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Editorial

It is once again the time of year when we tend to take a moment and look back on the IP year that was, reflecting on the biggest, and most impactful news and events. With this in mind we will host our inaugural programme of patent prosecution & litigation webinars reviewing European patent decisions of 2018. Do register early to guarantee your place at one or all of the webinars! Also a reminder that you can keep up to date with our latest IP & Brexit news at www.dyoung.com/knowledgebank/ip-brexit. Finally, from all of us at D Young & Co, our best wishes for a happy and prosperous New Year!

Editor:
Nicholas Malden

Events

07 December 2018
Airbus IP Seminar, France
European Patent Attorneys Anthony Albutt and Andrew Cockerell will be attending the Airbus IP Seminar 2018: IP in the Aerospace & Defence Industry.

22 January 2019
European patent prosecution & litigation webinar programme
Partners, Solicitor Advocate Antony Craggs, European Patent Attorney Garreth Duncan and Rechtsanwalt Uli Foerstl will present a series of three patent prosecution & litigation webinars on Tuesday 22 January 2019. The webinars will provide an update on patent case law from an eventful year at the EPO and CJEU, and will cover decisions by the German and the UK courts. See page 08 of this newsletter for further information. Register to secure your place at one or all of the webinars via this link: dycip.com/litigation-webinars.

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SEP / FRAND

FRAND licensing
What questions remain?

Now that the England and Wales Court of Appeal (EWCA) has upheld[1] all substantive aspects of the first instance judgment[2] in the case of Unwired Planet v Huawei, what problems remain for standard essential patents (SEPs) and their licensing?

> The specific challenge arising with SEP licensing is the balance of risks between hold-out (where an implementer continues infringing, relying on a FRAND commitment of the patentee making injunctions hard to obtain) and hold-up (where the patentee, having a monopoly right to an essential technology, refuses to license at an acceptable rate, or at all).

Good for the patentee

Arguably, Unwired Planet v Huawei comes down firmly on the side of the patentee in finding that in certain circumstances a worldwide licence can be FRAND and that, should more than one set of terms be considered FRAND, it is permitted for the patentee to insist on one of these. The FRAND nature of a worldwide licence was assessed at first instance based on a number of factors: all of the comparable licences were worldwide, it was clearly industry practice for willing licensees and willing licensors to agree to worldwide licences (anything else would have been inefficient and resulted in "madness"), and the Unwired Planet portfolio had broadly comparable geographical scope to those in the comparable licences.

The judge at first instance also held that a worldwide licence would not constitute anti-competitive bundling or tying based on CJEU case law, his own reasoning, and a lack of evidence which would be required to support a contrary finding.

The Appeal Court went further, explicitly addressing the risk of hold-out that could arise if the proprietor could not insist on a worldwide licence in one court, but instead would have to initiate proceedings in many jurisdictions to secure royalties.

In the 2017 CJEU judgment in Huawei v ZTE[3], guidance was provided that an injunction could be issued if, in spite of reasonable behaviour by the patentee, the implementer did not progress in good faith.

Because the Huawei v ZTE judgment was delivered while the Unwired Planet proceedings were ongoing, the latter was considered a "transitional" case, and so care should be taken when considering the manner in which Huawei v ZTE was applied. However, Huawei may now find themselves with a UK injunction if they refuse to agree to a worldwide licence. At the appeal, Huawei repeatedly challenged this on the grounds that the only patents at issue were UK patents. However, the appeal judges rejected their arguments, as previously reported[4], and refused permission to appeal to the UK Supreme Court.

Questions over the FRAND nature of a worldwide licence therefore appear to be largely settled, though other issues certainly remain.

Counting patents

As discussed previously[4,5] this case addressed head-on the challenges arising from the sheer number of patents involved.

Although never intended as a basis for setting royalty rates, the lists of rights declared to standards organisation have become a de facto starting point. Some commentators have suggested that over-declaration, whereby such lists include non-essential and/or invalid rights, is a problem that needs to be solved, however this is to misunderstand the primary purpose of the declarations. Some over-declaration is inevitable because standards organisations (such as ETSI) may require applications to be declared before they become granted patents, and rights to be declared before the standard is stable.

