

Inside this Issue

<u>Pharmaceuticals: Commission refines intellectual property rules</u>	2
<u>EU: European Commission provides guidance on SEP licensing issues</u>	2
<u>USPTO Issues Guidance on Impact of SAS on AIA Trial Proceedings</u>	3
<u>Euro-PCT Guide: PCT procedure at the EPO</u>	3
<u>Important amendments under Mexican law regarding patents, utility models and industrial designs</u>	4
<u>Brexit and Intellectual Property – state of play May 2018</u>	4
<u>USPTO Seeks to Change BRI Patent Claim Construction Standard</u>	5
<u>Cuba and China Expand Biotechnology Cooperation</u>	5
<u>EU General Data Protection Regulation (GDPR) comes into effect</u>	6
<u>Benelux trademark becomes easier to oppose or invalidate</u>	6
<u>IP Australia introduces machine learning for TM examiners</u>	7
<u>Patent Related Changes To Bayh-Dole Act Regulations</u>	7
<u>China extends drug patents to 25 years</u>	8
<u>UK joins the Hague Agreement – Further details</u>	8
<u>UK Ratifies the UPC Agreement</u>	9

1. Pharmaceuticals: Commission refines intellectual property rules

EUROPEAN COMMISSION - PRESS RELEASE DETAILS PAGE - EUROPEAN COMMISSION - PRESS RELEASE BRUSSELS, 28 MAY 2018

The Commission is proposing a targeted adjustment to intellectual property rules to help Europe's pharmaceutical companies tap into fast-growing global markets and foster jobs, growth and investments in the EU. The EU has a strong intellectual property rights framework in place which protects Europe's know-how and sustains the pharmaceutical industry's world-class innovation capacity. To improve the current system further and remove a major competitive disadvantage of EU manufacturers, the Commission proposes a targeted amendment: the so-called 'export manufacturing waiver' to Supplementary Protection. [Read more](#)

2. EU: European Commission provides guidance on SEP licensing issues

THE END OF NOVEMBER SAW THE ANNOUNCEMENT OF THE HIGHLY ANTICIPATED COMMUNICATION OF THE EC ON THE EU APPROACH ON SEPS

The end of November saw the announcement of the highly anticipated Communication of the European Commission on the EU approach on Standard Essential Patents (SEPs). The licensing practices and negotiations related to SEPs have given rise to some intense litigation between SEP holders and SEP users often spanning multiple EU jurisdictions. Competition law also plays a vital role in these conflicts, even more so since the Huawei judgement of the Court of Justice of the EU (CJEU) in which the CJEU sets out a framework of rights and obligations for both SEP holders and SEP users when negotiating SEP licenses. If a SEP holder does not comply with said framework they could be considered. [Read more](#)

3. USPTO Issues Guidance on Impact of SAS on AIA Trial Proceedings

USPTO ISSUED A ONE-PAGE GUIDANCE DOCUMENT ON THE IMPACT OF THE SUPREME COURT'S RECENT DECISION

On April 26, 2018, the USPTO issued a one-page guidance document on the impact of the Supreme Court's recent decision, *SAS Institute Inc. v. Iancu*, on AIA trial proceedings. As has been widely reported, SAS reversed the PTAB's long-standing practice of deciding institution of IPR challenges on a claim-by-claim basis. Now, the decision whether to institute an IPR is an all-or-nothing choice, either requiring the denial of the entire petition, or institution and subsequent final written decision on all claims challenged in the petition. According to the new guidance, the panel of judges in an IPR may issue an order supplementing the institution decision when necessary to institute on... [Read more](#)

4. Euro-PCT Guide: PCT procedure at the EPO

INTERNATIONAL PHASE AND ENTRY INTO THE EUROPEAN PHASE (GUIDE FOR APPLICANTS)

11th edition, January 2018 :- This guide for applicants is aimed at those interested in pursuing the procedure under the PCT and focuses on elements specific to the PCT procedure before the EPO. It is referred to as the "Euro-PCT Guide" to distinguish it from the PCT Applicant's Guide published by WIPO ("WIPO PCT Guide").

