Kluwer Copyright Blog

Top 3 Posts of the Autumn from our IP Law Blogs

Kluwer Copyright Blogger · Monday, December 7th, 2020

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 September, October and November.

Top 3 Kluwer Copyright Blog posts of September/October/November

1) CJEU hearing in the Polish challenge to Article 17: Not even the supporters of the provision agree on how it should work by Paul Keller

"On Tuesday, November 10, the Court of Justice of the European Union (CJEU or Court) heard case C-401/19. This case is a request by the Polish government to annul the filtering obligation contained in Article 17 of the Copyright in the Digital Single Market (DSM) Directive on the grounds that it will lead to censorship and will limit the freedom of expression and the freedom to receive and impart information guaranteed in Article 13 of the EU Charter of Fundamental Rights (Charter)… Even for astute followers of the discussions around the implementation of Article 17, the hearing contained a number of surprises."

2) Article 17: What is it really good for? Rewriting the history of the DSM Directive – Part 1 by Felix Reda

"EU Member States are currently grappling with the task of implementing the Directive on Copyright in the Digital Single Market (DSM Directive) into national law. The European Commission is preparing its guidance to help national legislators make sense of its most controversial part, Article 17. These legislative developments have prompted a series of remarkably similar statements from rightsholders' interest groups, attorneys and academic commentators about the nature and purpose of Article 17. Part 1 of this blog post puts rightsholders' claims that Article 17 is a "clarification" of the existing right of communication to the public into historical context. Part 2 will show that this claim has no basis in the legislative text of Article 17."

3) Copyright vs data protection: CJEU grappling with the right to information about infringers by Giulia Priora

"On 9 July 2020, the Court of Justice of the European Union (CJEU) delivered its judgment in Case C-264/19 Constantin Film Verleih v YouTube and Google Inc. Providing clarification on the scope of the copyright holder's right to information, the CJEU decided that the notion of "address", as set in Directive 2004/48/EC (Enforcement Directive), does not encompass IP addresses, email addresses and phone numbers of online users, unless otherwise specified by national law."

Top 3 Kluwer Trademark Blog posts of September/October/November

1) Lionel Messi scores his surname trade mark – the CJEU's own goal? by Agnieszka Sztoldman

"On 17 September the CJEU handed down a long-awaited judgment on a matter that thrilled sports fans and the IP community (C-449/18P, C-474/18P, available in French and Spanish). Footballer Lionel Messi Cuccittini is allowed to register his surname as a trademark for a sportswear brand after a nine-year legal battle."

2) Cocktail lovers – watch out! Are alcoholic drinks similar to non-alcoholic ones (and if only for trademark purposes)? by Alena Fischerova

"As readers may recall, the General Court rendered a judgment around two years ago in the Asolo v Red Bull case (known under FLÜGEL – T-150/17 of 4 October 2018) ruling on similarity, or rather dissimilarity, between alcoholic and non-alcoholic beverages. While the FLÜGEL case concerned specifically energy drinks vs. alcoholic drinks, the General Court made a reference to previous decisions in which it had held that "the average [German] consumer is used to and aware of the distinction between alcoholic and non-alcoholic drinks" (LINDENHOF, T?296/02, para. 54 and MEZZOPANE, T?175/06, para. 80) and concluded that the same applied to energy drinks and alcoholic drinks. As a result, they were held dissimilar… Two years have passed since the judgment in the FLÜGEL case and this author thought it was time to see how the EUIPO case law had developed."

3) CJEU finds reputation is irrelevant in the assessment of similarity of two signs by Julius Stobbs

"The Court of Justice has said that reputation and enhanced distinctive character are not relevant to the assessment of similarity of the signs under Article 8(1)(b) of the Regulation and should only be considered in the assessment of likelihood of confusion. This is important because if the marks are not held to be similar, there can be no likelihood of confusion."

Top 3 Kluwer Patent Blog posts of September/October/November

1) German Bundestag approves legislation to ratify the Unified Patent Court Agreement by Kluwer Patent blogger

"The German Bundestag has approved draft legislation to ratify the Unified Patent Court Agreement. 571 representatives support the UPCA, 73 voted against. It means the necessary 2/3 majority was easily achieved. There were three abstentions.

The vote is an important step towards introduction of the Unitary Patent system, which can enter into force only after Germany has completed the ratification procedure. The draft legislation will now go the Legal Committee of the Bundesrat and could be voted on by the Bundesrat in December (UPDATE 27/11: according to the UPC Preparatory Committee this is expected to take place on 18 December 2020). It will also have to be signed by the Bundespräsident, before Germany can formally deposit its instrument of ratification with the secretariat of the European Council and finalize the procedure."

2) German draft UPC ratification bill in parliament, chance of new constitutional challenges by Kluwer Patent Blogger

"Crucial months are ahead for the Unitary Patent project. In Germany the re-ratification process of the Unified Patent Court Agreement is progressing rapidly, but the threat of new constitutional complaints is looming.

Two weeks ago, the Bundesrat approved the UPC ratification bill. Yesterday, in first reading, the Bundestag referred the bill to the parliamentary committees (both the Committee of Legal Affairs and Culture will have their say) for discussion. A second decisive reading in the Bundestag is expected late October or early November. According to a report of Juve Patent, the UPC ratification should go through parliament in the slipstream of the discussion on the 2021 budget, "which means that a large number of members of parliament are guaranteed"."

3) The EPO's Ride from Patentamt to Oktroybureau by Thorsten Bausch

"The official translation of "European Patent Office" into German is "Europäisches Patentamt", the latter obviously being a composite of Patent and Amt.The German word "Amt" is derived from medieval German "ambt" or "ambahte", which means servant. That is, the prime function of an Amt is to serve the people. This is, by the way, also the origin of "office": Officium in Latin means "service", but can also be "duty". A synonym for the German "Amt" is "Behörde", and this term comes from "hören" (to listen). A person who holds an "Amt" is a "Be-amter" in German… Sometimes I wish that the modern EPO were still a Patentamt in this good, traditional sense. But I am afraid that this ship has sailed a while ago. I would submit that the EPO has, in at least some important respects, meanwhile morphed into an Octroybureau."

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

This entry was posted on Monday, December 7th, 2020 at 12:58 pm and is filed under Case Law, inter alia, for ensuring that EU law is interpreted and applied in a consistent way in all EU countries. If a national court is in doubt about the interpretation or validity of an EU law, it can ask the Court for clarification. The same mechanism can be used to determine whether a national law or practice is compatible with EU law. The CJEU also resolves legal disputes between national governments and EU institutions, and can take action against EU institutions on behalf of individuals, companies or organisations.">CJEU

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