

The Role of the Case Law of the Court of Justice of the European Union in the Field of Intellectual Property

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1.

"Intellectual property rights present a particular challenge to the EU"¹

"The Court of Justice of the European Communities is a controversial institution. Although it remains 'tucked away in the fairyland of the Duchy of Luxemborg', the days when it was 'blessed....with benign neglect by the powers that be and the mass media' are long gone."²

2.

National, international and european dimensions of the law of intellectual property

¹ C. Barnard: The Substantive Law of the EU, Oxford University Press, 2007, p. 173

² A. Arnall: The European Union and its Court of Justice, Oxford University Press, 2006, p. 3

3. The role of the law of IP in the EU law

3.1 Protection of IPRs as an exception to the principles of free circulation of goods and free competition

Art. 28/101 v. art. 36 TFEU

3.2 Harmonization as to content and protection of the IPRs

4.

The Role of Case-Law

4.1

The Court of Justice of the EU

- **Its mission (19/1 TEU)**
-
- **Its specific composition (19/2 TEU)**
-
- **Its specific competence (19/3 TEU)**

4.2

Procedural aspects of the IPRs protection

4.2.1

Types of procedures

General court

- **Regulations on trademarks and designs (control of the decisions of the OHIM decisions)**

Court of Justice

- **Appeals against judgments of the General court**
- **Directives in the various fields of IP (preliminary rulings and direct actions)**
- **Regulations in the field of judicial cooperation (preliminary rulings)**
- **Application of the international law (Berne and Paris Conventions'family, WIPO, TRIPS)**

4.2.2

Composition of Chambers and Method of Judgments

4.3

Tendencies of Case Law

4.3.1

No Court can choose its cases!

The variety of topics shows the problems arising at the EU market: often overlapping!

4.3.2

Some recent cases:

- **Padawan (C-467/08, 21.10.2010) – private copying-fair compensation**
- **Football Association Premier League (C-403/08 and C-429/08, pending, opinion of advocate general of 3.2.2011) – satellite transmission**
- **Flos (C-168/09, 27.1.2011) – designs, copyright**
- **American Clothing (C-202/08 P and C-208/08 P, 16.7.2009) – maple leaf as community trade mark-Paris convention**
- **Google (C-236/08 to 238/08, 23.3.2010) – trade marks on internet-keywords-electronic commerce**
- **Lego (C-48/09 P, 14.9.2010) – three-dimensional sign as trade mark-former patent**

4.3.3

Extraproblem - patents

Substantial law and litigation: opinion 1/09 (pending)

5.

Conclusion

The case law ebbs and flows....

Nemo iudex in propria causa!