



e-News

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International Association for the Protection of Intellectual Property
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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

India: [Indian Supreme Court rejects Novartis crystalline form patent](#)

The Supreme Court of India has rejected Novartis' patent application for the beta crystalline form of Imatinib Mesylate, on the ground of non-patentability under Section 3(d) and lack of inventive step. A new form of a known substance which does not result in enhancement of the known efficacy of that substance is not patentable. The Court held that Imatinib Mesylate was disclosed in the prior art, and, therefore, a "known substance". The new beta crystalline form was not demonstrated to have any enhanced therapeutic efficacy over the known substance. *(Article by Sudhir d. Ahuja, D. P. AHUJA & CO., Calcutta, India)*

Poland: [Whatever happened to Polish support for Unified Patent Package](#)

Poland is one of only two EU countries which did not sign the international agreement on the Unitary Patent Court. This is the result of an intense domestic discussion as to possible negative impact of the unitary patent system in the EU on the Polish economy. The Polish National AIPPI Group actively participated in this discussion.

(Article by Marek Łazewski, Secretary of Polish National Group of AIPPI)

Switzerland: [Swiss Moral Rights permit owner to destroy but not modify house: a recent decision of a Swiss state court](#)

A few months ago, a Swiss state court prohibited the modification of a property by its owner, on the grounds that the proposed modification would have affected the architect's moral right. This revisits a classic issue: the architects' right to the integrity of their work.

(Article by Thomas Widmer, LALIVE, Geneva, Switzerland)

Thailand: [Concurrent Registration of Similar Marks in Thailand](#)

A recent and very important decision of the Thai Supreme Court (*Matsuda & Co. v. Department of Intellectual Property and Valentino S.p.A.*) has reviewed the law surrounding trademark registration and the potential conflict with prior-registered marks in Thailand. This article provides valuable insight into the effects of this decision and guidance to brand owners on what they need to know to register their trademarks.

(Article by Srila Thongklang and Parichart Monaiyakul, Tilleke & Gibbins, Bangkok, Thailand)

The Netherlands: [New electronic tools from the European Patent Office: Mailbox and MyFiles](#)

In the attached article, the European Patent Office announces the launch of two electronic tools, Mailbox and MyFiles. The article provides detailed information on these new tools, which allow enhanced electronic communication between the EPO and the users community. These tools also empower applicants, thereby making the procedures they are required to follow more transparent. In a nutshell these tools offer the following benefits to the users: security; quality and transparency; access to unpublished files; electronic mail; and, self service features.

(Article by M.T. Grau Canet and L. Brockhuis-Kuurstra, European Patent Office, The Hague — Rijswijk, The Netherlands)

United Kingdom: [Copyright infringement & the Internet](#)

The UK Supreme Court decides that the Directive on harmonisation of copyright in the information society (Article 5(1), 2001/29/EC) excludes from infringement, copying purely as a consequence of viewing material on the internet. Unusually, it has sought guidance from the CJ(EU) because the application of copyright law to internet use has important implications for many people across the EU.

(Article by Trevor Cook, Bird & Bird, London, United Kingdom)

United States of America: [U.S. Supreme Court Holds "First Sale" Doctrine Applies to Copies of a Copyrighted Work Lawfully Made Abroad](#)

The "first sale" doctrine, codified in Section 109 of the U.S. Copyright Act, permits the owner of a lawfully acquired copy of a copyrighted work to sell it without the copyright owner's permission, regardless of whether the copy was made in the United States or another country. In *Kirtsaeng v. John Wiley & Sons, Inc.*, the Supreme Court rejected any geographical restriction upon the "first sale" doctrine, relying on the language of the Copyright Act, Congressional intent, the common law, and policy considerations.

(Article by Seth I. Appel, Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP, Chicago, Illinois, United States of America)

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Swiss Moral Rights permit owner to destroy but not modify house: a recent decision of a Swiss state court
Thomas Widmer, LALIVE, Geneva, Switzerland

Art. 12 (3) of the Swiss Federal Copyright Act of 1992 (the "Copyright Act") reads that works of architecture may be modified by their owner.

However, Art. 11 (2) of the Copyright Act stresses that even if a third party is authorized by contract or by law to modify a work of art, the author is entitled to oppose any alteration of the work which would affect his personal rights.

In other words, Swiss law, like French law but contrary to British law, for instance, considers that waivers to the right of integrity are null and void.

The conditions upon which an architect may oppose alterations of an architectural work are the following:

First, the architectural work must qualify as a work of art. It must therefore have an "individual character". The individuality is to be distinguished from the commonness of routine work; it results from the diversity of the decisions taken by the author and by surprising and unusual combinations making it extremely unlikely that a third party confronted with the same task would be able to create an identical work.

In the case under scrutiny, the villa, which had been the object of various articles published in specialized magazines, was considered by the court as clearly different from common villas – and thus bearing an individual character.

Second, the alteration, which must be important, has to affect the author's personal rights.

The moral right of integrity aims at protecting the author's professional reputation and honor, but not the work of art *per se*. The more a work of art is original and bears the author's mark, the more the courts will tend to accept that an alteration affects the author's personal rights.

In the case at hand, the owner of the real estate wished to cover an open terrace by way of a movable system or by erecting a pergola in the continuation of the terrace. The criterion of the importance of the alteration was thus fulfilled. Moreover, the open terrace was precisely one of the singularities of the property and closing it could prejudice, according to the court, the very nature of the villa as well as, by way of consequence, the architect's own personality.

Third, moral rights cannot, in principle, impede alterations which aim to maintain the economic value of a property or to adapt a property to technical and ecological conceptions (e.g. additional insulation, installation of solar panels, etc.). This was not an issue *in casu*.

Fourth, unlike French law, moral rights under Swiss law are limited in time and expire seventy years after the author's death. The author's heirs are authorized to exercise these rights, pursuant to their own judgment.

This was not an issue in the case at hand either, since the architect of the villa was still alive when the owner decided to proceed with the litigious modifications.

Five, architects are not entitled to oppose the *destruction* of their architectural work; they only have the right to take pictures of their work and to receive – at their own costs – a copy of the related architectural plans.

Finally, it is worth noting that in some countries, like Austria, owners of architectural works protected by copyright are allowed to freely modify their real estate but have to affix a plate mentioning that the architect has not consented to such modification. This alternative could be adopted in Swiss law, according to legal scholars, in case of minor breaches of the moral right of integrity only, when other sanctions would be disproportionate (J. de Werra, *Le droit à l'intégrité de l'oeuvre*, Berne 1997, n° 137).