

European Intellectual Property Review

2017 Volume 39 Issue

11

ISSN: 0142-0461

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Opinion

OWEN O'RORKE

Search Engine "Pessimisation": An Upward Trend for Right Holders? 669

From 1 June this year, the two leading search engine operators (that is, Google and Microsoft—the operator of Bing) committed to a Voluntary Code of Practice upholding the interests of bona fide right holders in the UK. This Opinion considers what this means.

Articles

ALPANA ROY AND ALTHAF
MARSOOF

Geo-blocking, VPNs and Injunctions 672

Geo-blocking is the technical means by which copyright owners and licensees give effect to the practice of territorial licensing arrangements in respect of works made available on the internet. In effect, this has led to market fragmentation in an environment where consumers see no borders and have the expectation of universal access to content. Online consumers, therefore, have retained the services of virtual private networks (VPNs) to bypass geo-blocking technology, a practice that has irritated copyright owners, and in particular the film industry. In light of these tensions, this article first considers whether geo-blocking measures are valid technology protection measures. Secondly, it considers whether the injunctive remedy made available in the EU, Singapore and Australia specifically targeting "intermediaries" and "network" or "carriage" service providers applies to VPNs so that they can be compelled to adopt technical measures to prevent their users from bypassing geo-blocking measures.

DR DEMING LIU

Reflecting on an Account of Profits for Infringement of Intellectual Property Rights 681

The article debates the changes that the EC Intellectual Property Enforcement Directive brings about for the law of an account of profits in the UK. It also examines case law to establish how the courts regard the account and what methods they use in allocating the profits. Inter alia, it criticises the court's approach toward remuneration for the infringers' skills and labour. Furthermore, it argues against the UK court's refusal to change the principle of election between an account of profits and damages. It yet again takes issue with some courts' approach to apportioning profits.

DR TONY ROLLINS, NICOLA DAGG
AND STEVEN BALDWIN

From *Takeda* to *Teva v Merck*: Are We Treading the Right Path on Combination Product SPCs? (Part 2) 697

In two earlier articles, including Part 1 of this series, we discussed the diminution of SPC term since SPCs were introduced in 1993, how the understanding of the definition of "product" in art. 1(b) of Regulation 469/2009 (the SPC Regulation) has developed over time and how various courts within Europe have dealt with the definition of product. In this article, we look in greater detail at the treatment of chemical combination products within the SPC system. In particular, we consider the key role that combination product cases have played in the development of the law regarding art.3(a) and 3(c) of the SPC Regulation. As part of that, we look at whether the CJEU should take the advice of *Arnold J* in the UK and adopt a "core inventive advance" test into SPC law. We set this discussion within the context of how pharmaceutical companies have applied for chemical combination products in practice since inception of the SPC Regulation and how the average SPC term for chemical combination products has dwindled over time.

Second Medical Indications and the Swiss-Form Claim: Taming Frankenstein's Monster—Part 3: The Franken-Cuckoo Comes Home to Roost 705

Few patent claim formats present more interpretative difficulties than that of the so-called Swiss form. Taking shape as purpose-bound process claims (i.e. claims directed towards a manufacturing process applied for a particular end) the Swiss form was originally conceived as an attempt to navigate treacherous waters—waters bordered by two seemingly immutable prohibitions on patenting: the excluded; and the old. A jury-rigged solution to a thorny problem, the Swiss-form claim promised to extend patent law's incentives to the discovery of new and useful functions of existing medicaments: repurposing the old to create the new. For inventions known in other fields, inventions with no prior medicinal purpose, a solution had already been given in statute; art 54(5) of the European Patent Convention (EPC) 1973 allowed discovery of the first medical use of a known compound to be claimed as a purpose-bound product. Once, however, a first medical use was known: that was it. Secondary indications, arguably no less beneficial than the first, were left out in the cold. The Swiss form was devised to bridge this gap: its purpose undoubtedly noble; its proposed effects glittering. However, this virtuous facade conceals a darker underbelly: an underbelly in which the text of the Convention was mutilated and warped, leaving knotty, perhaps intractable, problems in its wake. This then is the story of the Swiss form: of its birth, its execution, and the more recent attempts to disentangle the legacy of its creation. Parts 1 and 2 of this series of articles have provided a picture of the birth of the Swiss-claim format and outlined some of the difficulties inherent in any attempt to bring it to heel. This final part (Part 3) concentrates on the litigation in *Warner Lambert v Actavis*, the case in which the EBA's Franken-cuckoo finally came home to roost.

Comments

CHARLOTTE SCOTT

Victoria Plum Ltd (t/a Victoria Plum) v Victorian Plumbing Ltd 719

Victoria Plum Ltd (t/a Victoria Plum) v Victorian Plumbing Ltd concerned the defence of honest concurrent use in the context of keyword advertising. The decision is interesting for a number of reasons which are set out in this comment.

DR PAUL LAMBERT

NUTRIPLEN Trade Mark Infringement Case in Ireland 721

This article comments on a trade mark infringement decision in the case *Nutrimedical BV and by order Aymes International Ltd v Nualtra Ltd*. The judgment of Mr Justice Twomey, delivered on 2 May 2017, decided that the registered mark NUTRILETE was infringed by NUTRIPLEN, in particular by likelihood of confusion. The claim was that the use by Nualtra Ltd (Nualtra) of the mark NUTRIPLEN infringed the rights of the registered trade mark NUTRILETE. Ultimately, infringement was held, but damages were reduced.

JUSTIN DAVIDSON AND VINCENT OEY

Patent Examination Guidelines Revised in China 728

On 1 April 2017, the latest amendments of the Chinese Patent Examination Guidelines (the Guidelines) came into force. It is the third time the Guidelines have been amended since this current edition was published in 2010. This comment considers the changes made to the new edition.

Book Review

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