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## UPDATING INDUSTRIAL PROPERTY IN SPAIN

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It is an honour for me to write for the Editorial of the IPR- Helpdesk-Bulletin, which is just starting. I would like to briefly review what constitutes, in my opinion, the essential developments regarding industrial property in Spain. Our Office's activities are organised around three specific areas: a first section on legislative and normative measures; a second section related to international actions and a third section referred to aspects related to the improvement of the files processing.

As regards the first section, it is mandatory to mention the Trademarks Act and its Regulation, which have just entered into force. One of the Act's main innovation is the withdrawal of the examination ex officio by establishing an alternative system. The Spanish Patent and Trademark Office (OEPM) carries out a computer-based search for signs prior registered or applied for. It notifies those holders of signs that were detected of the publication of the application for the registration of the new trademark so that they may oppose if they wish to do so.

Another relevant innovation of the Trademarks Act is the introduction of the multi-class classification, which is not only a great reform from a theoretical point of view, but from the practical one it will entail the adoption of internal measures, on the one hand, as regards files processing - because a multi-class trademark file may bring to a division or to different ways of each of the classes of the same trademark - as well as regarding organisation and management.

The Trademarks Act sets out other important challenges, such as the trademark colour publication in the BOPI (Industrial Property Official Bulletin) or the amendment of the different forms.

Secondly, and within the legislative section, it is obliged to mention the Draft on the Industrial Designs, necessary tool in order to comply with the Community Directive but also an important renewal exercise, due to the fact that the former Act dates from 1929.

This Draft mirrors quite well the Council Regulation in aspects such as not needing registration in order to get temporary protection. It also reflects other aspects such as the introduction of a twelve-months grace period from first disclosure for the design to be registered; the possibility of seeking protection for up to 50 designs through a single application or the cutting down of fees and administrative terms. This Draft will have a particular bearing on sectors as relevant to Spain as the fashion sector, ceramics, furniture industry, jewellery and costume jewelry or the toy industry.

The Draft, like it happened with the Trademarks Act, respects the Judgement delivered by the Constitutional Tribunal in June 1999 and, therefore, introduces the Comunidades Autónomas' capability of receiving and formally examining designs applications.

Within this legislative and normative measures, patents have to be also mentioned. The milestones of the patents' area could be cited as being the Biotechnological Inventions Act -which refers to ethical issues and referents that had to be considered- and the Real Decreto passed in September 2001 that introduces the option of taking a patentability examination in all the sectors of the art. Up to date, just a 10% of the files end in an application for examination.

Regarding international measures, and linking with the examination issue, it has to be noted that Spain has obtained from the WIPO General Assembly the condition of International Preliminary Examining Authority, which it will start working by the end of 2002. Thus, the OEPM training in order to process PCT applications in Spanish is completed.

The discussion on the introduction of Spanish as official language within the International Trademark system is a third aspect of this block of international activities, which will be probably sort out in the WIPO Assembly, in September 2003. Spain applied for this measure together with other countries.

Finally, within the third block that I referred to at the beginning, I would like to mention a few general aspects of great relevance to the user. A first action that the OEPM started to carry out two years ago, is the establishment of quality systems through the setting up of working groups, publication of brochures of services and measurements of the customers' degree of satisfaction. Other essential aim is the project for decision of any industrial property file in the shortest time possible and with a satisfactory quality degree.

It is also worth emphasising the electronic application project -for which the European Patent Office is actively co-operating, in the case of patents, as well as the Office for Harmonisation in the Internal Market, as regards trademarks; and, lastly, the electronic archive, complement to the electronic application, which will allow a paperless system.

I would like to finish by inviting the readers of this Bulletin to pop in our Office and express their opinions. Without these opinions our wishes of improvement will be useless.

## The implementation in Belgium of the Directive 2001/29/EC on the harmonisation of copyright and related rights in the information society

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Belgium will implement the EC Directive on copyright in the information society (Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, *Official Journal L 167*, 22/06/2001 P. 0010 - 0019) in the coming months. Indeed, a draft bill which clearly refers to the directive is on the way and will be discussed soon. Let's see what are the major changes to be expected to the existing Belgian copyright framework.

### Distribution right

The Belgian proposal provides an exclusive right to control distribution of the work incorporated in a tangible article. This right is clearly granted to authors, besides reproduction right and the right of communication to the public. In Belgium, authors were only entitled to a distribution right only by analogy with performers. According to this new provision, the distribution to the public of the original or a copy of a work, by sale or otherwise,

will require the prior consent of the author.

### The exception for temporary reproduction

The Belgian proposal will also implement the mandatory exception for temporary acts of reproduction. This exception covers two specific cases. The transmission of a work in a network by a technical intermediary and a lawful use of a work. These acts are authorised only if they have no independent economic significance. However, the scope of this exception is subject to interpretation. Indeed, for example, there is no certainty whether "caching" is covered. The other existing exceptions will not demand major changes in order to fulfil the requirements of the Directive.

### The legal protection of technological measures

The introduction of a legal protection of technological measures will be a fundamental innovation in the Belgian framework. Authors are protecting their rights threatened by the evolution of technologies thanks to techno-

logical measures. However, technical measures are more and more circumvented. Therefore, the legislator wants to provide a legal protection to these systems. The draft bill prohibits not only the circumvention itself, but also the provision of services, or the manufacture of devices, products or components which are facilitating the circumvention of technical measures.

The Belgian legislator will not modify the whole structure of the copyright act but will nevertheless bring some relevant and significant changes. These modifications are often a faithful implementation of the provisions of the Directive.

