Issue 3 2024

The Trademark Lawyer

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Echoes of ethics: protecting voices and likeness in the era of AI

Launch interactive document

Ian DiBernardo, Partner and Chair of the Intellectual Property Litigation Practice Group, and Marcus Strong, Associate, of Brown Rudnick evaluate the infringement of voice and likeness in AI-generated works by reflecting on the recent case between Scarlett Johansson and OpenAI and the *Lovo* case.

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CTC Legal Media

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CTC Legal Media

Editor's welcome

Considering the ever-evolving landscape of technology and creativity, this issue delves into the intersections of these developments and the role of IP. Our cover story explores the complex issues surrounding the use of AI-generated works and the infringement of voice and likeness, drawing from recent high-profile cases.

Our guest interview this issue is with Danny Marti, Head of Public Affairs and Global Policy at Tencent, who offers valuable perspectives on IP protection in the dynamic industries of entertainment and gaming. Danny emphasizes Tencent's use of data analytics and interception tools to prevent infringement, drilling down to the company's core values, their extensive IP portfolio, and their strategies for protecting innovation.

> "The goals and initiatives aimed at fostering innovation."

Additionally, during a conversation with Steph Dales, we explored the UKIPO's refreshed strategy, providing an exclusive look at the goals and initiatives aimed at fostering innovation and creativity in the UK. Then we examine new changes in trademark assignment in China and the resulting impact on bad-faith filings; the impact AI-based tools are having on US trademark practice; the approaching round of dotBrand registrations and the potential impact on brand protection; and questions of AI authorship and risk management.

Our *Women in IP Leadership* segment features Laetitia d'Hanens, Partner at Gusmão & Labrunie, and Aurélia Marie, Of Counsel at Beau de Loménie.

Plus find our Award Winning Law Firm Rankings for Asia Pacific.

Enjoy the issue.

Faye Waterford, Editor

Mission statement

The Trademark Lawyer educates and informs professionals working in the industry by disseminating and expanding knowledge globally. It features 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.trademarklawyermagazine.com*

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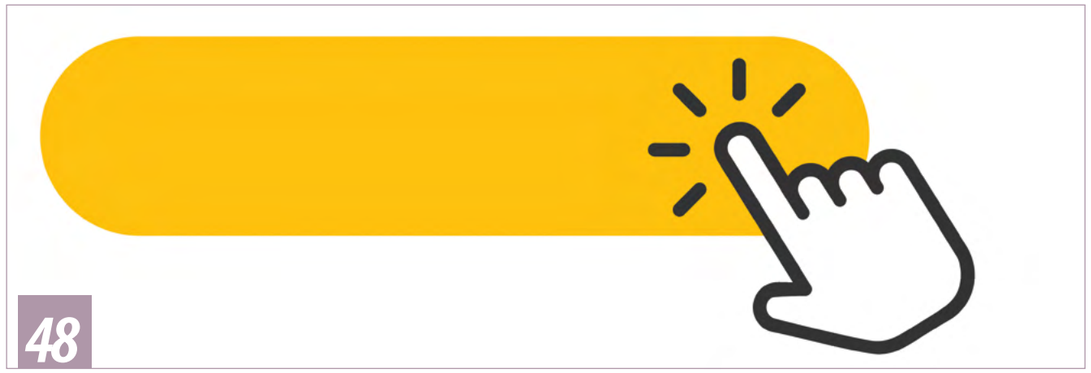


MEET THE EDITORIAL BOARD

Lindsey Annable - Brand Protection Manager, Potter Clarkson. UK

Lindsey is responsible for the management and development of the *iProvidence* service. She joined the company in 2020 with a background in intellectual property and brand protection. Lindsey has extensive experience in protecting brands across online marketplaces, domains and websites, social media, app stores, and NFT marketplaces.

Francesco Bonini - Studio Bonini. Italy

Francesco has 25 years of experience in Italian and EU trademark and design prosecution. He has had successful cases in oppositions, appeals, and cancellations both before the EUIPO and the Italian PTO. Francesco has his office in Vicenza, in the North-East of Italy. It has helped and helps several companies of the Venetian area to protect their IP rights, dealing with IP prosecution.

Enrique A. Diaz - Senior Partner, Goodrich Riquelme. Mexico

IP Latin American expert Enrique joined the firm in 1998, finished law school in 2001, and by 2010 he became the youngest lawyer to have ever been made senior partner in the firm's history. He is currently a foreign expert on Latin-American intellectual property, managing the prosecution of over 3500 trademarks and more than 1000 patents per year.

