



2022 GLOBAL IP DIRECTORY

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Enrique A. Diaz ediaz@goodrichriquelme.com (5255) 5525 1422

Jaime Delgado jdelgado@goodrichriquelme.com (5255) 5207 5324

Juan Carlos Suarez jcsuarez@goodrichriquelme.com (5255) 5207 9261

Guillermo Sosa gsosa@goodrichriquelme.com (5255) 5207 7561

e-mail: mailcentral@goodrichriquelme.com
website: www.goodrichriquelme.com

Paseo de la Reforma 265, M2
 Col. y Del. Cuauhtemoc, 06500 Mexico, D.F.
 Tel. (5255) 5533 0040, Fax. (5255) 5207 3150



2022 GLOBAL IP DIRECTORY

Editor Faye Waterford
 faye@ctclegalmedia.com

Publishing Director Chris Dooley
 chris@ctclegalmedia.com

Advertising Enquiries
 Katie Kerr (Publishing Executive)
 katie@ctclegalmedia.com

Financial Director Carla Ottley
 accounts@ctclegalmedia.com

Published by:
CTC Legal Media Ltd,
 23 Hedgers Way, Kingsnorth,
 Ashford, Kent TN23 3GN
 Tel: +44 (0)20 7112 8862
 Fax: +44 (0)20 7084 0365

Design and Repro by:
 Design and Printing Solutions Ltd
 Unit 45C, Joseph Wilson Industrial
 Estate, Whitstable, Kent CT5 3PS

Printed by:
 Pureprint Group, Crowson House,
 Bolton Close, Bellbrook Park,
 Uckfield, East Sussex TN22 1PH

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CTC Legal Media

Editor's welcome

After another year of extensive research into the world's leading IP firms, we are proud to bring you our latest extensive compilation with the 2022 Global IP Directory.

This up-to-date and exclusive directory lists a host of intellectual property firms from across the globe and does so in alphabetical country order to make the process of searching as streamlined as possible.

CTC Legal Media continues to create this publication to support and encourage intellectual property companies who want to actively promote their expertise with international clients and gain new business around the world. The publication is solely made up of listings, advertisements, and editorials from those firms actively seeking new business, in order to make your process of choosing a suitable law firm as efficient as possible.

Don't forget - all the information in this hard-copy publication is also listed on our websites. To view the full comprehensive list or conduct a concise interactive search by country or company, visit www.patentlawyermagazine.com and www.trademarklawyermagazine.com. All listings on our website will have direct links to the required company's email address, phone number, and website.

Be sure to also visit www.lslawmag.com to view the latest issues of *The Life Sciences Lawyer*.

From all of us here at CTC Legal Media, we would like to thank the entrants for the information they submitted to us, our readers for their continued support, and all our clients for helping to compile this extensive intellectual property directory. We hope you find it to be an invaluable guide to the world's IP firms, and we look forward to working closely with you all in the future.

Best wishes for 2022 and beyond.

The CTC Legal Media Team

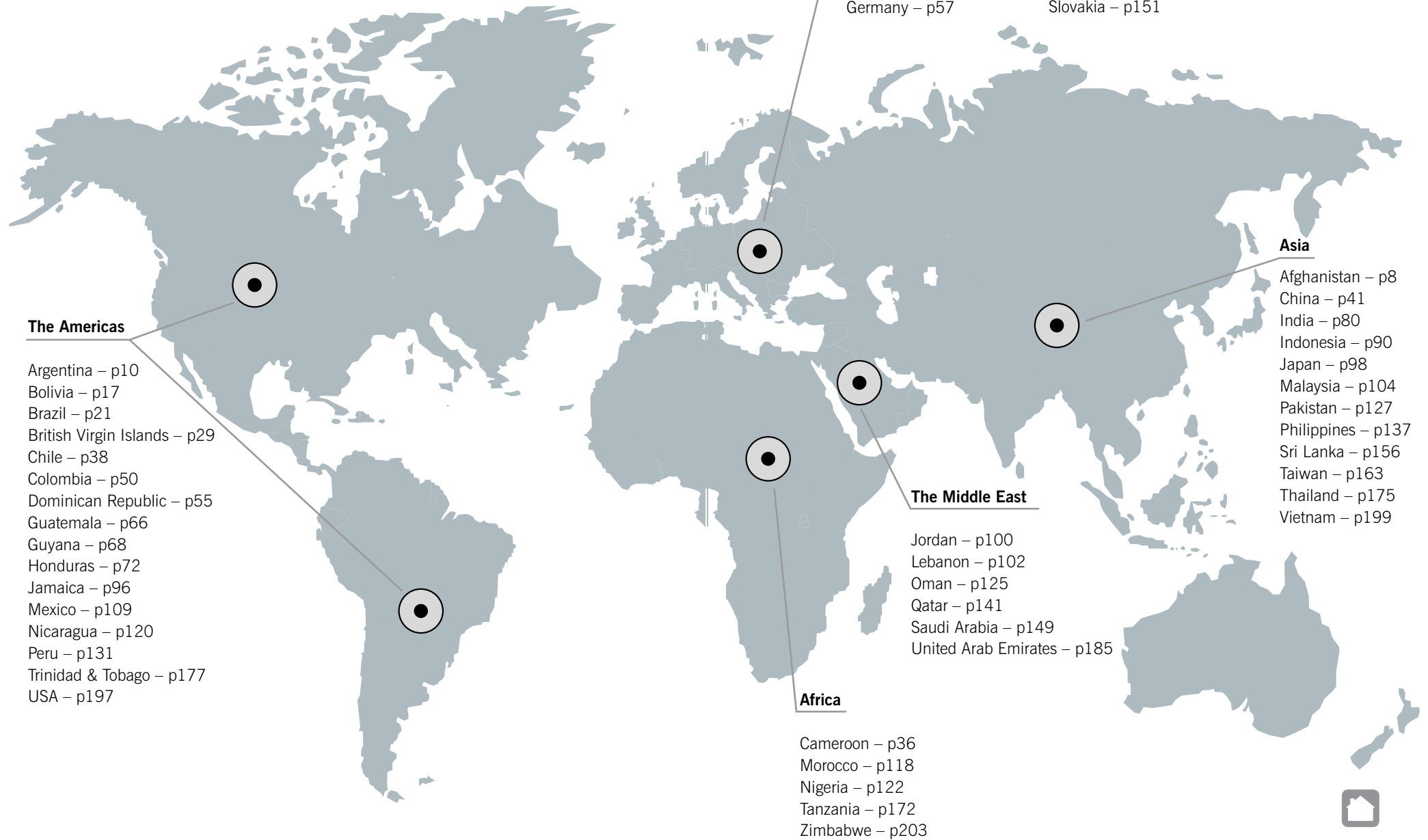


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The Patent Lawyer and *The Trademark Lawyer* educate and inform professionals working in the industry by disseminating and expanding knowledge globally. They feature articles written by people at the top of their fields of expertise, which contain not just the facts but analysis and opinion. Important judgments are examined in case studies and topical issues are reviewed in longer feature articles. All of this and the top news stories are brought to your desk via the printed magazine or the website www.patentlawyermagazine.com and www.trademarklawyermagazine.com



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Mob: +93700005661

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Argentina



O'CONOR|POWER
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E-mail and web

ocp@oconorpower.com.ar
oconor@oconorpower.com.ar
www.oconorpower.com.ar

Address

San Martín 663, Piso 9.
Ciudad Autónoma de Buenos Aires.
(C1004AAM) Argentina.

Phone/Fax

(5411) 4311-2740
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Sworn Declaration of Use and Mid-Term Declaration of Use: who is who?

O'Connor & Power provide an explanation for the often confused Declaration of Use and the Mid-Term Declaration with applicable law examples to aid foreign attorneys active in Argentina.

The use of a trademark in Argentina can be analyzed in various situations, such as use relating to a *de facto* or unregistered trademark; the use in connection to an opposition procedure; to the cancellation action due to non-use; use in connection with renewals; and finally the use required by the so called Mid-Term Declaration of Use (MTDU), as established not long ago by the art. 26 of the Trademark Law No. 22,362

In daily practice, we have noticed that colleagues from abroad tend to be confused about these two types of Sworn Declarations, which have in each case completely different purposes.

A) TM renewals: the Sworn Declaration of Use :art. 20 of Law No. 22,362.

The Trademark Law (TL) addresses the renewal requirements in its article 20, although it is necessary to complement the same with what is established by art. 5 of the TL.

The legal text establishes that in the case of renewals, an affidavit is required detailing

the use of the trademark in at least one of the classes or as a designation, and the product, service or activity must be also indicated.

Said use must be within the five year prior to the expiration of the trademark as required by article 5.

Likewise, the affidavit of use can be attached

In principle it is submitted with the TMO at an intermediate moment in the life of the trademark registration.

It is important to underline that the lack of submission of the MTDU does not cause the rejection or abandonment of the trademark registration by the TMO as in other countries.

at the time of filing or within 30 days, as long as it is indicated in the application renewal form Circular No. 2, Clarification Circular No. 1 of July 12, 1994.

Lately, Resolution No. 123/2019 has introduced amendments regarding the renewal filing date, establishing that a trademark renewal can be filed six months before or during the six-month grace period, as long as an extraordinary official fee is paid.

Unlike in other countries, Argentina's use requirements for renewal are quite flexible and broad, and may include use such as the marketing of goods and services, being the trademark as a part of a designation of an activity or a trade name.

Additionally, and *contario sensu* as in other countries, there is no need to attach documents evidencing the use; a duly executed sworn declaration of use shall suffice.

Failure to submit this affidavit of use will result in the rejection of the renewal application.

Applicable law:

Trademark Law No. 22,362:

"ARTICLE 5 — The term of duration of the registered trademark will be 10 years. It may be renewed indefinitely for equal periods if it was used, within the five year prior to each expiration, in the marketing of a product, in the provision of a service, or as part of the designation of an activity."

"ARTICLE 20. — When the renewal of the registration is requested, the provisions of Article 10 shall be acted upon and a sworn statement shall also be presented stating whether the trademark was used within the period established in Article 5, therefore least in one of the classes, or if it was used as a designation, and it will be indicated as appropriate, the product, service or activity

Once the resolution approving the registration or renewal is issued, the respective certificate will be delivered to the applicant".

B) TM Maintenance: the Mid-Term Sworn Declaration of Use (MTDU) of article 26 of Law No.22,362.

In recent years, the need for another affidavit was established, which is known as a Mid-Term Declaration of Use (MTDU), in that, in principle it is submitted with the TMO at an intermediate moment in the life of the trademark registration.

Contrary to what happens with the affidavit for trademark renewal, in the MTDU it is possible to indicate that the trademark has not been used.

We shall deal with this situation further below.

This MTDU must be submitted as from the fifth year from the date of the registration date until its sixth year .

In the event the MTDU is not filed during the before mentioned fifth year, it may be filed later as long as an extraordinary fee is paid for each year elapsed.

Likewise, the regulatory decree expressly establishes that as long as the MTDU is not filed, the renewal application will not be processed; consequently, it is mandatory to submit the same if the trademark needs to be maintained and in force.

