Kluwer Patent Blog

Top 3 Posts of the Summer from our IP Law Blogs

Kluwer Patent blogger · Monday, September 10th, 2018

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 June, July and August.

Top 3 Kluwer Copyright Blog posts of June, July and August

1) Axel Voss's JURI Report on Article 13 Would Violate Internet Users' Fundamental Rights by Christina Angelopoulos

"Last week, the Legal Affairs (JURI) Committee of the European Parliament voted in favour of Rapporteur MEP Axel Voss's proposal on Article 13 of the draft Directive on Copyright in the Digital Single Market. The saga surrounding this infamous text is however far from over. A group of MEPs are currently challenging the JURI version of the proposal through the so-called rule 69c procedure. This means that on the 5 July at 12:00, the plenary of the Parliament will vote on whether the JURI report provides an acceptable basis to start "trilogue" negotiations with the Council. This will be a yes/no vote. If the EP decides to vote against the JURI mandate, every MEP will be able to file an amendment to the JURI report in the next plenary session in September. This would allow for Article 13 (as well as the equally contested Article 11) to be reworded."

2) The EU's Controversial Digital Single Market Directive – Part I: Why the Proposed Internet Content Filtering Mandate Was So Controversial and Part II: Why the Proposed Mandatory Text- and Data-Mining Exception Is Too Restrictive by Pamela Samuelson

"The stated goals of the EU's proposed Digital Single Market (DSM) Directive are laudable: Who could object to modernizing the EU's digital copyright rules, facilitating cross-border uses of in-copyright materials, promoting growth of the internal market of the EU, and clarifying and harmonizing copyright rules for digital networked environments?

The devil, as always, is in the details. The most controversial DSM proposal is its Article 13, which would require online content sharing services to use "effective and proportionate" measures to ensure that user uploads to their sites are non-infringing. Their failure to achieve this objective would result in their being direct liable for any infringements. This seemingly requires those services to employ monitoring and filtering technologies, which would fundamentally transform the

rules of the road under which these firms have long operated.

This column explains the rationales for this new measure, specific terms of concern, and why critics have argued for changes to make the rules more balanced."

3) Julia Reda discusses the current Proposal for a Directive on copyright in the Digital Single Market by Kluwer Copyright Blogger

"We are thrilled to have had the opportunity to ask Julia Reda MEP a few questions on the controversial Proposal for a Directive on copyright in the Digital Single Market (DSM Directive)... Although the proposed DSM Directive has many controversial topics, we have decided to focus this interview on perhaps the two most controversial: the press publishers' right (Article 11…) and the so-called "value gap" or "transfer of value" proposal (Article 13…)."

Top 3 Kluwer Trademark Blog posts of June, July and August

1) CJEU: Puma's feline jumps high: EUIPO must take into account earlier decisions recognizing reputation of a mark invoked in an opposition by Athanasia Giannopoulou and Verena von Bomhard

"By judgment of 28 June 2018 (C?564/16 P), the CJEU rejected an appeal filed by the EUIPO. The case was, in essence, about whether and to which extent the EUIPO could or even had to take into account its own previous decision practice, including findings of fact (namely, that the trademark relied upon has a reputation) from previous cases. The General Court had gone quite far in imposing on the Office that it take such findings into account and potentially even request evidence from the opponent. The appeal of the Office was unsuccessful."

2) CJEU on the Kit Kat shape and acquired distinctiveness of EU trade marks for shapes by Verena von Bomhard

"On 25 July 2018, the CJEU handed down its ruling in the latest edition of the battle between Nestlé and Mondelez over the KIT KAT shape (C-84, 85, 95/17 P). This time, the discussion focused on whether a non-traditional EU trade mark that is not inherently distinctive must be shown to have acquired distinctiveness in the EU as a whole, or in every single Member State."

3) The technical function of a potato snack by Lasse Søndergaard Christensen and Kathrine Spinner Madsen

"On the 21 March 2018 the Danish Board of Appeal ("The Board") delivered its decision regarding the trademark protection of the shape of [a] potato snack (decision no. AN 2017 00006). In the decision The Board concluded that the most significant feature of the shape of the product was the grooved surface, which could merely be considered as a feature which was necessary to obtain a technical result and/or followed from the nature of the goods themselves."

Top 3 Kluwer Patent Blog posts of June, July and August

1) Cooperation and dialogue are priorities for new EPO president Antonio Campinos by Kluwer Patent Blogger

"Effectiveness, international cooperation and staff relations are three main areas on which Antonio Campinos intends to focus as new president of the European Patent Office. Campinos, who started in office on 1 July 2018, wrote this in a message which was published today on the EPO website."

2) UK intends to stay in the Unitary Patent system post-Brexit by Kluwer Patent Blogger

"The United Kingdom wants to stay in the Unitary Patent system post-Brexit. This has been confirmed in the UK's Brexit White Paper, which was published today.

According to article 151 of the paper, 'The UK has ratified the Unified Patent Court Agreement and intends to explore staying in the Court and unitary patent system after the UK leaves the EU. The Unified Patent Court has a unique structure as an international court that is a dispute forum for the EU's unitary patent and for European patents, both of which will be administered by the European Patent Office. The UK will therefore work with other contracting states to make sure the Unified Patent Court Agreement can continue on a firm legal basis.'"

3) International Investment Arbitration, the European Patent Office, and the Future Unified Patent Court by Simon Klopschinski

"Since the Eli Lilly v. Canada award of 2017, the relevance of international investment law for patents has been known to a wider public. In response to the revocation of two Canadian patents concerning the compounds olanzapine and atomoxetine by Canadian courts, the US pharmaceutical company Eli Lilly initiated arbitral proceedings against Canada on the basis of the investment chapter of the North American Free Trade Agreement (NAFTA). Even though Eli Lilly lost the dispute, the award made clear that international investment agreements (IIAs) matter for patents because the arbitral tribunal found that, in principle, patent decisions by host state courts can be challenged before an international investment tribunal on the basis of an IIA."

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

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