



Hot Topics

Apple of the industry's eye? Steve Jobs' address on the DRM dilemma

Apple Inc. CEO, Steve Jobs' open letter entitled 'Thoughts on Music' suggesting that record labels should sell songs online, unencumbered by Digital Rights Management (DRM) has caused quite a stir within the music industry and consumer groups in Europe and USA. This letter presents potential economic and legal implications for both the entertainers and the entertained.

DRM is a generic term for a set of technologies for the identification and protection of intellectual property in digital format. The letter investigates three alternatives that might shape the future of the music industry. Firstly, it suggests the preservation of the status quo characterised by exclusivity of operation of various DRM systems. Next, the possible licensing of Apple DRM FairPlay to its competitors in order to attain interoperability. The last, and the most radical invites the recording industry to abolish DRMs in entirety.

DRM is considered by the entertainment industry as a tool to combat internet piracy and introduce effective market segmentation and an incentive to create. Job's letter has brought to the forefront some much debated issues regarding DRM. Firstly, the present DRM systems like Apple's FairPlay or Sony's ATRAC are not interoperable, thus restricting users to one hardware platform. The consumers are locked into buying music only from that company's music store. Moreover, DRM limits the consumers' legitimate exceptions regarding the use of the copyrighted material by curbing the ability to transfer the user rights between consumers and hence nullify the first sale doctrine. Furthermore, DRMs do not allow consumers to format shift legitimately purchased content. In early January a ruling of the Norwegian government ombudsman held that the FairPlay DRM model violated Norwegian law. DRM was accused of impinging upon people's freedom of expression by forbidding content use for academic purposes or review that is permissible under the fair dealing/use provisions. Consumers perceive that the ability of DRM systems to track their habits erodes their privacy.

DRM has also been criticised on the ground that the use of Technological Protection Measures restricts the access and use of works in the public domain thereby hampering innovation. Furthermore, DRMs distort markets. The 2006 report of the UK Government's All Party Internet Group (AIPG) noted evidence of such market distortion in other industries where DRM was used to control after-markets and recommended the development of principles to ensure the effective operation of the EU single market. Consumer groups in many European countries have threatened legal action against Apple for such restrictive practices if no agreement is reached soon.

So, should DRM be abandoned? It seems that the music industry is fighting a losing battle. Online piracy continues to plague the industry, most DRM systems in the past have been successfully breached and many DRM free formats like MP3 are flourishing. The AIPG Report has advised the UK government against any legislation making DRM systems mandatory.

Noting that the promotion of the underlying objectives of copyright law can only be achieved by trying to attain a balance between individual rights of ownership and use of copyright protected works for societal benefit, it can be concluded that DRM inherently is not a bad proposition. The problem lies in the restrictive use of DRM systems by copyright holders. Some experts suggest that this copyright objective can only be accomplished if DRM-based business models provide relaxed usage restrictions, introduce interoperability amongst DRM systems, recognise the need of end users to share content, and facilitate it legitimately.

Copyright & Technology

When exceptions confirm the rule: Google's use of cached news items infringes copyright

Google Inc v Copiepress (No. 06/10.928/C – Tribunal de premiere instance de Bruxelles) concerned Google News which is a service provided by the Google platform that specialises in the indexation of news articles available on the internet. The service has operated in Belgium since January 2006, however, this has been strongly opposed by Copiepress, the collecting society representing Belgian publishers of newspapers written in French and German. Copiepress was concerned that

Google News did not operate as a search engine, but as an information portal and reproduced copyright material belonging to the society's members without due authorisation. The matter came to a head before the Belgian court.

In examining the technology behind two Google services, Google News and Google.be, it emerged that the search engine mechanically visits internet pages and creates cached versions of the texts for the purpose of facilitating and accelerating the elaboration of the relevant information. The cached version, however, could also become useful when the original server is temporarily unavailable. Also, it was readily accessible by the user through the Google.be interface.

