2016 Volume 38 Issue 5
ISSN: 0142–0461

European Intellectual Property Review

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What Protection for Trade Secrets in the European Union? A Comment on the Directive Proposal 255

In November 2013, the European Commission published a Proposal for a Directive on the protection of undisclosed know-how and business information (trade secrets), which, after first being amended by the EU Council in 2014, has now entered the legislative phase. Since its publication, journalists, whistle-blowers and trade unions have criticised this document for placing an excessive burden on freedom of expression, the right to information and employees' mobility. In fact, a harmonised protection of trade secrets in the EU needs to be based on a set of principles in order to ensure its public acceptance. In particular, its scope needs to be sufficiently delimited in order to remain a tool restricted solely to business life, and the protection granted must provide clear safeguards for the respect of fundamental rights.

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The ingenuity of patent lawyers tests the limits of two important doctrines governing the distribution of patented goods. A recent decision of the Federal Circuit involves a complex licensing scheme with an unusual pattern that gives the scheme characteristics arguably bringing it into conflict with the exhaustion doctrine, on the one hand, but safely within the doctrine permitting licensing of limited fields of use, on the other hand. The author suggests that the Federal Circuit's reasoning in reversing a lower court's grant of summary judgment is not faithful to Supreme Court precedent, because it imposes an erroneous standing requirement on invoking the exhaustion doctrine and uses an unduly narrow standard to determine whether what is sold and what infringes the patent are sufficiently alike to trigger the exhaustion doctrine. Part 1 of this two-part article traces the development of the US exhaustion doctrine to the present. Part 2 will address the Federal Circuit's controversial judgment in this case, which may greatly limit the application of the exhaustion doctrine by providing a way to circumvent it; and then discusses a new legal analysis to supplement the exhaustion doctrine, based on equitable estoppel.

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The smartphone and tablet wars in the US and other jurisdictions are a harbinger of complex litigation ahead as courts wrestle with the task of teasing out of complex technological detail the ownership of intellectual property rights and determining how far second comers may lawfully go in replicating functional features. This article considers the recent judicial revisiting of copyright and patent protection in the *Oracle America v Google* litigation for software to bring smartphones and tablets within pre-existing rules or alternatively adjust those rules to fit market realities.

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Having made it to the Court of Justice of the EU on a referral from Mr Justice Arnold, the famous four-fingered chocolate-coated wafer bar, Kit Kat, returned to Mr Justice Arnold in the High Court. The High Court, in applying the (not entirely satisfactory) reasoning of the CJEU, rejected Nestlé's application to register the three-dimensional shape of the Kit Kat. This comment looks at the CJEU and High Court decisions and considers their import on the registrability or otherwise of 3D shapes as trade marks.

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On 15 January 12015 the Court of Justice of the EU gave its ruling in the case *Ryanair Ltd v PR Aviation BV*. The court had to decide whether the rights of a lawful user of a database, according to Directive 96/9 on the legal protection of databases, are also applicable in a case where a database is not protected by the Directive. In the view of the court, the Directive must be interpreted as meaning that it is not applicable to a database which is not protected either by copyright or by the sui generis right under that Directive, so that arts 6(1), 8 and 15 of that Directive do not preclude the author of such a database from laying down contractual limitations on its use by third parties.

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