Notes & links to further information

1. *Full decision of [2018] EWCA Civ 2344: dycip.com/2018EWHC2344.*
2. *Full decision (PDF) of [2017] EWHC 711 (Pat): dycip.com/2017EWHC711*
3. *Full decision of C-170/13, Huawei v ZTE: dycip.com/c-17013*
4. *D Young & Co article: www.dyoung.com/knowledgebank/articles/frand-appeal-huawei-unwired-planet*
5. *D Young & Co article: www.dyoung.com/knowledgebank/articles/frand-california*
6. *Avanci white paper (PDF): dycip.com/avanci*
7. *dycip.com/avanci-pricing*
8. *Federal Trade Commission v Qualcomm Incorporated No. 17-CV-00220-LHK (N.D. Cal.) (2018), Dkt. No. 931*
9. *dycip.com/etsi-ex-ante-disclosures*

Both sides proposed approaches to deal with this, and while the judge did not find either objectionable in principle, neither was wholly satisfactory and both were very time-consuming and expensive. Evidence supporting claimed "essentiality ratios" is likely to be required in any future litigation to support proposed rates based on 'top-down' calculations or comparisons with other known portfolios.

Reliance on current industry practice

The appeal court endorsed the approach of the judge to assess FRAND terms based on "what a willing licensor and a willing licensee in the relevant circumstances acting without holding out or holding up would agree upon, general practice in the industry, and any relevant comparables". Of course, concrete evidence for only the last two of these existed, and this was to be used to determine the first.

As such, the extent to which the specific findings in this case (particularly around the rate calculations) are fact-specific cannot be over-stated. Although the mobile telecommunications industry is large and global, the number of implementers is relatively small, and their products are (or at least, have been) broadly similar in nature (being either standards-compliant network equipment or mobile handsets). This meant that there were a large number of comparable licences available, and industry practice was well established and well understood.

Indeed, not only did the Unwired Planet judgment rely heavily on current industry practice to determine rates and terms, but the CJEU's guidelines in Huawei v ZTE require the alleged infringer to "respond to that offer [from the proprietor], in accordance with **recognised commercial practices** in the field" (emphasis added) in order to avoid injunctive relief being granted.

However, the increasing variety in products using a particular technology, and the flexibility being provided in newer standards to support devices of different capabilities is going to make setting royalty rates for SEPs harder, not easier. As pointed out by Avanci, a patent pool targeting wireless communications for IoT: "the value of a license to wireless technology

Standard-compliant products use technologies covered by one or more SEPs

bears little relation to the $75,000 price tag for a luxury sports car or a $2,000 stainless steel refrigerator"[6]. To address this, Avanci's royalties "will vary … based on the value the technology brings to the device, not its sales price"[7].

Further challenges may arise if the recent summary judgment[8] in FTC v Qualcomm is relied upon by chipset manufacturers or participants in supply chains other than brand owners. In that case, the FTC sought, and obtained, a declaration that "Qualcomm's voluntary FRAND licensing commitments to [ATIS and TIA] . . . require Qualcomm to make licenses available to competing modem-chip sellers". Similar challenges arise from the IEEE's 2015 update to its policy to require licensing at the smallest saleable patent practicing unit ("SSPPU") level.

This raises challenges for licensees: first, many licensees will be seeking licences in respect of products (such as cars, or refrigerators) or components for which few, or no comparable licences exist. Second, which is "the field" to consider in the Huawei v ZTE guidelines – the automotive industry, the domestic appliance industry, or the consumer electronics industry? Third, end product sales price has been the conventional basis for determining royalties in wireless communications in the past but may make little sense in many new scenarios. The starting points (overall royalty burden for a mobile handset) in the top-down approaches used in both Unwired Planet and Ericsson/TCL would provide almost no help in such cases.

How then, could a court establish current industry practice should it be asked to determine royalties in new circumstances?

It is notable that in some ex-ante statements in respect of 3GPP 5G technologies[9], licence rates for 5G-compliant mobile handsets are expressed in flat rate ($/€) amounts, rather than as a portion of sales price. This clearly simplifies some parts of the royalty calculations, but it does not solve the problem for other applications – indeed, the same companies are participants in the Avanci pool.

