

Top 3 Posts of the Winter from our IP Law Blogs

Kluwer Trademark Blog

March 18, 2021

Kluwer Patent Blog

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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 December, January and February.

Top 3 Kluwer Copyright Blog posts of December/January/February

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1) Trends and Developments in Artificial Intelligence: Challenges to Copyright by Bernt Hugenholtz, João Pedro Quintais and Daniel Gervais

"On 20 October 2020, the European Parliament adopted a resolution on IP rights for the development of AI technologies. In parallel, on 25 November 2020, the European Commission published a commissioned study on challenges posed by AI to the European IP rights framework.

The study, which was carried out by researchers at the Institute for Information Law (IViR) [the authors of this post] and the Joint Institute for Innovation Policy (JIIP), examines the state of the art of copyright and patent protection in Europe for AI-assisted outputs in general and in three priority domains: science (in particular meteorology), media (journalism), and pharmaceutical research. The term "AI-assisted outputs" is used in the study to refer to productions or applications

generated by or with the assistance of AI systems, tools or techniques. This post focuses on the copyright analysis of the study (for a broader overview of the study, see here)."

2) The French Supreme Court rules that Knoll 'Tulip' Chair is not protected by copyright by Brad Spitz

"In a judgment of 7 October 2020, the French Supreme Court upheld the judgment of the Court of Appeal of Paris of 13 April 2018 that ruled that Knoll's 'Tulip' chair is not protected by copyright in France. Under the reciprocity rule set out in Article 2(7) of the Berne Convention on works of applied art, the Court of Appeal sovereignly found that the famous Tulip chair is not eligible for copyright protection under the national law of the country of origin, i.e. US law, and therefore is not eligible for copyright protection in France. This rule of conflict is rarely used, which makes this case all the more interesting."

3) Article 17: (Mis)understanding the intent of the legislator by Paul Keller

"Today, the French Government presents the second report on content recognition tools on digital sharing platforms commissioned by the Conseil Supérieur de la Propriété Littéraire et Artistique (High Council for literary and artistic property – CSPLA). The new CSPLA report, authored by Jean-Philippe Mochon (who had also authored the previous report on content recognition tools), focuses on "proposals for the implementation of Article 17 of the EU copyright directive" and marks an important and timely contribution to the discussion about the implementation of Article 17. It provides further insights into the positions taken by France throughout the discussion."

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1) CJEU on EU trademark appeals in 2020 – year in review by Verena vom Bomhard

"Here's a look-back on the year that is about to end, with a promise not to say anything about Covid, Brexit, or Trump!"

This is about CJEU rulings in 2020 concerning appeals filed in trade mark matters –

some numbers and observations – and wishes for 2021!”

2) EU: Slogan IT’S LIKE MILK BUT MADE FOR HUMANS registrable by Verena vom Bomhard

“On 20 January 2021, the General Court handed down its judgment in the slogan case brought by Oatly AB against the EUIPO’s refusal to register “IT’S LIKE MILK BUT MADE FOR HUMANS” (Case T-253/20). The General Court sided with Oatly and found that this slogan was sufficiently distinctive to be registered as an EU trademark.”

3) CJEU: The EUTM unitary character requires a homogenous application of procedural rules, including in counterclaims for revocation by Sara Parrello and Fabio Angelini

“In the absence of specific EU provisions, EU national court shall apply in regard to EUTM registrations the applicable national law pursuant to art. 129 EU Reg. 2017/1001 (EUTM Regulation). However, this may lead to different national interpretations and treatment of EUTM registrations and affect the unitary character of the EU mark, and as we all know, the Court of Justice does not really like that. Case C-607/19, decided on 17 December 2020 on a request for a preliminary ruling from the Bundesgerichtshof (Federal Court of Justice, Germany), shows that the EUTM unitary character is still an overriding concern for the CJEU and that it will go to great lengths to ensure it.”

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1) Top 5 changes to the 2021 EPO Guidelines for Examination by Laurence Lai

“Last year, the European Patent Office changed the publication schedule of the Guidelines as part of its Strategic Plan 2023 which meant there was no update to the Guidelines in 2020. The changed schedule also made room for public consultation to enable increased stakeholder involvement.

The first such public consultation ran for six weeks and closed mid-April 2020. Future consultations will follow a similar timeline. Following that consultation, as well as the usual Guidelines update process, the EPO has today published

an advance preview of the Guidelines which will come into force on 1 March 2021.”

2) German ratification of Unified Patent Court Agreement put on hold by Kluwer Patent Blogger

“The German ratification of the Unified Patent Court Agreement has been put on hold at the request of the German Federal Constitutional Court.

The FCC has confirmed this in answer to questions by Kluwer IP Law. The FCC has asked Bundespräsident Frank-Walter Steinmeier, to refrain from signing the bill into law, because two constitutional complaints were filed against ratification of the UPCA on 18 December 2020 (2 BvR 2216/20 and 2 BvR 2217/20), the day the Bundesrat completed the parliamentary ratification procedure by unanimously approving the bill.

A spokesperson for the Federal President has indicated he will indeed wait with signing the bill.”

3) Survey: EPO working conditions continue to deteriorate by Kluwer Patent Blogger

“Less than one out of three employees at the EPO are satisfied with their working life, according to a survey on psychosocial risks which was carried out for the Staff Union of the EPO. 66% of the respondents in the survey said their working conditions have deteriorated over the last 3 years, and 63% perceive a negative impact of work on their health.

According to the results of the survey, carried out by the French group Technologia, the situation at the EPO is deteriorating for various reasons, partly depending on the site, Job Group or Directorate General, but the lack of time is increasingly mentioned. 72% of respondents mentioned this as, against 43% in the 2016 edition of the survey. Other factors are decisions of management (83%), poor atmosphere (58%), lack of consideration (51%), difficulty of the work (16%), ergonomics of the workplace (12%).

“As a result, the quality of the work is greatly affected. The impossibility of carrying out one’s tasks and doing quality work also impacts on the health of employees, particularly in terms of psychological distress”, according to a summary of the results.””

Read further posts on the Kluwer Copyright Blog [here](#), the Kluwer Trademark Blog [here](#) and the Kluwer Patent blog [here](#).