As in the case of the SDU, there is no need





to attach evidence or proofs of use; a sworn declaration needs to be completed indicating the goods or services for which the trademark has been used.

It should be noted that the MTDU is not applicable to all registrations, but only to those granted as of January 12, 2013.

For example, if the trademark was granted on August 5, 2016, the MTDU must be submitted between August 5, 2021 and August 5, 2022.

It is important to underline that the lack of submission of the MTDU does not cause the rejection or abandonment of the trademark registration by the TMO as in other countries.

It is very important to underline that at the time of the renewal of a trademark, the TMO shall not process an application for renewal if the MTDU has not been filed.

In many cases in which there is no real certainty about the use of the trademark, it may be wise enough to await to file the MTDU only upon renewal of the trademark, to prevent alerting parties that the trademark registration is not in use, which could give place to the filing of a cancellation action due to non-use.

Applicable law:

Law 22,362, Article 26: "Likewise, once the fifth year has passed since the registration of the trademark was granted, and before the expiration of the sixth year, its owner must submit a sworn statement regarding the use that he had made of

the trademark up to that moment."

Regulatory Decree 242/2019, Article 26: "The sworn statement of use must be accompanied by all those trademark registrations that have completed five years of validity on the date of entry into force of the modification of this article. The failure to submit the affidavit will presume the lack of use of the trademark, unless proven otherwise.

If the affidavit had not been submitted within the term provided by the Law that regulates it, the request for renewal of the registration that has been submitted in a timely manner will not be processed, until such obligation is fulfilled and the established fee has been paid."

Resolution 123/2019, Article 2: "Mid-Term Sworn Declaration. The owners of those trademarks that have been granted as of January 12, 2013 are reached with the fulfillment of the Sworn Declaration of Use provided by Article 26 of the Law of Trademarks and Designations No. 22,362 and its amendments, and its Regulatory Decree No. 242/2019"

Contact

O'Conor & Power

San Martin 663, Piso 9, Ciudad de Buenos Aires, (C1004AAM) Argentina

Tel: +54 11 4311-2740

ocp@oconorpower.com.ar

oconor@oconorpower.com.ar

www.oconorpower.com.ar



Koubriakov, Tseliatsitskaya & Partners, Ltd.

Address: Avenue Pobediteley, 17, of. 1015, 220004 Minsk, Belarus

Telephone/Fax: +375 17 226 99 34

Email: info@patentoffice.by **Website:** http://patentoffice.by/

Contacts: Koubriakov Boris Evgenyevich, Patent Attorney of Belarus, Eurasian Patent Attorney, Director. Tseliatsitskaya Iryna Viktorovna, Patent Attorney of Belarus, Eurasian Patent Attorney, Deputy Director of the company.

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W.A. Mendez & Asociados S.R.L.
Patent and Trademark Attorneys

Address: Av. 16 de Julio No. 1490 (El Prado), Edif. Avenida, Piso 3, Of. 3,
La Paz, Bolivia
Telephone: +591 2 2 2338540 **Fax:**
Email: wamendez@wamendez.com.bo
Website: www.wamendez.com.bo **Contact:** Alvaro F. Siles Martin, Partner

Bosnia & Herzegovina



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**Dr DIANA PROTIĆ-TKALČIĆ
& PARTNERS d.o.o.**

Address: 36 Kosevo, Sarajevo, Bosnia and Herzegovina, 71000

Telephone: +387 33 206 904 **Fax:** +387 33 444 140

Email: dprotic@bih.net.ba **Website:** www.protic-tkalcic.ba

Contacts: Diana Protić-Tkalčić, Consultancy, protection, maintenance and enforcement of industrial property rights, domains and copyright.

Brazil



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New Brazilian law promotes the freedom to contract on licensing agreement and reduces government interference on royalty remittance overseas

José Carlos Vaz e Dias & Bruna Valois of Vaz e Dias Advogados & Associados set out to explain what foreign licensors can expect from the new law that will become valid on 30 December 2022.

On the 30 of December 2021, substantial changes to the foreign exchange control system were implemented in Brazil by Federal Law no. 14,286. There were 14 federal laws revoked and 40 laws and regulations applicable to the existing foreign exchange consolidated control system that modernized and made more flexible the current applicable laws regarding the local parties' ability to purchase hard currencies for complying with international financial commitments from

business transactions. Among the changes was compensation of credits between a foreign and a local party without the need of any effective transfer of funds, which draws attention since this practice is totally prohibited under the laws of the land. Further to that, under certain situations, stipulating foreign currency as prevailing in commercial agreements enforced in Brazil and executed between Brazilian parties are allowed in specific situations, such as leasing of equipment in the infrastructure sectors

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Phone: + 55 21 3176-6530 | Fax: + 55 21 3176-6528
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CEP: 20011-000
Email: mail@vdav.com.br | Website: www.vdav.com.br



The novelties implemented by the new law have also reached the legal framework for licensing and technology transfer agreements. In this matter, it is always important to recall that specific fiscal and foreign exchange control laws were especially tailored and applied to attract technology and prevent local licensees from paying royalties above the rates the government understood as reasonable, notwithstanding the market price.

This article will depict the positive changes applicable to licensing and technology transfer and will point out how the changes will affect the parties' ability to set the royalty rates and secure remittances overseas.

Sweeping and continuous reforms of the technology transfer legal framework

Brazil is internationally known as a country where government control closely followed licensing and technology transfer agreements, since the inflow of foreign technology was regarded during the 1950's through the 1980's as crucial to the economic development of the country and competitiveness of the local companies. This statement expresses the interference in the main contractual clauses and state the creation of endless legal requirements that the parties should fulfill for the agreement to be valid and effective. Among them, we highlight the need for prior recordation and the scrutiny of contractual clauses by the Brazilian Patent and Trademark Office (BPTO).

This controlling scenario has drastically changed in the last 10 years, as it was realized that licensing technology to Brazil was a difficult business for foreign licensors and domestic licensees alike. The long years of state control made Brazil one of the most unattractive markets for foreign technology and technology development by foreign companies. Historically, the relevant changes began with the BPTO's publication of Resolution 156/2015 that substantially enlarged the list of imported services that could be included under technical assistance agreements dispensed from prior recordation. Then, Resolution 199 of 7 July 2017 established the Guidelines for Recordation of Licensing and Technology Transfer Agreements. The former Resolution

eliminated the BPTO's powers to examine the agreement under the perspective of taxation, foreign exchange control restrictions and any other legal issues during recordation procedure.



By any means, royalty remittances between the parent company and its subsidiary would not overcome the maximum 5% of the net sales price or licensee's revenue.



The agency's focus is now on the exam of the formalities of the agreements and the validity assessment of the licensed industrial property rights in Brazil, which represents a substantial reduction in the time it takes to successfully record these agreements.

Phasing out registration at the central bank – a big wave of freedom

Concerning the prior government approvals of licensing agreements, Law 14,286/2021 has eliminated the registration requirement at the Brazilian Central Bank (BACEN) for a licensee to

proceed with royalty remittances to a licensor. The registration was regarded as a hindrance once the approval of the financial clauses by BACEN took place after recordation at the BPTO. Furthermore, local licensees needed to seek further BACEN's approval of the Payment Scheme. This Payment Scheme is a document issued by the accounting department of the licensee comprising detailed information about the licensee's net sales or revenues obtained from the licensed products and the calculated royalties for a commercial bank to remit remuneration overseas to a foreign licensor. Therefore, there were three unnecessary layers of government approvals that substantially delayed the timeframe for remittance and receipt of the royalties by the licensor.

From the new rule of Law 14,286/2021, the licensee will solely be required to proceed at any commercial bank holding the Payment Scheme and the recordation certificate issued by the BPTO in hands to proceed with the payment to the licensor. From this perspective, recordation of contracts at the BPTO is still needed and therefore it has not been abolished, as Article 211 of the Industrial Property Law and specific taxation laws set out three events that make recordation compulsory and justifiable, as follows: (i) effectiveness of the agreement before third-parties, especially if the licensor has granted exclusive rights and the licensee is required to enforce in court such rights or when the granted rights encompass the licensee's ability to defend or join the licensor in disputes involving the licensed patents or trademarks in courts against infringers; (ii) qualify the licensee for tax deductions on the remitted amount to the licensor and (iii) entitles the licensee to remit royalties to the foreign party as payment for the grant of licensed rights.

Recordation is not indispensable for the validity of agreements or for the maintenance of the validity of the industrial property rights in Brazil. The execution of a licensing or distribution agreement and an invoice showing the sale of the products/mark are sufficient to prove local commercialization thereby preventing forfeiture.

For the aforementioned purposes, the following commercial agreements are subject to the recordation requirements: (a) patent

licensing, (b) trademark licensing, (c) know-how licensing agreement, (d) technical assistance contract, and (e) franchising. This means that copyright licensing, professional technical services (related to marketing, logistics and administrative services), distribution agreements, software licensing, among others, are not subject to prior recordation at the BPTO.

No more limitations on parent-subsidiary remuneration

Another relevant change in the technology transfer scenario has been the freedom for the contracting parties to set the amount of royalties when the foreign licensor and the local licensee are parent-subsidiary companies or hold a controlled-controlling relationship. This freedom takes the lead due to revocation of the sole paragraph of Article 50 of Law 8,383/1991, which limited the payable royalties to a foreign licensor to the fiscal deductibility ceilings set out by Law 3,470/1958 and Ministerial Ordinance 436/1958. According to the revoked rule, royalties would need to be within the limits of the fiscal deductibility, which range from 1% to 5% of the net revenue obtained from the sales of the licensed product depending upon the activity field in question. For example, patent licensing in the oil and gas industry would entitle the licensee to obtain higher deductions (up to 5% of the net revenue). On the other hand, deductibility on technology (patent or know-how) linked to personal care would be limited to 1% of the net revenue obtained by the licensee derived from the exploitation of the licensed technology. The deductibility cap for trademark licensing stands at 1%.

By any means, royalty remittances between the parent company and its subsidiary would not overcome the maximum 5% of the net sales price or licensee's revenue. This is an unjustifiable hindrance on licensing and technology transfer, and its elimination by the new Law 14,286/2021 was of great benefits to the parties, especially the licensor.

This freedom to contract under Law 14,286/2021 has ended the discrepancy on the treatment between agreements involving related and non-related contracting parties, since the laws of the land do not impose limitations on setting royalties





and remittances overseas when the parties are not related.

Therefore, according to the new ruling, the remuneration to a foreign licensor will no longer be limited by the fiscal deductibility ceilings and therefore the rates above 5% of the net sales price of the licensed product or net revenues will be fully accepted. Remuneration will be set by the rule of thumb and the prices commonly practiced in the international market or the bargaining powers during negotiations.

This freedom also extends to know-how licensing, technical assistance agreements, and franchising when the parties are related.

