

International Team



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Patents

Outstanding progresses towards the Unified Patent Litigation System (UPLS)

The Swedish presidency of the EU seems to have among its priorities the new draft of the UPLS which would set up a European specialized patent court known as the European and Community Patents Court (ECPC). The UPLS aim to improve legal certainty for patent holders who currently find that the validity of their patents varies from European country to country. Hence, equal protection across Europe could help prevent infringement and streamline enforcement. The first instance would be largely decentralized, dealing with patent infringement cases. A

central division would be competent for hearing revocation actions. At second instance, there would be a Court of Appeal. The ECPC shall evaluate evidence freely and independently, and would have the power to make final decisions on cases without the mandatory involvement of the ECJ. The UPLS should also aim to lower costs avoiding duplication of lawsuits and enabling SMEs to better protect their IP rights. Finally, in order to attract the trust of the patentees, the judging panel is planned to comprise a combination of technical and legal expertises.

Competition Defense

Copyright collecting entity fined by the Antitrust Commission

The National Commission of Competition Defense has issued a decision, upholding the appeal lodged by the Spanish TV channel TELECINCO against the entity "AIE" in charge of the management of the author and performer copyrights in Spain. The Commission ordered AIE the payment of 770.000 Euros since the fees established to TELECINCO have been considered discriminatory. The AIE has the monopoly regarding the management of performers copyrights, and from this dominant position established general fees for the use of those copyrights, which have been considered by the Commission as being exorbitant and affecting to the public inter-

est. Within the negotiations with the different TV channels, the AIE established abusive fees ruling in favor of its own interest. Moreover in the particular case of TELECINCO, the applied fees were higher than the applied to other TV channels for their use of the same



copyrights.

The Commission has stated that due to the special and privileged position the AIE holds, the entity has a higher responsibility in terms of transparency and objectivity than any other company. In the light of the above mentioned, AIE has been sanctioned and would have to rectify the general fees in order not to be abusive.

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Ignacio Temiño in World Trademark Review



Ignacio Temiño partner of Abril Abogados, has been acclaimed by the well-known magazine World Trademark Review (August/ September 2009 edition), as one of the most important Spanish legal experts in Intellectual Property.

Genoma España selects Abril Abogados

GENOMA ESPAÑA the Spanish Foundation for Research Development in Genomics and Proteomics, has included ABRIL ABOGADOS among the firms selected for contracting services related to the management of Intellectual Property portfolio.



Abril Abogados took part in FIRJAN

ABRIL ABOGADOS was invited as a lecturer specialized in Community Trademark Law to the Intellectual Property Seminar organized by FIRJAN (Federação das Industrias do Estado do Rio de Janeiro) which took place in Brazil by the end of July



Data Protection

Providing passwords within a trial is illegal

The Spanish Data Protection Agency has fined a company for providing the password of an electronic commerce user during a trial. The basis of the fine, which was finally reduced to 1000 €, was the breach of the law statement according to which "the passwords, while in force, shall be stored so unintelligible". The company provided within the proceeding the user name and password of a supposed fraudster who used someone's else credit card. The supposed fraudster started an infringement proceeding against that company and it was finally demonstrated that passwords are not stored unintelligible.




European Case Law

Exhaustion of Trademark rights

Tunisian company Société Industrielle Lingerie (SIL) was granted a license by Christian Dior (CD) concerning its luxury corsets. Despite of Christian Dior's refusal to sell the corsets outside of the permitted distribution network, SIL went ahead with the sale of the corsets to a discount store. CD immediately instituted a suit for trademark infringement. SIL averred that CD had exhausted its trademark rights. However the ECJ held that the proprietor of a well-known trademark could prevent a licensee from selling its goods to discount stores, provided the licensee's activities "damages the allure which bestows on those goods an aura of luxury". In a similar case, the Spanish Courts have condemned the supermarket MAKRO to pay Clavin Klein an amount of 400.000 Euros due to the loss of prestige of its marks produced by the indiscriminate sale in shelves where food products and others were provided.

New Technologies

Consejos sobre Adwards y Keywords. Google

 Sponsored links are useful advertising tools, but they may also constitute a serious problem for the trademark holders. The reason is that advertisers choose themselves the key words for such links, which sometimes may include third parties' trademarks, to attract consumers to their business. Google has been criticized for holding the advertisers as the only responsible party in this issue; however, there is a complaint process that is available to trademark holders, which is extremely useful to avoid legal actions. By filling a simple form, the trademark owner will submit information regarding the registered trademark and the infringing sponsored link. Google undertakes to investigate these alleged infringements and, eventually, to delete the sponsored links. Therefore this is a fast and easy measure, contributing to avoid other slow and expensive procedures.

The end of Domain Tasting

"Domain tasting" refers to the practice of registering a domain name and then deleting it within the 5 day grace period for no cost. This allows to find out whether the domain name attracts users; by placing advertising on the page, domain tasters can also make money during the 5 days from pay-per-click ads. Because domain tasting led to abuse, ICANN implemented a penalty last year: registrars that canceled more than 10% of the domain names within the 5-day grace period. The fines imposed by ICANN led to the virtual end of domain tasting: compared to last year, domain deletions in the grace period are down 99.7%. That's good news for trademark owners, too, because the domains being tasted often contained protected terms (or were confusingly similar to high-traffic domain names).



Breves

Robinson Lists

The Electronic Commerce Federation and the Spanish Data Protection Agency have launched the called Robinson Lists, consisting in a service enabling citizens to stop receiving advertising. It is an exclusion advertising file. The user registered in these lists can choose those media from which it does not want to receive advertising. According to Data Protection Law the company sending advertising have to check the mentioned lists before sending any advisement to any people whose data have not been directly provided by them.



Judgment on Trademark dilution: BIO



The Spanish Supreme Court has issued an awaited Judgment on trade mark dilution. The Spanish extension of the International Trademark nº 213645 "BIO" in class 29 was cancelled on the grounds of dilution. According to the Judgment found the cancelled mark's owner contributed to the dilution to the "BIO" mark by consistently using it together with the applicant's "house mark". The Court found that this association lead consumer's to infer that "BIO" was not a mark, but a specific kind of yogurt with biological components and properties marketed by the applicant.

Spanish Designs

The Spanish Patent and Trademark Office in compliance with the new program of time reduction in design granting, has published in the Official Bulletin of July 31 the first three day registrations. This three day granting requires the designs been filed with the paid fees and with no formal defects.

3 days!!!

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