Conclusion

Unwired Planet v Huawei was undoubtedly significant in terms of the depth and breadth of analysis which took place, resulting in a complete, court-endorsed, licence agreement, and some principles are broadly applicably, particularly relating to the interpretation of the ETSI FRAND commitment interpreted according to French civil law. However, many practical aspects of SEP licensing remain challenging, and will get more complex as diversity of products and applications increases.

Author:
David Hole

Supreme Court decision Warner-Lambert appeal Swiss-form claims and skinny labels

The long awaited Supreme Court decision in Warner-Lambert v Actavis was handed down on 14 November 2018.

A reminder of the facts

Pregabalin is sold by Pfizer (ex Warner-Lambert) as Lyrica® for three labelled indications: epilepsy, generalised anxiety disorder and neuropathic pain. The basic patent, which disclosed the epilepsy and anxiety indications, expired in 2013.

The patent in suit, EP 0 934 061 (as centrally limited at the European Patent Office - EPO), was directed to pregabalin (marketed as Lyrica®) for the treatment of pain. Two claims were alleged to be infringed, claims 1 and 3. Claim 1 was a Swiss form claim to the "use of [pregabalin] for the preparation of a pharmaceutical composition for treating pain". Dependent claim 3 was limited to treating neuropathic pain.

Following expiry of the basic patent, generic manufacturers prepared to launch generic pregabalin with a "skinny label" omitting the neuropathic pain indication. Such an approach is specifically permitted under EU pharmaceutical regulators. Some also took further steps to inform pharmacists and health professionals that the drug was not to be prescribed for the treatment of pain.

The lower courts' decisions

Following interim proceedings, the full trial on the merits was heard before the Patents Court in 2015. The generic manufacturers sought revocation of the patent on the grounds of lack of inventive step and insufficient disclosure. Warner-Lambert brought a counter-claim against Actavis for infringement.

At first instance, the judge (Mr Justice Arnold) rejected the arguments on inventive step, but ruled claims 1 and 3 of the patent invalid for insufficiency. Specifically, the judge found that the claims were sufficiently disclosed in respect of inflammatory pain and peripheral neuropathic pain, but not central neuropathic pain. He also ruled that, even if the claims had been found valid, they would not have been infringed: either directly (as there was no act of manufacture in the UK), or indirectly (as there was no "supply of means relating to the invention" by an upstream manufacturer). He also rejected a request by Warner-Lambert to amend the claim post-trial to try and address the validity issue, considering it an abuse of process.

The Court of Appeal upheld the Patents Court's findings both on validity and abuse of process. The court did not decide on the infringement issue, but indicated in obiter comments that it differed from the Patent's Court's test on infringement. As regards direct infringement, the court considered that if the manufacturer knows or can reasonably foresee that the pharmaceutical will be used for the patented use, there is prima facie infringement. The court considered this could be negated where "the manufacturer takes all reasonable steps within his power" to prevent that use – while not stating explicitly what those steps should be, the message was that reliance on a "skinny label" may not be enough. As regards indirect infringement, in the court's view, "preparation" for the purposes of a Swiss-form claim could include a packaging step and/or a labelling step, the latter potentially being carried out by a downstream pharmacist.

The issues before the Supreme Court

The principal substantive issue for the Supreme Court to consider was the role to be played by plausibility in the statutory test for insufficiency. The Supreme Court also opined on how infringement by Swiss-style claims should be determined. It should be noted that the Supreme Court's comments on infringement, like those of the Court of Appeal, were obiter as the issue of infringement was not ultimately pursued before it. Nevertheless, they did so given they considered the infringement issue was of general public importance.

The Supreme Court decision

In summary, the Supreme Court dismissed Warner-Lambert's appeal that the patent was sufficiently disclosed, and upheld the generics' appeal that none of the disputed claims were sufficient.

The Supreme Court also unanimously held that, if the claims had been found valid, they would not have been infringed.

The Supreme Court was also unanimous on construction and agreed with the lower courts that the post-trial amendment sought by Warner-Lambert was an abuse of process.