Protecting the licensed IP right in Brazil is indispensable

Foreign licensors should note that if an invention, trademark, or industrial property right is not protected in Brazil, it cannot be licensed and most importantly, it cannot generate royalties. According to the Industrial Property Right Law (Law 9.279/96) and the BPTO's Guidelines on Licensing Agreements, the licensing agreement will not produce any effects if the enlisted technology of IP rights is not filed, granted, or registered before the BPTO or protection is not adequately maintained locally. This applies to trademark situations under the Madrid Protocol, of which Brazil is a signatory country, when the applicant fails to keep its rights enforced locally. This often translates into a considerable delay in royalty payments to the licensor, as the granting

of a patent, due to the large backlog of the BPTO, can take several years and a few months in the case of trademarks. The alternative route for a foreign licensor in this case would be to license the technology through a know-how licensing agreement. As to trademark licenses, the most efficient action for licensor is to immediately register the trademark in Brazil, even before licensing.

It is important to point out that the validity period for know-how contracts registered by the BPTO is five years, and it is possible to extend this period for an additional five years maximum upon reasonable justification in cases where the know-how represents an important commercial and economic nature. Moreover, this five-year criterion adopted by the BPTO is not based on any law and payments made arising from the exploitation of know-how are no longer limited to the cap of the fiscal deductibility.

Under this perspective, Law 14.286/2021 gives an extra incentive for licensors to seek protection for its licensed IP rights in Brazil, as it has permitted that trademarks and patents that have been filed, but are not yet protected by the BPTO, can generate royalties and remittances to a foreign licensor. This is an important novelty, since Article 11 of Law 4.131/62 expressly determined that licensing agreements should follow with the evidence of validity of the licensed rights and therefore prevented remittances overseas from patent and trademark applications. The rationale behind

it was that patent/trademark applications are regarded as expectation of rights by scholars, not granted rights yet, where the property legal requirements are yet to be examined by the BPTO during prosecution procedure.

Therefore, patent and trademark applications would generate royalty calculation and, consequently remittances as from the date the application is published at the Industrial Property Gazette.

This reinforces the freedom to negotiate between the contracting parties, in the sense that they can now expand and stipulate the calculation of royalties from the moment of filing the trademark and/or patent, as well as make more concise payment schemes.

When will the new law be valid?

Notwithstanding the improvements on the legal framework for the license and technology agreements, the effects of Law 14.296/2021 are not automatic, as the law holds a *vacatio legis* of one-year for the contracting parties, commercial banks, and public authorities to get adjusted and operate according to the new developments. Therefore, the new rules will be valid, effective, and applicable to licensing and technology agreements as from 30 December 2022.

Final remarks

The new law eliminates unnecessary bureaucracies caused by legal and governmental interference, including provisions that limit the licensor's rights in their technology, and simplifies the process involving foreign exchange and royalty remittances overseas derived from technology transfer agreements. This makes possible for the Freedom to Contract Principle to prevail in the licensing and technology transfer field. Therefore, it grants the contracting parties the ability to negotiate the rights and conditions of the agreement without interference, including those of a financial nature, and independently of the corporate relationship between the parties.

Therefore, law 14.296/2021 may be regarded as one of the most important changes that helps shape up the legal framework for licensing agreements in Brazil, providing a better business environment.

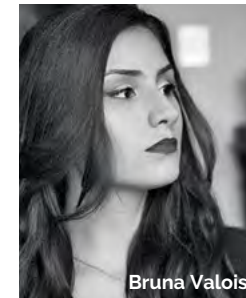


José Carlos

José Carlos Vaz e Dias, PhD, Senior Partner at Vaz e Dias Advogados & Associados

José Carlos Vaz e Dias is an attorney at law who has specialized in patent, trademark matters, and

foreign investment law since 1993. His activities focus on legal support and consultation to foreign companies that want to invest in Brazil, especially in the technology fields, and support on trademark protection and litigation.



Bruna Valois

Bruna Valois, Associate at Vaz e Dias Advogados & Associados

Bruna Valois is an attorney-at-law and has specialized in international business transactions since 2014. She conducts the preparation and negotiations

for commercial agreements in the technology sphere, in relation to matters such as technology transfer, licensing of intellectual property rights, copyright agreements, merchandising, research and development, franchising, distribution, confidentiality agreements and other contracts involving the exploitation of intellectual property rights.

Contact

Vaz e Dias Advogados & Associados

Rua da Assembleia 10/2422

Centro Rio de Janeiro

RJ, CEP: 20011-000 -BRAZIL

Tel: 55 21 3176-6530

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Tel.: +55 21 3811-0888
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British Virgin Islands



How to register a trademark in the British Virgin Islands

Jamal S. Smith, Founder and Principal of Thornton Smith, provides a step-by-step guide on trademark registration.

The registration process in the British Overseas Territory of the Virgin Islands, commonly referred to as the British Virgin Islands, can be divided into four stages: (1) pre-application stage; (2) application stage; (3) publication stage; and (4) certificate stage.

1. Pre-application stage

(a) Inspection of the register

Before filing the application for registration, it is possible to search the register of trademarks during normal business hours for any identical or similar trademarks.

(b) Registrar's opinion

In addition to a search of the register before filing an application for registration it is possible to request the Registrar's Opinion on the registrability of the trademark prior to filing the application. The Registrar's Opinion can be used to support the application for registration.

2. The application stage

(a) Trademark owner

The trademark owner must authorize the filing of the application. It is possible to change the name and/or address of the trademark owner during the application process and after registration. The trademark owner may also change by assignment, transfer or other operation of law before the completion of the application process

since the registration will take effect from the date of filing.

(b) Trademark agent

The application must be filed by a registered trademark agent and it is possible to change a trademark agent at any time. There is no statutory requirement for an instrument of appointment such as a power of attorney or authorization of agent and the relationship is one of agreement between the trademark owner and the registered trademark agent. However, unlike a registered trademark agent in the United Kingdom, a BVI registered trademark agent is not exempt from the statutory prohibition against drawing or preparing any legal instrument, including relating to any trademark. Any registered trademark agent that is not also qualified to practice law in the British Virgin Islands can only file the statutory forms and serve as liaison between the Registrar and the trademark owner but cannot prepare any trademark document or give legal advice on the statutory forms or other trademark document.

(c) Non-English characters

It is possible to register trademarks using non-English words, letters or characters such as Arabic, Chinese, Devanagari or Cyrillic characters. When foreign numerals and foreign



script are used in a trademark, the application for registration must be accompanied by a certified translation into, or equivalent meaning or transliteration in, the English language of those foreign numerals or foreign script.

(d) Representation

A trademark would include a brand, color, device, figurative element, heading, label, letter, name, numeral, shape, signature, smell, sound, taste, ticket or word, or any combination of signs. Regardless of the form it takes, the trademark must be capable of being represented graphically. This would be straightforward for word marks, or a device or figurative mark which can be represented by a picture or drawing. However, with respect to olfactory marks it is expected that there will be guidelines issued by the Registrar to allow the representation of smells by some special mechanism since providing a graphic representation through chromatography, for example, has not been acceptable elsewhere, and the position would have to be the same for any gustatory mark that attempts to depict a taste. The same would not be true of sound marks, since it is quite possible to produce a musical notation or score to satisfy the requirement of graphical representation, and a sound spectrograph can depict pitch, progression and volume, and therefore, be capable of graphically representing the sound for purpose of registration. As a result, it is quite possible to register jingles.

A shape mark may also cover packaging that has no intrinsic shape of its own, like liquids or pellets.

Although a color can itself be registered as a trademark, the color of

the trademark may also be used to determine the distinctive character of a trademark. Limiting a trademark to a particular color or specific colors may help to determine the distinctive character of the trademark. A trademark that is registered without limitation of color is registered for all colors.

(e) Priority

Although the British Virgin Islands is not a Paris Convention Country it is possible to claim priority based on an application filed in a Paris Convention Country or a WTO Member within six months of the first application. It is possible to claim a different priority date for different goods or services based on different applications.

(f) Classification

The application must include a statement of the goods and/or services in accordance with the Nice Agreement concerning the international classification of goods and services adopted on 15 June 1957 as subsequently amended or revised. The current version is the 11th edition of the Nice Classification which came into force on 1 January 2017. It is also possible to make a single application with respect to several classes.

(g) Intention to use the trademark

The applicant must give a declaration of use of the trademark in relation to the goods or services in respect of which it is sought to be registered or there is an honest intention to use the trademark, or allow it to be used, in relation to the goods or services concerned.

(h) Examination

After the Registrar receives an application, he or she must examine

the application in order to ensure that it meets all the requirements for registration, including any requirements that may be prescribed by rules. If the Registrar is satisfied that all the requirements for registration have been met, then the application will be accepted. Alternatively, if the Registrar is not satisfied that all the requirements for registration have been met then the Registrar must issue a defective notice to the applicant.

been published any amendment or withdrawal of the application must also be published.

4. The certificate stage

If after publication there have been no successful written objections or oppositions, the trademark will be registered as of the filing date of the application. The Registrar will enter it on the register, issue a certificate of registration, which is prima facie evidence of the registration, and publish notice of the registration.

A BVI registered trademark is not exempt from the statutory prohibition against drawing or preparing any legal instrument, including relating to any trademark.

3. The publication stage

Once the application has been accepted by the Registrar there is no notice of acceptance given by the Registrar and it is merely published in the Gazette. After publication, the applicant can still withdraw or amend certain aspects of the application, but once the application has

Contact

Thornton Smith
Capitol Chambers, P.O. Box 3534
Road Town, Tortola VG1110,
Virgin Islands (UK)
Tel: +284 494 2518
mail@thorntonsmith.com
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No. 1777, Rue 6.261, Yaoundé 2 Auditorium Jean Paul II Boulevard Mbankolo Quarters.

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Interpretation of the new Guidelines for trademark examination

Ray Zhao of Unitalen Attorneys at Law reviews the new Guidelines implemented as of January 1, 2022 to bring you up to speed with the main changes that all attorneys should know.

In recent years, Chinese Trademark Law and other relevant laws and regulations have been revised and improved. As a result, the practical experience and reform results of cracking down on "malicious application" and "hoarding registration" of trademarks and optimizing the examination and trial process need to be summarized and consolidated.

Procedures such as formal examination, classification of goods and services and trademark

various business Guidelines, instructions, and internal procedures for trademarks. The new Guidelines, which will come into effect on January 1, 2022, are the regulations for the



The Internet and e-commerce platform transaction documents and transaction records are included in the trademark use judgment.



procedures of different trademark matters, an important basis for the examination and



retrieval elements, Madrid international registration of trademarks, need to be further sorted out and clarified, and substantive provisions of trademark examinations and trials need to be further enriched and improved.

In the face of higher requirements and tasks of a new era of intellectual property, the CNIPA enacts the new Guidelines for Trademark Examination (hereinafter referred to as the Guidelines) have been formulated by integrating

trial of trademarks, and specific guidelines for the public to handle trademark registration applications or other trademark affairs. It is of great significance to strengthen the protection of intellectual property rights, optimize the process of trademark registration examination, and improve the quality and efficiency of trademark examination and adjudication.

There are a few important changes in the Guidelines which all brand owners and practitioners should know:

1. Bad faith applications filed without intent to use shall be rejected

Clarification of the definition of "malicious trademark application not for the purpose of use": According to Article 4 of the Trademark Law, malicious trademark applications not for the purpose of use refer to the behaviors of applicants who submit a large number of trademark registration applications not based on the needs of production and business activities, with lack of real intention of use, improper occupation of trademark resources, and disruption of trademark registration order.

