European Intellectual Property Review

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In November 2013, the European Commission published a Proposal for a Directive on the protection of undisclosed know-how and business information (trade secrets), which, after first being amended by the EU Council in 2014, has now entered the legislative phase. Since its publication, journalists, whistle-blowers and trade unions have criticized this document for placing an excessive burden on freedom of expression, the right to information and employees' mobility. In fact, a harmonised protection of trade secrets in the EU needs to be based on a set of principles in order to ensure its public acceptance. In particular, its scope needs to be sufficiently delimited in order to remain a tool restricted solely to business life, and the protection granted must provide clear safeguards for the respect of fundamental rights.

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Heightening Tension between the Exhaustion Doctrine and Field-of-use Licensing in Information Technology Tests the Limits of each Doctrine (Part 1) 262
The intricacy of patent lawyers tests the limits of various important doctrines governing the distribution of patented goods. A recent decision of the Federal Circuit involves a complex licensing scheme with an unusual pattern that gives the scheme characteristics arguably bringing it into conflict with the exhaustion doctrine, on the one hand, but safely within the doctrine permitting licensing of limited fields of use, on the other hand. The author suggests that the Federal Circuit's reasoning in reversing a lower court's grant of summary judgment is not faithful to Supreme Court precedent, because it imposes an erroneous standing requirement on invoking the exhaustion doctrine and uses an unduly narrow standard to determine whether what is sold and what infringes the patent are sufficiently alike to trigger the exhaustion doctrine. Part 1 of this two-part article traces the development of the US exhaustion doctrine to the present. Part 2 will address the Federal Circuit's controversial judgment in this case, which may greatly limit the application of the exhaustion doctrine by providing a way to circumvent it; and then discusses a new legal analysis to supplement the exhaustion doctrine, based on equitable estoppel.

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