Trademark package passes

The European Parliament has approved the trademark reform package.

Trademark registrations will become “quicker, cheaper and more reliable” in the EU, according to a statement announcing the parliamentary approval, four weeks after EU Council members gave the trademark package their backing.

The package promises fee reductions for community trademarks, streamlined, more efficient and harmonised registration procedures across all trademark offices in the EU, and the means to stop fake goods in transit through the EU’s territory.

“The trademark system in Europe functions well but is in need of a modernisation. Parliament has consistently kept the users of the system at the forefront of the discussion and we are glad to see a system that will provide a lot of added value for users,” commented rapporteur Cecilia Wikström.

USTR slams Alibaba for counterfeiting

Alibaba Group has remained off the Notorious Markets list despite widespread concerns about piracy and counterfeiting on its ecommerce sites.

The US Trade Representative (USTR) released its 2015 Notorious Markets report in December without returning Alibaba to the list, after commenters that rely on trademark protection widely criticised its marketplaces, including Taobao, Tmall and 1688.

“Brand owners continue to report that Alibaba platforms, particularly Taobao, are used to sell large quantities of counterfeit goods,” reported the USTR.

Alibaba has publicly promised to crack down on piracy and counterfeiting on its marketplaces, which dominate online retailing in China. Taobao was first denounced in the USTR’s yearly naming and shaming of foreign intellectual property infringers in 2008, but it was removed in 2012 after cleaning up its act. Alibaba made subsequent efforts, including responding to takedown requests and removing thousands of infringing listings, to appease brands.

But in 2015, the Chinese government accused Alibaba of failing to live up to its promises, which the ecommerce giant strongly denied. According to the State Administration for Industry and Commerce, Taobao appeared in three of the top 10 cases named by the National Copyright Administration of China in its 2014 ‘Sword Net Action Campaign’.

“Alibaba reported that it has added new enforcement features since the 2014 list,” according to the USTR, “including a good-faith product takedown procedure, a three-and four-strikes penalty system, and an English-language version of the TaoProtect portal to register IPR and submit takedown requests.”

Samsung makes its case

Samsung has asked the US Supreme Court to weigh in on its smartphone war with Apple.

The South Korean smartphone maker filed a petition with the Supreme Court on 14 December, asking it to review its first design patent case in more than 120 years.

The appeal stems from a US Court of Appeals for the Federal Circuit decision in May 2015, which backed Apple and found that Samsung had infringed three design patents with its Galaxy smartphones, among others. En banc rehearing requests from Samsung and Apple were knocked back in November.

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Continued from p1

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Trademark package passes

Continued from p1

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Despite these new procedures, the USTR is “increasingly concerned” by rights holders’ reports that Alibaba's enforcement programme is too slow, difficult to use and lacks transparency.

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These steps should include simplifying Taobao’s processes for rights holders to register and request enforcement action, making its good faith takedown procedures generally available, and reducing its timelines for takedowns and issuing penalties for counterfeit sellers.

“USTR will continue to monitor the situation in the coming year for evidence of whether the new enforcement changes are demonstrably effective in addressing ongoing concerns.”

Separately, Alibaba named Matthew Bassiur as head of global IP enforcement in December. He joined the Chinese ecommerce company from Pfizer, where he oversaw the pharma company’s anti-counterfeiting operations. Jack Ma, executive chairman of Alibaba Group, said following his appointment: “Counterfeiting is a problem that challenges all forms of distribution, whether in ecommerce or offline retail.”

“Some rights holders also report good working relationships and cooperation with Alibaba’s enforcement teams. However, it is unclear what effect these procedures are having on the overall prevalence of counterfeit goods on the Alibaba platforms, particularly Taobao. Furthermore, submissions [in 2015] from trademark holders in several industries do not report improvement of the underlying problem.”

“We will continue to be relentless in our long-term commitment to protect both consumers and intellectual property rights owners, and we call on all companies in our industry to join our fight against bad actors.”

The trademark reform package did face opposition from the Netherlands and the UK, but the European Parliament didn’t accept any amendments during its first reading.

Dutch EU Council officials abstained from the agreement in November 2015 because they had “grave concerns” about the package’s proposed measure for detaining goods in transit.

The UK also opposed the package’s proposal to transfer any Office for Harmonization in the Internal Market (OHIM) surplus to the EU budget.

Samsung makes its case

Continued from p1

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STILLWATERS is an award winning law firm in Nigeria that specializes in intellectual property law, corporate and commercial, taxation and litigation. The firm operates from the commercial cities of Lagos and Abuja in Nigeria, with associate offices in Accra in Ghana and Douala in Cameroon.

