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# European Intellectual Property Review



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## The Effect of Failure to Notify the Spanish and German Ancillary Copyright

Laws 263 The Spanish and German "ancillary copyright" laws require online news aggregators to remunerate publishers for excerpts of content published on their pages. In Spain, publishers cannot even waive their right. As a result, Google has withdrawn its news page from Spain, publishers have seen their traffic reduced, and consumers are deprived of useful overviews. This article points out that the laws should have been notified to the European Commission, to avoid fragmentation of the internal market, and explains that the laws are not enforceable since this was not done.

Understanding the Transitional Provisions of the Agreement on the Unified

The transitional provisions in art.83 of the Agreement on the Unified Patent Court have stirred debate among prospective users. There are many contrasting interpretations and though many argue that the position is clear, it is far from certain what effect it will have in practice. The matter is of no small importance given that every single European patent in force as of the date of the UPC coming into

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**Opinions** BO VESTERDORF

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#### existence will be subject to this provision. This article will explore these uncertainties, and their impact on patentees and prospective users, the effect of the Brussels 1 Regulation on art.83 and how certainty might be achieved.

**Can Importation Satisfy Local Working Requirements?** 278 The Indian Intellectual Property Appellate Board (IPAB) in its decision in *Bayer v India* (2013) held that "working" of a patented invention is not necessarily restricted to local manufacturing within India and that in certain cases importation may constitute "working". This article contends that IPAB conflated the "legitimate reasons" defence for failure to work with the question of whether importation can satisfy local working requirements.

#### Designing Copyright Licensing Laws to Support the Converged Digital Economy 285

The changed nature of information dissemination and exchange, and the convergence of previously discrete computing, telecommunications and broadcasting technologies have eroded the traditional rationale for compulsory copyright licensing schemes. The objective of this article is to consider the continuing merits of compulsory copyright licensing schemes in the context of a converged digital economy characterised by widespread and rapid dissemination and extensive transformative use of information. In considering the issue, the proper relationship between copyright licensing law and competition law will be addressed.

#### Compulsory Licensing of Pharmaceutical Patents in India: Whether the Natco Decision Will Meet the Global Benchmarks? 296

The need to find a balance between the rights of pharma patent holders and public health has triggered some highly passionate debates in the last three decades. India provides a good case study which shows that the flexibilities under TRIPS Agreement can be efficiently utilised by developing countries without compromising their interests. The decision by the India Patent Office to grant a compulsory licence in favour of an Indian pharmaceutical company, Natco, has triggered lot of criticism and concerns. This article analyses the soundness of the decision in the light of global practices dealing with compulsory licensing which is reflected in international agreements, the Indian Patent Law provisions and the conduct of the Indian Patent Office in subsequent applications for such licences. It highlights some important factors which justify the grant of a compulsory licence in order to prove that the compulsory licence so granted is not anti-TRIPS and meets all the global benchmarks.

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PENNY GILBERT AND SAM CARTER	Product-by-Process Claims: Clarification from the UK Court in <i>Hospira v</i>
	<i>Genentech</i> 314 In <i>Hospira v Genentech</i> , Birss J considered the validity of two patents to lyophilised formulations of
	antibodies. He found all the claims in issue invalid, on the basis that the proposed amendments added matter, and the claims lacked inventive step (though he gave leave to appeal this finding of obviousness). He further held that a claim to a product expressed as being "obtainable by" a process may lack clarity and be found invalid if it fails to identify the characteristic(s) defined by the process. The judgment provides helpful guidance on the construction and validity of product-by-process claims under UK law.
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	This article discusses an October 2014 ruling of the Delhi High Court in <i>World Wrestling Entertainment</i> <i>Inc v M/s Reshma Collection</i> , which offers a pathbreaking approach to the maintainability of trade mark infringement actions in a jurisdiction where none of the traditional elements of jurisdiction—the plaintiff, the defendant and the cause of action—are physically located. The decision offers guaranteed maintainability outcomes to two previously unconsidered permutations, suggesting that plaintiffs from literally anywhere in the world could sustain trade mark suits in India. The article considers the pros and cons of this proposition before locating the judgment within a proposed 11-step maintainability inquiry which seeks to balance various factual and legal considerations in the Indian context, as the elements of jurisdiction inevitably move further and further apart in the future.
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	Rolls? Backaldrin Österreich The Kornspitz Co GmbH v Pfahnl Backmittel GmbH
	(C-409/12) 327 On March 6, 2014 the CJEU handed down its judgment in <i>Backaldrin Österreich The Kornspitz Co</i> <i>GmbH</i> $\nu$ <i>Pfahnl Backmittel GmbH</i> (C-409/12) concerning the genericism of a trade mark. Article 12(2)(a) of Directive 2008/95 (theTrade Mark Directive) provides that a trade mark shall be liable to revocation if "in consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a product or service in respect of which it is registered". In the present case the CJEU explains how this provision should be interpreted.
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