In evaluating the extent of the reproduction, the court considered Google's opposition to the injunction and commented that infringement occurs not only in cases of integral reproduction, but also when partial reproduction contains the imprint of the creator's originality. The court found that reproduction of what, under English law, is understood as a 'substantial part' subsisted both in relation to the making of a cached version and in relation to the extracts that result from searching through Google News.

Google's defence relied on the exceptions to the distribution right, established under Article 21 of the Belgian law on copyright and related rights. The court rejected Google's argument on two grounds. Firstly, the exception concerning 'citations from material which has been lawfully published' requires that the citation must fit in the context of a coherent commentary. The random juxtaposition of information was held to lack any analytical character. As a result, Google could not invoke the citation exception. Secondly, it was agreed that the exception concerning reproduction for the purpose of reporting current events is designed to allow the media to promptly react to news events without being delayed in the process by having to request the right holders' authorisation. The court rejected the view that Google was in a similar situation and suggested that, on the contrary, it would not be impossible for Google to seek authorisation from the relevant right holders.

Google had complied with the injunction since the initial application by Copiepresse. Yet, having failed in its opposition before the court of First Instance, the American company has announced that it intends to appeal. It will be interesting to observe any new developments in this case due to its potentially crucial implications for the scope of copyright exceptions. It has been suggested that the Belgian case could encourage other European countries to adopt similar restrictive approaches. If this occurs, it will confirm that the narrow European doctrine on exceptions and the more user-friendly fair-use approach adopted in the US are adapting markedly divergent paths.

Upsetting the court could upset the other party too

In *Independiente Ltd & Ors V Music Trading Online (HK) [2007] EWCA 111*, the claimants are companies involved in the British and Irish music industry in various capacities whilst the defendant runs a Hong Kong based Internet retail business known as CD WOW!, which purchases CDs and DVDs overseas which it sells to members of the public in the United Kingdom. Following a dispute relating to alleged copyright infringement by way of parallel imports, the parties entered into a settlement agreement in January 2004. The agreement included an interim provision to restrict the sales of the defendants until the agreement came into full force and included undertakings to the court. The claimants commenced a second action in respect of these alleged breaches of the undertakings claiming that they were also breaches of contract. Mr Justice Underhill decided this as a preliminary question. He did not accept that the undertakings could be construed as having been given to the claimants as well as the court. However, he found it inconceivable that the defendant, having been prepared to give undertakings to the court, had not intended to give the same to the claimants. He used the officious bystander test and asked whether, if the parties had been asked at the point of contract, they would have understood that these undertakings were to be given to the claimant as well as to the court. He held that the obvious answer would have been "of course". Anything else would have been contrary to commercial common sense.

The defendant appealed the ruling of Mr Justice Underhill on the preliminary issue. However, the Court of Appeal agreed with Mr Justice Underhill. Lord Justice Mummery said that undertakings given to the court would, in many cases, include no contractual context. In this case, there was an agreement to give undertakings not to do certain acts which, it had been alleged, were infringing copyright. Thus, in agreeing to give such undertakings to the court, the defendant was also agreeing with the claimant in the action not to do the acts that they were undertaking to the court not to do.

The courts are usually very reluctant to accept any implied terms to a detailed contract especially when it has been drafted by highly experienced lawyers. However, it seems that necessity to give business efficacy to the agreement allowed the implied intentions of the parties to be taken as part of the agreement as no other interpretation made business sense.

Patents

Is BlackBerry safe now?

On 7 February 2007, the England and Wales Court of Appeal ("Court") handed down a decision in the case *Inpro Licensing S.A.R.L. v Research In Motion UK Limited and T-Mobile (UK) Limited* concerning a patent held by Inpro which was

previously considered invalid for obviousness by the Patents Court.

Inpro's patent at hand was held invalid for obviousness on 2 February 2006, further to Research In Motion's (RIM) application for its revocation. It was also held that RIM's "BlackBerry" computer system was "infringing" as its features fell within certain Inpro's patent claims which were allowable in principle.