## New order for the design

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**Everybody is speaking about it but nobody really knows about it and each one is yielding to it without knowing it. In the process of radical transformation, the whole world of design has its own aesthetic rules, but it remains to set the rules on its protection.**

Sometimes, it can be intimidating to enter the field of design because this matter may appear complex or monolithic for somebody who has not been initiated into its mysteries. In fact, this generic word groups together several categories relating to graphics, to industry or environment. More recently, the emergence of new classifications should be noted. They are linked to products, electronics and Internet, the youngest one. As the spheres to which stylism relates have just as much a wide range of interests, the matter remains unclear for specialists. The university world is wondering about the validity of its universality, particularly compared to the diversity of cultures. Pragmatic people would like to know if it forms part of the firm. So, how to handle the innovative part, to defend the creations and to comprehend its management? Professionals (consultants; inde-

pendent designers; designers agencies; members of the design department or of the marketing department of a firm; communication agencies; web design developers agencies; graphic designers, developers and promoters of products agencies) question themselves on the setting up of an international code for supervision of actors on the stage (quality surveillance).

### Very trendy

The design has the wind in its sails and is developing in spite of economic recession. The profusion of competitions, projects and other research forums shows that. In view of an "ugliness which is badly sold", a continuous evolution of technologies, an increased - but justified - demand by the consumers, it should be noted that various products for a very targeted market only appeal through "their look". The "family likeness" strives for representing the visiting card of the firm, a kind of distinctive and immaterial element... so dear to the Intellectual Property Rights sector. To this observation, a common denominator may be added. If a good product is well sold because it meets perfectly a specific need at a particular moment, a beautiful

one is better sold. Especially in this new culture where appearance and beauty of individuals are seriously quantified.

### The rules of the game

It is a bit of a challenge to get statistic data on design since there is precisely no circumscribed reality. This difficulty makes it charming and arouses interest about such a fluctuating world of social and economic actors with different natures and aspirations. The only common leitmotiv is the search for an aestheticism applied to a product (object, industry), a place (residence, shop) or a more abstract concept (Internet, Information technologies, manga).

To corroborate all this, the professions fragmented and scattered are blending in with others. This is probably the reason why every country has at least about twenty associations where members share either the same interest or a technical speciality (medical design); so many places to exchange ideas, innovations and to host competition. For instance, the Fedrigoni UK launches the "2002 Imaginative paper awards" in September 2002. In France, The Minister of Industry has started two studies: the one on the design

practice in small and medium industries, and the other on the design offer (by agency or by freelancers). The results will be available in November at the presentation of awards by the "Design Observer" in Paris and ought to be communicated to the public. Either national or international, these associations aim at universalising. Their networks and their interoperability are concentrated and, even if every one keeps his first objective, common approaches are adopted. The topic for thought selected for the conference of the Icsid - "Reflecting experience, design between industrial innovation and enhanced user services" - affirms this trend. Would ergonomics become an element in its own right of research? The International council of societies of industrial design brings together, since its creation (1957), more than 150,000 professional designer members coming from 150 national associations of 53 countries. The next conference will be held in Hanover, from 8 to 10 September 2003.

On its side, the Design management institute will organise its next conference on the topic "How do you meet the challenge of fusing design, strategy and technology and find opportunities for success in the complex world we are all confronted with?". A massive programme for professionals conscious of the

hard realities of the market...

### The age of reason

Far to sleep on their achievements, the protagonists are cogitating and fidgeting. The design or model is not anymore the small brother of the patent, it becomes more important. Finally! The European Union is aware of this evolution. Still utopian two years ago, the community model is almost a reality. Since the Regulation on Community designs and models passed by the Council in December 2001, the industrial models that have been disclosed were protected from last 6 March 2002.

But the most interesting remains to come, it will be possible for designers-creators and innovative firms to apply for registration before the OHIM. That will allow them to secure an exclusive right to use their creations and thus to summon up their arms to face slavish imitations and other pirated copies or counterfeiting. The date for the first registration application in order to get a registered community model is still unknown, but the OHIM is getting ready actively in order to be able to receive the filings from the beginning of next year.

As some good news are never heard alone,

the website of the American Collecting Society for Copyright is just opening to the public. The operations of management (licence agreement, digital photocopy of works, calculation of royalties for "droits d'auteur" or copyright) are now made easier by this server<sup>1</sup>. And Eureka<sup>2</sup>, the portal designed for Small and Medium Enterprises (SME) - or Small and Medium Industries (SMI), has recently also posted information relating to innovation. A set of protections which, at the end, will help the design to go from the abstract level to the concrete one, but always appealing us...

1. Copyright clearance centre inc.: [www.copyright.com](http://www.copyright.com)

2. Eureka, European network for market orientated R&D: [www.eureka.be](http://www.eureka.be), [www.eureka.be](http://www.eureka.be)

## Intellectual Property in the Sixth Framework Programme

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When this article is written, the Participation Rules<sup>1</sup> have not yet been officially adopted. However, and with the reservations mentioned, some comments can be made about the treatment of intellectual property in the Sixth Framework Programme (from now on, 6FP).

The proposed Regulation include, on one hand, the participation rules themselves (requirements for participants, evaluation and selection, financial contribution, etc.), and on the other hand, the dissemination and exploitation rules, which cover not only the treatment of intellectual property (property and protection of knowledge) but also the use and dissemination of the research results.

An adequate treatment of intellectual property rights is essential for the success of any scientific and technological cooperation, especially at an international level, as is the case with the actions financed by the 6FP<sup>2</sup>.

