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JOB OFFERS AND ADVERTISEMENTS**MONTHLY CASE LAW OVERVIEW****Copyright*****IP10242. Opinion A-G on copyright protection of a folding bicycle dictated by its technical function***

Case C- 833/18: Brompton Bicycle v Chedech. Opinion A-G Campos Sánchez-Bordona. Copyright. The referring court must determine whether a bicycle whose folding system was protected by a patent which has now expired can be classified as a work eligible for copyright protection. According to the advocate-general, that court in particular seeks to determine whether such protection is precluded where the shape of the object “is necessary to achieve a technical result” and what criteria it must use when conducting that assessment. In the opinion of the Cofemel case ([IPPT20190912](#)) and the Doceram case ([IPPT20180308](#)), amongst others, are discussed. In quotes: [...]

“102. In the light of the foregoing considerations, I propose that the Court of Justice should reply to the Tribunal de l’entreprise de Liège (Companies Court, Liège, Belgium) in the following terms:

‘(1) Articles 2 to 5 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society do not provide for copyright protection of creations of products with an industrial application whose shape is exclusively dictated by their technical function.

(2) In order to determine whether the specific features of the shape of a product are exclusively dictated by its technical function, the competent court must take into account all the relevant objective factors in each case, including the existence of an earlier patent or design right in the same product, the effectiveness of the shape in achieving the technical result and the intention to achieve that result.

(3) Where the technical function is the only factor which determines the appearance of the product, the fact that other alternative shapes exist is not relevant. On the other hand, the fact that the shape chosen”

Privacy***Google may refuse to accede to a request for de-referencing of personal data falling within the special categories only if it is strictly necessary for protecting the freedom of information of internet users******IPPT20190924, CJEU, GC v Google***

Privacy. Prohibition of processing of personal data under Directive 95/46 applies to Google: subject to the exceptions provided for by the directive, Google has the obligation to comply with a request for de-referencing to web pages containing personal data. Google may refuse the accede to a request for de-referencing of personal data falling within the special categories when processing is covered by the exception in Article 8(2)(e) of the directive: the processing relates to data which are manifestly made public by the data subject or is necessary for the establishment, exercise or defence of legal claims. Google must ascertain whether the inclusion of the link in the list of results is strictly necessary for protecting the freedom of information of internet users potentially interested in accessing that web page by means of such a search, protected by Article 11 of the Charter: on the basis of all the relevant factors of the particular case and taking into account the seriousness of the interference with the data subject’s fundamental rights to privacy and protection of personal data laid down in Articles 7 and 8 of the Charter, ascertain, having regard to the reasons of substantial public interest referred to in Article 8(4) of Directive 95/46 or Article 9(2)(g) of Regulation 2016/679 and in compliance with the conditions laid down in those provisions. Data relating to legal proceedings brought against an individual conviction are data relating to ‘offences’ and ‘criminal convictions’ within the meaning of Article 8(5) of Directive 95/46. Google is required to accede to a request for de-referencing relating to links to web pages displaying such information, where the information relates to an earlier stage of the legal proceedings in question and no longer corresponds to the current situation in so far as the data subject’s fundamental rights override the rights of potentially interested internet users.

Trade Mark Law***CJEU about ‘unauthorised use of variety constituents’ of Article 13(2)(a) Community Plant Variety Rights Regulation*****[IPPT20190703, CJEU, Viridis v EUIPO](#)**

Trade Mark Law. No genuine use of medicine during clinical trials in the case of a medicinal product which has not yet been granted a marketing authorisation, it is not even possible to advertise it in order to gain or maintain a market share, uses prior to imminent trading may be genuine use if they are external in nature and have an impact on building the future audience. Required conduct of a clinical trial may constitute a valid reason for non-use but trade mark registration prior to it and its long duration fall within the sphere of influence and responsibility of the trade mark proprietor, and therefore cannot be regarded as obstacles beyond his control.

The Copyright Directive must be interpreted as not precluding a rebuttable presumption that the performer has authorised the exploitation of his performances**[IPPT20191114, CJEU, Spedidam v INA](#)**

Trade Mark Law – Geographical Indications. The Copyright Directive must be interpreted as not precluding national legislation which establishes, as regards the exploitation of audiovisual archives by a body set up for that purpose, a rebuttable presumption that the performer has authorised the fixation and exploitation of his performances, where that performer is involved in the recording of an audiovisual work so that it may be broadcast: the protection of the performer also extends to the exploitation of audiovisual archives, the performer’s prior authorization is required for any act of reproduction or making available to the public of the fixations of their performances, provisions on consent for any act of reproduction or making available to the public also allow the consent to be expressed implicitly, when a performer who is himself involved in the making of an audiovisual work so that it may be broadcast by national broadcasting companies, and who is thus present at the place where such a work is recorded for those purposes, first, is aware of the envisaged use of his performance and gives his performance for the purposes of such use, it is possible to take the view, in the absence of evidence to the contrary, that he has, as a result of that involvement, authorised the fixation of that performance and its exploitation.