There were some interesting points in relation to procedural law. During the proceedings, it was held that the case had to be decided by the streamlined procedure which Pumfrey J, retrospectively considered inappropriate, since the use of such procedure must depend on all the circumstances of the case at hand such as the degree of complexity, the commercial importance and so forth, and not on the basis that if one party asks for it, the other has the onus to raise an objection to its use. This vision was also shared by Lord Justice Jacob on appeal. Moreover, Inpro's expert witness was held to be an unsatisfactory expert during the proceedings before the Patents Court, and the only material which was considered as cogent and helpful was the material tendered by RIM.

It is a settled principle that to reverse a declaration of obviousness the appellant must show that the trial judge made an error of principle. In this case, with just one expert, showing an error of principle was particularly difficult.

The patent in suit refers to a computing system which uses devices like hand-helds (in the patent called "field computers") for use with the internet. In essence, the patent is concerned with a field computer with a small display and limited battery life which can access the internet. The idea behind the patent is to interpose a proxy-server between the field computer and the Internet so that the former can perform the heavy part of computing and sends a reduced page which fits the field computer's screen. There were two issues which revolved around two claims, i.e.:

- the idea of having a proxy server which carries out the heavy computing in favour of the hand-held which communicates its screen capacity to the proxy, and
- the possibility of assembling text and images into a single file before sending to the field computer.

The Patents Court found the patent was obvious due to three previous citations: "Mowser", "Pythia" and "Bartlett", which all disclosed a proxy-server acting between a field computer and the Internet. In relation to Mowser, the Court found that the conclusion drawn by the trial judge as to the obviousness was clear and convincing since the paper immediately suggests to the skilled person that he can use size reduction to meet the display size. The idea behind the claim was found obvious and

trivial since it added nothing to the common general knowledge.

In relation to the Pythia, the Court found no error in principle in the appealed decision, which considered the invention obvious since the features of having a match between the thumbnail and the screen were disclosed. Furthermore, in relation to Bartlett, even though the document was very brief, the idea of sending images was disclosed and the reader able to consider how to carry it out, so there was no use of hindsight in considering it as an anticipation. For all the foregoing reasons the Court dismissed the appeal.

The decision is important in that it emphasises the importance of marrying procedure with the complexity of the case. Moreover, Lord Justice Jacob's views on expert witnesses are legendary, and this case indicates the difficulty of winning an appeal should parties find themselves without such experts.

Trade Marks & Domain Names

OHIM got a lesson from playing Pointy Guitar

In 2003, Kustom Musical Amplification Inc (Kustom) applied to register a Community Trade Mark for a three-dimensional mark in the form of the body of a stylish pointy guitar. The examiner rejected the application on the ground that the trade mark applied for was devoid of any distinctive character according to art 7(1)(b) of the Trade Mark Regulation (EC No 40/94). The Board of Appeal upheld the decision of the examiner when appealed by Kustom. Dissatisfied with the outcome, Kustom approached the Court of First Instance with the main grievance that OHIM failed in its obligation to provide sufficient opportunity to Kustom responding to the grounds of rejection. This was because OHIM only provided internet links to the material relied on to justify the absence of distinctive character, without supplying such information in hard copies to Kustom.

Article 73 of the Regulation imposes an obligation on OHIM to state the reasons for its decision and grants an applicant a right to be heard on the grounds relied upon before a decision is reached. This therefore requires that OHIM should make a decision after forwarding the affected party all the relevant material relied upon. In this particular case, the court found that OHIM and the Second Board of Appeal used internet links as evidence to support their decision. These internet links were used without supplying a hard copy of those internet pages to Kustom. Moreover, when the court checked those internet links, some links were not accessible, while contents of other pages were changed. In the court's judgment, this deprived Kustom from presenting its case against this evidence.

The court further considered whether such a breach of OHIM's obligations was a sufficient ground for annulment of the decision. In this regard, the court looked at the fact that OHIM assessed the similarity between the shape applied for and other existing shapes found on the links to internet webpages. In addition, the ground for refusal expressly referred to those internet references. Consequently, the court annulled OHIM's decision.

