

SUMMARIES

COMPETITIVENESS, INNOVATION AND INTELLECTUAL WORKS IN THE EUROPEAN UNION

Levente Tattay

This paper aims to highlight the effects of the relationship between global competitiveness, innovation and intellectual property. A reliable indicator of global competitiveness is the competitiveness relating to innovation. The intensive use of patents, trademarks, utility models and designs will play an important role in near future until 2020 relating to growth of innovative competitiveness and economic growth in the European Union.

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

Dr György Vida

The essay is a redraft of a thesis work written by the author in 2011 for the advanced course of intellectual property organized by the Hungarian Intellectual Property Office. It deals with legal and procedural questions linked to claim drafting of computer implemented inventions and computer implemented business methods. The author aims to present the legal background as set out in the Articles and the Implementing Regulations of the European Patent Convention (EPC) and to give an overview of earlier and recent decisions of the Board of Appeal of the European Patent Office to show how the basic patentability criteria, i.e. technical character, novelty and inventive step, are interpreted in light of the EPC and the case law in this special field. Article 52(1) of the EPC and Rules 42(1) and 43(1) of the Implementing Regulations require the subject-matter of a patent application to have a technical character or contain a technical teaching. Putting it in another way, the subject-matter for which protection is sought must be formulated in technical terms that provide sufficient instruction to a skilled person about how to solve a particular technical problem with particular technical means – in contrast to merely financial, commercial or mathematical concepts. Throughout the essay examples of claims are shown for which a negative written opinion was drawn up by the EPO examiner on the basis of Art. 52(2) EPC, because the patent application contained subject-matter excluded from patentability and lacked technical character. In other examples basis of the negative opinion was Art. 56 EPC, for the patent application contained subject-matter that lacked an inventive step either because no objective technical problem was presented, or the problem to be solved

fell exclusively into a non-technical area, or the features involved to the solution were not more than notorious technical features.

EARLIER TRADEMARKS AS GROUNDS FOR REFUSAL OR INVALIDITY – PART 2

Dr István Gödölle

In the second part of the article the likelihood of confusion in the case of different trademark types is discussed. In this context the definition of a consumer, the evaluation of the likelihood of confusion, the factors influencing this likelihood are examined with reference to several legal cases.

USE OF THE REPUTED MARK OF A THIRD PARTY WITH DUE CAUSE – RED BULL

Dr Sándor Vida

The mark RED BULL (energy drinks) has a reputation in several countries included Benelux. The owner of the mark “The Bulldog” used the latter for restaurant services involving the sale of drinks, from almost the same time as the mark RED BULL was registered. The proprietor of the mark RED BULL brought an action for cease of the mark “The Bulldog”. The Amsterdam District Court dismissed the claim, the Court of Appeal ordered cease, Netherlands Supreme Court referred for preliminary ruling to the Court of Justice of the EU. The latter said (C-65/12) that pursuant the concept of “due cause” the proprietor of the trademark with reputation may be obliged to tolerate use by a third party if it is demonstrated, that its sign was being used before the reputed mark was filed. Reported is on comments of von Mühlendahl, McLeod, Weiss and a blog in IPKat. The author of the article believes that the judgement reflects also the principle of vested rights, moreover that the judgement can be understood as speaking on the possibility of an ex lege coexistence.