Factors to be taken into consideration to determine whether it constitutes a malicious trademark application not for the purpose of use includes the basic information of the applicant and the overall situation of the trademark application submitted by the applicant.

According to the practice, it summarizes and lists nine typical cases of malicious trademark applications not for the purpose of use, and makes specific explanations in the form of embedded cases. At the same time, it acknowledges that the applicant applies for trademarks identical to or similar to its registered trademark for defense purposes and applies for trademarks in advance in appropriate amounts

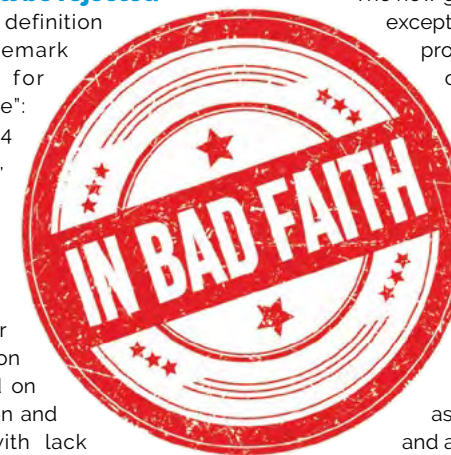
for realistic and expected future business.

2. Terms that shall not be used as trademarks

Article 10 of the Trademark Law stipulates that existing trademarks shall not be registered and used as trademarks, and the application standard of this article in the examination is one of the emphases of this revision.

For instance, having the same or similar name with that of leaders of other countries, regions or political international organizations known to the public will not be allowed.

The new guideline perfects the exception of the prohibition provisions for the application of signs containing place names. A new exception is added, that is, it is clear that the marks made up of the characters of place names and other characters, whose overall composition is different from that of place names, are not easy for consumers to associate with place names, and are not easy for consumers to misidentify the place of origin.



3. Enhance the trademark protection

In the determination on similarity between figurative trademarks, it was judged to be a similar trademark if the trademark completely included other graphic trademarks that have a preexisting degree of popularity or distinctiveness. Or, trademarks including other graphic trademarks that have previously had higher visibility or greater prominence. In this case it is determined to be a similar trademark, and the original word "completely" is removed. The scope of protection is expanded and strengthened.

The criteria for "prior use" has been adjusted and the restriction of use only in the Chinese market removed. Removing the



restrictions on trademark use in China: In view of the development of practice, the Guidelines remove the restriction on the use of trademarks in China in the recognition of prior use and some influence, instead, the influence of the use must meet the requirements that China is influenced by use outside China.



The new Guidelines, which will come into effect on January 1, 2022, are the regulations regulating the procedures of different trademark matters.



The relationship between the business address of the trademark applicant and the prior user is added to recognize special relationships.

4. Non-use cancellation action

To adapt to the development of e-commerce and Internet trading, the Internet and e-commerce platform transaction documents and transaction records are included in the trademark use judgment.

Using a registered trademark on similar goods or services which are not approved by the CNIPA shall not be considered as using

the mark. However, according to the need of practice, use on non-standard goods or services still constitute the use of approved goods or services. OEM, which means only manufacturing in China and only exporting to other countries, shall be considered as valid use in China.

5. Office action

The application of office action is confirmed. The Guidelines clearly points out that the office action is part of the trademark examiner's discretion in substantial examination procedures. From the date of office action to the date the trademark applicant, or their agent, provides supplementary evidence or supplementary documents will not be included in the trademark term requirements. It also lists 18 situations in which the examiner can request the applicant to make explanations or amendments by issuing the examination opinion at their discretion.

Contact

Unitalen Attorneys at Law (Patent, Trademark & Copyright)

7/8Th Floor, Scitech Place,
22 Jian Guo Men Wai Ave. Beijing
100004, P.R.China

Tel: (8610) 59208888

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Trademarks in Greece

Alexandra Botsiou, Attorney at law, of Vardikos & Vardikos provides an overview of trademarks in Greece covering types and scope of protection, registration, and enforcement.

The Greek Trademarks Law 4679/2020 implemented the Directive 2015/2436/EC (approximation of the laws of the Member States relating to trademarks) and the Directive 2004/48/C (enforcement of intellectual property rights), replacing the previous Greek Trademark Law 4072/2012.

1. Types of Trademarks

Any sign can be considered registrable as a trademark. It can be words, names, illustrations, designs, letters, numbers, colors, position, sound, shape, pattern, motion, multimedia, and hologram, on the premises that: i. it distinguishes the goods of one undertaking from those of other undertakings ii. it is represented in the registry in a manner enabling the competent authorities and the public to determine precisely the protection afforded to its proprietor.

The law provides also for guarantee and certification trademarks.

They can't be registered as trademarks signs that:

- (I) Cannot constitute a trademark;
- (II) Are devoid of distinctive character;
- (III) Consist exclusively of signs or indications which may serve in trade to designate the kind, quality, quantity, destination, value, geographical origin or the time of the goods production or of the service rendering or other characteristics of the goods or service;
- (IV) Consist exclusively of signs or indications which have become customary

in the everyday language or in the established practices of the trade;

(V) Consist exclusively of the shape imposed by the nature of the product or it is necessary to obtain a technical result or gives substantial value to the product;

(VI) Are contrary to public order or to principles of morality;

(VII) Are deceiving;

(VIII) Are contrary to applicable legislation.

2. Scope of protection

The registration of a trademark confers on its proprietor the exclusive right to use it, to affix it to the products intended to distinguish, to use it for characterization of the provided services, to affix it to covers and packaging of goods and to any other printed material, and to use it in electronic or audiovisual media.

The proprietor is entitled to prohibit any third party from using:

- (I) A sign identical to the registered trademark for goods or services identical to those for which the trademark has been registered;
- (II) A sign identical with or similar to the registered trademark, when due to the simultaneous identity or similarity of the goods or services there is a likelihood of confusion, including the likelihood of association;
- (III) A sign which is identical or similar to a trademark with a reputation, where use of that sign without due cause would take unfair advantage of, or would be detrimental to the distinctive character or its reputation, regardless of whether the sign is intended to distinguish goods or services that are similar to products or services of the earlier trademark.

The Law introduces a special provision that empowers the proprietor to prevent third parties from bringing goods in the course of trade into Greece, when such goods, packaging



Any sign can be considered registrable as a trademark. It can be words, names, illustrations, designs, letters, numbers, colors, position, sound, shape, pattern, motion, multimedia, and hologram.



included, come from third party countries and bear without authorization a trademark which is identical to the trademark registered for such goods or which cannot be distinguished in its essential aspects from that trademark. This applies regardless of the Customs status of the infringing products.





The proprietor can request that the reproduction of the trademark in a dictionary, encyclopedia or similar reference work is accompanied by an indication that it is a registered trademark.

The right to a trademark can be transferred, in life or after death, for all or part of the goods or services for which an application for a trademark has been filed or registered, regardless of the transfer of the undertaking.

The proprietor can grant a license, exclusive or not, for the use of a national or international trademark or trademark declaration valid in Greece, for part or all of the products or services and for all or part of the Greek Territory. The trademark license agreement must be in writing.

3. Registration

The trademark application is filed before the competent Greek Trademarks Authority. The examiner reviews the application on procedural and substantive grounds. The *ex officio* examination of relative grounds for refusal is abolished; the publication of the approval decision to the designated website serves as notification for third parties which could have an interest to oppose the application.

The examiner's decision accepting the registration of a trademark's application can be opposed within a three-month deadline

commencing from the day after its publication on the designated website of the Ministry.

The proprietor of the trademark may divide the trademark application or registration, stating that part of the products or services contained in the original declaration or registration will be the subject of one or more partial declarations or registrations.

4. Enforcement

The registration of a trademark confers on its proprietor the exclusive right to use it, to affix it to the products intended to distinguish, to use it for characterization of the provided services, to affix it to covers and packaging of goods and to any other printed material, and to use it in electronic or audiovisual media.

Administrative Courts

The Administrative Courts are competent to adjudicate appeals against the Trademark Committee's decisions that rule on the decisions of the examiners regarding objections or applications for dispute resolution. Appeals are required to be filed within 60 days from the day of the publication of the decision

Civil Courts

The Civil Courts are competent to adjudicate the following:

- (I) Disputes regarding trademark infringement;
- (II) Oppositions of article 583 of Civil Procedure Code against the Trademark Committee's decisions on the applications of trademark's revocation or invalidity;
- (III) Claims and counterclaims of restraining orders on trademark's revocation or invalidity;
- (IV) Claims related to trademark assignments;
- (V) Actions on the right to information.

The new law abolishes the provision according to which civil courts were bound by the final decisions of the Trademarks Committee and the Administrative Courts, i.e., they have the jurisdiction to adjudicate on the validity of the registered national and European Union trademarks, provided that the proprietor of the trademark is entitled to counterclaim for the declaration of invalidity of the trademark or revocation.

The claim for revocation or invalidity can only be brought as a counterclaim and the defendant has to notify the Trademarks Registry at the latest by the date of the court hearing, otherwise the action is inadmissible. Additionally, once the infringement action has been filed by the claimant, the defendant can no longer challenge the validity of the trademark by filing a separate action before the Trademarks Registry. If the action has been filed before the filing of the civil claim, the court has the discretion to suspend the proceedings brought before it, ordering provisional measures. The defendant has the same right in interim injunction proceedings.

The objection of the proof of use has to be raised at the hearing of the opposition otherwise it will be inadmissible. The claimant is granted at least 30 calendar days in order to submit material proving the use of the earlier mark along with a supporting writ. The defendant is granted at least 25 calendar days starting on the day after the aforementioned deadline

expired in order to evaluate the proof material and submit a writ. Within three calendar days following the expiration of the second deadline, both parties submit their rebuttals. The Administrative Trademark Committee can rely on facts that are so well-known, that no doubt remains that they are true.

The burden of proof in revocation proceedings is put on the proprietor of the contested trademark.

The proprietor can request to have the full court decision or parts thereof published on social media.

Interim measures are filed by the individual who has the trademark registered in their name.

Penal Proceedings

The Greek Law provides for criminal offenses, such as imprisonment and fine, in case of trademarks infringement for those who:

- (I) Use a trademark without having such right;
- (II) Launch, possess, import or export products or offers services using another's trademark;
- (III) Intentionally use a reputation mark to exploit or damage its reputation;
- (IV) Intentionally use symbols and signs of public interest.

Mediation

In light of the Mediation Law 4640/2019, the trademark disputes can be submitted to mediation.

Contact

Vardikos & Vardikos
3, Mavromichali Street,
Athens 106 79, Greece.
Tel: +30 210 361 15 05
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Patent and Trade Mark Agents

2 Avenue of the Republic, P.O. Box 10109, Georgetown, GUYANA, South America

Tel: +592 226 2671 Fax: +592 226 7809

Email: csmain@cameronandshepherd.com | Web: cameronandshepherd.com

*Partners: Hari N. Ramkarran SC, Josephine Whitehead SC, Rafiq T. Khan SC,
Nikhil N. Ramkarran & Kamal Ramkarran*

Associate Counsel: Rebecca Alya Khan, LLB (Dist.)