In this area, the novelties included have two aims. Firstly, they try to arbitrate the conflict of interests existing between the need to guarantee, on one hand, the intellectual heritage of each participant, which creates an incentive for individual research, and on the

other hand, the access of each participant to the other participants' knowledge for research collaboration to be productive. Secondly, the Participation Rules take greatly into account the characteristics of new participation instruments: networks of excellence and integrated projects.

Among the novelties directed to finding the balance between an adequate protection of individual knowledge and the need to access and disseminate that knowledge, we can highlight the following:

- Any participant will be able to exclude explicitly, by means of a written agreement between the future participants and before the signing of the contract with the Commission, specific pre-existing know-how (Article 25(3)). And this even if that knowledge could, in some way, be useful for the implementation of the project. It will be for the other participants to refuse this authorization if they demonstrate that the implementation of the project or their legitimate interests would be significantly impaired thereby.

This measure could bring about difficulties in its practical implementation. In-

deed, the identification of pre-existing know-how implies the disclosure, even if it is only slightly, of that pre-existing know-how, the access to which is in fact being avoided. It is even more difficult when it is about pure "know-how" and it is not protected by any industrial or intellectual property right<sup>3</sup>.

On the other hand, the need to reach a Consortium agreement before signing the contract with the Commission is strengthened.

- Disappearance of all mentions to the Technological Implementation Plan, aimed at assuring an adequate management of intellectual property rights and the fulfilment of the obligation of exploitation and diffusion of knowledge. However, this does not imply the disappearance of the control and monitoring from the Commission to the plan of use and exploitation of the results. The reason is maybe a desire for simplification and for granting greater flexibility to the Consortium.
- As regards exploitation, participants will have access rights only to the knowledge generated by other participants that is

necessary for the use of their own knowledge (Article 27(1)).

The access rights to any knowledge generated in the context of the research programme to which the contract is attached will disappear. Under the Fifth Framework Programme, participants in a specific project could be obliged, in certain circumstances, to grant access rights to the principal contractors of the same specific programme, when the knowledge was necessary for the implementation of their work within their project (Articles 12(1) in fine and 13(1) in fine of the RTD Model Contract). Although the practical implementation of these regulations was very limited, participants were worried about the possibility to be forced to disclose their knowledge to the contractors of other projects with whom they had had no contact and with whom they had not started a close relationship similar to the one they had reached with the participants of their own project.

The main novelty, aimed, among other

things, at taking into account the new instruments, consists of the obligation to reach a consortium agreement, unless the call for proposals stipulates something different (Article 12(5)). Indeed, the new instruments imply, on one hand, the collaboration within the same project of different profile participants (for instance, big companies with SMEs), and on the other hand, a greater flexibility in the incorporation and replacement of participants during the course of the project. Both aspects require a considerable degree of autonomy and self-regulation in many aspects, one of them being the treatment of intellectual property.

Summing-up, the simplification of the rules concerning the treatment of intellectual property, on one hand, and the management of the consortium with the new instruments, on the other hand, entail a greater degree of autonomy for the consortium, which should be expressed with clear and effective rules in the Consortium agreement. As a consequence, IPR-Helpdesk meets new challenges when it comes to give first line assistance to current and potential participants in

the 6FP.

1. Regulation draft of the European Parliament and the Council concerning the rules for the participation of undertakings, research centres and universities in, and for the dissemination of research results for, the implementation of the European Community Sixth Framework Programme (2002-2006). <http://europa.eu.int>

2. See about this the interesting working document published by the European Commission: "Role and Strategic Use of IPR (Intellectual Property Rights) in International Research Collaborations", prepared by a working group of independent experts.

3. Some techniques, similar to the "enveloppe soleau" that exists in France, could be useful in these cases.

## What Should SMEs Take Into Account When Offering Their Products And Services On A Web Site?

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1.

Electronic commerce constitutes a great opportunity for small and medium-sized enterprises (SMEs) to improve their businesses. However, there is uncertainty about the legal regime applicable to certain uses of the Internet. The purpose of this article is to explain the legal obligations SMEs must fulfil when they offer their products or services on Web sites. From the moment SMEs start any kind of economic activity using electronic means, they are considered information society service providers (ISPs) for the purpose of Directive 2000/31 on electronic commerce.

2.

According to Art. 4 of this Directive, the setting up of an information society service is not subject to prior authorisation by the competent authorities. However, ISPs must comply with the transparency obligation stated in Art. 5. They should make the following general information accessible in their Web site: name; geographical address where they are established; contact details, including e-mail address; if they are registered in trade or similar public register, the trade register and their registration number or other equivalent mean of identification; and prices, including taxes and delivery costs, must be clearly and

unambiguously indicated. Depending on the specific activity the ISPs are in which engaged, they must make clear: if this activity is subject to an authorisation scheme, the name of the relevant supervisory authority; if it is a regulated profession: the professional institution, the professional title and the Member State where it has been granted, and a reference to the applicable professional rules in their place of establishment and the means to access them; if it is subject to VAT: the corresponding VAT number.

Additionally, the Directive imposes two other obligations. Firstly, when commercial communications consisting of promotional offers - gifts, discounts, promotional competitions or games - are included in a website, the offeror - who might not be the owner of the Web site - must be clearly identified and the conditions to qualify for the promotion clearly and unambiguously presented. Secondly, concerning the conclusion of contracts through a Web site, the Web site must contain: the terms and general conditions of the contract in a way that the recipient can reproduce and store them; the technical steps to follow for the conclusion of the contract; and a means for identifying and correcting input errors prior to the placing of the order.

SMEs must not feel uncomfortable about

these legal obligations: in order to comply with them, it is enough to provide a "link" in the Web site to access a specific page where all the information is displayed. However, the ISP must also make sure that the Internet user passes through the Web page where the contract terms are displayed before finally placing an order. There will therefore not be any doubt about the user's acceptance of those terms.