The case details

Construction of the claims, in particular claim 3 (neuropathic pain)

Warner-Lambert had attempted to argue before the Court of Appeal that the term "pain" should be construed by a skilled person as limited to specific types of pain listed in the description. They also argued, based on expert testimony, that the term "neuropathic pain" in claim 3 would be understood as limited to peripheral neuropathic pain. However, the Court of Appeal dismissed this argument and ruled that claim 1 covers all pain and claim 3 covers all neuropathic pain, whether peripheral or central.

Warner-Lambert argued before the UK Supreme Court that the Court of Appeal's construction was erroneous as it had ignored the expert evidence before it. However, the UK Supreme Court dismissed these arguments and affirmed the construction of the lower courts.

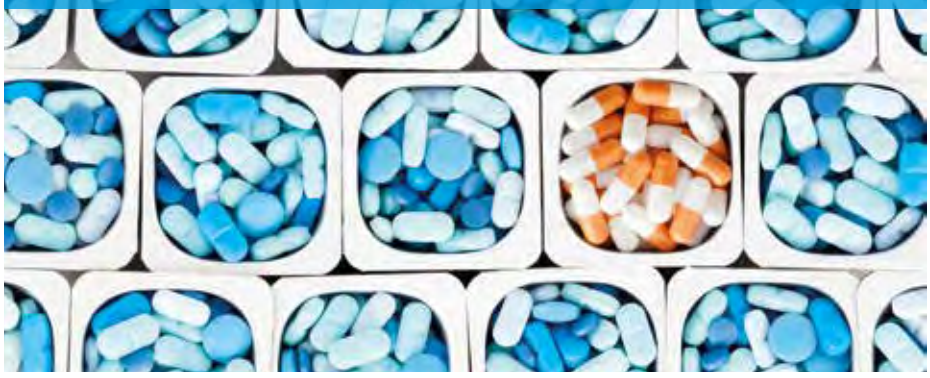
Sufficiency of disclosure

The sufficiency requirement in patent law is designed to ensure that the patentee, in exchange for obtaining a monopoly, must provide a full disclosure of their invention so that third parties following the teachings of the patent can carry out the invention without an undue burden – this is sometimes called the "patent bargain".

Lack of sufficient disclosure is a ground for revocation of the patent both in national revocation proceedings and in opposition

Link to full decision
Full decision of [2018] UKSC 56 on appeal from [2016] EWCA Civ 1006: dycip.com/2018-uksc-56

Implications for sufficiency of disclosure and infringement of second medical use claims



proceedings before the EPO. However, the UK courts have generally adopted a higher threshold for sufficiency than the EPO in recent years, and continued this approach in this case.

UK patent case law (and that of the EPO) recognises two lines of reasoning why a patent lacks sufficient disclosure. The first – "classical insufficiency" – is that there is not sufficient information in the patent to enable the skilled person to practice the invention.

The second line of reasoning for insufficiency is where an invention is found not to be enabled across **the entire scope of the claim**. This is based on the principle that the claim must not exceed the technical contribution to the art. This is often known as "Biogen insufficiency" as it follows the House of Lords' 1997 decision in Biogen v Medeva.

Although it is possible to provide additional evidence to support sufficiency of disclosure after filing of the patent application, the application as filed must itself include sufficient information to make the claimed therapeutic use plausible across the scope of the claim. The requirement that the invention be "plausible" from the application as filed originated in the case law of the EPO Boards of Appeal in relation to inventive step, but the UK Courts have adopted it as part of the test for sufficiency. However, the intention is the same in both cases: to prevent applicants filing applications having over-broad, speculative claims without scientific support across their scope, and attempting to justify them solely by the use of post-filing data.

In relation to medical use claims, as the invention is the new use of the product, the Supreme Court considered it essential that the application as filed contained some disclosure how or way the known product can be expected to work in the new application – otherwise, it would be possible to patent purely speculative claims to any conceivable use of a drug without having invented anything at all.

A majority of the Supreme Court opined that plausibility would be established by the application as filed containing reasonable scientific grounds that the product would have the claimed therapeutic effect: experimental data are not essential. However, a bare assertion that a product is efficacious for the claimed medical indication, without any credible scientific reasoning why, would not meet the plausibility threshold.

