European Intellectual Property Review

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Opinion
SIGRID STERCKX AND JULIAN COCKBAIN


The EPO Enlarged Board of Appeal (EBoA) has recently heard arguments, in the latest of a series of referrals relating to patent eligibility, as to whether, under art.53(b) EPC, patents may be granted for plants (and parts of plants) produced by conventional plant breeding processes.

Articles
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Happy IP: Replacing the Law and Economics Justification for Intellectual Property Rights with a Well-being Approach 197

The dominant justification for intellectual property rights at least in the West and international treaties is utilitarian, and more precisely based on the Chicago School of Law and Economics (first section). However, this school of thought is both flawed and ideological (second section). Basing protection solely on the economic aspect of utility (i.e. income) has been increasingly challenged in recent years. We thus propose that intellectual property rights should be justified using a notion of utility based directly upon well-being, rather than using income as a proxy. We outline a theory-neutral approach to well-being that could be employed for this purpose (third section). Our proposal, like any and every other legal programme, cannot avoid being ideological (fourth section) but it avoids the flaws of the Law and Economics approach. It is also not paternalistic (fifth section).

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Shellfish Patents Krill Experimentation: Defences for Sharing Patented Aquatic Genetic Materials in Aquaculture 210

Aquaculture is an emerging field for patents. Defences, however, are a significantly underutilised tool for equitably sharing aquatic genetic materials for experimentation and breeding of improved aquatic strains. This article maps the defence landscape, navigates the tensions and gives an insight into how defences can resolve difficulties posed by aquatic genetic materials' self-replicating and multi-jurisdictional nature.

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The case law relating to the use of trade marks as adwords has evolved in a piecemeal fashion. Given the significance of cases Cosmetic Warriors v Amazon and Interflora v Marks & Spencer, it is time to assess these developments in context, evaluating the current balance between promoting competition and preventing infringement.

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This article discusses how free trade can enhance the parallel importation of patented pharmaceuticals and the development of the pharmaceutical manufacturing capacity in Africa. It also explores the option of using the strategy of an African free trade area to promote the use of compulsory licences to import patented pharmaceuticals into the continent.

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Dreaming Authorship: Copyright Law and the Protection of Indigenous Cultural Expressions 240

Copyright law struggles to give meaning to Indigenous notions of communal ownership and custodianship of particular cultural forms. The Federal Court of Australia’s decision in Bulan Bulan v R & T Textiles (1998) 56 FCR 244 suggests that copyright law’s notion of authorship relies upon a model of creativity which is incomplete, and which may struggle to reflect the variety of creative works that flourish in the modern world. This article argues that the joint authorship test is more flexible than this case might suggest; although ultimately a sui generis regime would be best adapted to the task of protecting Indigenous cultural property.
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