Kluwer Copyright Blog

Top 3 posts of the autumn from our IP law blogs

Kluwer Copyright Blogger · Monday, December 4th, 2023

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 most-read posts from each of our IP law blogs. Here are the most popular posts over the past few months.

Top 3 Kluwer Copyright Blog posts

1) Generative AI, Copyright and the AI Act by João Pedro Quintais

"Generative AI is one of the hot topics in copyright law today. In the EU, a crucial legal issue is whether using in-copyright works to train generative AI models is copyright infringement or falls under existing text and data mining (TDM) exceptions in the Copyright in Digital Single Market (CDSM) Directive. In particular, Article 4 CDSM Directive contains a so-called "commercial" TDM exception, which provides an "opt-out" mechanism for rights holders. This opt-out can be exercised for instance via technological tools but relies significantly on the public availability of training datasets. This has led to increasing calls for transparency requirements. In response to these calls, the European Parliament is considering adding to its compromise version of the AI Act two specific obligations with copyright implications on providers of generative AI models"

2) Generative AI: the US class action against Google Bard (and other AI tools) for web scraping by Gianluca Campus

"In a recent post we analysed a class action filed in the US against Open AI for unauthorized use of copyright works for training of generative AI tools such as ChatGPT ("Generative AI" or "Gen AI"). We have also noted that this was not the only class action filed in the US against Open AI,

since a parallel class action was based on alleged data breach. Another class action was recently filed against Google (notably by the same law firm which promoted the class actions against Open AI) in the United States District Court – Northern District of California for alleged web scraping (this means covering both copyright and privacy aspects) in the training of its AI tools, Bard, Imagen, MusicLM, Duet AI, and Gemini."

3) Artificial intelligence, machine learning and creativity in visual art: what are the protectability requirements? Part 1: the Italian Supreme Court's "floral fractal" case by Gianluca Campus

"One of the main contentious points when artificial intelligence, deep learning or machine learning (for the distinction between these functionalities, see here) are used for generating creative works is the question of attribution of works to an author, usually a human who has used the tech tool with some level of involvement in the creation (for the debate around the protection of AI generated works, see here).

In an interesting case (Court of Cassation, Civil Section 1, order 1107/2023), the Italian Supreme Court has left the door open for the protection of a graphic work generated by a machine learning tool, at least where the parties have never discussed in the merits whether and to what extent the use of such tool had absorbed the creative elaboration of the artist who had made use of it. This is a two-part post, whereby this part looks at the Italian case, while Part 2 will focus on the same issues but from a US perspective."

Part 2 of this post is available here.

Top 3 Kluwer Trademark Blog posts

1) Brothers in arms. The EUIPO defends its Board of Appeals' jurisdiction (and its own) and the CJEU allows an(other) appeal to proceed by Sara Parrello and Fabio Angelini

"To which extent can the General Court review decisions by the EUIPO Boards of Appeal (BoA) is an issue never properly addressed, and one that the CJEU has found to be "significant with respect to the unity, consistency or development of EU law". Thus, with its order of July 11, 2023, it allowed an appeal to proceed (see case C-93/23, EUIPO v Neoperl)."

2) "An Apple is not an Apple", at least according to the Swiss Federal Administrative Court… by Peter Schramm

"With Judgment of 8 March 2023 (B-1974/2022), the Swiss Federal Administrative Court

confirmed the rejection of an opposition by Apple against a trademark showing another stylized apple motif."

3) Jaguar prowls to victory in their opposition to the registration of an EUTM by Julius Stobbs and Amelia Sainsbury

"The Opposition Division has partially upheld an opposition filed by Jaguar Land Rover ("Jaguar") against EUTM application no.16778672 for a figurative mark, applied for by luxury fashion designer, Philipp Plein."

Top 3 Kluwer Patent Blog posts

1) EPO Propaganda Master Class – or: How to Justify Higher Fees for Lower Quality Work by Thorsten Bausch

"It will be nothing new for regular readers of this blog that I and many others have long been advocating for more well-qualified examiners at the EPO. Obviously, these examiners also need to be given adequate time to scrutinize the ever-increasing number of new patent applications per year thoroughly.

Alas, it will also be no secret that the policy of the EPO upper management, unfortunately endorsed by the Administrative Council, has been exactly the opposite for the last ten years. While the number of new European Patent Applications per year increased by about 10%, i.e from 174.500 to 193.500, during the time period from 2018 to end of 2022, the number of examiners actually decreased by about 10%, i.e. from 4315 to less than 4000."

2) Beat Weibel: Low quality patents harm European industry by Kluwer Patent Blogger

"The declining search and examination quality of EPO patents is not only harmful because inventions are not protected but they also create a lot of uncertainty for the industry. The problem has aggravated due to the Unitary Patent system, as thousands of Unitary Patents will flood countries where traditional European patents were not often validated in the past. The Industry Patent Quality Charter (IPQC) offered to enter into a dialogue with the EPO, but as the EPO has so far declined to discuss the problems, the IPQC will now turn to national governments for help. Beat Weibel, chief IP Counsel at Siemens and the initiator of the Industry Patent Quality Charter, said this in an interview with Kluwer IP Law."

3) EPO makes correct diagnosis but prescribes the wrong medication with the Proposed Amendments to the Rules of Procedure of the Boards of Appeal by Thorsten Bausch and Adam Lacy

"The EPO has proposed new amendments to the Rules of Procedure of the Boards of Appeal (RPBA) to support more ambitious timeliness objectives. In our view, they are unlikely to shorten appeal proceedings, will reduce the quality of decisions, and are unfair on Respondents so should not be adopted in full."

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

To make sure you do not miss out on regular updates from the Kluwer Copyright Blog, please subscribe here.

This entry was posted on Monday, December 4th, 2023 at 4:06 pm and is filed under European Union You can follow any responses to this entry through the Comments (RSS) feed. You can leave a response, or trackback from your own site.