Content description :- The Euro-PCT Guide is of a summary nature. It gives an overview of the procedures under the PCT before the EPO, including entry into the European phase before the EPO as designated/elected Office. The information it provides is not to be considered complete, nor is it intended to replace relevant WIPO publications and EPO decisions and notices... [Read more](#)

5. Important amendments under Mexican law regarding patents, utility models and industrial designs

AMENDMENTS TO THE MEXICAN IP LAW INVOLVING PATENTS, UTILITY MODELS AND INDUSTRIAL DESIGNS CAME INTO FORCE

Mexico has recently put into effect a number of provisions regarding diverse IP issues that merit close attention. Kat friends Edith Rivero and Veronica Avilez of Dumont have summarized these developments for IPKat readers. Amendments to the Mexican Industrial Property Law involving patents, utility models and industrial designs came into force on April 27, 2018. The amendments are directed to attempting to fix certain perceived shortcomings related to lack of information to third parties, the prosecution time for a patent application, and the system for prosecution and maintenance of industrial designs. A brief discussion of these amendments is provided below.. [Read more](#)

6. Brexit and Intellectual Property – State of play May 2018

THE EU-UK DRAFT WITHDRAWAL AGREEMENT WAS REPUBLISHED RECENTLY TO SHOW WHICH SECTIONS HAVE BEEN AGREED

The EU-UK draft withdrawal agreement was republished recently to show which sections have been agreed and which sections require further discussions. The agreement has been helpfully colour coded into green sections (agreed provisions, technical legal revisions only) and yellow sections (policy agreement, drafting changes required). Sections that are left white represent terms proposed by the EU where negotiations are still required. The draft withdrawal agreement contains a provision for a transitional period (Article 121) which will run from the UK's official exit from the EU (on 29 March 2019) until the end of 2020. A summary of the provisions that relate to intellectual property (IP).. [Read more](#)

7. USPTO Seeks to Change BRI Patent Claim Construction Standard

THE US PATENT TRADE-MARK OFFICE ANNOUNCED ON MAY 8 THAT IT PROPOSES TO REPLACE THE BRI PATENT CLAIM CONSTRUCTION STANDARD

The United States Patent Trademark Office announced on May 8 that it proposes to replace the broadest reasonable interpretation ("BRI") standard for construing unexpired patents with the same standard used in Federal district courts and the International Trade Commission ("ITC"). Under the proposed approach, the Office would apply the principles that the Federal Circuit articulated in Phillips v. AWH Corp., 415 F.3d 1303 (Fed. Cir. 2005) (en banc) and its progeny. As held in Phillips, the "words of a claim are generally given their ordinary and customary meaning," which is "the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e.. [Read more](#)

8. Cuba and China Expand Biotechnology Cooperation

CUBA AND CHINA HAVE EXPANDED THEIR BIOTECHNOLOGY COOPERATION WITH THE SIGNING OF ANOTHER MEMORANDUM OF UNDERSTANDING

Beijing, May 18 (RHC) -- Cuba and China have expanded their biotechnology cooperation with the signing of another memorandum of understanding for the opening of new joint ventures in the field of biotechnology. This is the second agreement of its kind signed this week between the two nations. It involves BioCubaFarma business group, the Chinese State Development and Investment Corporation (SDIC) and Sino-Pharma company. Eduardo Martinez, president of the Cuban firm, and Shi Hongxiang, vice president of SDIC, signed the document at the island's embassy in Beijing. Martinez said that the document is a starting point to take cooperative relations in the biotechnology sector to a higher step. Its essence is to explore several new ... [Read more](#)

9. EU General Data Protection Regulation (GDPR) comes into effect

**THE EUROPEAN UNION
GDPR ENTERS INTO
FORCE WITH THE AIM
OF ENSURING A HIGH
LEVEL OF DATA PRO-
TECTION.**

The EPO has always been committed to ensuring the highest level of data protection and as far as back as 1992 put in place its own data protection rules and structure including the nomination of an independent Data Protection Officer (DPO). As an international organisation established by its own international treaty signed by 38 member states with its organisational autonomy, the EPO fulfils its mission of providing high quality and efficient services under the European Patent Convention. The European Patent Convention is independent from the regulatory framework of the EU and hence the GDPR is not directly binding to the EPO. The EPO is entitled to receive data for its mission.. [Read more](#)

10. Benelux trademark becomes easier to oppose or invalidate

**AS OF JUNE 1, 2018,
A NUMBER OF CHANGES
TO THE BENELUX
CONVENTION ON
INTELLECTUAL PROP-
ERTY (BCIP) WILL COME
INTO EFFECT**

As of June 1, 2018, a number of changes to the Benelux Convention on Intellectual Property (BCIP) will come into effect. The changes will make it easier for holders of earlier trademarks and other interested parties to oppose the filing of a Benelux trademark or to contest the validity of a registered Benelux trademark. The changes are, amongst others:

- 1. Expansion of the grounds that can be invoked in the already existing opposition proceedings; and*
- 2. A new administrative revocation- and invalidity procedure outside court.*

Reputation of older trademark becomes ground for... [Read more](#)