In conclusion, the decision affirms that trade mark applicants should be informed of the reasons for a decision by OHIM so that they can have an opportunity to respond and present their case, especially in situations where the contents of an internet link could change at any time. However, it must be noted that the decision does not touch upon the merits of Kustom's application. An indistinctive shape still cannot be registered as a trade mark.

Naming Pharmaceutical Products: Be More Careful

On 13 February 2007, in *Mundipharma AG v OHIM-Altana Pharma (Case T-256/04)*, the Court of First Instance clarified the assessment of likelihood of confusion in a dispute between the Community Trade Mark application of RESPICORT for goods in Class 5 against an application of RESPICUR for "therapeutic preparation for respiratory illness" in the same class.

The applicant was Mundipharma, which is an established international company with a worldwide licensing and distribution network for the sales of licensed products such as analgesics, respiratory treatments and cardiovascular drugs. The intervener, in this case, was Altana Pharma, a German company whose main products are gastrointestinal and respiratory drugs. In 1998, the intervener submitted a trade mark application to the OHIM for RESPICUR for goods in class 5. The applicant brought an opposition proceedings against the application since RESPICORT had been registered in 1990 for goods in the same Class. This opposition proceedings was rejected, both by OHIM and by the Second Board of Appeal. The tribunals concluded that there was no likelihood of confusion between the two marks in question because the applicant had not succeeded in proving use of RESPICORT for its registered goods "Multi-dose dry powder inhalers containing corticoids, available only on prescription", and although there was a certain similarity between the goods in question, it was offset by marked differences between the two opposing signs.

On further appeal to the CFI, Mundipharma asked the court to annul the decision of the Second Board of Appeal, on the grounds that the decision infringed art 8(1)(b) of Regulation No 40/94. Specifically, the decision should be annulled on the following five grounds:

- the limitation of the goods;
- the determination of the relevant public;
- the similarity of the signs;
- the distinctive character of RESPICORT; and
- the fact that the Deutsches Patent-und Markenamt (German Patent and Trade Mark Office) had found the likelihood of confusion between the signs.

In respect of the salient points relating to the naming of pharmaceutical products and trade mark registration, the CFI's findings can be summarised as following:

- since the relevant public had an important bearing on the likelihood of confusion, the definition of the relevant public should be clarified;
- the two opposing marks included both over-the-counter goods and goods available only on prescription; hence, the relevant public was made up of health care professionals and the patients. Moreover, the latter could generally be said to show a higher than average level of attention; and
- the marks in question were somewhat similar for the health care professionals and highly similar for the patients. The professionals would perceive a certain conceptual difference between the two marks. For the patients, however, the marks were visually, phonetically and conceptually similar.

Therefore, the CFI annulled the decision of the Second Board of Appeal of OHIM. This can be regarded as a significant decision in the assessment of the likelihood of confusion between opposing marks. The core implication is that the European Courts will tread cautiously where trade marks applied to pharmaceutical products are concerned. Market confusion depends, not only on the definition of the relevant public, but sometimes on the safety implications for the general public.

The Kitchen Company in search of the successful recipe

In its recent ruling in *BVBA Management, Training en Consultancy v Benelux-Merkenbureau (C-239/05)*, the European Court of Justice has shed light on various European trade mark law issues. The reference was made in the course of proceedings between BVBA Management, Training en Consultancy (MT&C) and the Benelux Trademark Office (BMB). The former applied to register the word mark 'The Kitchen Company' as a trade mark for certain goods in Classes 11, 20 and 21 and for services in Classes 37 and 42. The BMB refused registration on the ground that the sign lacked distinctive character. However, in its decision it did not deal with each product and service individually, but examined the sign applied for as a whole.

MT&C appealed to the Brussels Court of Appeal, which stayed the proceedings and referred three questions to the ECJ for a preliminary ruling.

