Kluwer Patent Blog

Fordham Conference 2015 – Governments and IP

Daniel Byrne (Bristows) · Wednesday, April 8th, 2015

Lord Hoffman (former Court of Appeal judge and presently at Queen Mary University) spoke about what can be done to harmonise the law. He said that the governments of most jurisdictions accept that judges have some choice in how the law is developed. There is then a range of views of how much regard should be had of foreign decisions. Lord Hoffman stated that, although he thinks taking account of foreign judgments smacks of showing off, there are practical (and commercial) advantages in making English IP law the same as other jurisdictions (although he was less keen on this in constitutional or commercial law). In Europe there is advantage in the fact that the same text falls to be interpreted (the EPC) and cross-jurisdictional cooperation is enhanced by attendance at conferences such as this one.

Non-patent topics were discussed and are set out briefly below:

Hon. Antonio Campinos (President of OHIM) described OHIM as a 20 year success story with a substantial accumulated surplus generated from fees (430m euros), which is being reinvested in the services offered by OHIM. He mentioned the new 'TM VIEW' has allowed 5 million knock-out searches covering many registers. It is a good thing that all Member States have agreed on administrative practices (including the classification system and absolute and relative grounds for refusing a trade mark). There is an extant question about whether the OHIM surplus should be utilised more widely than the CTM system (including distribution to member states) and whether the self-funding of the office is consequently at risk. On being asked (by **Trevor Cook**) whether fees at OHIM are set artificially high, **Mr Campinos** noted that fees are set on the proposal put forward by the Commission and the decision of Member States and the political mechanism to change the fees is complex.

Maria Martin-Prat (Copyright, European Commission) discussed copyright policy issues. She noted that the 28 member states of the European Union do not share the same views on copyright, in particular on the level of the intervention required (or how much to leave to the market) and the tension between copyright legislation and cultural diversity. A substantial copyright review is going to be necessary at an EU level due to the harmonisation already accomplished and the involvement of the CJEU and the limited margin allowed to countries to vary their laws, particularly in relation to exceptions. A higher level of harmonisation will be required, which is most likely in an incremental approach, but it should retain a degree of flexibility and the challenge in the single market is clear. The CJEU will always have a role but it should not be required to intervene in every issue.

Ted Shapiro (Wiggin LLP) agreed with **Maria Martin-Prat** that a reform in European copyright is brewing. A communication is due in May 2015. Cross border accessibility of online services appears to be a major goal. However, he noted that territoriality funds film production and it will be difficult to safeguard the value of rights in the film sector while reducing barriers.

Karyn Temple Claggett (US Copyright Office) gave a perspective on the difficulty in legislating for copyright in the USA in light of the 'hysteria' that surrounds it. Many more people (members of the public) now have an interest in copyright and the intensity of the debate dampens progress. Nevertheless, governments continue to have an obligation to engage with the debate and to legislate appropriately.

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

This entry was posted on Wednesday, April 8th, 2015 at 11:17 am and is filed under EPC
You can follow any responses to this entry through the Comments (RSS) feed. Both comments and pings are currently closed.