Professionalism, flexibility and innovation are the hallmark of our practice. We value professional excellence, outstanding result and realize they both require creativity and hard work. We strive to gain every legal advantage for our clients while upholding the principles behind the practice of law. Over the years, we have acquired considerable experience and an enviable reputation for rendering quality legal services in our areas of specialization.

Practice representative clients include over 660 foreign multinationals, publicly-quoted companies, private companies, financial institutions, government institutions, industrial medium size businesses and individuals. Our practice is adequately equipped and well positioned to meet the challenges of legal practice in an ever-changing technological age.

People . Integrity . Service
But Samsung still disputes whether it really infringed the patents and now wants the Supreme Court to revisit this area of patent law for the first time “in more than 120 years”.

“Late nineteenth-century cases considered design patents on such products as a spoon handle (1871), a carpet (1886), a saddle (1893) and a rug (1894),” but a smartphone is not a spoon handle or a carpet, Samsung pointed out.

“[Smartphones] contain countless other features that give them remarkable functionality wholly unrelated to their design.”

“By combining a cellphone and a computer, a smartphone is a miniature internet browser, digital camera, video recorder, GPS navigator, music player, game station, word processor, movie player and much more.”

Turning to its own case, Samsung explained in its petition: “The three design patents at issue here cover only specific, limited portions of a smartphone’s design.”

Apple’s patents claim “indisputably unprotected elements” within the overall claimed ‘ornamental’ design that are “conceptual” and “functional”.

“No one may own rectangles, round corners, the colour black or the concept of a grid of icons. Rectangular shapes and flat screens allow a user to view documents and media. Round corners make phones easier to slip into a pocket or purse. A bezel prevents the glass screen from shattering if a phone is dropped. Icons on a screen inform a user how to touch the screen to initiate various functions,” explained Samsung.

“But the Federal Circuit nonetheless held that a district court need not instruct a jury to disregard those unprotected elements when assessing the similarities between a patented design and an accused product.”

“The court allowed the jury to find infringement based merely on similarities in ‘overall appearance’ and indeed, based on ‘any perceived similarities or differences’ whatsoever,” added Samsung.

Samsung also wants the Supreme Court to rule on whether the Federal Circuit should have allowed the original jury to award Samsung’s entire profits from the sale of smartphones found to contain the patented designs, totalling $399 million.

The smartphone manufacturer explained that if juries are allowed to continue awarding 100 percent of a product’s profits even when a patented design is only 1 percent responsible for the product’s sale, they must award “the entire profits on a car (or even an eighteen-wheel tractor-trailer) that contains an infringing cup-holder”.

“The Federal Circuit did not dispute that such results are absurd, but stated its belief that statutory text compels them. That belief is incorrect,” argued Samsung.

“Nothing in the text of Section 289 [of the Patent Act] supports the Federal Circuit’s breathtaking construction, or suggests that Congress intended such a radical departure from traditional principles of causation and equity.”

Dallas Buyers Club case dismissed in Australian Federal Court

The Dallas Buyers Club case over allegedillegal downloads has been dismissed by the Federal Court in Australia.

Justice Nye Perram of the Australian Federal Court dismissed the case after the movie’s makers failed to convince the court of an acceptable solution to accessing and using ISP iiNet account holder information.

US move studio Voltage Pictures sought access to the private details of Australians who allegedly downloaded copies of the movie Dallas Buyers Club.

In April 2015, the movie studio successfully filed a discovery order with six Australian ISPs to reveal the names of customers who had illegally downloaded the movie via file-sharing networks.

But in August, Justice Perram stayed the order and required a $600,000 bond as a condition to lift the stay. But Voltage failed to make a payment and its petition to lift the stay was dismissed.
Intellectual Property in an Innovative World

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In its amended proposal to lift the stay, Voltage offered to write to each individual infringer seeking expenditure, licensing and payment fees, and $60,000 to access 472 names of the alleged 4,726 infringers.

Voltage also cited the Winnebago Industries v Knott Investments decision, arguing that it was not necessary to prove that an infringer would have sought a hypothetical distribution licence.

But in a final decision issued on 16 December, Justice Perram rejected the argument, holding that the principle “does not apply” in copyright cases.

SoundCloud and PRS for Music end copyright dispute

UK music copyright collective PRS for Music and SoundCloud have reached an agreement for a multi-territory licence to cover the service. The new licence covers the use of PRS for Music’s repertoire since SoundCloud’s launch. It will allow PRS for Music’s members to receive royalties when their works are used by SoundCloud.

