SUMMARIES

RACE AGAINST TIME: THE ROLE OF REGISTERS AND DATABASES IN THE PRESERVATION AND PROTECTION OF TRADITIONAL KNOWLEDGE

Dr. Mariann Binet Szulmanné

Since the CBD [especially Art. 8(j)] directed to the preservation of the knowledge, innovation and practice held by indigenous people and local communities has come into force measures for the protection of traditional knowledge have received more and more attention. One of the most promising steps for protection of traditional knowledge is its documentation in databases and registers. The role and the most characteristic features of databases in this field, the most appropriate databases for novelty search are briefly summarized in this study. Documentation plays an important role in defensive protection of traditional knowledge providing an effective tool for the patent authorities to retrieve the prior art in order to determine whether an application really meets the requirements of novelty and inventive step and in this form it helps to prevent the acquisition of intellectual property rights over traditional knowledge by parties who are not entitled for that. At the same time databases assist conservation and maintaining the traditional knowledge, help in the identification of communities, which might be entitled to benefit sharing.

WHAT MAKES SOMETHING FAIR? THE USE OF AUTHORS' WORK IN THE LIGHT OF THE FAIR USE TEST

Péter Mezei

The present article, which is about a „critical safety valve" of the United States' copyright law: the fair use doctrine, introduces first the theoretical framework of the judge-developed test. This doctrine, which is in many aspects similar to the continental "free use" cases, but also differentiates from them because of its flexibility (and the covered topics), requires the balancing of four factors from the courts. According to the presented bunch of cases the first (the purpose and character of the use) and the fourth (the effects of the use on the market of the work) factor emerge from them. The test covers nowadays a vast number of uses. The article analyses several important topics. Thus the classical case of citation, the unauthorized preparation of derivative works (emphasizing the question of parody), and the challenges of the digital age, such as file-sharing, in-line linking or framing, are examined. The courts and their main controllers, the legal commentators, remain self-consistent: the fair use test shall be applied only in cases, where the user realizes the aims of the Constitution of the United States: the promotion of progress and useful arts.

THE ANALYSIS OF THE EUROPEAN PRIORITY LAW IN THE PRACTICE OF THE EUROPEAN PATENT OFFICE – OR HOW SHOULD WE CLAIM THE PRIORITY OF A PAN FOR A PLASTIC GLASS?

Zsófia Kacsuk

The present paper attempts to explain the conceptual framework of the priority system defined by the European Patent Convention and the Case Law of the European Patent Office. The first part of the paper gives a short introduction to the code of rules on priority and an insight to the basic characteristics of the European patent system. The second part focuses on the practical aspects of the European priority right by analysing Paper C of the 2007 European qualifying examination.

COMMUNITY TRADEMARKS AND THE USE OF LANGUAGES

Dr. Sándor Vida

The official languages of the EC were determined in 1958 by the Council regulation Nr. 1. OHIM's working languages are determined in Article 115 of the Council Regulation No. 40/90 on community traemarks as well as the notion of the second language. Ms. Kik filed her application for a CTM in Dutch and indicated as second language also Dutch. The application was dismissed, and the Court of First Instance as well as the ECJ dismissed the claim (C-361/01). Comments of Király, Shuibhne, Mayer, Bender are summarised in the report. Though in the case TOP (T-242/02) the Court of First Instance stated infringement of procedural rules by OHIM, this was not decisive in rejecting the application. In respect of the opposition against the application Neurim Pharmaceutical (T-218/06) the nonrespect of the language rules resulted dismission of the application by the Court of First Instance, too. OHIM as well as its Board of Appeal delt also several time with language deficiencies, mainly in opposition cases. Language problems arised also in respect of labelling products, but the Directive 2000/13 EC solved most of them. Translation is a cruical problem for OHIM as well as for the ECJ, especially considering the financial burden. For the new Member States this poses supplemental problems, as it is explained the Skoma-Luxy case (C-161/07) by Lasinsky-Sulecki and Morawski. On the other side harmonisation of trademark law resulted enrichement of the „trademark language" in several Member Countries, included Hungary.