Kluwer Copyright Blog

Top 3 posts so far this year from our IP Law Blogs

Kluwer Copyright Blogger · Tuesday, April 9th, 2019

To ensure you don't miss out on interesting IP law developments reported on our other IP blogs, we will, on a regular basis, provide you with an overview of the top 3 most-read posts from each of our IP law blogs. Here are the top posts from January, February and March.

Top 3 Kluwer Copyright Blog posts of January, February and March

1) The science of piracy, the piracy of science. Who are the science pirates and where do they come from: Part 1 by Balázs Bodó

"In 2016, Science published a short report on the usage of SciHub, a piratical scholarly journal article distribution service. Set up by Alexandra Elbakyan, a kazakhstani scientist, SciHub allows users to bypass journal publishers' paywalls, so everyone can have access to journal articles for free. The report, based on a dataset provided by Elbakyan, offered a stunning insight into the underground circulation of scholarly knowledge. The colourful maps made it clear that it is not just developing countries that seem to struggle with access issues: high income European and North American countries are also eager pirates of scholarly articles.

The topic of this post is a closely related phenomenon: the underground circulation of scholarly books. Using a dataset provided to us by one of the administrators of a prominent shadow library, we mapped both the supply of and the demand for academic monographs, textbooks and other learning materials via piratical shadow libraries. Our primary findings suggest that scholarly book piracy is a ubiquitous global phenomenon, with no apparent end in sight. If that is indeed true, what might the consequences be for the status quo in scholarly publishing?"

2) Finnish court rules on copyright in the film 'Iron Sky' by Petteri Gunther

"The Finnish market court (Markkinaoikeus) has sided with the producers of the sci-fi feature film 'Iron Sky' in a copyright case (MAO:302/18) concerning rights in that movie. The market court dismissed the claims by animators and visual effects (VFX) technicians who asserted that the producers of the feature film had used the claimants' copyright-protected works for sequels to the Iron Sky movie without their permission."

3) Thou shalt not sample… without permission! by Joao Pedro Quintais and Bernd Justin Jütte

"On 12 December 2018 Advocate General (AG) Szpunar delivered his Opinion in Case C-476/17, Pelham. The case concerns the practice of sampling, i.e. the reproduction of minimal parts of a phonogram for the purposes of using it in another phonogram…This case addresses the fundamental tension between exclusive rights of producers, which are essentially incentive-based, and the artistic freedom of sampling artists. After summarizing the facts and questions, we go through the different answers provided by the AG, followed by a few concluding remarks."

Top 3 Kluwer Trademark Blog posts of January, February and March

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1) Brexit: The road keeps turning by Julius Stobbs and Cameron Malone-Brown

"After a Christmas full of German chocolate, French wine and Italian coffee, the UK has now turned its attention once more to its membership within the EU, and the impending lack thereof.

With yesterday's vote, Parliament voted against the deal proposed by the Prime Minister, to govern the British exit of the European Union…This development certainly does not provide clarity for the brand owner or IP practitioner, and it is looking increasingly likely that this unclear position will persist right up to the wire. This most recent step may be in the direction of a No Deal Brexit scenario, as discussed here, given that there is (at present) no deal on the table for discussion, barring that which has been expressly defeated."

2) WHOIS blackout and impact on UDRP by Lauren Somers

"It would be fair to say that the implementation of GDRP last year caused a number of headaches for businesses that handle personal data. However, one of the lesser publicised implications of GDPR was the redaction of all WHOIS information for registered domain names.

Suddenly, information about the registrant of a domain name, i.e. WHOIS data, was redacted by most domain name registrars. This information was previously freely accessible, provided that the registrant hadn't opted to privacy shield their data, and was a useful tool to trade mark owners in enforcing their rights, particularly in complaints about domain names before the World Intellectual Property Office (WIPO) under its Uniform Dispute Resolution Policy (UDRP).

The UDRP requires that 1) the complainant have rights in a mark identical or confusingly similar

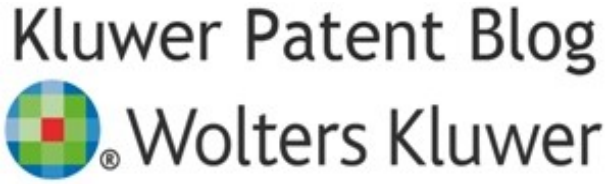
to the domain name, 2) the registrant has no legitimate interest in the domain name, and 3) that the domain name was registered and is being used in bad faith. Both the second and third of these elements have been affected by the WHOIS blackout."

3) Amendment of the Spanish Trademark Law: A more European Law by Carolina Pina

"The Royal Decree-Law implementing the European Trade Marks Directive 2015/2436 was published in the Official State Gazette on December 27. The main part of this legislation amending the Spanish Trade Mark Law will come into force on January 14, 2019."

The main points to be highlighted are set out in this post.

Top 3 Kluwer Patent Blog posts of January, February and March



1) The Haar in the Soup by Thorsten Bausch

"[Y]et another referral to the Enlarged Board may deserve our attention. TBA 3.5.03 referred the following questions to the Enlarged Board, of which question 3 may have the greatest Impact:

(1) In appeal proceedings, is the right to an oral hearing under Article 116 EPC restricted if the appeal is prima facie inadmissible?

(2) If the answer to Question 1 is in the affirmative, is an appeal against the decision granting a patent prima facie inadmissible in this sense, which Appeal has been filed by a third party within the meaning of Article 115 EPC and which has been substantiated by arguing that there is no alternative remedy under the EPC against a decision of the Examining Division not to take into account the third party's objections concerning the alleged violation of Article 84 EPC?

(3) If the answer to one of the first two questions is no, can the Board hold oral proceedings in Haar without violating Article 116 EPC, if the appellant complains that this location is not in conformity with the EPC and requests that the oral proceedings be moved to Munich?"

2) EPO: consultation on Strategic Plan 2023, social tensions remain by Kluwer Patent Blogger

"The EPO has opened a public consultation to get input for its Strategic Plan 2023, which will outline the vision for the Office. 'Its implementation will ensure that we continue to provide high-quality patent services that encourage innovation and contribute to growth.' … The consultation is focused on three topics: 1) Evolution of the patent system and future challenges; 2) Delivering high quality products and services; 3) Social responsibility and transparency. The final proposal for the Strategic Plan 2023 will be submitted to the Administrative Council for adoption in June 2019 and the approved version will be published on the EPO website."

3) One more thing on Teff: Patent Quality by Thorsten Bausch

"A few days ago, our Kluwer News Blogger reported on a decision in the Netherlands, holding two Dutch patents for processing the Ethiopian grain "teff" as null and void. While this decision certainly has a political dimension, which formed the focus of the reports in the general press and

the report from the Norwegian Fridtjof Nansen Institute, it also has a dimension extending into the issue of patent quality."

Read further posts on the Kluwer Copyright Blog here, the Kluwer Trademark Blog here and the Kluwer Patent blog here.

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This entry was posted on Tuesday, April 9th, 2019 at 3:33 pm and is filed under Britain' and '**ex**it' and refers to the UK leaving the European Union (EU). A referendum – a vote in which everyone (or nearly everyone) of voting age can take part – was held on 23 June 2016, to decide whether the UK should leave or remain in the EU. Leave won by 51.9% to 48.1%. Britain's departure from the EU is scheduled to take place at 11pm UK time on 29 March 2019.">Brexit, Case Law, European Union
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