Robert Ashcroft, chief executive of PRS for Music, said he was pleased to have reached a settlement with SoundCloud.

“This ends over five years of discussions on the licensing requirements for the platform, resulting in a licence under which our members are fairly rewarded for the use of their music.”

The music-streaming platform faced opposition in August 2015 when the society confirmed it began legal proceedings against SoundCloud for failing to obtain a PRS of Music licence.

Ashcroft added: “The safe harbours in current legislation still present ambiguity, but our agreement with SoundCloud is a step in the right direction towards a more level playing field for the online marketplace.”

Alexander Ljung, founder of SoundCloud, added: “We’re pleased to have reached an agreement that will, improve the accuracy of royalty distributions, and launch new services for our 175 million listeners on SoundCloud in 2016.”

Apple and Ericsson settle global standards dispute

Apple and Ericsson have agreed to end all pending patent infringement litigation over standard-essential patents (SEPs) in a new seven-year licensing agreement.

The deal includes a cross-licence that covers patents relating to both companies’ SEPs (including the GSM, UMTS and LTE cellular standards), and grants other patent rights.

As part of the seven-year agreement, Apple will make an initial payment to Ericsson and then pay ongoing royalties.

The technology firms were engaged in a long dispute over SEPs, with Ericsson accusing Apple of using its technology in devices without a licence. Apple originally held that Ericsson was seeking unfairly high royalty fees in the case, which began in January in the US, and then came to the UK and Germany.

The agreement ends investigations before the US International Trade Commission, and the lawsuits pending in the District Court for the Eastern District of Texas and the Northern District of California, as well as lawsuits in the UK, Germany and the Netherlands.

The companies will also collaborate in multiple technology areas, including the development of the next generation 5G cellular standards.

“We are pleased with this new agreement with Apple, which clears the way for both companies to continue to focus on bringing...”
new technology to the global market,” said Kasim Alfalahi, chief intellectual property officer at Ericsson.

**FIS settles three-year business method patent dispute**

A patent dispute over business method patents between US financial services technology providers has been settled.

Fidelity National Information Services (FIS) settled with competitor Fiserv, ending a patent infringement suit that has raged since 2012.

Fiserv filed a lawsuit against FIS in January 2012, claiming that features of its financial and payment solutions, including its Payment Manager product, infringed four business method patents.

That suit was stayed pending the Patent Trial and Appeal Board’s (PTAB) review of the disputed patents.

In December last year, the PTAB ruled that all claims in the four patents asserted by Fiserv were invalid because they were deemed abstract under the Supreme Court’s 2014 Alice decision, which ruled that implementing an abstract idea using a computer does not make an invention patent-eligible.

“The dispute has now been settled, with no monetary payment made or promised by either party,” said FIS in a statement.

Fiserv will dismiss its appeals of the patent office decisions, and the parties will dismiss the federal district court lawsuit. The patents Fiserv asserted against FIS remain invalid.”

**Hesco secures trademark win in China**

The Hesco Group has won a trademark infringement case against a Chinese company selling replica products online.

Qiao Shi was using the ‘Hesco’, ‘Mil’ and ‘Concertainer’ trademarks to sell copycat wire structures, but it was ordered to cease using them by the Hebei Higher People’s Court in September 2015. An appeal was rejected at the beginning of December.

Chief judge Zhang Shoujun of the Hebei Higher People’s Court ordered Qiao Shi to cease using the trademarks to promote its versions of Hesco’s products and remove all references from its websites.

In March 2014, the World Intellectual Property Organization Mediation and Arbitration Center deemed Qiao Shi’s use of the domains hesco.org and hesco.bastion.org to be blatant examples of unlawfully using the internet to pirate goods.

Once the domains were transferred to Hesco, Qiao Shi continued to use its trademarks to sell and promote the cage-like collapsible structures, according to Hesco.

Andrew Taylor, general counsel of the Hesco Group, said: “We have experienced copycats seeking to exploit our reputation by selling unauthorized products and this successful judgement is an important step in stopping infringers seeking to unlawfully use our trademarks.”

**Michael Hughes, CEO of Hesco Group, said:** “This judgement should send a clear message to other companies attempting to imitate and present themselves as genuine sellers of authentic Hesco product and that Hesco will ensure only genuine Hesco barriers are supplied throughout the world.”

