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Debranding: A Form of Trade Mark Infringement? A Discussion of the CJEU Decision in *Mitsubishi/Duma* 605

The Court of Justice recently rendered a decision in which the question came up whether debranding of products is a form of trade mark infringement. It concerned products that were imported into the EU by a third party after having been debranded. The court concluded that it is, because the act of debranding conflicts with the right of the trade mark owner to control the first placing on the EU market of his products. The author argues that the reasoning leading up to this conclusion is wrong.

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Gene Patents and the Marginalisation of Ethical Issues 608

In 2013 and 2015, the US and Australia, respectively, rejected the patentability of isolated genes. In March 2016 a Canadian challenge to gene patents was settled providing a licence to the Children's Hospital of Eastern Ontario (who took the initial challenge) to carry out genetic testing. A primary driver of the litigation in these jurisdictions was the ethical issues posed by patents. In 1998, the EU adopted tailored legislation on biotechnological patents, and again a primary concern underlying the legislative drafting process was the ethical issues posed by such patents. Nonetheless, despite ethical issues driving challenges to, and debates on, changes of patent law, in practice ethical issues are given limited consideration within patent litigation and adjudication. Using gene patents as a case study, this article argues that patent law fails to engage with the ethical issues (including potential healthcare implications) of biotechnological patents in a meaningful way. The only exception to this is the Canadian approach examined, where solutions outside patent law, via licensing, have been developed. The article argues that unless and until we adopt fundamental institutional change within patent law, it behoves us to take seriously and devise appropriately, solutions outside patent law to address the ethical issues posed by patents.

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Because of the prevalence and varied nature of sui generis GI systems in the region; implicit regulatory freedom; and identified policy advantages, Australia should make sui generis GI registration available for all its domestic food products beyond just wine. By introducing bespoke legislation in the context of FTA negotiations with the EU, Australia could gain an advantage in international trade and support more effective protection of provenance in domestic agriculture.

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Rethinking the Functionality Exclusion in EU Community Design Law 639

EU Community Design law excludes from protection "features of appearance" of a "product" which are "solely dictated" by its "technical function". The application of the exclusion has been controversial and can appear arbitrary. This article argues for a transparent, certain, objective and holistic approach to functionality, and suggests that Australian design law may provide a useful model for consideration.

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In his Opinion in *Pelham* (C-467/17) Advocate General Szpunar suggests that the use of samples from sound recordings is not permitted under the European copyright rules. While applying an extensive interpretation of the scope of the rights of phonogram producers, he rejects an extensive interpretation of the quotation exception and limits the role of fundamental rights as external checks to copyright law.

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This article highlights the increasing challenges faced by the innovator companies owing to pre-grant opposition proceedings in Pakistan. On one hand, the generic drug makers are using the system as a legal tool to frustrate the process of patent grant, while on the other paralysing the innovator companies from initiating patent infringement proceedings against them. In the recent opposition proceedings between Otsuks and Pharmatec, the Pakistan Patent Office had correctly applied the relevant provisions of the Patents Ordinance 2000 to decide the question of limitation, but failed to apply its judicial wisdom while denying protection to Otsuka patent application relating to an improved process for preparing aripiprazole when opposed by the generic drug maker—Pharmatec. Fluctuation in the decision at the ex parte stage and after opposition are unveiling interesting parallels and providing a guideline helping innovator companies and equally the generics in future patent-related conflicts.

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