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Opinion

TOMRUK ŪSTŪNKAYA

Fashion Law: The Limitation Conundrum of the Patents Act 1977 621

This opinion discusses the limitation of the Patents Act 1977 and expresses concerns for the legislation to protect fashion adequately. The viewpoint of the author is that design and creativity govern fashion, and where functional features are created as part of a creative fashion piece, limitations of the legislation are apparent. Concluding remarks and recommendations for reform are proposed.

Articles

JESSICA C. LAI

Patents, Knowledge Governance and Gender 623

The world-over, patented inventions are predominantly attributed to male inventors. Some of this is due to the fact that there are fewer females in patent-heavy fields. However, more fundamentally, the gender patenting gap results from the fact that patent law itself is gendered—it is filled with multiple binaries that serve to maintain masculine domination over the disempowered. The immediate reaction to this is to de-gender patent law, but any attempt to expand patentability is countered by arguments that this harms the public domain. This article argues that attempting to de-gender patentability and balance this against the public domain is the wrong focus. The privatised and the public domain also constitute a constructed binary. An egalitarian knowledge governance system must go beyond socialised binaries.

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MATTHEW CASKIE, DR ANJA LUNZE,
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Pharmaceutical Patent Law in Times of Crisis: A Comparative Study Part II 643

The second part of this article (Part I was published in the previous issue) discusses the regulatory framework for conducting clinical trials and obtaining marketing authorisations in emergency situations in view of the corona pandemic of 2020. The authors, having regard for their practical implications, discuss these subjects both from a broader EU law perspective as well as from the national perspective of six jurisdictions, and give their view on the extraordinary measures that have been adopted.

ELEONORA ROSATI

Does the Duration of the Storage Matter? Live Streaming Providers as “Online Content Sharing Service Providers” under Directive 2019/790 652

Directive 2019/790 provides an articulated regime for “online content sharing service providers” (OCSSPs), defined as providers that—as their main or one of their main purposes—store and give the public access to a large amount of protected subject-matter uploaded by users, which they organise and promote for profit-making purposes. By focusing on the particular case of live streaming platforms, which cache user-uploaded streams only insofar as is necessary to enable transcoding and streaming to end-users and do not preserve the stream for later access, this contribution explains why the duration of the storage at hand is irrelevant under the directive and why, as a result, such providers qualify in principle as OCSSPs and are subjected to treatment envisaged in art.17 therein.

CEES MULDER

Proposal for a Revision of the European Patent Convention 656

In 2000, the European Patent Convention was amended with the aim of modernisation and for promoting alignment with the TRIPS Agreement and the Patent Law Treaty. As not all issues could be considered in the revision, the idea of a “first” and a “second basket” was born. Several substantive topics were postponed to the “second basket” to be dealt with in a later revision conference, which never took place. In this article, proposals are discussed to revise the European Patent Convention. Apart from looking at the substantive requirements for patentability and at the introduction of a grace period for inventors, proposals for amendment of several articles are formulated. Finally, a proposal to safeguard the judicial independence of the boards of appeal in the European Patent Convention is also discussed.

Applications of the Force Majeure Exception in the Realm of EU Trade Mark Law: Analysis of the Tendencies of the Case Law of the CJEU and EUIPO 668

The present study consists in an analysis of the tendencies of the case law of the Court of Justice of the European Union (CJEU) and of the European Union Intellectual Property Office (EUIPO) concerning the invocations of the force majeure exception in the realm of European Union trade mark law. Through a practical prism, light will be shed on the possible applications of the force majeure notion within the main paradigmatic EUIPO procedural scenarios where they usually arise. This study aims at serving as comprehensive guide on the practical uses of the force majeure exception vis-à-vis EUIPO. In what concerns the audience targeted, it is addressed, among others, at applicants for European Union trade marks (EUTMs), EUTM proprietors and their professional representatives, as well as at EUTM examiners and decision-takers.

Comments

FABIO ANGELINI AND SARA PARRELLO

The Grüne Punkt case 684

There is genuine use of an EU collective mark where it is used to distinguish the goods or services of the members of the association, proprietor of the mark, from those of other undertakings which are not affiliated with the association, in order to create or preserve an outlet for those goods or services. Nonetheless, the CJEU observed that beyond the essential function of an EU collective mark, there might be other factors that may be able to create and preserving an outlet for the goods and services in question, such as the intangible value of being an environmentally friendly manufacturer.

ANNA MARIA STEIN AND GIULIA ROMANELLI

A Secret Is Not for Ever: Court of Milan, XI Criminal Division, Decision No.12818, 26 November 2019 689

In this criminal case of first instance, the Court of Milan overturned the past case law and applied some of the principles related to the Trade Secrets Directive into a criminal proceeding, stating that trade secrets do not have an absolute character and are not everlasting. The trade secrets holder has to prove that certain (identified) information is confidential, has an economic value, and that measures to keep the information confidential have been implemented. Moreover, employees cannot be limited in using their knowledge.

Book Review

NASEEM KHAN

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