**ParkerVision targets smartphones**

ParkerVision has filed a complaint against Apple, Qualcomm, LG and Samsung over infringement of four of its patents. The firm, which develops radio frequency technologies, lodged complaints in district court and the ITC.
An increasing number of wrists are decorated with small devices doing the important job of tracking every move the body connected to that wrist makes. As I type this, my very own tracker is confusing my keyboard taps for steps.

But it is no longer just fitness trackers that are making wearable tech a common feature of daily life. Fashion editorial is rife with details of the next big wearable item—from jewellery that lights up on receipt of an email, to the Apple Watch, which is being touted to fitness fans and fashion lovers alike, to shoes that change colour at the tap of an app. The fashion industry is starting to embrace all that the world of wearable tech has to offer. The healthcare sector, often an early adopter of new technology, is exploring how wearable tech may help with diagnostics and the delivery of medication. Even the banking sector is reportedly looking into how it can use wearable tech to help with the protection of customer accounts.

This article will look at the key intellectual property considerations in this brave new world of wearable tech. Much of what this article will cover will be familiar ground in the sense that it will look at how the existing IP framework will apply to wearable tech, but what is so very interesting about wearable tech to an IP practitioner is exactly how this framework will apply and what new challenges it will present.

**What is wearable tech?**

First things first, however—what do I mean by wearable technology? Definitions abound but in this article, wearable tech is simply that—tech that is wearable.

3D printing and apps will not be considered here as such, although the former may well be responsible for producing the items we will wear in the near future, and the latter can make that pair of Gucci.
slingbacks on our iPhone 6 appear at our office desk the next day after a couple of taps, this article is solely concerned with tech that is active when worn.

**Why should IP practitioners care about wearable tech?**

IP practitioners—perhaps more than most—need to be in tune with what is happening in the world. We need to know what our industries of interest care about. What the next big thing is. What counterfeiters might be trying to copy next.

Wearable tech is one of those interesting beasts that straddles a number of different industries, bringing together practitioners from different fields in a kumbaya-like manner.

Practitioners from the worlds of technology, fashion, fitness, healthcare and even banking, to name but a few, have an interest in what the world of wearable tech means.

What is particularly interesting about wearable tech is the way we are seeing partnerships between companies that have traditionally not had much involvement with one another. For example, Google has teamed up with Tag Heuer and Intel to bring us a smart watch. Wearable tech also poses some interesting new IP challenges for clients—be they companies or our business team for in-house lawyers.

**What IP issues do we need to think about?**

A number of the IP issues to be considered are themselves not novel. As with any product, wearable tech manufacturers will have to consider the relevance of an entire suite of IP rights.

Trademark protection will remain an important consideration although there may be some thought to be given to the application of trademarks when two companies co-develop a device. Companies may also have to apply for protection in additional classes.

Design protection may be something wearable tech manufacturers may want to give more thought to. Design protection is often overlooked but, if the registration route is pursued, it is a relatively cheap means of building an IP portfolio. As there is no examination procedure, it is also very quick, although thought should be given to what is registered as any infringement claim will be limited to what has actually been registered.

At these early stages of the roll out of a variety of wearable tech products, the market will be (and already is, in the case of fitness trackers) flooded with a large number of different devices and so a design registration (or the assertion of unregistered rights, while being mindful of unjustified threats) can be a useful means of protecting the design of a device.

Patents will also be an important consideration whether new technologies are being developed (Google has filed a patent for a wearable that targets cancer cells), or existing technologies are being licensed. Finally, copyright will also be relevant in terms of any software used and packaging (as well as any underlying design drawings).

However, what is novel is the extent to which an entire IP suite has to be considered by companies moving into the tech space for the first time. Certain aspects of the IP world will likely be new to the companies bringing devices to the market.

Software developers who may have come up with an idea that will be incorporated by another company may have to consider for the first time how IP rights can be used to protect physical articles. Fashion companies will likely have to consider the role and importance of patents for the first time. Health companies may become interested in design protection having not necessarily considered it in great detail before.

There are also commercial IP considerations where companies are working together to develop a device that may well be unchartered territory. Research and development agreements and other co-development agreements will have to be entered into and IP will be an important consideration here.

Thought will have to be given to concepts such as background and foreground IP rights to ensure that there is clarity when it comes to the ownership of IP that existed both before and after the development of the device.

While well-covered ground for the health sector, the fashion industry, for example, may not be so familiar with this network of agreements needed to protect IP ownership. IP issues are of course not the only legal considerations. The data protection and privacy implications of wearable tech should be well explored.

There will also be regulatory considerations, which may impact on branding and will likely be new considerations for companies that have not had to think about the regulatory environment in which these devices operate.