Plant Variety Rights***Boswelan rightly declared revoked due to lack of genuine use as a trademark*****[IPPT20191219, CJEU, Club Variedades Vegetales Protegidas](#)**

Plant Variety Rights. Planting of a protected variety and harvesting of the thereof, which is not liable to be used

as propagating material may not be regarded as an ‘act of production or reproduction (multiplication)’ of variety constituents within the meaning of Article 13(2)(a) Community Plant Variety Rights Regulation: authorisation of the holder of a Community plant variety is required if the conditions laid down in Article 13(3) of that regulation are fulfilled, unless the holder has had reasonable opportunity to exercise his right in relation to the said variety constituents. The fruit of a plant variety, which is not likely to be used as propagating material, may not be regarded as having been obtained through the ‘unauthorised use of variety constituents’ (Article 13(2)(a) Community Plant Variety Rights Regulation where those variety constituents were propagated and sold to a farmer by a nursery in the period between the publication of the application for a Community plant variety right in relation to that plant variety and the grant thereof. The same applies to those fruits if those fruits were harvested after the Community plant variety right was granted. When the propagation and sale takes place after the grant of the plant variety right, the holder may assert his or her right under Article 13(2)(a) and (3) of that regulation unless the holder had a reasonable opportunity to exercise his or her right in relation to those variety constituents.

ITEMS**News****[IP10243, AI inventorship uncertainty because of EPO decision](#)**

Patent Strategy: “The EPO’s justification for refusing a patent application that had an artificial intelligence tool listed as the inventor does not provide enough clarity on the rules surrounding AI-generated inventions, according to in-house and private practice IP lawyers. [...]

As one of the reasons for its decision (point 27), the EPO wrote that AI cannot have rights because it does not have a legal personality comparable to natural or legal persons. “Legal personality is assigned to a natural person as a consequence of their being human, and to a legal person based on a legal fiction. Where non-natural persons are concerned, legal personality is only given on the basis of legal fictions. These legal fictions are either directly created by legislation, or developed through consistent jurisprudence. In the case of AI inventors, there is no legislation or jurisprudence establishing such a legal fiction.” As a result, the EPO added, AI systems or machines cannot have rights that come from being an inventor, such as the right to be mentioned as the inventor or be designated as an inventor in a patent application.

But the DABUS team says it is not arguing that AI should own the rights to the patents, but rather that the tool should be given the status of inventor.”

[IP10241, V.O. strengthens its position in Belgium](#)

From the press release: “Liège was incorporated into the office network of V.O. Patents & Trademarks today. V.O. now has two offices in Belgium - in Leuven and Liège - and eight offices in the Netherlands and Germany. Altogether, more than 60 specialists work in these ten offices, helping all kinds of companies, from tech start-ups to multinationals, maximize the value of their intellectual property. V.O. is also a recognized service provider for Cheques-entreprises and it won the Best IP advisor: Benelux Silver Award.

Our new office is located in the Liège Science Park, adjacent to the University of Liège. The University is one of the major drivers behind the technology industry in the region. It includes knowledge institutes, countless research centers and more than 70 spin-offs, some of which are pioneers in their sector.

From last April, we already welcomed many of these innovative companies at our new V.O. ‘meet the expert’ location. Here interested parties can easily walk in without obligation with simple questions and get practical tips on patents, trademarks and designs. “We saw a rapid growth in the number of visitors that needed good advice. We also saw that their needs frequently started turning into orders,” says Annemie Jaeken, partner at V.O. Patents & Trademarks. “Now that we have added this branch to our company network, we are available every day with our full range of services. We can now optimally meet the needs of clients in the region.”“

IP10244. EU tender copyright and new technologies

European Commission: “The European Commission has launched a call for tenders for a study on copyright and new technologies. The time limit for receipt of tenders is 03/04/2020 16:00 hours CET (study reference: SMART 2019/0038).

The aim of the study is to help European creative industries unleash the potential of new technologies. The study will look into two issues related to copyright and new technologies: the management of copyright data linked to protected content and the interaction between artificial intelligence (AI) and the creative industries.

The study will identify and quantify the economic impact of current issues related to metadata management in the copyright industries. The study will investigate the ways in which new technologies can contribute to improving the efficiency and transparency of licensing of content and management of rights.

In addition, the study will examine issues related to the use of copyright-protected content as input of AI technologies as well as to the production of cultural outputs by or with the assistance of AI technologies.”

IP10245. “HGF continues to expand with the announcement of two new Partners”

“Trade Mark Attorney and European Trade Mark Attorney will join our Manchester office and Kerry Rees a European and UK Patent Attorney will join our London office as Partners on 24th February 2020.

Kerry is a Patent Attorney with considerable experience drafting new applications, prosecuting applications in Europe and throughout the world, appealing oral proceedings before the EPO and providing FTO opinions and infringement and validity opinions. Kerry has handled patent work on many aspects of biotechnology including genomics, proteomics, biological research tools, viral vectors including gene therapy, immunoassays, vaccines, immunology and plant biotechnology for blue-chip, multinational biotechnology companies, UK Universities, SMEs and start-up companies.

Rigel is a brand protection specialist, a Chartered Trade Mark Attorney and a European Trade Mark Attorney. Her practice consists in particular of trade mark portfolio management work such as clearance searches, due diligence, filing strategies and the provision of infringement and validity opinions. She is an experienced prosecutor of UK and European Union trade mark applications and particularly enjoys the challenges of contentious matters such as infringement, opposition, cancellation actions and appeals and she is regularly instructed to represent parties before the UK Intellectual Property Office.

HGF’s strategic plans to increase the Partnership follows a year of growth including the merger of HGF & Patronus IP which extended its reach across Germany and Austria in Munich, Heidelberg, Salzburg and the opening of a second office in Ireland in Dublin, taking the total to 22 offices throughout the UK and Europe. The firm continues to see tremendous growth and success and has recently been named by The Financial Times as one of Europe’s leading Patent Law firms 2019.”

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