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Attorneys at Law



Dr. Katalin Szamosi

Managing partner
szamosi@sbgk.hu

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drafting in technology
transfer matters, strong
focus on contentious
patent, trademark,

industrial design and copyright-related matters,
representation before the Court of Justice of the
EU, arbitration in domain disputes, mediation &
advising on consumer protection and antitrust
matters.



Dr. Péter Lukácsi

Partner, Attorney at Law
lukacsi@sbgk.hu

Advising prosecution &
litigation in various fields
of IP law, strong focus on
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law, negotiating & drafting distribution,
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Dr. Ádám György

Partner, Attorney at Law
adam.gyorgy@sbgk.hu

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Patent attorneys



Zsolt Szentpéteri

Co-managing partner
szentpeteri_zs@sbgk.hu

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Katalin Mészárosné Dónusz

**Deputy managing
partner**

donusz@sbgk.hu

Advising national,
European & PCT patent
applications covering

the automotive, construction & toy industries; as
well as representation in trademark & industrial
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Szabolcs Farkas

Partner, Patent counsel
farkas@sbgk.hu

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Likelihood of confusion to be presumed if rival marks and goods/services are held to be identical

Aprajita Nigam, Managing Associate at LexOrbis, reviews the trial and appellate stages of a case regarding likelihood of confusion between identical marks in the same industry.

The Supreme Court of India recently ruled in an infringement suit pertaining to the hospitality industry which had seen a reversal of the permanent injunction Order passed by the trial court during the appellate stage at the High Court. The Order of the High Court was set aside, and the permanent injunction order passed by the trial court was maintained. This judgement clarifies the difference between an infringement action and a passing off action with respect to the evidence required and presumptions taken by the Court.

At the Trial Court:

In the year 2009, the appellant-plaintiff (Renaissance Hotel Holdings Inc.) had filed a suit for infringement of its trademark "RENAISSANCE" before the trial court which was decreed in its favor and the respondents-defendants were permanently restrained from using the mark "SAI RENAISSANCE" ("impugned mark").

The appellant-plaintiff is a U.S. based company and proprietor of the mark "RENAISSANCE" in relation to hotel, restaurant, catering, bar, cocktail lounge, fitness club, and spa services etc. The appellant-plaintiff had



In response, the respondents-defendants argued honest and concurrent adoption under Section 12 of the Act and again reiterated that the rival parties cater to different class of customers.



claimed the use of the mark "RENAISSANCE" for hospitality business throughout the world since the year 1981 and in India since 1990. The appellant-plaintiff had also argued that it runs a hotel and convention centre in Mumbai and Goa and its mark "RENAISSANCE" is registered in India under class 16 and class 42 (registration was secured in 2003 when hotel, restaurant, accommodation services were classified under class 42). The respondents-defendants (B. Vijaya Sai and Others) were running one hotel under the impugned mark "SAI RENAISSANCE" at Kadugodi, Bangalore and another one at By-Pass Road, Puttaparthi. It was contended by the appellant-plaintiff that the respondents-defendants had copied its trademark "RENAISSANCE", its stylized representation, signage, business cards and leaflets to suggest an affiliation, association, nexus or connection with the business of the appellant-plaintiff.

In response to this, the respondents-defendants argued that the word "RENAISSANCE" is a generic word, and no exclusive rights can be granted over the same to the appellant-plaintiff since it is neither a well-known mark nor any reputation or goodwill has been earned by the appellant-plaintiff in respect of the said trademark in India. The respondents-defendants also claimed honest adoption and stated that they are ardent devotees of Sri Shirdi Sai Baba and Sri Puttaparthi Sai Baba and have combined the word SAI with a dictionary word RENAISSANCE; they claimed to have been running the hotels for 15 years and had no knowledge about appellant-plaintiff's business. The respondents-defendants further contended that there was no likelihood of confusion since they catered to a different class of customers than those catered by the appellant-plaintiff. It was also submitted that the services provided



are totally different and the respondents-defendants were not serving non-vegetarian food and alcoholic drinks to customers.

Having heard both the parties, the trial court granted permanent injunction in favor of the appellant-plaintiff and restrained the respondents-defendants from using the impugned mark or any other mark deceptively similar to the trademark "RENAISSANCE" for goods/services covered by appellant's-plaintiff's registrations in classes 16 and 42. appellant-plaintiff's prayer for damages was rejected.

First Appeal at the High Court of Karnataka:

Aggrieved by the permanent injunction, the respondents-defendants filed an appeal at the High Court, which was allowed, and the permanent injunction Order was set aside. The High Court allowed the appeal observing that (1) the appellant-plaintiff did not disclose its transborder reputation earned in India, (2) appellant's-plaintiff's hotel is a 5-star hotel while the respondents-defendants' hotels are not of that standard, (3) *no evidence was produced by the appellant-plaintiff to show that the respondents-defendants were taking unfair advantage of its trademark or that the use of impugned mark was detrimental to the distinctive character or reputation of the appellant's-plaintiff's trademark, and (4) no claim of confusion made by any customer.*

Second Appeal at the Supreme Court of India:

Aggrieved by the Order of the High Court, the appellant-plaintiff filed an appeal at the Supreme Court of India and argued that the High Court has erred in applying Section 29(4) (c) of the Trade Marks Act, 1999 ("the Act") in the present case by focusing on the lack of evidence for proving confusion and/or unfair advantage and/or detriment to the distinctive character. It was submitted that Section 29(4) (c) is applied only when the case falls under the scope of Section 29(4)(a) and (b) which is not the case at hand because the services provided by the respondents-defendants are not dissimilar. The counsel for the appellant-plaintiff contended that the present case falls under Sections 29(1), 29(2), 29(3) and 29(5), and

once it is established that there is an imitation then no further evidence is required to establish that the appellant's-plaintiff's rights are violated.

In response, the respondents-defendants argued honest and concurrent adoption under Section 12 of the Act and again reiterated that the rival parties cater to different class of customers.

The Supreme Court of India noted the relevant provisions of the Act and highlighted that Section 29(2)(c) lays down the eventuality of infringement when the rival marks are identical and are being used for identical goods/services. It was further observed that it is pertinent to note



Then the Court shall presume that the defendant's mark is likely to cause confusion on the part of the public.



Section 29(3) of the Act which says that if a case falls under Section 29(2)(c) then the Court *shall presume* that the defendant's mark is likely to cause confusion on the part of the public. The Court opined that the legislative intent is very clear that proof of likelihood of confusion is necessary in cases where marks are identical and goods/services are similar, or where marks are similar and goods/services are identical, but such evidence is not necessary when marks and goods/services both are identical; in such cases, presumption of likelihood of confusion comes in to play.

The Court then placed reliance on *Kaviraj Pandit Durga Dutt Sharma v Navratna*



Pharmaceuticals Laboratories [(1965) 1 SCR 737] to explain the difference between an infringement suit and passing off action. While a passing off action is a common law remedy being an action for deceit, an infringement action is a statutory right given to the registered proprietor for the vindication of exclusive rights to the use of the registered trademark in relation to those goods/services. If the essential features of plaintiff's trademark are adopted by the defendant then the difference in packaging, writing, or any other differences in offering of the goods/services to indicate a trade origin different from that of the plaintiff may help the defendant in escaping liability under a passing off action but such factors are immaterial for infringement suit. In an infringement suit, the only question to be asked is whether the defendant is improperly using the plaintiff's registered mark. If the answer is affirmative, then the injunction would follow even if actual confusion/deception or damage cannot be established.

The Court further observed that in the present case, both the trial court and the High Court had concluded that the impugned mark is identical to the appellant's-plaintiff's mark and was being used for same services, and thus, the trial court rightly held that the present case would be covered by Section 29(2)(c) read with

Section 29(3) of the said Act where likelihood of confusion would be *presumed*. The Court also noted that the rival marks "RENAISSANCE" and "SAI RENAISSANCE" are phonetically and visually similar. The Court placed reliance on Section 29(9) of the Act which provides that where the distinctive elements of a registered trademark is a word then the trademark would be infringed by the spoken use of that word as well as by its visual representation.

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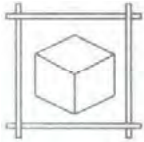
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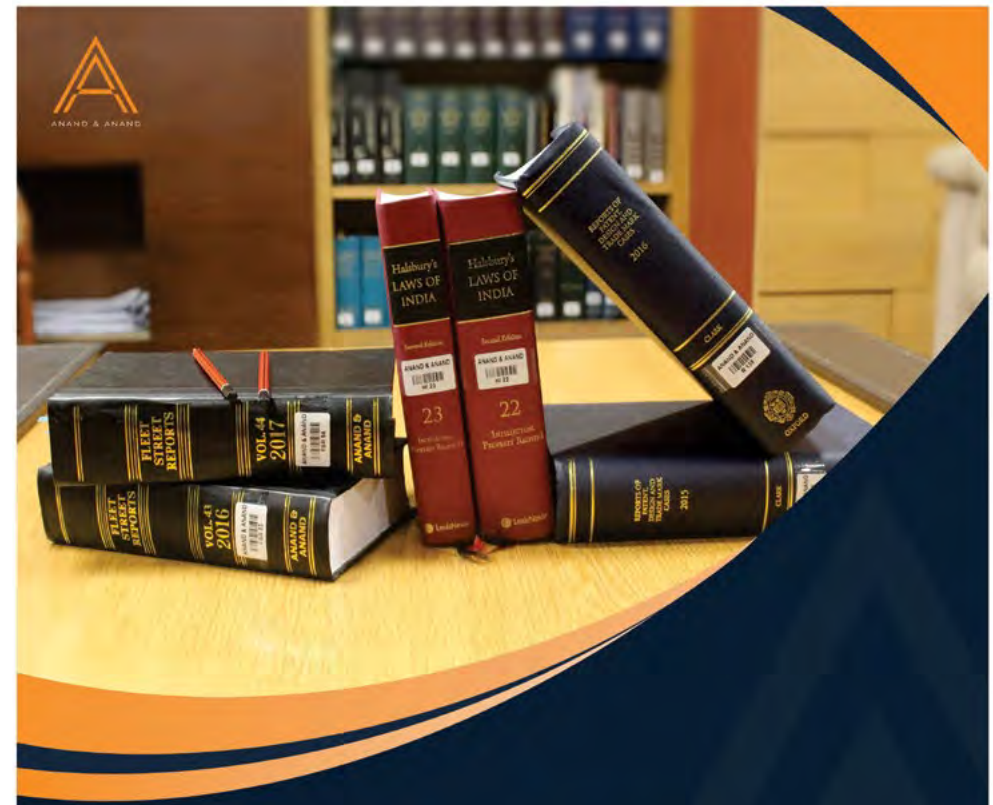
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Address: DIPO Business Center 11th Floor, Jl. Jend. Gatot Subroto Kav. 51-52, Jakarta 10260, Indonesia

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Email: Dubai@UnitedTm.com



JORDAN (Amman)
Suite 7, 2nd Floor
Chicago Building, Al Abdali
Tel : +962-6-5683088
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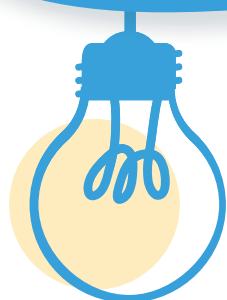




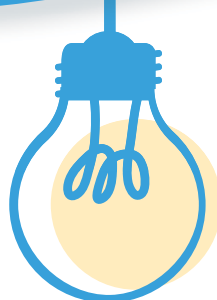
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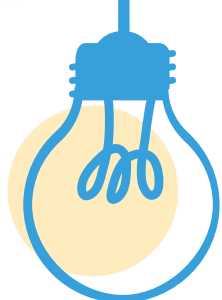
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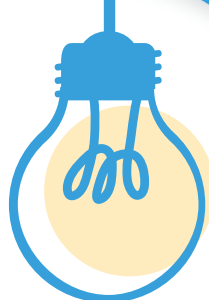
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Daniel Legaspi J.
dlegaspi@s-s.mx

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Limits to the exploitation of Mexican Cultural elements: the new Law for the Protection of Cultural Heritage in Mexico.

