Kluwer Patent Blog

Top 3 posts from August and September from our IP law blogs

Kluwer Patent Blog · Tuesday, October 18th, 2016

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 August and September.

Top 3 Kluwer Copyright Blog posts of August/September

1) A new chapter in the linking saga by Tomasz Targosz

"The 'linking saga' initiated by the Svensson decision of the CJEU back in 2014 has taken a new turn with today's GS Media judgment. Of course, it would be more appropriate to call it a 'communication to the public' saga, but I suspect that the origin of the Svensson decision and the underlying threat of 'paralysing the internet', should linking be found infringing, is at least partly responsible for the confusion, which in my highly subjective view (the GS Media decision lends credence to subjective factors, so I feel justified) has been only aggravated by the court's latest contribution. I would argue that the GS Media decision is the most conspicuous example to date of the CJEU's continuous efforts to ignore what has been left of a sound copyright theory. Unfortunately, it offers very little in return."

2) EU competence to create a neighbouring right for publishers? The small pieces make up the big picture by Ana Ramalho

"Earlier this year, the Commission launched a public consultation on the role of publishers in the copyright value chain. The consultation sought to gather views on a number of issues, namely the impact of granting an EU neighbouring right to publishers and whether the need for EU intervention is different in the press sector vis-à-vis other sectors of the publishing industry. Recently leaked documents (including a draft Directive) confirmed that the EU intends to introduce a right for news publishers.

Independently of the merits or demerits of introducing such a right, another discussion is, in this blogger's opinion, crucial: does the EU have the necessary powers to do so?"

3) Opinion of AG Wathelet in the Soulier and Doke case (C-301/15): Licensing exclusive rights requires express prior consent of the author; opt-out doesn't help. by Sylvie Nerisson

"The prior express consent of the author is necessary to use a copyright work under EU law; the statutory presumption of collective management of copyright doesn't comply with the need for

express prior consent, even with an opt-out possibility and for a legitimate objective, Advocate General Wathelet said in his opinion on the pending request for a preliminary ruling C-301/15 ("Soulier and Doke") on 7th July 2016."

Top 3 Kluwer Trademark Blog posts of August/September

1) Germany's most famous castle has been fortified by Michaela Ring

"On July 05, 2016, the General Court confirmed the decisions of the invalidity department and the Boards of Appeal of the EUIPO and decided that the EU word mark "NEUSCHWANSTEIN", registered by the Free State of Bavaria for goods and services in various classes remains registered since the trademark neither consists exclusively of an indication serving to designate the geographical origin of the goods and services and is not devoid of any distinctive character, nor was the mark applied-for in bad faith (GC decision of July 05, 2016, T-167/15)."

2) Denmark: What do LEGO, JENSEN and UTZON have in common? by Lasse Arffmann Søndergaard Christensen and Louise Thorning Ahle

"LEGO, JENSEN and UTZON have in-common that they all are trademarks and last names at the same time…In Denmark, as in all EU Member States, the trademark law contains an own-name-defence, i.e. a provision whereby anybody can use his or her own name provided this is in accordance with honest practices in trade.

In the years following the LEGO ruling there was a tendency to take the exception a bit far, as people seemed to think that if LEGO had to co-exist, then nobody could prohibit the use of one's own name. However, recently we have received two rulings going in the other direction."

3) *The EU Commission publishes its guidelines on counterfeit goods in transit* by Bartosz Krakowiak

*"On July 5, 2016 the EU Commission published its "notice on the customs enforcement of Intellectual Property Rights concerning goods brought into the customs territory of the Union without being released for free circulation including goods in transit" (in short: **"Transit Guidelines"**). The document is a slightly delayed reaction to the recent changes in the EU trademark laws (EU Trademark Regulation and Trademark Directive), which introduced a significant change in relation to enforcement of trademark rights against counterfeit goods transiting through the EU or a Member State."*

Top 3 Kluwer Patent Blog posts of August/September

1) Fahrzeugscheibe II (Windscreen II) – Now we can see more clearly… by Thorsten Bausch

"The German Federal Court of Justice (FCJ) recently issued a second decision in a nullity lawsuit revolving around a windscreen for vehicles (Fahrzeugscheibe II, X ZR 41/14). While the first decision dealt with interesting questions regarding the transferability of the right to priority, the second one treads more conventional paths, yet it still contains a couple of interesting statements on various issues."

2) 'It is unrealistic to think UK could ratify Unified Patent Court Agreement any time soon' – by Kluwer UPC News Blogger

"The Preparatory Committee of the Unified Patent Court reported earlier this month that its work will be finished by the time of its meeting in October, and this will be its last. Due to the political reality of the Brexit vote and the legal uncertainty over its future participation in the Unitary Patent project, it is unrealistic, however, to think the UK can ratify the Unified Patent Court Agreement in the timescales envisaged before the referendum of 23 June 2016. Bristows partner Alan Johnson said this in an interview with Kluwer IP Law. He thinks the best option is to start working on an alternative system, which could include the UK and other non-EU-members such as Switzerland and maybe even bring Spain back into the system."

3) No legal obstacles for post-Brexit UK to participate in Unitary Patent system by Kluwer UPC News Blogger

"A post-Brexit UK can stay in the Unitary Patent system, although a number of criteria would have to be met. That is the opinion of leading counsel Richard Gordon QC and Tom Pascoe of Brick Court Chambers, who were asked by the IP Federation, the Chartered Institute of Patent Attorneys and the Intellectual Property Lawyers Association for an opinion on the legal consequences of a Brexit for the UP system..'"

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

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