European Intellectual Property Review



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The Case for Scientific-Ethical Audit in Patent Application Proceedings 193 This article argues the case for adding a process of scientific-ethical review to regular patenting procedures, potentially avoiding foreseeable ethical implications that not only harm the patent office involved, but harm the reputation of intellectual property as a whole, especially within the field of life sciences.

We are Experienced! Jimi Hendrix in Historical Perspective 196

Drawing on significant original research to be fully published in a forthcoming book (*Art and Modern Copyright: The Contested Image* (Cambridge University Press, 2016/17)), this article relates little-known details of the history of photographic copyright and the first statutory originality criterion. In doing so, it critically reflects on the decision in *Bowstir Ltd v Egotrade Sàrl* (2015, Paris TGI) concerning copyright protection for a photograph of Jimi Hendrix by Gered Mankowitz.

Initial Interest Confusion: Attempting to Define its Current Status Within European Trade Mark Law 201

Initial interest confusion is a controversial doctrine and has, until now, been largely resisted or ignored. Following *Interflora v Marks & Spencer* (CAII) and *OCH-Ziff Management v OCH Capital*, it is necessary to ask whether it ought to be accepted within European trade mark law, and if so, where within the current framework it should sit.

Extended Collective Licensing in the UK—One Year On: A Review of the Law and a Look Ahead to the Future 208

This article, presented in two parts, outlines the development of the extended collective licensing regulations in the UK in the first part. In doing so, the article draws a line through the failed attempt of the Gowers Review 2006 to the success of the Hargreaves Review 2011 and ultimately to the successful implementation of an extended collective licensing scheme in 2014. The second part reviews the scheme, which has now been in place for more than a year, and explores the progress of the licensing organisations in implementing the scheme. Furthermore, from the perspective of one of the oldest extended collective licensing schemes in the world—i.e. that of Denmark—the article questions whether the UK can learn any lessons from the Danish system in moving forward.

Patents: First Filing in France, National Security and the Internationalisation of Research and Development 221

To protect national defence interests, the French Intellectual Property Code lays down a number of requirements relating to the first filing in France—with the Institut national de la propriété industrielle (the National Institute for Industrial Property, INPI)—of European and international patent applications. In addition, the French Penal Code contains provisions which punish the communication of information to foreign powers where this is liable to jeopardise the "fundamental interests of the nation". Applying these legal constraints may be difficult in practice, especially in a world where research and development is becoming increasingly international. What, for example, is the position where the applicant for a patent is a French company that belongs to an international group, or where the applicant is a foreign company but the inventors happen to be French nationals?

LUIGI PALOMBI

Association for Molecular Pathology v Myriad Genetics (US) and D'Arcy v

Myriad Genetics (AU): Are Gene Patents in Europe a Threatened Species? 231 The Biotechnology Directive, passed by the European Parliament in 1998, provides that biological materials, even when they are isolated from the human body, are patentable subject-matter. However, two recent decisions of the highest appellate courts in the US and Australia cast doubt on the legitimacy of the Directive. These two decisions not only overruled patent office practice that had stood unchallenged for more than 30 years, but they demonstrate how differences in patent law statutory language and jurisprudence are irrelevant when it comes to determining what is an "invention". Given that TRIPS mandates that patents be granted only for "inventions", in light of these decisions it is arguable that the Biotechnology Directive is inconsistent with TRIPS.

ALICE BLYTHE

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The Trans-Pacific Partnership Agreement and the Protection of Commercial Confidential Information and Trade Secrets in New Zealand Law 237

A number of initiatives are in progress internationally to strengthen and harmonise trade secrets law, and trade secrecy provisions can be expected in new trade agreements. This article analyses the trade secrecy provisions in the recently concluded Trans-Pacific Partnership Agreement (TPPA) to which New Zealand is a party, and the potential impact these provisions will have on New Zealand law.

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Ukulele Bands Battle over IP Rights 246

This article considers the recent ruling of the UK Intellectual Property Enterprise Court on the ukulele band The Ukulele Orchestra of Great Britain (UOGB), preventing a rival band from using a similar name, namely The United Kingdom Ukulele Orchestra. H.H. Judge Hacon found that UOGB could only successfully rely on passing off, as its Community word mark THE UKULELE ORCHESTRA OF GREAT BRITAIN was invalidly registered on account of being descriptive and having not acquired a distinctive character. The judge also dismissed UOGB's claim for copyright infringement in the "format" of two of its performances.

CHARLOTTE SCOTT Minder Music Ltd v Sharples 249

The case concerns a dispute as to the ownership of the copyright in a song called "Touch Sensitive" recorded in 1999 by The Fall and released by Artful Records on an album entitled The Marshall Suite. The music for the song was written by the second claimant, a band member called Julia Adamson. The lyrics were written by the vocalist Mark Smith, who later assigned his rights in the lyrics to the first claimant, Minder Music. The defendant, Mr Sharples, was the producer of the album version of the song. The central issue in the case was whether Mr Sharples shared with the claimants any copyright in the album version of the song, whether as a joint author of the song or by agreement. The claimants sought declarations that: the ownership of the copyright in the album version of the song was split one-third to Minder Music and two-thirds to Ms Adamson (as per an undisputed agreement between Mr Smith and Ms Adamson in 1999); and that no part of the copyright was owned by Mr Sharples. The claimants also sought an inquiry as to damages.

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