José Pablo Pérez Zea and Efraín Olmedo of Santamarina + Steta review the benefits of the implementation of this new law in Mexico for the protection of cultural elements in relation to IPRs..

With the intention to address and protect the diversity tangible and intangible cultural elements produced by the Indigenous and Afro-Mexican communities in Mexico, on January 17, 2022, a Federal Law for the Protection of the Cultural Heritage of the Indigenous and Afro-Mexican Peoples was issued and entered into force.

Mexico is undoubtedly a country with a very broad cultural diversity, which translates into an extensive catalogue of objects, crafts, traditions, knowledge and so many forms of expression and intangible goods by the several indigenous peoples in the territory who are granted a special Constitutional protection.

The relevance of the indigenous peoples is not only in their numbers but also in how essential they are for the national identity.



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that the Law restores the ownership of the cultural heritage not on the individuals of the community but on its organization. Therefore even if all of the individuals in that community are allowed to use their cultural elements of their community, they can only exploit them for their own individual interest and in no way are allowed to authorize the use of such elements to third parties.

In order to obtain authorization, the interested party must understand who the Authorities of such a community are under their own uses and customs, and obtain the right to use a specific cultural element through a written permit which must abide to the following standards:

(I) Free, prior and informed consent:

Before any use is made, the representatives of the community must be properly informed of the manner on which the use is intended to be made. Even if not required by law, it is advisable to conduct these negotiations with a translator, in order to properly represent the extent of the intended use and avoid any contractual misunderstandings.

(II) Fair and equitable participation:

The law requires that the distribution of the benefits over the exploitation of the cultural elements must be fair and equitable.



We must acknowledge that the protection of the cultural heritage is not in itself a form of intellectual property and therefore it does not abide to the same principles.



(III) **Onerous and temporary:**

All authorizations must be limited to a five year term, and unless it is agreed otherwise by the parties an economic retribution must be made to the authorizing community.

The authorization agreement must be executed before the National Indigenous Peoples Institute, who will verify that the authorization was granted through a free and informed consent. Precisely because of this, and in order to avoid delays or objections by the Institute, it is very important to maintain a clear communication with the authorities of the community.

In order to do so, it is advisable to inform them of (I) the true purpose of the use and its possible variables during the term, so that they can be represented on the agreement, and (II) all the relevant aspects and expenses that must be considered from production to distribution and final sale of the product, in order to create a clear understanding as to what is a fair and equitable participation on that specific project and avoid an arithmetic interpretation of what a fair distribution of the benefits should be.

Using any cultural element without authorization (either obtained by a party not legitimized to grant such a permit, or not according to the forms required by the law), or breaching the terms of the authorization, will constitute an administrative infringement sanctionable with up to USD \$250,000. It must also be considered that the same behavior can also be sanctioned under criminal law, with up to 10 years of imprisonment.

Considering that this Law presents no exceptions or fair use possibilities, nor objective parameters to properly determine what is owned by any of the communities, it is advisable to conduct a thorough investigation of the elements which use is intended and the communities to which they belong to in order to follow a more accessible path to their authorities and their authorization.

We can conclude that this Law was indeed an important step in the right direction to protect the cultural elements of many communities in the Country that deserve restoration, nonetheless this Law created a very complicated scenario

for interested parties to effectively obtain the authorization to use a cultural element with an absolute certainty that they are in no way infringing the rights of another community.

It was also a missed opportunity by the Mexican State to develop a proactive behavior aiming to create a solid structure which could truly and effectively empowering these communities. This could have been achieved if there was any obligation by the State to identify and publicize a catalogue of all the protected elements and which communities they belong to, as well as an accessible database of the legitimized authorities for each community and understanding of their uses and customs.

Finally, since this Law only protects national indigenous and Afro-Mexican People this was a missed opportunity by the Mexican State to take the first step toward a reciprocity system based on the acknowledgment and protection of the cultural elements of indigenous peoples of other countries in the Mexican territory. Nonetheless, as it was said before, this is a new form of protection and restitution, and therefore it will find itself – as intellectual property has been – in a constant state of evolution, hopefully becoming an effective tool for the restoration of the rights of the Indigenous Peoples and the creation of even more culture by all the population in Mexico.

Contact

Santamarina + Steta

Tel: +5255 5279 5400

José Pablo Pérez Zea, Partner

jperez@s-s.mx

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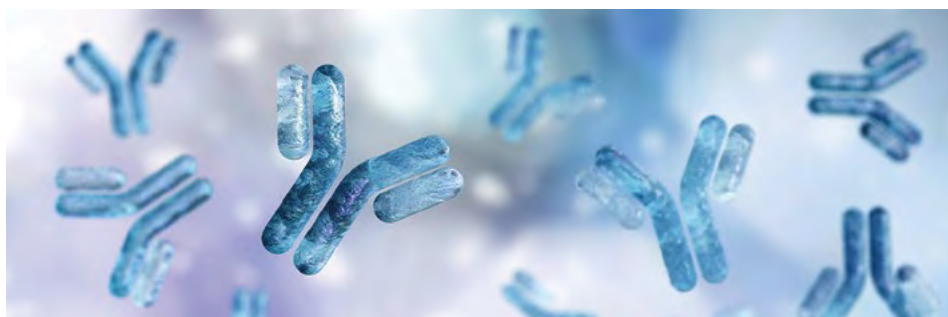
Development of biotechnology in antibody research

Colmenares & Asociados examine the development and patentability of vaccines in light of the COVID-19 pandemic.

Among the first applications of biotechnology were the use of yeast and fermented elements (beer, wine, cheese), then the genetic improvement of animal species (mutations) and plants, such as the potato gene for resistance of tomato peel. And in the energy industry, the use of biofuels (bioethanol)

The different innovative companies seek patent protection for the inventive research with antibodies so that they can be applied for the benefit of society, and not keep them as industrial secrets; then, after a period of protection, they become public.

Biotechnology, in the pharmaceutical field, has developed the production of antibodies



During the 70s, research in laboratories produced antibodies through an essentially biological process with animals (mice, rats). Then hybridomas were developed which are monoclonal antibodies produced by a clone. Subsequently, molecular biology developed techniques to obtain chimeric antibodies (35% murine and 65% human), and then with more technology, humanized antibodies (95% human) were developed.

to treat degenerative diseases (rheumatoid arthritis, multiple sclerosis, Alzheimer's) and cancer (multiple myeloma, leukemia), and they have been applied with some success for the treatment of diseases that were previously incurable. Much of this antibody research has been processed by Estudio Colmenares as invention patents and protection has been obtained for such antibody inventions.

Innovative research in the field of

biotechnology and health has given relevance to the patent of invention for antibodies, with it being necessary to identify and extract general and specific criteria on the clarity and inventive level to successfully obtain patent protection of the antibody inventions.

Currently, research is being carried out with monoclonal antibodies, which have high specificity and homogeneity to develop vaccines against the coronavirus, responsible for the global pandemic. In some countries, institutions have already applied for patents to protect inventions of antibodies to inhibit, prevent or neutralize the COVID-19 virus, such as: China, Korea, United States of America, England, etc.; in Peru, Pfizer has requested, on November 12, 2021, a patent of invention entitled "COMPOUNDS AND METHODS FOR THE TREATMENT OF COVID-19" (FILE 001897-2021 / DIN) to inhibit or prevent the replication of SARS-CoV-2.

The different inventions with monoclonal antibodies, which are requested as invention patents, go through a patentability examination, where an individual skilled in the art assesses whether the claims and the specification are clear and whether there is an inventive level.

The criterion of clarity refers to the wording of the claims, which must be clear because they define the scope of protection and, therefore, from just reading the text of the claims, the examiner must understand the problem and the solution of the invention. The specification must also be clear in order to explain the invention and avoid confusion and errors. If a claim is very technical, the specification must develop an explanation that allows the invention to be understood. Lack of clarity can be alleged for various reasons: inconsistency of the specification and claims, use of imprecise terms, use of ambiguous terms, definition of the product by its function and not by its characteristics, but also due to other reasons such as defining the invention by the result to be achieved.

If the invention has drafting problems which fail to allow understanding of the solution of the technical problem, the application will not meet the clarity requirements in the claims according to Article 30 of Decision 486 and in the specification according to Article 28 of the same law.

The inventive level refers to the analysis carried out by the examiner, who takes the knowledge of the state of the art as a starting point and then assesses whether the structure of the invention is obvious with respect to the teachings of the state of the art, that is, if the person skilled in the field of the invention would not have reached that result from the technical knowledge that existed at that time.

If the invention does not have a great qualitative advance or a surprising effect on the solution of the problem, for the technician of the matter it would not have inventive level according to article 18 of Decision 486.

The applicant for an antibody patent relating to COVID-19, after identifying what the problem is and explaining what the proposed solution is, must prove that a human monoclonal antibody achieves the surprising technical effect of neutralizing COVID-19, so that inventive height can be recognized.

Patents of monoclonal antibodies of various origins (Korea, China, United States of America, England and others) have been granted after the competent authority in patents of each of the countries has recognized the clarity and inventiveness of the antibody invention with regard to the effect of the neutralizing activity of the antibody to prevent and treat the respiratory infection of the Mers-cov virus.



