passive, and hosting ISPs should be allowed to perform certain management tasks on uploaded content.

Comments

DAVID WILSON, ANDREW MOIR, NIC RUESINK-BROWN AND KYRIAKOS FOUNTOUKAKOS

CJEU Permits Standard Essential Patent (SEP) Injunctions against Infringers who Engage in Delaying Tactics or do not Respond Diligently with a Good Faith Counter-offer 741

The CJEU has recently given judgment in *Huawei Technologies* (C-170/13), a case between the mobile equipment manufacturers Huawei and ZTE, which was referred to it by the Regional Court of Düsseldorf. The case concerned the circumstances in which it would be an abuse of a dominant position (a breach of competition law) for a standard essential patent (SEP) holder to seek an injunction against an alleged infringer. The CJEU's judgment provides important guidance and welcome clarity to both SEP holders and implementers as to what steps each must take in order to retain either the right to request, or the right to object to, a claim for an injunction preventing use of an SEP. However, some uncertainty remains. The judgment strikes a balance between protection for SEP holders on the one hand and undue delay for implementers in bringing their products to the market on the other.

AGATA SOBOL

Damages Calculation for Trade Mark and Denomination of Origin Violations: Interesting Outcome, but Unconvincing Reasoning: *Emmentaler Switzerland v Wick Käse GmbH* 744

This comment concerns the judgment issued in the *Emmentaler* case by the Court of Milano. What is of particular interest here is not the analysis of trade mark and appellation d'origine contrôlée infringement made by the judges, but the calculation of damages that resulted in €1,700,000 compensation awarded to the plaintiff.This decision will surely please all IPR owners who intend to claim damages for infringement in Italy, but it unfortunately shows as well how poor and unconvincing reasoning supports a similar compensation,

SOPHIE RICH, CHRISTOPHER SHARP AND ANDREW WELLS

Court of Appeal Clarifies Scope of Swiss Form Second Medical Use Claims 748

In *Warner-Lambert Co LLC v Actavis Group PTC EHF*, the Court of Appeal considered the interpretation of "Swiss form" second medical use claims, i.e. claims directed to the use of a chemical compound for the preparation of a pharmaceutical composition "for" the treatment of a particular disease.

Book Reviews

751