3.

The Directive does not substitute rather it complements, the existing legislation. This means that ISPs must additionally comply with the legislation applicable in their specific fields of activity. So, for those information society services whose recipients might be "consumers in a contract concluded at a distance", it is important to take into account the obligations imposed by Directive 97/7, and the Directive on the protection of consumers in distance marketing of financial services. Many of their dispositions repeat what Directive 2000/31 says, but SMEs must be aware of certain particularities.

4.

Finally, it must be pointed out that Directives need to be incorporated into national law to be effective - Directive 2000/31 had to be

transposed by January 2002, but some Member States have not yet done so - and therefore, some differences between one Member State and another can be found. So long as SMEs comply with these information requirements according to the legislation of the Member State where they are established, the provision of their services cannot be restricted in any other Member State.

However, the legislation of the country of origin of the service include its conflict of law rules, which implies that some issues relating to the provision of the service might finally be regulated by a foreign law. But this is another tricky question that would need a whole paper to be explained.

## Anti-counterfeiting in Europe - a difficult struggle

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Nunziante Magrone Studio Legale Associato, Roma

Although it is somewhat risky to quantify the size of the phenomenon of counterfeiting in Europe, it being mostly an underground activity, the estimates that can be made from the available evidence are alarming: €300,000,000,000 lost by business each year; 100,000,000 counterfeit products seized in the European Union in 2000 (that is, four times as many as were seized in 1999); 100,000 jobs lost over the whole of Europe during the last ten years.... The cost is great - it seems even worse when you consider that not only the volume, but also the diversity has been increasing. The luxury goods that used to be the primary subjects of counterfeiting have now been replaced by CDs, medicines, hygienic products and even food!

Businesses are the clear losers from this phenomenon, and so is Europe as a whole, to the extent that multinationals are reticent to invest in this "brave new world of counterfeiting". In the end, the consumer, too, is deceived, if not put in danger, by counterfeit products.

The European Union is very conscious of this problem, and has for many years been seeking to remedy it. The first attempt was made by the Commission in October 1998, when it published a Green Paper entitled "Combating counterfeiting and piracy in the single market"<sup>1</sup>. Understanding the scale of the phenomenon and the necessity for intervention at the European level, the Commission issued a communication in November 2000<sup>2</sup>, setting out an ambitious plan of action consisting of a series of measures to improve and intensify the battle against counterfeiting and piracy in the internal market. Among these measures were a proposal for a Directive to harmonise the Member States' legislation on the enforcement of intellectual property rights, training activities for officials of law enforcement authorities, public informa-

tion and awareness activities, and the setting up of administrative cooperation mechanisms between the Member States.

In spite of this tempting programme, as of the present, the Directive has yet to see the light of day, although several working parties are considering the subject. The task is not simple, admittedly. While waiting, the Member States fight on alone against the curse, and organise themselves.

Among them, Italy figures especially highly in the chart, being the third greatest producer of fakes in the world, and Europe's greatest consumer of counterfeit products. Counterfeits for sale proliferate in the streets of the great cities - the vendors are but the tip of the iceberg, for behind them there are certainly hidden networks of counterfeiters, ever more efficient, ever more organised, and capable of evading the law: was it not they who, by cunning or perhaps by naivety, affixed to counterfeit CDs that they put on sale a label saying "facsimile", to escape punishment?

Yet Italy most certainly has a law against counterfeiting: counterfeiting is an offence under the penal code. The great problem is enforcing the law: many people regard counterfeiting as a petty offence, of little importance, relegated to the lowest rank of problems to deal with, even if it is a little worrying. Indeed, sometimes public opinion rebels against enforcement, as happened, for example, several years ago in the case of certain anti-counterfeiting raids at the Tuscan resort of Forte dei Marmi. Police forces, lacking specialisation in the battle against counterfeiting, will often have other fish to fry, and will not want to risk making enemies with public opinion.

In view of such a lack of enforcement, some trademark owners have conceived more subtle strategies for fighting counterfeiting: creat-

ing a distinctive hologram to place on genuine products so that fakes can be recognised; or seeking to offer the greatest counterfeiter a licence to use a sportswear trademark, so as to transform fakes into inexpensive originals for the less selective customer! Not to forget the vast sums of money spent by certain corporations on curbing the phenomenon.

Conscious of the increasing seriousness of the problem, the Italian Government now seems ready to take matters in hand: the Italian Minister of Industry, Antonio Marzano, has recently announced an ambitious plan of action for fighting counterfeiting. The programme consists principally, in the first place, of the reorganisation of the functioning of the police, so as to increase efficiency; and in the second place, of the creation of twelve specialised anti-counterfeiting tribunals in different parts of the country.

Will the Italian Government succeed in meeting the challenge? Could these initiatives educate and better inform public opinion? It is certainly too early to judge; but the Italian programme, faithful to the letter and spirit of the proposed Community Directive that is being drafted, is a good omen for those who wish to see the long-existing anti-counterfeiting legislation finally being applied.

1. COM(98) 569, October 1998

2. COM (2000) 789, not published

### Prior art searches: a must for RTD participants

RTD projects participants often ignore prior art searches before entering an R&D activity. They often consider this type of search as an additional administrative burden. One can only highly recommend to conduct or let conduct this type of prior art searches before the project for the following reasons:

- Such a search is not expensive compared to the money invested in an R&D project: starting from 500 Euros if done professionally.
- This search not only gives you an idea about the innovativeness of your project but also about competitors or potential collaborators that have patented technologies in your area.
- The experience shows that a significant

number of projects must be abandoned or reoriented after such a search. Searches often show that there are identical or better solutions to the problem your project intends to solve.