Dissenting, Lord Mance considered such a test imposed too high a standard and considered it necessary for the patentee to disclose reasons for regarding the claimed therapeutic effect as plausible only when the skilled person reading the patent would be sceptical about it in the absence of such disclosure.

The Supreme Court thus dismissed Warner-Lambert's appeal that the claim to the use of pregabalin for the treatment of central neuropathic pain was sufficiently disclosed. The Supreme Court went even further, and upheld Actavis' and Mylan's appeal that the treatment of any kind of neuropathic pain was also insufficiently disclosed.

The Supreme Court may have established a higher bar to sufficiency of disclosure for pharmaceutical inventions and firmly placed plausibility as a key aspect of sufficiency.

Infringement of Swiss-style second medical use claims

Even though claims 1 and 3 had been found invalid for insufficiency, the Supreme Court nevertheless considered the issue of infringement in obiter remarks. In particular, they considered the proper interpretation of Swiss-form claims.

The Supreme Court recognised the considerable difficulty of applying to Swiss-form patents the statutory provisions on infringement of a patent in the UK, which they were not designed to accommodate. This misgiving has been expressed by UK patents courts in the past, most notably by the House of Lords in Merrell Dow v Norton. In particular, the judges considered the issue of the "mental element" of second medical use patents. The court noted that while section 60(1)(c) of the Patents Act, which relates to direct infringement (by acts relating to a direct product of a process claim) is a "strict liability" provision which has no mental element, section 60(2), which relates to indirect infringement, requires proof of knowledge that the act would infringe.

The Supreme Court considered the infringement questions raised a number of competing objectives:

1. To provide reasonable protection to the second medical use patentee, by preventing competitors from marketing the drug for the patented use.
2. To allow generic manufacturers to lawfully market the drug for the non-patented uses (thereby avoiding the second medical use patent effectively becoming a second patent for the drug itself), and the public the benefit of lower prices for these uses.
3. To provide reasonable legal certainty for all parties involved in the pharmaceutical supply chain (manufacturers, wholesalers, pharmacists and prescribers).

[Continued overleaf, page 06]

[Continued from page 05]

The differing opinions of the Supreme Court judges take these competing objectives into account, but they reached different conclusions as to how.

Lord Sumption and Lord Reed agreed that the intention of the alleged infringer is irrelevant and that the sole criterion of infringement is whether the product as it emerges from the manufacturing process, including its packaging and any labelling or accompanying leaflet, is presented as suitable for the uses which enjoy patent protection.

Lord Mance agreed that the test depends on the objective appearance and characteristics of the product as it is prepared, presented and put on the market, but leaves open the possibility (i) that in rare cases the context may make it obvious that these are not to be taken at face value, and (ii) that there may be circumstances in which the generic manufacturer should positively exclude use for the patent-protected purpose.

Lord Hodge and Lord Briggs preferred the view of Mr Justice Arnold at first instance that the test is whether the alleged infringer subjectively intended to target the patent-protected market.

As regards the case on indirect infringement, the Supreme Court disagreed with the Court of Appeal's view that the invention in a Swiss form claim, which is a purpose-limited claim to a process of manufacture, could somehow be put into effect by a pharmacist dispensing a product upon prescription. In this regard, they preferred the view of the first instance Patents Court.

Clearly there were split views by Supreme Court judges on this matter and an apparent reluctance to commit themselves in obiter remarks. Most acknowledged this as the difficulty of applying the existing tests for infringement in UK patent law to the use element in Swiss-type claims. Therefore further litigation where the infringement issue is ultimately pursued as far as the Supreme Court may be necessary to resolve the split of views exposed in the Supreme Court by this decision.

Author:
Garreth Duncan

Allowed text at the EPO
More than just a formality

A recent Technical Board of Appeal Decision, T506/16 provides an important reminder of the need to check carefully the text of a patent specification allowed by the European Patent Office (EPO).