In its first question the court asked for classification in respect of whether the trade mark authority is required to reach a separate conclusion with regard to each of the individual goods and services for which protection is sought. The ECJ gave a negative answer. It considered a general reasoning to be sufficient where the same ground of refusal is given for particular categories of goods and services.

The next two questions focused on whether Benelux law was consistent with the Trade Marks Directive. Essentially, the ECJ was asked if it is possible for the national rules to prevent the court reviewing a decision of the trade mark authority ruling on the distinctive character of a mark for each of the goods and services separately; and whether that court could be precluded from taking account of facts and circumstances which arose after the original decision had been taken. The ECJ confirmed the freedom of the Member States to adopt any relevant procedural provisions and recognised the flexibility of national laws to regulate those matters.

The decision highlights the fact that the approximation of the trade mark laws by the Directive is limited to those national provisions which most directly affect the functioning of the internal market. Thus, Member States are given discretion to determine the procedure for the registration of trade marks, including *inter alia* the conditions under which the courts can review the national authority's decisions. Furthermore, as regards the refusal of a trade mark registration, general reasoning will suffice, provided that the goods and services in question can be considered collectively and in the same manner.

Confidentiality & Data Protection

Post-employment non-compete clauses: Are you protecting yourself?

Farr was an insurance broker specialising in insurance services for providers of social housing. Mr Thomas, at the time of the termination of his employment, was the managing director of Farr. His employment contract included a clause prohibiting him from competing with Farr for a period of 12 months after the termination of his employment (a post-employment non-compete clause). Mr Thomas resigned from the company due to the unfavourable terms of employment offered to him after the company had undergone restructuring. Immediately after his resignation, Mr Thomas was solicited by a number of companies, including a potential competitor of Farr.

Dissatisfied with the way he had to resign, and faced with the prospect of a new job opportunity, Mr Thomas issued proceedings against Farr, seeking damages for constructive dismissal and a declaration that the post-employment non-compete clause was unenforceable as an unreasonable restraint of trade. Ramsey J, deciding the latter issue as a preliminary issue, held the clause was reasonable and enforceable. Aggrieved with the decision, Mr Thomas appealed to the Court of Appeal.

The Court of Appeal held that the most important consideration in determining the validity of post-employment non-compete clauses is whether the nature of the employment has exposed the employee to information that requires protection beyond his employment term. Once this is answered in the affirmative, it will not be necessary to differentiate between information which should remain confidential at the end of employment and the information which should not.

In the opinion of the Court of Appeal, Farr's pricing strategy and financial information were two clear examples of information that Farr wished to keep confidential in the post-employment period, as such information was capable of being exploited by Mr Thomas' new employer to undercut the dealings of Farr. It also held that the 12 months duration for enforcing the post-employment non-compete clause was a reasonable period, being a conservative estimate of the duration within which the pricing information could lose its significance due to premium adjustments. The Court of Appeal also held that the clause merely restricted Mr Thomas from competing with Farr, but did not prevent him from acting as an insurance broker in sectors other than social housing. Thus, it concurred with the judgment of Ramsey J.

The incorporation of post-employment non-compete clauses in employee contracts are a necessity, particularly in certain types of businesses. Companies often invest significant amounts of money in devising new products, services and operational strategies. At the same time, the pricing models and financial strategies of the companies play an important role in a highly competitive market. Disclosure of this information can have a significant negative impact on the companies, if it falls into the hands of competitors. One of the most common ways such situations will occur, is through the recruitment of ex-employees by competitors. The judgment of the Court of Appeal has taken these commercial realities into consideration and determined the reasonableness of such clauses.

Business Creativity: Copyright in Trade Disputes

The High Court handed down its recently in *Cembrtt Blunn Ltd v Apex Roofing Services LLP & anor* [2007] EWHC 111 (05.02.07) in respect of a claim for copyright infringement and breach of confidence made as part of a claim over faulty

roofing tiles, highlighting the effective use of copyright and trade secrets law against opponents in trade disputes.

