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International Association for the Protection of Intellectual Property
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Property, to be held in Tel-Aviv, Israel, later this year. More information will follow soon.
(*Israeli Group of AIPPI*)

February 2014: Commemoration of the 50th Anniversary of the Spanish Group of AIPPI

On May 7 1963, the Spanish Group of AIPPI was established. Since then, it has become a respected voice, influencing significantly the landscape of industrial property.

To commemorate this anniversary, the Board of Directors of the Spanish Group, agreed to issue a commemorative book with studies on intellectual property, as a tribute to the production of high quality literature that has characterized the Association over the past 50 years.

Moreover, some social events will be organized to celebrate the 50th anniversary during the next General Assembly and Congress in February 2014 in Barcelona.
(*Spanish Group of AIPPI*)

Articles and notes

Italy: [Second anniversary of the Trademark opposition system, a quick view on the trends](#)

In May 2011, the Italian Patent and Trademark Office (IPTO) launched its long-awaited opposition system. Since then, more than 2,400 oppositions have been filed against applications for Italian trademarks (and international trademarks designating Italy). The rules of procedure closely follow Community procedure. Reputation is not a valid basis for opposition against dissimilar goods or services. In order to enforce reputation of a mark owners need to proceed with cancellation actions before IP courts.

(*Article by Silvia Grazioli, Bugnion S.p.A., Milan, Italy*)

Switzerland: [Cigarette trademarks: “Activate” and “Release” deemed distinctive under Swiss law](#)

The Swiss Federal Institute of Intellectual Property (the “**Institute**”) recently issued two decisions dealing with oppositions in the field of cigarette trademarks (class 34).

The first one related to an opposition raised by the owner of the “Activate” Swiss word trademark against the “L&M Activate Fresh Flavour” Swiss word and device trademark, while the second one concerned the alleged risk of confusion between the “FlavoRelease” Swiss word and device trademark and the “Release” Swiss trademark.

The present contribution aims to briefly analyze both of these decisions.
(*Article by Thomas Widmer, LALIVE, Geneva, Switzerland*)

The Netherlands: [Transatlantic developments in relation to the antitrust analysis of reverse payment settlements: Lundbeck and Actavis](#)

On 20 June 2013, the European Commission imposed fines on the Danish pharmaceutical company Lundbeck (EUR 93.8 million) and four generic manufacturers (EUR 52.2 million) for reverse payment agreements relating to generic versions of citalopram, an antidepressant. A few days earlier, the US Supreme Court held in the FTC v. Actavis case that reverse payment agreements are not *per se* anticompetitive, but must be analysed on an individual basis under the “rule of reason” test.

(*Article by Herman Speyart, NautaDutilh, Amsterdam, The Netherlands*)

The Netherlands: [The European software patent controversy: Court of Appeal sides with the European Patent Office](#)

The Court of Appeal of The Hague is the exclusive appeal court in patent cases in The Netherlands. For the first time, the Court of Appeal of the Hague has taken a position on a fundamental question relating to software patents (“*computer implemented inventions*”). This issue is treated differently in various European countries. One view is that the entire subject matter of the claim is not patentable if the contribution, in the light of the prior art, falls within the “excluded subject matter” categories *software as such* or *a presentation of information as such*. The court, in conformance with the practice of the EPO, has decided that other view is that if such a claim contains any technical feature at all, perhaps as trivial as a keyboard/processor /monitor combination, the subject matter is patentable but may fail on novelty or inventive step. This last approach conforms with the practice of the European Patent Office (“EPO”), which approach is now also accepted by the Hague Appeal Court.

(*Article by John Allen, NautaDutilh, Amsterdam, The Netherlands*)

United Kingdom: [Supreme Court finds no damage for 'infringement' of invalid patent claims](#)

If a patent has been held to be valid and infringed but is then subject to limitation or revocation before the damages enquiry has taken place, what is to happen?

The Supreme Court has held in Virgin Atlantic Airways v Zodiac Seats, overturning an established line of authority from the Court of Appeal, that no damages are payable since the infringer is entitled to rely on the fact of the later revocation of the patent. The doctrine of *res judicata* does not apply because the ‘infringer’ is not seeking to re-argue its case on validity, it is relying on the fact that the patent is no longer in force and is deemed never to have existed, a fact that neither had nor could have been raised at an earlier stage.

(*Article by Michael Browne, Redd Solicitors, London, United Kingdom*)

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Cigarette trademarks: “Activate” and “Release” deemed distinctive under Swiss law
Thomas Widmer, LALIVE, Geneva, Switzerland

By decision n° 11667 dated 5 February 2013, the Institute held that the verb “Activate” was, if used on its own and without any direct object, distinctive in relation to cigarettes, since one cannot determine what is activated.

However, if followed by a direct object such as “Fresh Flavour”, “Activate” becomes descriptive of the effect produced by the relevant product.

Therefore, according to the Institute, even if both the opposing (“Activate”) and the opposed (“L&M Activate Fresh Flavour”) trademarks shared the “Activate” verb, the latter was represented in the opposed trademark in a descriptive form, which cannot create any risk of confusion.

This decision was followed by another decision n° 12140 rendered on 16 May 2013 by the Institute, which had to rule on the merits of an opposition raised by the owner of the “FlavoRelease” word and device trademark against the “Release” trademark, both also registered in class 34.

In this case, the Institute took the view that “Release” was distinctive in relation to cigarettes if used on its own, and noticed that both the opposing and the opposed trademarks included this verb. The Institute went on to rule that the presence of “Flavo” in the opposing trademark was of no relevance since its meaning (flavour) was descriptive, and therefore concluded that there was a risk of confusion between these two marks.

In the author’s view, the reasoning used by the Institute is debatable. On the assumption that “flavour release” is descriptive in relation to cigarettes, the trademark “FlavoRelease” can only be protected to the extent that (i) it comprises distinctive device elements and/or (ii) the combination of “Flavo” and “Release”, both sharing the same “r”, is deemed distinctive.

This being said, the opposed trademark did not include any of these distinctive elements. Hence, the opposition should have been rejected.

In particular, the Institute’s analysis is incorrect in that it takes for granted that the adding of the word “Flavo” in the “FlavoRelease” trademark is of no relevance since “flavour” is descriptive. On the contrary, the presence of “Flavo” before “Release” renders the meaning of the whole opposing trademark descriptive in relation to cigarettes, and the comparison with the opposed trademark should therefore have taken place on the basis of the distinctive elements of the opposing mark only.