- It is obvious to check who is the genuine owner of a house you will buy. Such an automatism should also apply to R&D projects by checking who the owners of technologies you will use or develop are. This can be best done by a patent search.

This type of searches are best conducted in patent databases as this source of information offers the most exhaustive access to existing technologies. Introductory searches can be conducted for free on the Internet as shown in the esp@cenet quiz we publish

regularly. It is however advisable to supplement these initial results with a professional search. You can contact the nearest PATLIB centre to get such a professional help.

Links:

PATLIB centres: [www.epo.org](http://www.epo.org)

Patent Information and other Patent Links: [www.patentbookmarks.com](http://www.patentbookmarks.com)

### PATENT OF THE MONTH

#### Assembling a bookcase with bare hands: "Method for making a rigid construction by wedging together panels and frames without using tools"

This month we want to offer to our readers a very recent invention whose purpose is to make our every-day lives easier, being very useful to those not very handy!

Usually, when it comes the situation of buying a bookcase by pieces to be assembled at home, one finds that at least a minimum quantity of tools such as needles, hammer and/or glue have to be used. Belgian inventor Alain Chennaux wanted to make this task easier. He designed a method for assembling rigid structures to end in useful spaces for storage, like cupboards or bookcases, without needing any tools whatsoever. After presenting the invention for a Belgian patent,

he filed a PCT application for its protection in many countries: PCT Publication No: WO 96/14000

For an easy understanding, Chennaux's assembling method basically consist of at least two chassis (one can have more than two pieces) in the form of a single frame, with joined uprights, and at least two rectangular panels for the space between the upper and lower parts of the frame. The assembly of frames and panels is made by the inclined insertion of the panels perpendicular to the frame, wedging together panels and frames with force.

The patent documents emphasise that as a result of the invention assembly is very fast; the final structure is very rigid and being flat all the elements, their packaging and transport are significantly easy. Due to these reasons, it has been successfully commercialised.

For detailed information, please see the links below:

Patent-General:

<http://l2.espacenet.com>

US Patent:

<http://l2.espacenet.com>

PCT Description at:

<http://l2.espacenet.com>

Some information and pictures:

[www.twunederland.nl](http://www.twunederland.nl) (In Dutch)

[www.woonvorm.nl](http://www.woonvorm.nl) (In Dutch)

[www.newyorkmetro.com](http://www.newyorkmetro.com)

## esp@cenet Quiz

### Test your patent-searching skills!

The esp@cenet quiz is an exercise proposed monthly to our readers. Its aim is to show that patent searching can be an exciting quest, yielding relevant results in almost all technical fields.

### New Patent Quiz:

**This month we propose to look for patents relating to similar cameras that are described in the following BBC article:** "Doctors are using tiny cameras swallowed as a pill to detect stomach illness in patients. The capsule endoscopes - about the size of a jelly bean - transmit information to a belt which stores the images. The cameras are in use at the endoscopy ward at Bristol's Southmead Hospital, 'New technology' Transmitters contained in the pills send thousands of colour images to the special unit worn on the belt. At the climax of the pill's journey in the colon, the high-resolution images are downloaded to the computer where they can be analysed."

<http://news.bbc.co.uk>

Try to retrieve patents relating to this type of "pill camera" used as an endoscope.

Please note that the trademark that can be seen on the picture of the BBC article can help you to find relevant patents.

### Solution to the previous quiz: Tracking individuals

To retrieve patents relating to that system you can use the following search strategy:

1. Define the technical concepts best describing the invention.
2. Combine these concepts.
3. Retrieve relevant patents and check their classification symbols.
4. Continue the search combining these classifications with keywords.

#### 1. Defining technical concepts

Concepts defining this invention are the following:

1. Chip, circuit, microprocessor, etc.
2. Implantable, skin, body
3. Kidnap\*, track\*

#### 2. Combining concepts

The combination **chip and implantable** yields some results like US2002026224 more relating to implantable devices used to monitor vital functions than to tracking devices.

Simply entering the word **kidnap\*** yields 25 records that can easily be browsed. Among them you will find WO9727499, PERSONAL TRACKING AND RECOVERY SYSTEM that corresponds to our searched invention. (link <http://l2.espacenet.com>)

#### 3. Retrieving the classification

This patent has the following classification symbols:

A61B5/00B8: Detecting, measuring or recording for diagnostic purposes by an implanted circuitry.

(link: <http://l2.espacenet.com>)

G08B21/00A: Safety alarms

(link: <http://l2.espacenet.com>)

#### 4. Using classification symbols

The combination of the classification symbol A61B5/00B8 corresponding to implanted circuits with G08 signalling, yields an additional document:

DE19700614 Person location system

(link: <http://l2.espacenet.com>)

The combination A61B5/00B8 with (locat\* or track\* or identif\*) yields:

US6280409 Medical for tracking patient functional status

<http://l2.espacenet.com>

US5855609 Medical information transponder

implant and tracking system

<http://l2.espacenet.com>

US5725578 Temporary implant with transponder and methods for locating and identifying

<http://l2.espacenet.com>

US4706689 Implantable homing device

<http://l2.espacenet.com>

All of them relate to such systems.

Further relevant patents can be found by checking the cited documents (CT field in the bibliographic patent record). These documents have been found by the patent examiner who treated the application and are to be considered as the closest prior art. Cited documents in the most relevant patent we found WO972799, yields an additional relevant patent:

US5021794 Personal emergency locator system

(link: <http://l2.espacenet.com>)

Interestingly, some of these products have been brought on the market as can be seen in the following web pages:

Verichip: <http://www.adxs.com>

Further reading on the subject: [www.kuro5hin.org](http://www.kuro5hin.org) that contains a lot of hyperlinks to relevant documents on the subject.