A letter enclosing a copy of a report on faulty roofing tiles was supplied to Apex. It was addressed to Cembritt from a technician working for its parent company, Dansk Eternit Holdings A/S, who had been asked to review the state of the faulty tiles. Apex circulated the letter to other parties as the letter contained potentially damaging insights into the faulty roofing tiles and a potential settlement proposal. An independent technician hired by Cembritt was revealed in the proceedings as the source of the disclosure.

The question arose as to whether such business correspondence was a work that could be protected by copyright. International conventions such as the TRIPS Agreement state that copyright should protect only expressions of an author's own intellectual creation and not principles, methods of construction or the like. However, upon review of the case law, the court found no rule prescribing that such correspondence could not attract copyright, and thus held that the normal copyright rules should be applied. Although the letter did refer to the technical facts of the case, they were referred to in the course of the technician expressing his opinion on them. Consequently, the letter was protected by copyright.

On the issue of trade secrets, Apex contended that the technical information in the letter was known to them already. The letter also contained views as to whether further offers should be made to Apex to settle the dispute on the faulty roofing tiles in addition to the underlying technical information supporting those views. The court decided that it was those confidential views that constituted information capable of protection as trade secrets. Apex knew that information to be confidential to Cembritt when they received it.

On both claims Apex raised the defence that they were justified in circulating the letter to defend claims raised against themselves for Cembritt's faulty tiles. The court took the view, however, that the principal technical information had already been disclosed to Apex sufficient for it to defend its claim. Further, the possible settlement proposed in the letter was used by Apex to bring in others to help push for a more advantageous settlement from Cembritt. Thus, there was no wider public interest in the disclosure of the letter.

This dispute demonstrates that companies involved in trade disputes should beware of such cavalier approaches to handling the correspondence of their rivals especially where litigation is contemplated.

Data security-fined for failure

The Financial Services Authority (FSA), empowered under the Financial Services Markets Act 2000 (FSMA), imposed a

penalty of £980,000 on the UK's largest building society, Nationwide, for its failure to take reasonable care to manage the risks concerning data security and the risk of data-theft or loss.

Nationwide holds financial information on over 11 million customers. In 2006, a laptop computer of Nationwide was stolen from an employee's home while he was on holiday and, although he reported the incident to Nationwide immediately, he did not inform them that the laptop contained confidential customer data. Nationwide took about three weeks before it investigated the theft and realised that the computer contained confidential information.

According to the FSA, this was a breach of Principle 3 of its Principles for Business which requires a business to 'take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems'. The sheer volume and nature of the information held by Nationwide posed a high risk to its customers in the case of a failure of its systems and controls. Although Nationwide subsequently reported the loss to the concerned authorities, including the FSA, and had controls which reduced the risk of fraud against the accounts held with Nationwide in case of data theft, it failed to manage or monitor the storage of data on portable storage devices such as laptop computers. This meant that its control over data held in this fashion and its use was limited which, in turn, increased the risk of further financial crime and identity theft.

In its various press briefings, Nationwide was quick to mention that the incident did not cause any actual monetary loss from its customer accounts. Nevertheless, the FSA was categorical in pointing out that the failures by Nationwide were shortly after the campaigns by the Government and the FSA about data security. The FSA also criticised the lack of sufficient internal procedures and controls to ensure data security, which included inadequate staff training, supervision and monitoring to ensure information security procedures, lack of a structured policy document in this regard, failure to effectively implement the procedures in place to manage risk concerning information security, and, most importantly, the delayed response to the theft itself, this showed a lack of care with respect to the risk of loss of customer information.

The penalty imposed by the FSA is the biggest in its history and could have been as high as £1.4m had the society not qualified for a 30 percent discount by agreeing to settle early. The fine will in effect be passed onto the members of the society since it is a mutual society. The FSA lacked any authority to penalise the directors for the breach as reported by BBC.

The case is of significance to all financial services companies, as well as to organisations dealing with personal information.

