SUMMARIES

THOUGHTS ON A LEGAL DISPUTE CONCERNING AN INTERFACE – ORACLE VS GOGGLE

Péter Somkutas

The dispute between Oracle and Google regarding the Android operation system's Java API is in an important stage. However the case was and still is before the US court and the decision raises several questions that are interesting concerning the copyright issues especially those that could change the habits of decades about the application programming interfaces. The author – completing with examples of technology – shows how to implement the copyright of compilation for the APIs.

MAIN ASPECTS OF CLAIM DRAFTING AND EXAMINATION OF COMPUTER RELATED INVENTIONS – USA

Dr György Vida

The present essay aims at providing a useful manual for claim drafting of computer related inventions and computer implemented business methods – and does this by analysing legal and procedural questions linked to the American patent act and by interpreting the case law of the Patent Trial and Appeal Board (PTAB) (before 2012 the Board of Patent Appeals and Interferences, BPAI) of the United States Patent and Trademark Office, the Court of Appeals for the Federal Circuit and the US Supreme Court. The essay focuses on §101 of the 35 U.S. Code, which defines the subject-matter eligible for patent protection. A computer program or software is based on the implementation of mathematical algorithms – and similarly to physical processes or natural phenomena, computer programs implementing mathematical algorithms as such can also be regarded as manifestations of laws of nature. However, according to the American case law, the laws of nature, physical phenomena and abstract ideas have been for a very long time excluded from patentability. In order to assess whether an invention is simply an abstract idea or a mathematical algorithm as such or, on the contrary, it belongs to a practical application of such solution, the USPTO has been employing for decades certain patentability tests. In the present essay numerous claim drafting examples are shown which failed to pass said patentability tests; on the other hand, such inventions and the respective linguistic claim formulations are also presented, which met the requirements of §101 and therefore shall be taken into account, if an applicant seeks to prevail during US patent application prosecution.

REQUIREMENTS FOR GENUINE USE OF A MARK

Dr Sándor Vida

A cafeteria in a provincial town of Germany used his mark Walzertraum (waltzdream) for years for chocolate creams. When a big concern applied the same as CTM the cafeteria filed opposition. The applicant requested evidence on use of the older mark. This was filed and OHIM's Opposition Division allowed the opposition. But the Board of Appeal rejected it considering that the use was not genuine. The Court of First Instance and the EU Court of Justice (C-141/13) rendered identical judgements considering the small quantities and that the use was made locally. Grabrucker analyzing the judgement says that the disregarding of publicity made by internet for the cafeteria, without possibility to order Walzertraum chocolate is new in community case law. The author of the review is surprised that a big concern quasi deprives a cafeteria of its valuable mark without compensation.

THE FIRST HUNGARIAN PATENT ACT IS 120 YEARS OLD

Dr László Papp

The first Hungarian patent act was adopted in 1895, and it regulated the patents until 1969. The historical survey of the author throws light on the main provisions of the act. According to it all inventions with novelty and industrial marketability could have been patented. This observation may seem short-spoken and almost a rubber-like rule, yet it remained in effect in its original unchanged version for almost fifty years, and taking this into account, it raises the question of the role of actual judicial practice which gives the mandate actual content. It introduced the questions which were shaped by the actual judicial process in this framework, among many others the category of "engineering effect" which is the foundation of the definition of invention. There was a significant judicial progress not only in the understanding of the concept of invention, but also in the field of novelty and novelty impairing.