Background – EPO allowance procedure

After a patent application has been examined by the EPO, and once the examiner is satisfied that the claims are allowable, the examiner issues a communication under Rule 71(3) EPC advising that the EPO intends to grant the application. This communication includes a copy of the allowed text of the patent application, the "Druckexemplar". This will include any amendments made by the applicant to the claims and description up to this point, as well as any amendments the examiner considers necessary. At this stage the examiner's amendments will typically address formal requirements, including making sure that the description is in conformity with the final version of claims, clarifying amendments and correction of errors.

The applicant must respond to the communication under Rule 71(3) EPC by either approving the allowed text or proposing amendments. After several years of prosecuting an application, there is often a temptation for applicants to celebrate once the allowance communication issues, and to consider that the final stages of the EPO procedure are a mere formality. In particular, some clients may carry out only a cursory review of the allowed text, for example by checking only the claims.

T506/16

In this case, the applicant's representative responded to a communication under Rule 71(3) EPC by requesting correction of some typographical errors in the claims. The applicant submitted amended claims pages including corrections to the relevant claims, but did not include the un-amended claims pages. The applicant explicitly requested that the un-amended claims pages be included together with the amended claims pages. The EPO subsequently issued a new Druckexemplar, but this included only the amended claims pages including the amendments to correct the typographical errors, and did not include the un-amended claims pages, despite the applicant's request to include these claims. This meant that the Druckexemplar issued with part of claim 1 and claims 2 to 6 missing.

Unfortunately, neither the representative nor the applicant noticed that claims were missing from the allowed text, and the representative subsequently approved the allowed text, and the application proceeded

The applicant is obliged to check the allowed text for errors prior to grant

to grant with the incorrect claims.

First instance proceedings

After grant, the patentee realised that the application had granted with the incorrect claims, and requested correction of the B1 publication in accordance with Rule 139 EPC.

Subsequently, the patentee requested correction of a printing error or in the alternative correction of the granted patent under Rule 140 EPC.

The Examining Division decided that the request under Rule 139 EPC was inadmissible. Rule 139 EPC is only available for correction of documents submitted by a party to proceedings, and not for documents issued by EPO departments. Correction of documents under Rule 139 EPC is also only possible for pending applications.

The request for correction of a printing error was also refused by the Examining Division since the errors did not originate from printing process.

The request for correction under Rule 140 EPC was also refused. Rule 140 EPC allows correction of decisions by the EPO, but in accordance with G1/10 this provision is not available to correct patent specifications.

The patentee's further request to consider the decision to grant null and void and to issue a further allowance communication was also refused, since the decision to grant is binding on the EPO.

Appeal decision

The patentee appealed the decision of the Examining Division not to correct the specification. The patentee's main request was that the patent be corrected to include the full set of claims 1 to 14. However, the reasoning of the Examining Division was not overturned by the Board of Appeal.

Correction under Rule 140 EPC was not allowed, following the reasoning of G1/10 that this provision was not available to correct patent specifications. The patentee argued that the circumstances of G1/10 differed, since in G1/10 correction was requested during opposition proceedings, and the error was introduced by the applicant. However, the Board of Appeal held that the reasoning of G1/10 was not intended to be limited to correction of errors introduced during opposition proceedings, nor those introduced by the applicant.

Correction of the patent under Rule 139 EPC was also not allowed, following the reasoning of the Examining Division that this provision is not available after grant, and that the existence of pending appeal proceedings is not relevant. They also agreed with the Examining Division that Rule 139 EPC is not available to correct documents produced by the EPO, and that the correction could not be made as correction of a printing error.

The Appeal Board noted that according to G1/10 the applicant has an obligation to check the allowed text for errors prior to grant.

The appellant additionally submitted that the examination proceedings leading to the decision to grant the patent suffered from a substantial procedural violation because the decision was impossible to implement and was not based on an approved text. Therefore, the decision to grant should be set aside. However, the Board of Appeal noted that the patent proprietor had not filed an appeal against the decision to grant, but relied solely on appealing the decision by the Examining Division not to correct the patent specification. Therefore the Board of Appeal could not consider this point.

Conclusion

This decision reminds us of the difficulties in correcting a patent specification post-grant. The Druckexemplar should be checked carefully by applicants and their representatives. For important cases, an extremely thorough review of the allowed text should be carried out, and it may be worth having the text reviewed by a second attorney. If the worst happens and errors in the specification are identified after grant, please contact your attorney at the earliest opportunity to discuss options.

