

European Intellectual Property Review

2021 Volume 43 Issue 7

ISSN: 0142–0461

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Revision of the Swiss Patent Act: Overdue or Redundant? 415

Switzerland is currently considering introducing a Swiss patent that is fully examined with regard to novelty and inventive step and, additionally, an unexamined Swiss utility model as a more cost-effective alternative protective right. This opinion discusses this proposed modernisation of the Swiss Patent Act.

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Patent injunctions against unlicensed defendants who implement a patented technology standard may produce exclusionary effects that are anti-competitive. Should it make a difference whether the patent in question (1) involves a technology standard developed under the auspices of a standard-setting organisation (i.e. a standard essential patent or SEP); or (2) covers an invention that is incorporated into technology standard without going through this standard-setting process (i.e. a patent that is essential to a de facto standard or “de facto essential patent”)? The potential anti-competitive effects are the same in both categories of patents, yet the legal frameworks of jurisdictions that have considered these legal issues appear to differentiate between them. This article examines the validity of distinguishing between these two groups of patented standards, using examples from various jurisdictions to illustrate the bifurcated approach that has been taken towards placing limitations on the patent holder’s freedom to seek injunctive relief.

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A Study on Punitive Damages for the Infringement of Intellectual Property Rights in China 433

The punitive damages system plays a vital role in compensating intellectual property (IP) holders for damages, fighting against malicious infringement and promoting innovation. To reduce the increasing infringement of intellectual property rights (IPRs), China has introduced punitive damages in IP legal system since 2013. However, the conditions for the application of punitive damages in judicial practice are still very controversial, including how to identify “malicious” or “intentional” infringement and “serious circumstances” as well as the calculation of damages. This article explains the background of China’s punitive damages system for the infringement of IPRs, focuses on the judicial application of punitive damages in the field of trademark law and analyses important disputes. The introduction of punitive damages conforms to the trend of further strengthening IPRs protection in China and is beneficial to technological progress and innovation.

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With its rising popularity, podcasting is an undeniable revolution in technology, which has challenged the traditional norms of copyright law. While podcasting has come a long way since its introduction, how copyright law accommodates podcasting technology is not yet clear. This article examines particular challenges that podcasting poses to copyright law, and explains how copyright law is far-sighted in the modern world.

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The perception of a consumer has played a pivotal role in the distinctiveness of trade marks and the resolution of trade mark disputes, hence an average consumer figure is asserted to be a guiding factor in identifying whether a trade mark is distinct, confusing or whether there is an interest to be protected. The aim of this article is to critically examine the figure of the average consumer and its significance under the trade mark law in relation to consumer perception. This article concludes that although the manner of determining consumer perception in trade mark law is sometimes inconsistent with actual behaviour, the figure of the average consumer should be maintained under trade mark law. It further suggests that a cross-disciplinary (doctrinal and empirical) approach should be employed by the courts in determining consumer perception and applying the figure of the average consumer in order to improve trade mark law.

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In *Travel Counsellors Ltd v Trailfinders Ltd*, the Court of Appeal confirmed that a competitor business receiving information from ex-employees of its rival who have come to work for them will be liable for breach of confidence unless they make inquiries that a reasonable business would make to ensure that the information that are receiving is safe to use.

DR ELLA O'SULLIVAN

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The decision of the Receiving Section of the European Patent Office to reject the DABUS applications is evaluated. The relevant provisions of the European Patent Convention and the application of these provisions in establishing who may be an inventor by the EPO are considered. Two key obstacles to the patenting of AI are identified in the DABUS decision. These are the identification of inventors as human, and the difficulty of acquiring an invention from AI as a non-legal entity. This article concludes that the second obstacle presents the most notable challenge to patenting AI inventions, but that underplaying the role of AI in inventions may allow patent applicants to avoid this obstacle. It is suggested that an alternative AI patent regime may be required to deal with ongoing AI developments in order to avoid subversion of the European patent system.

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“Judge a Cheese by its Cover”, Says the Court of Justice in the *Morbier* Case 475

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