Contact

Colmenares & Asociados

Bolognesi 125, Floor 9,
Miraflores, Lima 18, Peru


Tel: +(511) 444 - 4326

Fax: +(511) 444 - 4102

email: email@colmenares.com.pe

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JORDAN (Amman)
Suite 7, 2nd Floor
Chicago Building, Al Abdali
Tel : +962-6-5683088
Fax : +962-6-5683089
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LEBANON
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Buhairah Corniche, Sharjah
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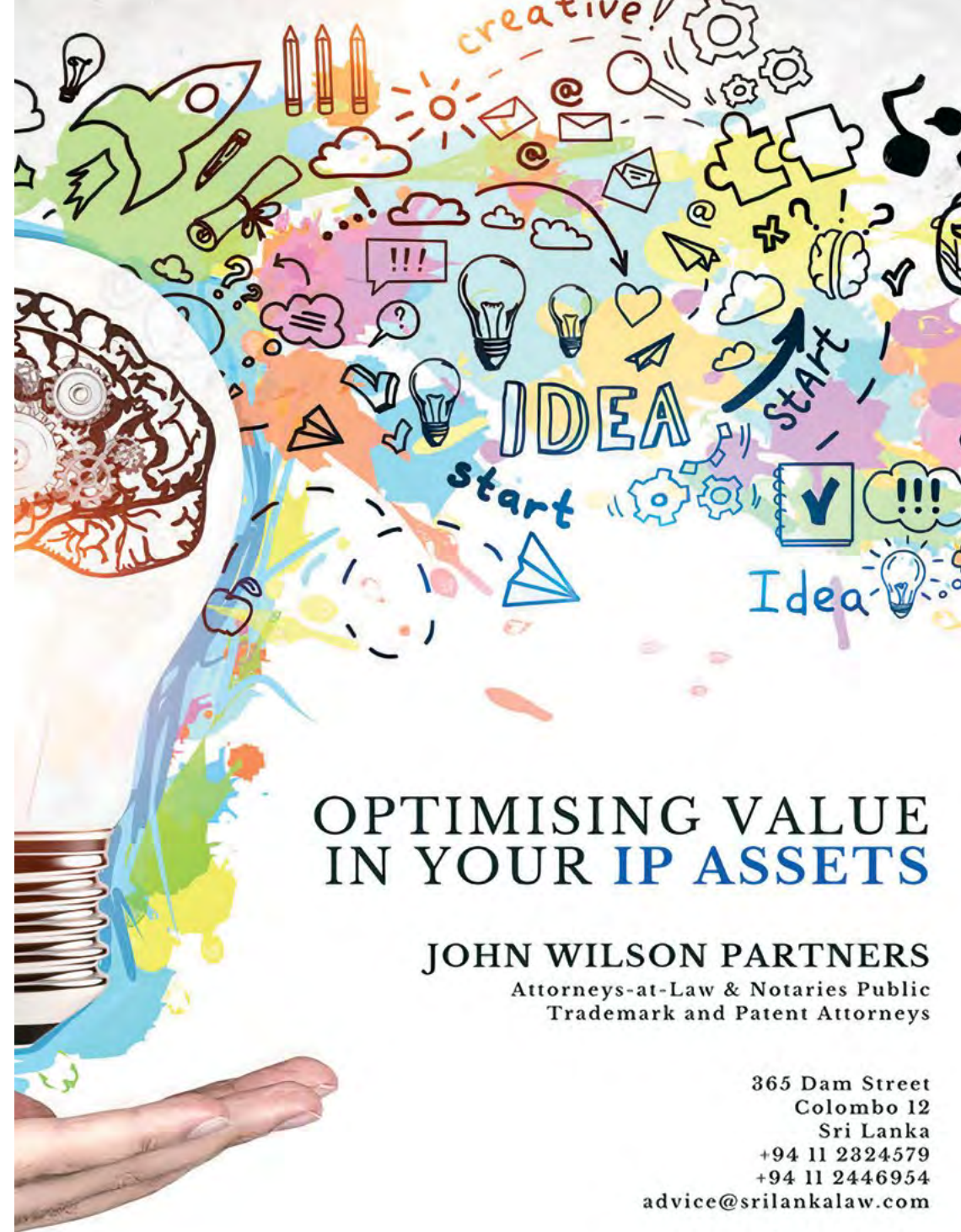
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Introduction of the 2021 newly amended program for hearing patent invalidation in Taiwan

Yu-Li Tsai, Partner & Patent Attorney at Deep & Far Attorneys-at-Law, summarises the changes for patent invalidation hearings in Taiwan to aid you in your preparation.



I. Purpose

On February 8, 2021, the Taiwan Intellectual Property Office (TIPO) announced the newly amended program for hearing patent invalidation. The purpose of the hearing is to provide an opportunity for the parties of the invalidation in dispute to state opinions about the cause, evidence and legal opinions on the issues and interrogate with each other. This proceeding can help the examiner of the invalidation to consider all the facts, evidence, and results of the interrogation, and find the facts based on rules of logic and experience and make a decision through their free evaluation.

II. Term Definition

- (1) "Parties" refer to the patentee of a patent in dispute and the invalidation requester in a patent invalidation case.
- (2) "Interested parties" refer to any of the following other than the parties in a patent invalidation case: (1) The party in a lawsuit involving a patent in dispute. (2) The licensee or pledgee of a patent in dispute. (3) The party

whose rights or interests are compromised by the existence of the right to a patent in dispute.

- (3) "Agent" refers to the patent attorney, patent agent or lawyer appointed by the aforementioned parties or interested parties involved in a patent invalidation case.
- (4) "Presiding official" refers to a person appointed from among the examiners of handling invalidation of a patent in dispute.

III. Holding a Hearing

- (1) If either party in a patent invalidation case finds it necessary to conduct mutual inquires with the other party or to question witnesses or expert witnesses, they shall submit a request containing specific reasons for holding a hearing. The hearing may be held if TIPO deems it necessary.
- (2) TIPO may hold a hearing *ex officio* if it deems it necessary.
- (3) To facilitate the unobstructed progression of the hearing, TIPO may hold a preliminary hearing on account of case complexity and notify the parties to be prepared for the following: (1) Discuss and decide on the process of the hearing; (2) Ascertain the admissibility of relevant documents and evidence; (3) Define the issues; and (4) Other matters concerning the hearing.
- (4) TIPO shall notify witnesses or expert witnesses prior to the hearing if it deems the parties' request of questioning them at the hearing necessary
- (5) The parties wishing to change the date shall do so 10 days prior to the

set date and file a request containing specific reasons. If the reasons are deemed justifiable, TIPO shall allow such request and notify the parties of the change. If not, TIPO shall notify the party filing the request that the hearing will be held as scheduled.



This proceeding can help the examiner of the invalidation to consider all the facts.



- (6) The parties considering making the hearing proceedings open to the public is likely to be against the public interest, or to cause material harm to their interests, may file a request containing specific reasons thereof within 10 days following the receipt of the hearing notice. If the reasons are deemed justifiable, TIPO shall allow such request and notify the parties that the proceeding will not be held in public. If not, TIPO shall notify the party filing the request that the proceeding will still be held in public.
- (7) The interested parties wishing to attend the hearing should file a request with relevant supporting documents within 20 days after the hearing is publicized.
- (8) TIPO may *ex officio* reschedule or cancel a hearing. Where there is a change of date, TIPO shall reissue a notice and have it published.





IV. Reply of not Holding the Hearing

If TIPO considers the reasons for requesting a hearing to be obviously unrelated to the case or the merits of the case to be sufficiently clear, it shall then notify the requester(s) or state the reasons in its written decision for not holding the hearing.

V. Hearing proceeding

- (1) The hearing shall only be attended by examiners, the parties, or their agents, as well as witnesses and expert witnesses who TIPO deems necessary to attend. However, the interested parties with approved requests for attendance and the general public allowed to sit in may also attend the hearing. If these parties are juristic persons, they may appoint their employees to attend the hearing; agents may appoint those who have expertise in patent invalidation to attend the hearing.
- (2) The hearing proceeding in principle shall be held in public. However, the

presiding official may decide that the proceeding not be made entirely or partially public if the parties have filed a request prior to the hearing or if the parties make a statement in the hearing proceeding that the documents or evidence being open to the public could cause material harm to their interests.

- (3) A hearing is conducted by a panel comprised of three or more examiners. When a hearing is ongoing, all of the examiners shall be present.
- (4) During the hearing, if the requester wishes to withdraw the invalidation case, the presiding official may terminate the hearing pursuant to the provisions as prescribed in point 10 of the Program.
- (5) The presiding official considering the parties to have sufficiently carried out the mutual inquiries, shall then announce the end of the hearing

immediately after the parties respectively make their closing statements. If the inquiries have not been sufficiently carried out, a decision on the date and venue of a subsequent hearing shall then be made prior to the end of the date of the current hearing.

- (6) During the hearing, the parties may forgo parts of the issues or grounds they alleged. The forgone issues and grounds shall be recorded in the hearing minutes without examination.

“During the hearing, the parties may forgo parts of the issues or grounds they alleged.”

- (7) The presiding official shall inform the parties that, pursuant to Article 109 of the Administrative Procedure Act (“[i]n the case of dissatisfaction having been raised against the administrative disposition rendered pursuant to the preceding article [note: i.e., hearing procedure], no administrative appeal or other prior proceedings is required for the purpose of institution of an administrative remedial proceeding in relation thereto”), they may bypass the administrative appeal procedure, and proceed directly to filing and administrative lawsuit if they are dissatisfied with the administrative decision rendered based upon the hearing

VI. Suspending the Hearing Procedure

- (1) The presiding official may, by request or *ex officio*, terminate the hearing proceeding given the requester’s willingness to withdraw the invalidation case or that the requester’s presentation of new facts have impact on the decisions of the invalidation case.
- (2) Article 109 of Administrative Procedure Law shall not apply to a decision on invalidation where the corresponding hearing proceeding is terminated.

Contact

DEEP & FAR Attorneys-at-Law

13th Fl., No. 27, Sec.3,
Chung San N. Rd.,
Taipei 104, Taiwan, R.O.C.

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FAX: +92-42-36285585, 36285586, 36285587

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Websites: www.utmps.com and www.unitedip.com



DUBAI (UAE)
Suites 401-402, Al-Hawai Tower
Sheikh Zayed Road, Dubai
Tel : +971-4-3437 544
Fax: +971-4-3437 546
Email: Dubai@UnitedTm.com



JORDAN (Amman)
Suite 7, 2nd Floor
Chicago Building, Al Abdali
Tel : +962-6-5683088
Fax : +962-6-5683089
Email: Jordan@UnitedTm.com



LEBANON
6th Floor, Burj Al-Ghazal Bldg.,
Tabaris, Beirut, Lebanon
Tel : +961-1-21 5373
Fax: +961-1-21 5374
Email: Lebanon@UnitedTm.com



MOROCCO
58, Rue Ibn Batouta,
PPT. No. 4, 1 er Estage,
Casablanca, Morocco
Tel : +212-522206096
Email: Morocco@UnitedTm.com



OMAN
Suite No. 702, 7th Floor
Oman Commercial Centre, Ruwi
Tel : +968-24-787555, 704788
Fax: +968-24-794447
Email: Oman@UnitedTm.com



QATAR
Villa # 40, Al Amir Street
Al Mirgap Area, Doha, Qatar
Tel : +974-444 3083, 444 3093
Fax : +974-444 7311
Email: Qatar@UnitedTm.com



SAUDI ARABIA
Behind Maktaba Al Shawwaf
30th Street-Olaya, Riyadh 11444
Tel : +966 -11- 4616157, 4655477
Fax: +966 -11- 4616156, 4622134
Email: SaudiArabia@UnitedTm.com



SHARJAH (UAE)
Suite 203, Al Buhairah Building
Buhairah Corniche, Sharjah
Tel : +971-6-5722742
Fax : +971-6-5722741
Email: UAE@UnitedTm.com



SRI LANKA
105, Hunupitiya Lake Road,
Colombo 02,
Sri Lanka.
Tel : +94 11 4322790-1
Email: srilanka@UnitedTm.com



SUDAN (Khartoum)
Flat No.1, 3rd Floor, Al Hurriya St.
Shaik Al Deen Brothers Bldg.
Tel : +249-183-740634
Fax : +249-183-796031
Email: sudan@UnitedTm.com