Wearable tech is here to stay and this IP practitioner for one is excited to see where we are headed.  

> Wearable tech is one of those interesting beasts that straddles a number of different industries, bringing together practitioners from different fields in a kumbaya-like manner

**Sabrina Tozzi, IP associate, Baker & McKenzie**
Global IP Convention

Location: New Delhi
Date: 07–09 January 2016
www.iprconference.com

Global IP Convention is an annual meeting platform designed to discuss best practices and solutions to enhance IP management strategies. It has become one of the most attended IP conferences in Asia.

IP Confex

Location: London
Date: 16 March 2016
www.london2016.events4sure.com

The Global IP ConfEx, from the Global Outsourcing Association of Lawyers, will act as the ideal platform to promote the welfare, interests, education and professional development of all who are directly or indirectly associated with the legal and IP industry.
Alibaba Group has named Matthew Bassiur as head of global intellectual property enforcement.

He joined the Chinese ecommerce company from Pfizer, where he oversaw the pharma company’s anti-counterfeiting operations.

Prior to Pfizer, he was counsel for IP rights enforcement at Apple.

In his new role, Bassiur will lead a team that works with international brands and retail partners, industry associations, government regulators, law enforcement and other organisations to advance Alibaba’s anti-counterfeiting and IP rights protection efforts.

“Bassiur’s appointment is the latest step in Alibaba Group’s comprehensive and industry-leading efforts to fight counterfeits,” commented Jack Ma, executive chairman of Alibaba Group.

“Counterfeiting is a problem that challenges all forms of distribution, whether in ecommerce or offline retail. We will continue to be relentless in our long-term commitment to protect both consumers and intellectual property rights owners, and we call on all companies in our industry to join our fight against bad actors.”

Miclean Gleason has added former senior patent counsel Katherine Prescott to the firm as counsel.

While at Apple she set litigation, trial and settlement strategy for patent and consumer class action litigation. She joins from Wilmer Cutler Pickering, where she also served as counsel.

Prescott litigates patent and trade secret cases involving a wide range of technologies, including computer and network security, medical devices and turbocharger manufacturing.

David Miclean, partner at Miclean Gleason, said: “Her ability to understand business implications in legal matters and her expertise in strategically communicating with clients make her an immense asset to our team.”

Jeffrey Snow has become partner at Pryor Cashman in New York.

Snow joins the firm from Cooper & Dunham, where he was also partner.

He has worked across licensing, prosecution and opinion and offered due diligence for companies in the medical devices industry and computer software.

Snow has also been trial counsel for numerous IP cases, Markman hearings, along with judgements in copyright, trademark and patent cases.

“We are thrilled to welcome Snow into the Pryor Cashman fold, adding strength to our already strong IP practice,” said Ronald Shechtman, firm managing partner.

Miclean Gleason has added former senior patent counsel Katherine Prescott to the firm as counsel.
People

He joined WilmerHale from Sullivan & Cromwell in New York, where he was an associate.

Syrett has represented companies in disputes before federal and state courts and has particular experience litigating disputes at the intersection of anti-trust and IP law.

IP boutique Kacvinsky Daisak Bluni has added Douglas Ringel as principal.

He joins from Kenyon & Kenyon and has more than 20 years of experience in IP.

His work includes litigation and providing counsel and opinions on rights, due diligence and licensing deals across medical devices, computer technology and electronic industries.

Ringel is the third principal to join Kacvinsky since October 2015.

Scott Bluni, principal and managing partner of Kacvinsky, said: “As a senior lawyer, he has built a solid practice and knows the intricacies of IP law from various perspectives and across several industries.”

The US Patent and Trademark Office (USPTO) has recruited Hope Shimabaku as the director of its new satellite office in Dallas, Texas.

She joins the USPTO from Xerox, where she served as vice president and corporate counsel, responsible for all IP matters for Xerox business services.

Shimabaku has also worked for BlackBerry, advising on US and Chinese standards setting, cyber security, technology transfer, and IP laws and legislation.

Michelle Lee, head of the USPTO, commented: “Hope Shimabaku knows the emerging economic opportunities in that region, and is committed to advancing the mission of the USPTO as America’s ‘Innovation Agency’ by assisting entrepreneurs to unleash game-changing innovations while creating high-paying jobs and fuelling economic growth.”

The USPTO opened the new office in Texas in November 2015.

The agency also has satellite offices in Denver, Colorado, and Detroit, Michigan.

The USPTO is headquartered in Alexandria, Virginia. IPPro

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