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European Intellectual Property Review

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The Case for Scientific-Ethical Audit in Patent Application Proceedings 193

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Initial interest confusion is a controversial doctrine and has, until now, been largely resisted or ignored. Following *Interflora v Marks & Spencer* (CA11) and *OCH-Ziff Management v OCH Capital*, it is necessary to ask whether it ought to be accepted within European trade mark law, and if so, where within the current framework it should sit.

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This article, presented in two parts, outlines the development of the extended collective licensing regulations in the UK in the first part. In doing so, the article draws a line through the failed attempt of the Gowers Review 2006 to the success of the Hargreaves Review 2011 and ultimately to the successful implementation of an extended collective licensing scheme in 2014. The second part reviews the scheme, which has now been in place for more than a year, and explores the progress of the licensing organisations in implementing the scheme. Furthermore, from the perspective of one of the oldest extended collective licensing schemes in the world—i.e. that of Denmark—the article questions whether the UK can learn any lessons from the Danish system in moving forward.

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The Biotechnology Directive, passed by the European Parliament in 1998, provides that biological materials, even when they are isolated from the human body, are patentable subject-matter. However, two recent decisions of the highest appellate courts in the US and Australia cast doubt on the legitimacy of the Directive. These two decisions not only overruled patent office practice that had stood unchallenged for more than 30 years, but they demonstrate how differences in patent law statutory language and jurisprudence are irrelevant when it comes to determining what is an “invention”. Given that TRIPS mandates that patents be granted only for “inventions”, in light of these decisions it is arguable that the Biotechnology Directive is inconsistent with TRIPS.

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A number of initiatives are in progress internationally to strengthen and harmonise trade secrets law, and trade secrecy provisions can be expected in new trade agreements. This article analyses the trade secrecy provisions in the recently concluded Trans-Pacific Partnership Agreement (TPPA) to which New Zealand is a party, and the potential impact these provisions will have on New Zealand law.

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This article considers the recent ruling of the UK Intellectual Property Enterprise Court on the ukulele band The Ukulele Orchestra of Great Britain (UOGB), preventing a rival band from using a similar name, namely The United Kingdom Ukulele Orchestra. H.H. Judge Hacon found that UOGB could only successfully rely on passing off, as its Community word mark THE UKULELE ORCHESTRA OF GREAT BRITAIN was invalidly registered on account of being descriptive and having not acquired a distinctive character. The judge also dismissed UOGB's claim for copyright infringement in the "format" of two of its performances.

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The case concerns a dispute as to the ownership of the copyright in a song called "Touch Sensitive" recorded in 1999 by The Fall and released by Artful Records on an album entitled The Marshall Suite. The music for the song was written by the second claimant, a band member called Julia Adamson. The lyrics were written by the vocalist Mark Smith, who later assigned his rights in the lyrics to the first claimant, Minder Music. The defendant, Mr Sharples, was the producer of the album version of the song. The central issue in the case was whether Mr Sharples shared with the claimants any copyright in the album version of the song, whether as a joint author of the song or by agreement. The claimants sought declarations that: the ownership of the copyright in the album version of the song was split one-third to Minder Music and two-thirds to Ms Adamson (as per an undisputed agreement between Mr Smith and Ms Adamson in 1999); and that no part of the copyright was owned by Mr Sharples. The claimants also sought an inquiry as to damages.

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