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A Switch on a Switch on a Switch: The Status of Harmonisation of Biotech Patent Law in Europe 541

The patentability of biotechnological inventions, including biopharmaceutical inventions, in Europe is determined by two separated and unrelated legal systems, namely European Union law and European Patent Convention law. As a consequence of this hybridity, a certain level of legal uncertainty regarding the patenting of biotechnological inventions cannot be avoided and interactions between the two systems are not always straightforward. In addition, under the European Patent Convention system the distinction between the importance of primary Convention legislation and secondary Implementing Regulations legislation appears not always clear. In practice, which of the two legal systems decides first on patentability, or otherwise, in the field of biotechnology has entirely different consequences. Legal certainty can presumably only be achieved by measures by the European Union law system, for instance after the referral of an appropriate question by a national Union tribunal or court.

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Inventions involving biological material often meet the sufficient disclosure requirement only by complementing written description with a deposit of that material in depositary institutions under the regime of the Budapest Treaty. Attention in drawn to the structural-informational nature of biological inventions, which requires special legal treatment as it is reflected in the expert solution adopted in the EPC and in the EU Biotech Directive. Discussed also are consequences of the amendments of claims in published patent applications and granted patents with references to deposited material.

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The Government of Singapore recently introduced a Bill to amend the tobacco control law with a view of prescribing plain packaging for tobacco products. The amendment was passed into law on 11 February 2019, with an expected implementation date in 2020. The consequence, of course, is a complete prohibition on the display of any trade marks, symbols, promotional images or logos on tobacco packs. In this article, we consider the constitutionality of this legislative measure, given that trade marks are, in essence, commercial expressions that attract constitutional free speech rights. Given that the constitutionality analysis requires an assessment of whether plain packaging is necessary or expedient in the interest of public order, which has been broadly defined to include the wider and larger interests of the country, we also conducted an empirical study to determine the effectiveness of plain packaging. Our study focused on the impact of package plainness and brand familiarity on smokers' package evaluation and quitting intentions.

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The Protection of Works of Applied Art in China: A Critical Study of the Current Practice and Preview of its Development 564

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The terms "Cloud" and "Cloud computing" are often used as synonymous for describing the technical infrastructure by which users may access—via client to server connections—resources distributed over a number of servers organised by Cloud service providers with the aim of offering a range of services, from computing to data analytics, from access to digital content to storage for remote access. What is relevant for the purpose of analysing intellectual property profiles is the fact that the Cloud provides the ability to store and analyse data using computers with a capacity no longer widespread in a myriad of devices but centralised in large hubs. However, these hubs are connected with the periphery in such a way that each of the connected subjects acquires a much greater storage and computing capacity than it could have on a single device. This article analyses how this essential feature of Cloud services creates some "tensions" with the current interpretation of some legal means, mainly in the area of copyright, and how technological evolution determines the need for a rethinking of some legal categories, especially in terms of the right of reproduction, right of distribution and communication to the public.

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The Paris Court of Appeal rendered the first notable FRAND decision in France on 16 April 2019 in the *Conversant v LG* case. Contrary to expectations the court did not fix FRAND royalties. This judgment remains interesting: it refocuses the debates around patents and it implements the new procedure for the protection of confidentiality resulting from the new Trade Secret Act.

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In a recent case involving two patents for an expandable garden hose, the Patents Court rejected an allegation that the patents were obvious for prior use based on work done by the inventor in his garden on prototypes. Does this decision suggest that the test for public availability might depend on the subjective intent of the prior user, or a hypothetical example of what might have happened, in circumstances that did not actually happen (i.e. a person looking into the inventor's garden)? Or is it simply an example of an inventor retaining control of the disclosure, so that they could prevent it from reaching a member of the public? This comment considers the judgment and its implications.

ANNA MARIA STEIN AND GIULIA ROMANELLI

Trade Secrets in Italy: Criminal and Civil Perspective (Italian Supreme Court, Criminal Division, Judgment No. 488895, issued on 20 September 2018) 591

This judgment is one of the most recent examples (at the date of submission of this comment) of how the Italian system protects, with critical difference, trade secrets under Criminal and Civil Law. Well before the entry into force of Trade Secrets Directive 2016/943 (transposed in Italy with the Legislative Decree No.63 of 11 May 2018) Italy had both criminal and civil rules on protection for know-how (art.623 of the Criminal Code and arts 98 and 99 of the Industrial Property Code). This case shows the difference in the concept of trade secrets according to the criminal and civil rules. This difference has a certain impact on the granted protection.

JOHN A. TESSENSOHN

Steak Preparation is Recognised as Eligible Subject-Matter by IPHCJ of Japan: Review of Business Method Patents in Japan 594

On 17 October 2018, the Intellectual Property High Court of Japan (IPHCJ) reversed the decision of the Board of Appeals of the JPO and ruled in favour of restaurant food company that had sought to patent a steak preparation method in a subject-matter eligibility case, *Pepper Food Service Co Ltd v Commissioner of Japan Patent Office*, Heisei 29 (gyo-ke) 10232. This is an interesting pro-owner decision because the IPHCJ set out a flexible and pro-applicant approach in determining what constitutes eligible statutory subject-matter in terms of business methods. This article will also provide an updated review of the current position of business method patents in Japan.

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