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Creative Machines: Ownership of Copyright in Content Created by Artificial Intelligence Applications 457

Over the past 10 years we have seen astounding developments in artificial intelligence (AI), often defined as the science of making computers do things. AI is growing increasingly sophisticated, and rather than being limited to "operating functions" and "machine learning" (e.g. autonomous cars; machine translators; speech, handwriting and image recognition systems etc.), we are now in a world where machines are being used to (help to) create different types of "artistic" content, i.e. music, paintings and poetry. This leads to various questions, including who owns AI-generated works, and whether they are even protectable by copyright at all.

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Let's Talk about Data Ownership 461

As personal devices, vehicles and industrial control systems increasingly join the ranks of the Internet of Things, the volume and potential value of big data rise exponentially. Private and public stakeholders are certainly focusing on the possibilities of "data" as never before. But if data are really the new "oil", then is the current legal framework fit for purpose? Does it provide adequate certainty over the ownership and licensing of this burgeoning commodity? And what are the implications of data protection law? Against the background of a current European Commission consultation and the imminent arrival of the GDPR, this article explores these questions from a civil and a common law perspective.

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The Mark of a Culture: The Efficacy and Propriety of Using Trade Mark Law to Deter Cultural Appropriation: Part 2: Practical Consequences and Legal Hurdles 467

This article is Part 2 of a two-part article—the first part appeared in the previous issue of E.I.P.R. This article presents theories of and requirements for trade mark protection, before attempting to apply these requirements to source communities seeking to prevent cultural appropriation of their cultural products. This article goes on to examine the efficacy and merits of source communities' potential use of trade mark causes of action to police cultural appropriation, and analyses the propriety of using trade mark law to this end.

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This article explores how UK and EU copyright law and policy can satisfactorily address hyperlinking to copyright works available on the internet without the relevant right holder's authorisation. It suggests that a satisfactory solution will adequately balance conflicting rights and objectives, conform with international legal instruments, and contour rights conferred by copyright with the precision that their proprietary character necessitates. It exhibits how the approach established in *GS Media* does not fulfil these criteria and suggests an alternative—reframing the infringement test for the making available right in a binary, objective fashion and harmonising Member States' secondary liability regimes.

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Developments Regarding the Patentability of Computer Implemented Inventions within the EU and the US: Part 1—Introduction and the Legal Problem of Patenting Computer-Implemented Inventions 489

The subject-matter eligibility criteria applied by the EPO and in the US impose significant constraints on patenting computer-implemented inventions (CI inventions) in these jurisdictions. There do not appear to have been significant changes to the EPO criteria over the last few years; by contrast the interpretation and application of the US criteria have significantly changed through and following the US Supreme Court's 2014 Alice decision, arguably rendering it more difficult to obtain and enforce patents directed to CI inventions in the US. However, both the EPO and US methodologies for determining subject-matter eligibility involve legal uncertainty and present difficulties for practitioners, applicant and patent holders. Part 1 of this article analyses and compares the current standards for patenting CI inventions in the EPO and in the US. Today, it cannot be concluded that one or the other methodology is clearly more liberal in finding CI inventions to be subject-matter eligible across all contexts.

Comments

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Laches and Statutes of Limitations in Patent Infringement Actions: The US Supreme Court Reaffirms *Petrella* 511

The US Supreme Court, in *SCA Hygiene Products Aktiebolag v First Quality Baby Products LLC*, has held that the equitable defence of laches does not apply to claims for patent infringement damages brought within the six-year period of 35 USC §286. The ruling is consistent with *Petrella v Metro-Goldwyn-Mayer Inc*, but may increase wait-and-see litigation strategies in the US.

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Humira Patent Rights Shot by "Fujifilm declaration" 518

Mr Justice Henry Carr, in the UK Patents Court, granted the declaration sought by the claimants that the dosage regimes for the biosimilar adalimumab products they intended to launch in Europe were obvious and/or anticipated at the claimed priority dates of certain European (UK) patents owned by AbbVie relating to the antibody adalimumab, sold under the trade mark HUMIRA. An array of legal issues arose, including entitlement to priority. In this case, the inventors of the patent subject-matter were US and German employees, the patents at issue had been abandoned by AbbVie prior to trial, and therefore complex issues of UK, US and German law were involved. This comment considers the judgment and its implications.

JOHN A. TESSENSOHN

Fragile Opponent Outcome Trends in Japanese Patent Oppositions 524

This article reviews the self-evident trends from the JPO's latest patent opposition outcomes data and statistics, and provides some guidance to users of Japan's patent system in reaping the greatest benefits of the post-grant opposition and co-existing post-grant invalidation appeal systems while ameliorating their risks in implementing their patent enforcement and defence strategy in one of the world's most important economic markets, Japan.

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