The most relevant patent we found seems to be the basic patent covering this product: <http://abcnews.go.com>

## HOW TO FIND A PATENT

In the first three issues of the IPR-Bulletin, we have presented most of the free online databases for searching a patent. In order to carry out a proper and efficient search, it is necessary to understand the way these databases are structured.

Each patent generally involves the following specific information: the publication number, the application number, the priority number, the publication date, the applicant, the Inventor, the representative, the International Patent Classification (and possibly also the European Patent Classification), a title and an abstract.

By way of illustration, you can find all this information in the "Edinburgh patent"

All this information is encoded in the same respective fields of the databases in such a way that the search might be done by using, for instance, only the name of the inventor or the publication number. Obviously, the choice of the searching field(s) will depend on the information that you have at your disposal for the search. It is therefore important to know exactly the scope of each of these fields before starting a research.

- Please, note that most of the time the name under which a patent is known by the public is not relevant at all in a patent

search from the patent databases.

In our example of the "Edinburgh patent", if you type "edinburgh patent" in the word search engine of the espacenet database, no matching documents will be found.

In this issue of the newsletter, we will present the two following searching fields: Publication number and application number.

### Publication number:

The unique number given to the Patent when it is published and consisting of a country code followed by a number. Sometimes the number is followed by a letter code which corresponds to a specific stage of the procedure such as "A" for patent application and "B" for granted patents.

In our example of the "Edinburgh patent", this patent holds two publication numbers: "EP 0 695 351 B1" and "WO 94/24274". In fact, this patent has been filed under the framework of the Patent Cooperation Treaty. Therefore it received an International publication number consisting of "WO" followed by the year and a number. As the "edinburgh patent" has been granted by the European Patent Office for several designated Contracting States of the European Patent Convention, it also

received a European patent publication number consisting of "EP" followed by a number and B for granted patent

### Application number:

The number which is assigned when a Patent Application is filed and consisting of ten of a country code followed by a year and a number. It defines the patent for which you are looking for.

- Please, note, however, that most patent databases only allow a search by this field for patents granted in the last years and that you sometimes need to type a country code before the application number in the searching field.

In our example of the "Edinburgh patent", this patent holds the following application number 94913174.2.

## Last Updates

### Last Updates of the IPR-Helpdesk Web Site

The IPR-Helpdesk team is very pleased to inform you that since the last issue of the IPR-Bulletin, very useful and interesting new documents have been posted on our Web site.

In the section "IP Guides" (Intellectual Property field), you will find the following new guides:

#### Guide on copyright and the Internet

(this document is only available in [English](#), [French](#) and [Spanish](#) at the moment but it will be very soon available also in German and Italian)

#### Guide on employees' creations

(this document is only available in [English](#) and [French](#) at the moment but it will be very soon available also in Spanish, Italian and

German)

#### Guide on domain names

(this document is only available in [English](#) at the moment but it will be very soon available also in French, Spanish, Italian and German)

#### IP Glossary

(this document is only available in [English](#) at the moment but it will be very soon available also in French, Spanish, Italian and German)

In the section "FP6 Documents" (IP within EU-funded RTD Projects field) you will find the following new document:

**A draft of a Regulation of the European Parliament and of the Council concerning the rules for the participation of undertakings, research centres and universities in,**

**and for the dissemination of research results for, the implementation of the European Community sixth framework programme (2002-2006)**

(This document is available in [Danish](#), [German](#), [Greek](#), [English](#), [Spanish](#), [Finnish](#), [French](#), [Italian](#), [Dutch](#), [Portuguese](#) and [Swedish](#))

## Brussels (Belgium) 11-13 November 2002: Launch event for FP6.

From 11 to 13 November 2002, the European Commission will hold a major conference on the 2002-2006 Sixth Framework Programme for research (FP6).

The purpose of this conference is to present the objectives and priorities of the FP6 and to explain rules for participation to this programme by means of parallel sessions. The way to participate the FP6 will be addressed as well as all the main thematic priorities of the FP6 and the cross-cutting issues of the European Research Area such as human resources and mobility, patenting and intellectual property.

Registration is required and the participation fee is 180 euros for registrations received by 15 September; 250 euros thereafter.

## EU: A compromise on ethical questions eventually enabled the Council of Ministers to adopt five Specific Programmes intended for the implementation of FP6 and FP6/Euratom

On 30 September 2002, the Competitiveness Council of Ministers eventually adopted three Specific Programmes to implement the Sixth Framework Programme of the European Community for research, technological development and demonstration activities 2002-2006 (FP6), whose budget amounts to 16,27 billion euros. Besides, two Specific Programmes were adopted to implement the Sixth Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities 2002-2006 (FP6/Euratom), whose final reference amount shall be 1,23 billion euros.

Final drafts of these five Specific Programmes exist since the first days of August 2002. Nevertheless, their approval was delayed due to discussions in Council and European Parliament on ethical issues such as possible funding of research involving human stem cells under FP6. A compromise on this question, prepared by Denmark, currently holding the EU-Presidency, could be reached and fixed by the Council on 26 September 2002, paving the way for the adoption of the above mentioned five Specific Programmes.

One of the three Specific Programmes implementing FP6 concentrates on two of the three main blocks of activities under FP6: "Integrating and Strengthening the European Research Area", while the second Specific Programme covers FP6's third main block of activities: "Structuring the European Research Area". The third Specific Programme focuses on the implementation of direct actions, which are to be conducted by the Joint Research Center (JRC) especially within the main block of activities "Integrating the European Research Area".