TANZANIA
Shauri Moyo Area,
Pugu Road
Dar-Es-Salaam
Tel : +255-222862900
Email: Tanzania@UnitedTm.com



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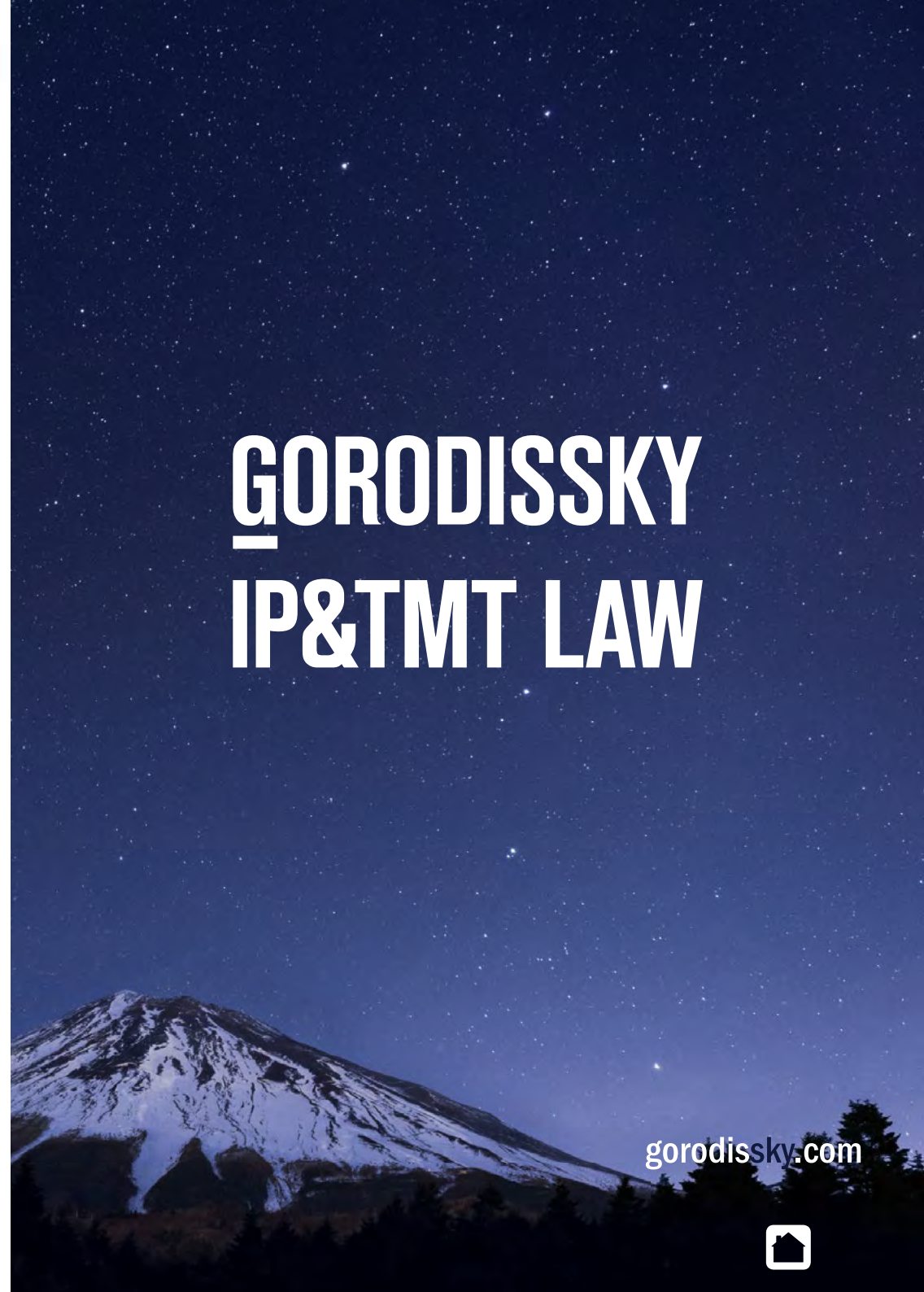
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Race to the Metaverse: opportunities and risks for brands and IP rights

WebTMS Ltd evaluate the growth of the Metaverse and what it will mean for the emergence of brands within.

Until the company formerly known as Facebook announced a change of name in mid-October, public awareness of the Metaverse concept was relatively low. The new moniker led to many questioning the rationale behind the name, while some businesses *sat up and took notice*¹ as one of the world's most influential companies appeared to be trespassing on their registered intellectual property rights

Facebook's brand transition to Meta isn't the only example of recent metaverse-related activity. In early November news broke that Nike has *applied to register*² its word mark, logo and "Just Do It®" slogan as trademarks in Classes 9, 35 and 41, specifically for downloadable virtual goods "for use online and in online virtual worlds". At the same time, the company began recruiting for virtual material designers who will be tasked with creating products solely for virtual consumption and, as the company puts it: "redefining our digital world, ushering us into the metaverse".

Unsurprisingly, others are following Meta and Nike's lead, and attempting to get ahead with

applications for metaverse-related IP rights. A quick look at trademark journals in the UK, US, Germany and France sees a marked uptick in *applications featuring the word "meta"*³ and "metaverse" across a range of classes.

So, what is the metaverse and why are brands and entrepreneurs getting excited about becoming part of it?

What is the metaverse?

The term metaverse was coined by science fiction *novelist Neal Stephenson*⁴ in his 1992 novel "Snow Crash". In it, he describes how "humans, as avatars, interact with each other and software agents, in a three-dimensional virtual space that uses the metaphor of the real world".

However, as the *technology to make this vision reality has emerged*⁵, the scale and

scope of metaverse potential has exploded. In his excellent metaverse primer, essayist and venture capital investor *Matthew Ball* gives his best-attempt definition as:

"The Metaverse is a massively scaled and interoperable network of real-time rendered 3D virtual worlds which can be experienced synchronously and persistently by an effectively unlimited number of users with an individual sense of presence, and with continuity of data, such as identity, history, entitlements, objects, communications, and payments."

Ball also describes the metaverse as a "quasi-successor state to the mobile internet", building upon and iteratively advancing what currently exists. It incorporates Virtual Reality (VR), Augmented Reality (AR), Internet of Things (IoT) and digital twins (digital replications of real-world constructs) and integrates the digital and



¹ <https://www.tnz.com/2021/11/01/meta-trademark-applicants-will-sell-to-mark-zuckerberg-for-20m/>

² https://tsdr.uspto.gov/#caseNumber=97095855&caseType=SERIAL_NO&searchType=statusSearch

³ <https://trademarks.ipo.gov.uk/ipo-tmcase/page/Results/1/UK00003715651>

⁴ <https://en.wikipedia.org/wiki/Metaverse>

⁵ <https://en.wikipedia.org/wiki/Metaverse>



physical worlds, with continuity between them.

A basic example of this continuity and blurring of digital and physical worlds might be someone walking down the street wearing *virtual clothes*⁶ that are visible to others who are wearing AR glasses (or even *smart contact lenses*⁷). Or, more basic still, think of Pokemon Go where players can view characters set in the real-world landscape when looking through their smart phone camera.



At the same time, the company began recruiting for virtual material designers who will be tasked with creating products solely for virtual consumption.



Much of the technology needed to realise the full vision of the metaverse does not yet exist – such as the ability to sustain millions of user realities synchronously in real-time – but some of the tools that will be part of it, such as AR and VR, are beginning to become mainstream.

Blockchain, non-fungible tokens and cryptocurrency also play key roles, as the metaverse will be a functioning economy. The facility for work, payment, ownership, and creativity are intrinsic to the metaverse. It will be possible to generate value that is recognised by and transferable to others. And this is where brands get interested.

That's because in the metaverse, it will be possible to buy digital assets and transfer them between all of its experience components. Matthew Ball explains: "your Counter-Strike gun skin, for example, could also be used to decorate a gun in Fortnite, or be gifted to a friend on/through Facebook".

Brands in the metaverse: my metaverse wardrobe is Balenciaga

Brands have already undertaken significant experiments in virtual worlds. Marvel has integrated its characters and IP into Fortnite and *O2 worked with EPIC Games*⁸ to recreate the O2 arena in Fortnite Creative as a venue for virtual concerts.

High fashion brand *Balenciaga*⁹ has aimed to bridge digital/physical spaces with a Fortnite collaboration that sees Balenciaga designs available for virtual purchase and incentives for players to share images of their avatars in Balenciaga.

Partnerships are a common feature in Roblox, too. This phenomenally successful gaming platform has more than 150 million monthly users and in the first nine months of 2020 *users spent \$1.2billion on in-game currency*¹⁰.

While the examples above centre on gaming platforms, it is important to remember that individual virtual worlds do not constitute the metaverse, rather it is the interoperability and

continuity between multiple digital experiences, some of which are entertainment-based but could just as easily be educational, retail, medical – or any number of other applications.

Challenges for brands in the metaverse

Clearly, brands are seeing the opportunities inherent in the metaverse. But there are some interesting questions to be considered around how brands protect themselves in the metaverse and offer their genuine products and services to consumers within it. It would be too much to hope that the metaverse will be free from counterfeiting, passing off and copycats, and this will require subtle handling, especially because user-generated content is currently a big feature of many virtual worlds.



Some of the tools that will be part of it, such as AR and VR, are beginning to become mainstream.



Monitoring for IP infringement across the multiple components of the metaverse will be a considerable challenge. Some commentators

have suggested that operators of different metaverse components should *establish strategies for protecting users' IP*¹¹, in a similar way to how YouTube, Amazon and eBay work to protect rights holders from illicit activity on their platforms.

Certainly, users are likely to have to agree terms and conditions of use for each metaverse entity they engage with. This will go some way to transferring legal jurisdictions across the boundary from physical to digital worlds and allow for the functioning of IP laws.

As a first step, *IP commentators are advising that brand owners register their key assets as downloadable virtual goods*¹² for use in virtual environments, as Nike has done. Over the longer term, the question may arise whether new virtual product classifications are needed, and indeed, the wider issue of regulation and legal jurisdiction in the metaverse will need to be explored.

It is likely that new brands will emerge entirely within the metaverse, taking advantage of low set-up costs and potentially unlimited global reach. The question of which jurisdictions should be prioritised for rights applications for such brands could become an issue, as the metaverse is not necessarily geographically relevant.

For now, it is a case of watching and waiting as this fascinating new environment emerges.

Contact

WebTMS Ltd
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⁶ <https://www.thefabricant.com/>

⁷ <https://www.mojo.vision/mojo-lens>

⁸ <https://videoweek.com/2021/07/21/fornites-creative-mode-is-emerging-as-brands-first-step-into-the-metaverse/>

⁹ <https://www.vogue.com/article/balenciaga-fortnite-partnership>

¹⁰ <https://digiday.com/marketing/how-roblox-is-paving-the-way-for-a-new-era-of-branded-gaming/>

¹¹ <https://www.thedrums.com/news/2021/06/04/how-do-brands-protect-themselves-the-wild-and-untamed-metaverse>

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scohen@lombardip.com

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