It demonstrates the importance of putting in place robust measures with equally strong monitoring to ensure data security and prevent any lapses within the internal controls. The case also brings to the fore the question of the viability of the business models which outsource customer information, and the questionable degrees of data security in relation to the outsourced customer information.

Injunctions and Piracy

Potter prevents piracy

The legendary author J. K. Rowling is suing the online auction hosting service eBay, in the Delhi High Court, India, for the alleged piracy of her work 'Harry Potter'. This action was brought by Rowling and Warner Bros, the studio responsible for the Harry Potter films, after the listing of the Harry Potter books for auction sale on 'Baazee.com', the previous Indian version of eBay.com. In their submissions, eBay argued that there was no need to grant an injunction as they were prepared to remove all the pirated works from the website. Nevertheless, the possibility of a temporary injunction could not be denied since this was necessary to prevent illegal auctioning of the pirated books. On the other hand, such an injunction raises the issue of whether a website hosting an auction sale can be held liable for damages arising out of illegal sales. Moreover, the language of the court order, which is operative until the resumption of the hearing, appears to have confused many as to whether it actually grants an injunction on the website or not. If the order is interpreted as not granting a temporary injunction on eBay, then the situation will not be different from the *status quo*. On the other hand, if the order is interpreted as having granted an injunction, then the injunction can be said to have the effect of a revolutionary precedent which is capable of preventing such infringements in the future.

The specifics of the case are as follows. The Harry Potter book is a literary work, which is protected under the Indian Copyright Act 1957. In previous cases, eBay has argued that their website is only a platform or marketplace for goods and is not an auction site. This argument is now vulnerable to attacks under the secondary infringement provision, namely section 51(a) (ii) of the Indian Copyright Act. According to this provision, permission given by any party for the use of a place for public communication of a protected work, with the intention of making profit, without the license thereof, amounts to the infringement, if the party doing so is aware of the infringing effect of his act.

In the present case, according to the legal advisor for J. K. Rowling, eBay was requested many a times to take steps to prevent the acts of alleged piracy and forgery. He added that eBay was reluctant to take these steps, even though they were capable of preventing this infringement. The reason appears to be the economic benefit that eBay gains out of these auctions.

In the current situation, the removal of the pirated work by the website, either by free will or due to the effect of the court order, may prove to be a nightmare for the website, because other brands may start to demand the same treatment against alleged infringement of their intellectual property works.

In conclusion, the order of the court has far reaching consequences irrespective of whether this confusing order is interpreted as having granted an injunction or not. The eBay website is now also fighting actions from the American jewellery company 'Tiffany' and the French company 'Christian Dior Couture'. In the current legal scenario, with the rapidly growing persuasive values of legal precedents set in the foreign countries in the field of intellectual property, this case may prove to be detrimental to eBay's stance against other companies.

News

Proposed Patent Litigation Agreement is Illegal – European Parliament

In February, the Legal Service which advises the European Parliament gave its opinion declaring the proposed European Patent Litigation Agreement (EPLA) to be illegal as it conflicts with European treaties and law.

It stated that Member States are not competent to make independent agreements on matters governed exclusively by EU law. One such matter is the EU Intellectual Property Enforcement Directive 2004/48/EC and so the EPLA is in direct conflict.

It went on to opine that the EPLA, which provides for disputes on its interpretation to be referred to an administrative committee and then to the International Court of Justice, contravened the exclusive jurisdiction of the ECJ on matters of EU law under Art 292 of the EC Treaty.

Although the opinion is not binding, this move is a political setback to the EPLA, which (despite having a long history) appeared to be gathering some momentum towards its adoption. The EPLA was intended to provide a single system for the consistent determination of disputes concerning European Patents (themselves derived from the European Patent Convention - a non-EU Treaty).

Gambling Act Consultation on Casino Premises Licences

The Department for Culture, Media and Sport (DCMS) has published a consultation paper which sets out proposals for the "Gambling (Inviting Competing Application for Casino Premises Licences) Regulations 2007" and the "Gambling Act – Code of Practice for determining applications for casino

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