### Links

Almost final drafts of the Council Decisions adopting the Specific Programmes (subject to minor amendments) and further documents relating to FP6 at:

» [www.europa.eu.int](http://www.europa.eu.int)

Related IPR-Helpdesk News Item:

» [www.ipr-helpdesk.org](http://www.ipr-helpdesk.org)

## European Union. The Commission Has Presented the Results of a Call for Expressions of Interest in the Sixth EU Research Framework Programme.

On 4th October 2002, the Commission has presented the results of a call for "Expressions of Interest" (Eols) in the Sixth EU Research Framework Programme (FP6). Some 12,000 Eols were received. 9080 Eols are addressed to four of the seven thematic priorities of FP6: "Sustainable Development, Global Change and Ecosystems" (2822); "Information Society Technologies" (2591); "Life Sciences, Genomics and Biotechnology for Health" (1997) and "Nanotechnologies and Nanosciences, Knowledge-based Multifunctional Materials, and New Production Processes and Devices" (1670).

These Eols applications follow the last 20th March 2002 invitation by the Commission for European scientific community and enterprises to put forward their ideas on the most promising topics for research. The vast majority of Eols are coming from EU Member States (about 80%) and Candidate Countries (about 12%). However, the report of the Commission shows that several hundred thousand research groups representing more than 50 countries are involved in Eols.

The multitude of Eols received also seems to demonstrate that the new instruments provided by FP6 to implement research activities, "Networks of Excellence" and "Integrated Projects" are greatly in demand.

About two thirds of the Eols concern large-scale "Integrated Projects", which are (according to FP6) designed to give increased impetus to the Community competitiveness or to address major social needs by mobilising a critical mass of research and technological development resources and competence and which have to be directed at obtaining specific and applicable results. The remaining Eols focus on "Networks of Excellence", whose purpose is to strengthen and develop Community scientific and technological excellence by means of the integration, at European level, of research capacities currently existing or emerging at both national and regional level.

### Links

Further information

» [www.europa.eu.int](http://www.europa.eu.int)

FP6 Expressions of Interest are available online at :

» [www.cordis.lu](http://www.cordis.lu)

The Expressions of Interest database can be found at

» [eoi.cordis.lu](http://eoi.cordis.lu)

Analysis of Eols:

» [www.cordis.lu](http://www.cordis.lu)

Related IPR-Helpdesk news item

» [www.ipr-helpdesk.org](http://www.ipr-helpdesk.org)

## US. The Senate clears the way for USA to join Madrid Protocol!

On 17 October 2002, the US Senate passed the advice and consent resolution and the concurrent resolution making technical corrections to the near future "Madrid Protocol Implementation Act", the Department of Justice Authorization Bill, HR 2215

The purpose of this Bill is to join the Madrid Protocol. This Protocol forms part of the Madrid System (together with the Madrid Agreement), was adopted by an international assembly in June 1989, came into effect on 1st April 1996 and is currently in force in more than 50 countries among which all the EU Member States, Japan, China and Singapore for example.

The ratification of this Protocol enables trademark holders to apply for the protection of their trademarks in any of the country party to the protocol with one single application that is administered by the International Bureau of the World Intellectual Property Organization (WIPO) in Geneva.

The bill has still to be signed by the President

which will thereby enact the Protocol and the instrument of accession has then to be deposited with the WIPO within a year before the USA becomes a Contracting Party of the Madrid protocol and applicants for, and holders of, an International Registration will be entitled to designate the US.

#### Links

Further information  
 » [www.legalmediagroup.com](http://www.legalmediagroup.com)

Text of the madrid Protocol  
 » [www.wipo.org](http://www.wipo.org)

### European Union: Commission publishes its first annual report on the development and implications of patent law in the field of biotechnology and genetic engineering

On 7 October 2002, the European Commission published the first of its annual reports on the development and implications of patent law in the field of biotechnology and genetic engineering. These reports are provided for by article 16 (c) of Directive 98/44/EC of 6 July 1998 on the legal protection of biotechnological inventions. According to the report, its elaboration has been difficult due to the fact that at the time of its drafting only six Member States had transposed the Directive into their national legal systems (Denmark, Finland, Ireland, the UK, Greece and Spain) although the Directive had to be implemented not later than 30 July 2000. The Commission's report insists that it would considerably hampering the development of biotechnology in Europe if this situation continued.

The report mainly addresses four essential topics: (i) the compatibility of the Directive with the relevant international agreements, (ii) the patentability of inventions relating to plants and animals, (iii) the patentability of inventions relating to and elements isolated from the human body and (iv) the exclusion from patentability of inventions whose commercial exploitation would be contrary to ordre public or morality. The report analyses these issues with special regard to the judgement of the Court of Justice of the European Community of 9 October 2002, which dismissed the action for annulment of Directive 98/44/EC brought by the Kingdom of the Netherlands (C-377/98).

As far as further investigation is concerned, the report identifies two topics that will be

particularly considered in the future: First, the scope to be conferred on patents relating to sequences or part-sequences of genes isolated from the human body, and, second, the patentability of human stem cells and of cells obtained from them. A group of experts in economics, law and natural sciences will be set up to support the Commission's efforts. The results of the Commission's investigations on the topics mentioned above will be published in its next annual report.

#### Links

Commission's press release:  
 » [www.europa.eu.int](http://www.europa.eu.int)

Full text of Commission's report (english version):  
 » [www.europa.eu.int](http://www.europa.eu.int)

Directive 98/44/EC on the legal protection of biotechnological inventions (full text):  
 » [www.europa.eu.int](http://www.europa.eu.int)

### Spain. The Information Society Services and E-Commerce Law (LSSICE), better known as "Internet Law" has entered into force on 12 October 2002.

