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Table of Contents

Opinion

DR BIRGIT CLARK AND SABRINA TOZZI

"Communication to the Public" under EU Copyright Law: An Increasingly Delphic Concept or Intentional Fragmentation? 715

Several high profile CJEU copyright law decisions over the last few years have brought the "communication to the public" right under art.3 InfoSoc Directive sharply into focus. These decisions have on occasion provided contradictory definitions of this increasingly Delphic concept. While the CJEU's latest two decisions in this field, *Reha Training* (C117/15) and *GS Media* (C-160/15), seem to provide conflicting guidance, they can equally be seen as an attempt by the CJEU to create specific sui generis groups of communication to the public cases rather than attempting to square the circle by trying to find a one-size-fits-all definition. Nonetheless *Reha Training* and *GS Media* appear to create more questions than they answer. This Opinion provides an overview and review of recent developments and case law in this fast-evolving area of EU copyright law.

Articles

MARI MINN

Voluntary Licensing of Patents in the Pharmaceutical Industry: Effective Means of Promoting the Competition Process while Remedying the Shortcomings of the Patent System? 718

Patents grant their proprietors with a time-limited exclusive right to exclude competitors from economic exploitation of the patented invention during the patent protection term. Although in the pharmaceutical sector this right inevitably puts patent proprietors in a strong market position, they are not entirely immune from competition and intervention with their patent rights because of possible litigation or the grant of compulsory licences. Therefore, it can be said that patents have a probabilistic character because their true value depends on the chances of surviving litigation, if ever contested, of course. One of the means used by patent proprietors to avoid litigation is the use of voluntary licences, which one hand provide an opportunity to control competitors while avoiding their patent value being contested in the court. It is thus appropriate to raise the question whether the voluntary licensing mechanism fulfils its function in the European pharmaceutical industry context or whether it is simply an additional means to exclude competition and control the innovation process.

VILHELM SCHRÖDER

Pay-for-Delay Settlements in the EU: Did the Commission Go Too Far? 726

Pay-for-delay settlement agreements have been described as agreements in which an originator pharmaceutical company compensates one or more generic companies for "delaying" the introduction of a generic product on the market. In this article, the author inter alia sets out to critically analyse the factors relied on by the Commission when concluding such agreements to violate competition law.

ROBERTA MONGILLO

The Idea-Expression Dichotomy in the US and EU 733

In US law the uncopyrightability of ideas is expressly codified in s.102 of the Copyright Act. Copyright does not protect ideas, but the creative expressions of ideas. The "idea–expression dichotomy" reflects a fundamental balance in copyright law, providing protection to the particular way an author expresses an idea and allowing the public to gain access to the idea itself. At the international level, the distinction is clearly ruled in art.9.2 of the TRIPs Agreement and art.2 of the WCT. In the EU this dichotomy finds only specifications with particular reference to certain sectors, such as databases and computer programs, but it can be considered to be implied in all the regulation of European copyright.

ANAND B. PATEL, JEFF PADE, VICTORIA CUNDIFF AND BRADFORD NEWMAN

The Global Harmonisation of Trade Secret Law: The Convergence of Protection for Trade Secret Information in the US and EU 738

Recent changes in trade secret law, although they consolidate many fundamentals across the world, demonstrate the difficulties that companies will face operating in a global environment. Understanding the nuances of each jurisdiction's rules and how those may change in the coming years will determine who will be successful. This article discusses some of those changes and the impacts they will have, allowing companies to better navigate this new IP landscape.

GABRIELE SPINA ALÌ

The Sound of Silence: International Treaties and Data Exclusivity as a Limit to Compulsory Licensing 746

Among various grounds, data exclusivity is often criticised for impeding the correct functioning of the flexibilities guaranteed by the TRIPS Agreement in relation to compulsory licensing. Several commentators have noted that, in cases where a generic competitor obtains a non voluntary licence on a patented pharmaceutical compound, the impossibility of relying on the regulatory data submitted by a previous applicant prevents access to the market and therefore neutralises the effectiveness of the licence. By thoroughly looking at the relevant international provisions and state practices, this article brings into question the soundness of these claims. International legal sources, once rightly interpreted, rarely limit the possibility to waive data exclusivity in a more stringent manner than in patent regimes, so that the real threat to compulsory licensing lies in the political disparities between developed and developing countries rather than in the substantive law of data exclusivity.

DR JESÚS IVÁN MORA GONZÁLEZ

Criminal Enforcement of the Trade Mark Holder's Vicarious Liability 757

This article is a semiotic analysis of the trade mark holder's vicarious liability, which aims to formalise an alternative hermeneutic criterion to protect the interests of trade mark holders without any need to embrace any misappropriation doctrine with the ability to marginalise the dialogical ability of citizens in the meaning-creating process of distinctive signs.

Comments

AGATA SOBOL

The Italian Supreme Court's Revirement on Bifurcated Cases and Consequences for Italian Patent Litigation: *Panotec Srl v L.C.R. Macchine Automatiche Srl and AGA Srl* 765

This is an important position taken by the Supreme Court on the relationship between cases on patent invalidity and infringement pending separately. Until now, the Italian Supreme Court and almost all the lower courts did not consider it necessary to suspend the infringement case of the patent until the invalidity case of the same patent was decided. With this judgment, the Supreme Court recognises expressly that the previous case law should be abandoned and that from now on infringement cases will have to be suspended if the invalidity case is pending at the same time. This comment will examine what are the possible consequences of this new approach to Italian patent litigation.

JOEL SMITH AND HEATHER NEWTON

Hyperlinking to Material on the Internet: The CJEU Expands on the Circumstances when it may Amount to Copyright Infringement 768

In its decision in *GS Media v Sanoma Media* (C-160/15), the CJEU has looked again at when the creation of hyperlinks may be a communication to the public of a copyright work, and so will be an infringement of copyright. The CJEU's decision has wide-ranging implications for the operation of the internet, and in particular for commercial entities.

TED SHAPIRO

EU Copyright Will Never Be the Same: A Comment on the Proposed Directive on Copyright for the Digital Single Market (DSM) 771

On 14 September 2016, the European Commission presented its second wave of copyright legislation for the Digital Single Market (DSM). This comment recalls the background to and sets out a brief analysis of the Commission's Proposal for a Directive on Copyright in the DSM (the Proposed Directive).

Book Reviews 777