Author:
Catherine Keetch

Welcome to D Young & Co Patent, design and dispute resolution & legal team appointments

We are delighted to announce new appointments to our patent, design and dispute resolution & legal teams.

Senior Associate William Burrell is a European Design Attorney and European Patent Attorney, with particular experience in registered design matters. He has considerable experience registering designs at both the UKIPO and EUIPO. He is well-versed in protecting products, games, user-interfaces and brands with registered design rights in territories all over the world. William has a wealth of experience in patent searching, drafting and prosecution and specialises in the fields of consumer devices, mechanical and automotive engineering.

William has recently published an update on the EUIPO's new, more relaxed, approach to the examination of Community design application priority claims. You can read this article via our website IP knowledgebank: www.dyoung.com/knowledgebank/articles/designs-priority-claims.

New Associate Solicitor Jake Hayes joins our dispute resolution & legal team and is experienced in handling a broad range of contentious matters ranging from multi-jurisdictional patent infringements to trade mark, design and copyright infringement actions in the UK's specialist IP court, IPEC. Jake has worked with clients in a wide-range of sectors including FMCG, food and drink, health and beauty, finance, high jewellery, telecommunications and construction. On the transactional side, Jake has worked with clients looking to monetise their IP rights in a variety of ways, whether as part of a larger corporate transaction or as a multi-territorial licensing, distribution or manufacturing deal.

Jake and William bring a wealth of knowledge and experience and we look forward to introducing them to clients and contacts.

And finally...

European patent prosecution & litigation webinar programme Tuesday, 22 January 2019

Our January programme of European patent prosecution & litigation webinars will provide an update on case law from an extremely eventful year at the European Patent Office (EPO), the Court of Justice of the European Union (CJEU), and will cover decisions by the German and the UK courts. This programme of webinars will be of interest to in-house counsel and associates who are involved or interested in European prosecution and litigation.

Speakers

The three webinars will be presented by IP specialists Antony Craggs (Solicitor Advocate), Garreth Duncan (European Patent Attorney) and Uli Foerstl (Rechtsanwalt).

Webinar programme

Each webinar will run once on 22 January and then be available on-demand. Topics and decisions we expect to discuss are given below.

1pm GMT: European patent prosecution & litigation (webinar 1 of 3: focus UK)

- Practical application of the new doctrine of equivalents (UK decisions Generics v Yeda, L'Oreal v RN Ventures and Fisher & Paykel v Resmed).
- Availability and nature of FRAND declarations (UK decisions Unwired Planet v Huawei, Conversant Wireless v Huawei & ZTE, Apple v Qualcomm).
- Guidance on plausibility and sufficiency (UK decisions Warner-Lambert v Generics).

2.30pm GMT: European patent prosecution & litigation (webinar 2 of 3: focus Germany)

- Indirect infringement and exhaustion of patent rights (German Supreme Court decisions Trommeleinheit and Digitales Buch).
- Pharmaceutical product compulsory license sought and granted in preliminary injunction proceedings (Federal Patent Court decision Raltegravir).

3.30pm GMT: European patent prosecution & litigation (webinar 3 of 3: focus EPO & CJEU)

- EPO significant cases (T 206/15, T 2374/16, T 384/15 and T 1280/14).
- Supplementary protection certificates (CJEU decisions Teva v Gilead, Boston Scientific v Deutsches Patent- und Markenamt).

To register to attend these webinars please visit our website event page: dycip.com/litigation-webinars

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IP & Brexit

As we prepare this newsletter to go to print the next known step for Brexit is for UK MPs to vote on the deal on after debate in parliament.

Whether the deal receives the political agreement it needs from the UK Parliament remains to be seen. Please rest assured that D Young & Co is prepared for any form of Brexit that may happen and we will be able to continue working with you to protect your IP both in the run up to Brexit and beyond. We will keep you informed of any changes that we think will affect your business. Our latest updates, including our most recent 'no deal Brexit' guide, can be found on our website: www.dyoung.com/knowledgebank/ip-brexit

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