The purpose of the LSSICE is to regulate E-Commerce activities, especially the consumers protection in all the transactions and commercial activities that are carried out in Internet.

The rules of this Law will bind the Information society Services Providers (ISPs) established in Spain, as well as ISPs which are not based in Spain but which commercialise services and goods in Spain's market. This "Internet Law" has been promulgated with the intention of preventing Spanish companies from registering their websites in countries with less rigorous legal dispositions.

However, the entry into force of the LSSICE has raised criticism, the Spanish Internet users Association (Internautas Association or IA) is dissenting with certain rules, especially the content of Article 12, asking for the elaboration of its corresponding regulation rules.

Notwithstanding, in order to spread the LSSICE rules, as well as to remove potential doubts of users and ISPs, the IA has created a easy guide explaining the peculiarities of the law. This guide is available on the IA's Web site.

#### Links

Further information:  
 » [www.madrimasd.org](http://www.madrimasd.org)  
 » [www.derecho.com](http://www.derecho.com)  
 » [www.abc.es](http://www.abc.es)

Information Society Services and E-Commerce Law (in Spanish)  
 » [www.setsi.mcyt.es](http://www.setsi.mcyt.es)

Internautas Association (IA)  
 » [www.internautas.org](http://www.internautas.org)

### US: The Supreme Court Has Heard Eldred v. Ashcroft, The Case That Could Change Copyright Law - It Looks Like The Government Will Win

On 9 October 2002, the US Supreme Court heard the case of Eldred v. Ashcroft, a case that could have far-reaching consequences for copyright law. The case concerns the Sonny Bono Copyright Term Extension Act of 1998. This Act extended the term of copyright by twenty years. Under the Act, the usual duration of copyright in the United States is the lifetime of the author plus seventy years, the same length of time as in the European Union.

The Court is being asked to decide whether the Sonny Bono Copyright Term Extension Act of 1998 is constitutional or not (See the previous news report for more information on the issues involved.)

Reports from people who attended the proceedings indicate that the Court seemed most convinced by the Government's arguments, that the Act is constitutional. But the Supreme Court is notoriously unpredictable: the case could still go either way.

The Court's decision is not expected for several months.

#### Links

Previous IPR-Helpdesk news item:  
 » [www.ipr-helpdesk.org](http://www.ipr-helpdesk.org)

News reports:  
 » [www.boston.com](http://www.boston.com)  
 » [www.washingtonpost.com](http://www.washingtonpost.com)  
 » [www.wired.com](http://www.wired.com)

## United Kingdom. The controversial case on silent songs' copyright has been settled by an agreement between the parties

The case arose when the album Classical Graffiti, by The Planets, was released containing a track entitled "A One Minute Silence", which consisted, as the name suggests, of one minute of silence. Many years before, composer John Cage had published a piano piece called 4'33", composition which also consisted entirely of silent notes. Mike Batt, the man who composed and arranged The Planets' album, was accused of plagiarism from Cage's music publishers.

This odd case on silence copyright was seen as a potential test for establishing what a "musical work" could be if the case had arrived at judicial stage. Nevertheless, this opportunity never came because it has been settled out of court by an agreement between the parties involved. According to some media, Batt could have paid a huge amount of money in order to avoid going to litigation.

### Links

Further information:

- » [abc.net.au](http://abc.net.au)
- » [www.out-law.com](http://www.out-law.com)
- » [www.msnbc.com](http://www.msnbc.com)

Related IPR-Helpdesk news item:

- » [www.ipr-helpdesk.org](http://www.ipr-helpdesk.org)

## European Union. The Commission calls for the constitution of a centralised Community Patent Court

One of the main contentious issues that still remain around the establishment of a workable Community patent is that of jurisdiction. How to manage the jurisdictional system; a single court or national courts..

The European Commission has taken a further step to find a solution. Due to the fact that Commission's first purpose is to find the way for a coherent and consistent jurisprudence, it understands that the best option will be the establishment of a central patent court to deal with infringement and validity issues.

At this very moment, the most important features of the proposed system would be the following: The central patent court would be set up in Luxembourg. Specialised patent

chambers in the Court of First Instance for hearing appeal cases are also envisaged. Regional Courts could be created if the amount of cases for the central court was too high.

The whole question still needs to be worked out. But, at this stage of the process, the Commission has clearly declared itself in favour of the centralised body.

### Links

Further information:

- » [www.legalmediagroup.com](http://www.legalmediagroup.com)

Related IPR-helpdesk news item:

- » [www.ipr-helpdesk.org](http://www.ipr-helpdesk.org)

## European Union. A Commission Report shows that the application of the public lending right in the EU is quite inconsistent

The public lending right (PLR), which was born under the development of the public libraries, has always been of particular interest to the European Institutions.

The Commission, in order to comply with Directive 92/100/EEC, on the Rental and Lending Right and Certain Related Rights, had to present a Report on the application of the PLR in the different Member States some years ago. The Report arrives now, showing that Member States' regulations have been improved, but PLR application is still partial and uneven.

Following the Commission's findings, PLR application is not correct, being made under different parameters depending on the State in question. Thus, just regarding payment, Belgium, France and Luxembourg (although it could be more) do not remunerate the holders at all. Sweden just grant remuneration to national authors or authors living in a particular territory; and Denmark and Finland only remunerate for books published in their national language.

Nevertheless, an optimistic perspective flows from the Report, and the Commission commits itself to continue examining PLR evolution and to adopt any future measures if necessary

### Links

Commission Report:

- » [europa.eu.int](http://europa.eu.int)

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