

SUMMARIES

THE EUROPEAN COLLECTIVE MANAGEMENT OF MUSIC RIGHTS – LEAD ASTRAY

Dr Péter Gyertyánfy

The European collective management of musical copyright is in a turmoil after the “CISAC Decision”. Representation rights for online uses are withdrawn by the major publishers, reciprocal representation agreements are more restrictive than ever, 95% of internet music use is illegal. The Commission threatens by further actions the collective management societies and refuses to move away from the Online Recommendation. The article recalls the legal and economic environment in which all this happens and searches for the reasons at the root of the events. It describes the short term consequences (negative for all stakeholders) and estimates the future of the economic rights in music in Europe (meagre chances versus strong probability of the 300 years old copyright becoming obsolete).

PAEDIATRIC EXTENSIONS TO SUPPLEMENTARY PROTECTION CERTIFICATES

Zsuzsanna Buzas Nagy

EC Regulation No. 1901/2006 on medicinal products for paediatric use entered into force on 26 January 2007. This regulation aims to facilitate the development and accessibility of medicinal products for use in the paediatric population, one possible reward for the conduction of research is a 6-month extension of the duration of SPC. The article reviews the basic definitions used in the regulation and practical issues how to gain the reward are also discussed. The most important question is what kind of documents are acceptable for intellectual property authorities to prove that the marketing authorization(s) reflect the results of all studies in compliance with the agreed paediatric investigation plan. There is a difference in this respect between the products having marketing authorization issued by EMEA under centralized procedure and those having national marketing authorizations obtained under the Mutual Recognition Procedure or Decentralized Procedure. The main factors influencing the future number of the applications are highlighted in the view of monthly report issued by the EMEA Paediatric Committee (PDCO) and the information about SPC-s collected from Public Industrial Property Database of the Hungarian Patent Office.

PATENT LAW ISSUES RELATING TO PRODRUGS AND METABOLITES OF PHARMACEUTICAL COMPOUNDS

Dr Katalin Mikló

A prodrug is a bioreversible derivative of a molecule that has some barrier to its utility as an effective drug, generally due to its poor physicochemical or pharmacokinetic properties. Therefore, the design and use of a prodrug can be considered a problem solving technique. The importance of the recent issue seems to be proven by the fact that 5% of the worldwide approved and marketed medicines are prodrugs and this tendency is growing. In recent years, there have been several litigated infringement cases focusing on prodrug patents. This article gives full details on the background of prodrug patents and also represents important court decisions relating to this topic without aiming at completeness.

NOTES ON THE HUNGARIAN LEGO DECISIONS – HARMONISATION PROBLEMS IN THE HUNGARIAN TRADE MARK – PART I.

András Lendvai

The author outlines some of the problematic points of the harmonisation of the Hungarian trade mark law and practice in a case study analysing the Hungarian court decisions on the national Lego trade marks (LEGO MARKS). The procedure in connection with Lego's community trade mark running in parallel to the Hungarian procedures gives a unique opportunity to realise the significant differences in the application of the harmonised European trade mark law between Hungary and the community.

The first part of the case study outlines the speciality of the Hungarian Lego cases which is that the Lego Marks have been registered as device marks but not as 3D marks. This is the reason why the grounds for refusal contemplated in the Hungarian cases have been wider than in the European cases (abstract, concrete distinctiveness and functionality). The study identifies the Lego Marks and the scope of the protection conferred by them. In this respect, the Hungarian courts considered the Lego Marks as 3D marks in contradiction to the facts registered in the public records of the HPO. Moreover, the courts confirmed that they did not consider the type of the registered sign as relevant in terms of the assessment of the Lego Marks. According to the author's view, the scope of the protection of the Lego Marks was interpreted on the basis of the product (a 3D object) instead of the device (picture) registered at the HPO. As the second point, the study gives a brief introduction of abstract and concrete distinctiveness and the difference between signs and marks in European case law.

THE PRINCIPLE OF EQUAL TREATMENT IN TRADE MARK LAW

Dr Ákos Süle

There are some perspectives of the preliminary ruling of the European Court of Justice in joint cases C-39/08 and C-43/08 Schwabenpost/Volks.Handy that let us think that trade mark offices of the Member States shall be more thoughtful about their previous practices when rejecting a trade mark application based on absolute grounds. In these cases the national trademark offices are expected to investigate their own former practice and take into account any referrals of the applicants to their previous practices and to the principle of equal treatment. However, when deciding on the registration of a trademark application, the principle of equal treatment shall be in harmony with the principle of legality so that previous erroneous decisions cannot serve as a basis for newer erroneous trade mark registrations. On the other side, any deviations from the former practice shall be duly reasoned. The practice of the German Bundespatentgericht is analysed through several cases. The suspected higher need for resources of the Hungarian Patent Office is also raised.

BAD FAITH BEFORE THE ECJ – EASTER BUNNY

Dr Sándor Vida

Lindt based on his CTM, registered for the shape of an Easter bunny sued an Austrian competitor who marketed similar Easter bunnies. The defendant claimed that the plaintiff had filed his CTM in bad faith because he knew of the prior marketing by the defendant. The Austrian Supreme Court referred the ECJ. The latter held (C-529/07) that the national court has to take in consideration in particular: knowledge of the applicant (i.e. Lindt), intention of the latter, the degree of protection enjoyed by the third party's sign. Comments of von Mühlendahl, Ladas, Montagon and Smith, Porter, Schmidt, Holah are referred. Moreover reported is on the practice of the Hungarian Patent Office as well of the courts, which seem to be more severe than that of the German ones.

PRODUCT COUNTERFEITING AND INDUSTRIAL PROPERTY PROTECTION

Prof. dr. Cristoph Ann LL.M.

The study concentrates on the relationship between product counterfeiting and present and future position and tasks of industrial property protection. It analyses counterfeiting as a serious economic problem, the effective action against which is very difficult because of the extension of global trade. According to the author counterfeiting may result in the decrease of the amount of patent protection applications.

100 YEAR MEMBERSHIP (1909–2009)

HUNGARY – MEMBER OF THE UNION FOR THE PROTECTION OF INDUSTRIAL PROPERTY (PARIS CONVENTION) SINCE 1909

László Végh

The Paris Convention applies to industrial property in the widest sense. However, the article deals with the subject matter relating to patents, especially with antecedents and reasons of the formation of Convention in the period of 1851–1883. The article is also concerned in the circumstances of the procedure of ratification of the Convention in Hungary, regarding generally the governmental activities on the field of patent protection, in the period of 1872–1909.