11. IP Australia introduces machine learning for TM examiners

IP AUSTRALIA HAS IMPLEMENTED "COGNITIVE COMPUTING TOOLS" FOR ITS TM EXAMINERS, CLAIMING THAT NO OTHER IP OFFICE USES SUCH TECHNOLOGY

IP Australia has implemented "cognitive computing tools" for its trademark examiners, claiming that no other IP office uses such technology. The 'Smart Assessment Toolkit' will streamline trademark examination, according to a press release issued today, May 25, as the machine learning models will quickly identify potential issues and alert trademark examiners to them. According to the release, the initial toolkit includes a 'smart search' function, which will "automatically compare new plain word trademark applications with earlier registered trademarks to produce a list of hits based on similarities of goods and services". The toolkit also includes 'word analysis', where a mark will be identified.. [Read more](#)

12. Patent Related Changes To Bayh-Dole Act Regulations

IMPORTANT CHANGES TO BAYH-DOLE ACT IMPLEMENTING REGULATIONS WILL APPLY TO FUNDING AGREEMENTS EXECUTED AFTER MAY 14, 2018

Several important changes to Bayh-Dole Act implementing regulations took effect on May 14, 2018, that will apply to funding agreements executed after that date and may apply to existing funding agreements modified after that date. In this article, we focus on the most significant patent-related changes.

The Bayh-Dole Act & Implementing Regulations :-

The Bayh-Dole Act governs rights in inventions made with U.S. federal government funding. Broadly speaking, the Act imposes invention disclosure obligations on "contractors," permits contractors to elect to retain title (subject to a worldwide, non-exclusive license to the U.S. government), and requires contractors to pursue patent protection and commercialization. [Read more](#)

13. China extends drug patents to 25 years

BEIJING- CHINA WILL LENGTHEN PATENT PROTECTION ON PHARMACEUTICALS TO UP TO 25 YEARS FROM 20 STARTING THIS MONTH

BEIJING -- China will lengthen patent protection on pharmaceuticals to up to 25 years from 20 starting this month, in a move that appears aimed at deflecting U.S. criticism over intellectual property violations.

Beijing has also scrapped import tariffs ranging up to 6% on 28 categories of drugs, including those used to treat cancer. Patent protection typically lasts 20 years, but drugmakers spend much of that time on clinical trials to clear regulatory hurdles, which reduces the period they can sell new drugs without competition from generic versions. Japan, the U.S., the European Union and other advanced economies grant up to five years .. [Read more](#)

14. UK joins the Hague Agreement – Further details

FURTHER TO THE NEWS OF THE RATIFICATION OF THE HAGUE AGREEMENT BY THE UK ON 13 MARCH THIS YEAR, THE WIPO HAS PUBLISHED

Further to the news of the ratification of the Hague Agreement by the UK on 13 March this year, the World Intellectual Property Office (WIPO) has published the following declarations with further information for applicants wishing to register their designs in the UK and abroad in a single application:

- International registered design applications designating the UK need to be filed through WIPO in Geneva, they cannot be filed at the UK Intellectual Property Office (UK IPO) directly. Typically online filing is used as this attracts reduced official fees.

– In principle, publication of an International registration takes place 6 months after filing. Applicants can make a request for deferred publication, and if the UK is designated the... [Read more](#)

15. UK Ratifies the UPC Agreement

**UK HAS RATIFIED
THE UNIFIED PAT-
ENT COURT AGREE-
MENT TO PAVE THE
WAY FOR THE NEW
UNITARY PATENT
AND THE NEW
COURT**

The UK has ratified the Unified Patent Court Agreement to pave the way for the new Unitary Patent and the new court. This is a major step forward for the system, which was first agreed in February 2013 but was put in doubt following the Brexit referendum of June 2016. In our Autumn 2016 edition of ipNews we explained that there need not necessarily be any exit from the UPC upon Britain's exit from the EU. With the UK leaving the EU on 29 March 2019, ratification now gives the UK the opportunity to get the system started and negotiate continued participation later.

On 26 April the UK Minister for IP, Sam Gyimah MP, announced that the UK government has ratified the Unified Patent Court Agreement. The instrument of ratification was signed by Foreign Secretary, Boris Johnson, and deposited with the General Secretariat of the EU Council.

Ratification by the UK is not the last hurdle for the UPC and the Unitary Patent system. Ratification by Germany is required, which is on hold pending resolution of a complaint before the German Federal Constitutional Court, scheduled on the Court's diary to be heard at some indeterminate time in 2018. (It is one of 36 cases scheduled this year before the Court's ... [Read more](#)