Catherine Hillaert-Prevost - Expert IP Strategist, Consultant & Advisor. Switzerland

Catherine has 35+ years' expertise leading IP strategies & portfolios in 160+ jurisdictions, and worked as French INPI Examiner, IP Counsel at law firms, Senior IP Counsel at major international companies Rhône-Poulenc, Rhodia, Nestlé, prior to being Global Head of IP & Anti-counterfeiting at Stoli Group for 12+ years. She now advises on IP protection, litigation, enforcement.

Misum Hossain – Founder & Head, Lincoln Legal Chambers. India

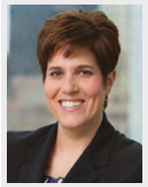
Misum has 18 years' trademark experience in registrations, dispute resolution and licensing. Misum, an alumnus of the University of London LLM programme, has advised clients for IP India, UKIPO, EUIPO, USPTO, IP AUS & CIPO. He is also currently Hon. VP at an academic non-profit. He has designed trademark courses, chaired seminars clocking 6K+ speaking hours, and trained 2.5K+ lawyers.

Gang HU - Deputy General Manager, China Patent Agent (H.K.) Ltd. China

Gang is a senior Chinese IP specialist and practitioner. He is good at solving difficult and complicated trademark litigation and non-litigation cases. Some of the influential cases he handled were widely reported on by media, and recent IP litigation cases represented by him were awarded by the Supreme People's Court as the annual guidance cases.

Stacey C. Kalamaras – Founding Partner, Kalamaras Law Office, LLC. US

Stacey is the founding partner of Kalamaras Law Office LLC, an IP boutique providing full-service brand protection services to SMEs. Stacey spent most of her career in Big Law representing well-known brands in over 150 countries. Prior to law school, she worked as a marketing and advertising executive. Stacey is a devoted trainer of other lawyers, having trained more than 6,500 on brand protection topics since 2018.

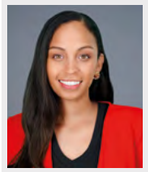


Barbara Leitao-Johnson – Associate General Counsel, Intellectual Property, IABBB. Latin America/USA

Barbara is a US based Brazilian Trademark Lawyer, having worked in several large Brazilian IP offices. With an LL.M. from George Washington University, DC, and after working at the IP protection areas of Facebook Reality Labs and Corsearch, she is currently taking the position of Associate General Counsel for IP at the International Association of Better Business Bureaus.

Rachael Lodge Corrie – Partner, FOGA DALEY. Jamaica

Rachael Lodge Corrie is a Partner of Foga Daley with a passion for Intellectual Property law, focused on brand portfolio management, trademark prosecution, non-routine trademark matters and advertising law. She is an active member of the Jamaican Bar Association, INTA's Young Practitioners Committee and a member of the Women's IP Today Steering Committee.



Yasir Masood – IP Manager, Rouse & Co. Dubai

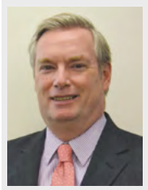
An experienced German legal advisor specializing in IPRs, particularly trademarks, Yasir is dedicated to serving a diverse clientele in the UAE and MENA region. With an in-depth understanding of IP laws and procedures in the UAE, GCC, Europe, and US, his expertise encompasses filing, enforcement, and drafting. As an active member of INTA and AIJA, Yasir is committed to staying at the forefront of IP.

Chris Mitchell – Member, Dickinson Wright. US

Chris Mitchell, a member of Dickinson Wright, has practiced exclusively in the area of intellectual property law for over 25 years, handling trademark matters - from procurement to licensing and litigation - for clients throughout the world.

Santiago R. O'Conor - Managing Partner, O'Conor & Power. Argentina

Santiago is an attorney and trademark and patent agent advising domestic and foreign companies on local and international IP law in Argentina and across Latin America with extensive experience. He is the managing partner at O'Conor & Power in Buenos Aires, Argentina.

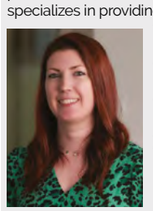


Peter Sloane - Partner & Co-Chair of the Trademark and Copyright Practice, Leason Ellis LLP. US

Peter Sloane is Partner and Co-Chair of the Trademark and Copyright Practice at Leason Ellis LLP, an IP boutique law firm in White Plains, New York. His practice includes trademark prosecution, U.S. and international, and federal court litigation.

Charlotte Wilding – Partner, Keltie LLP. UK

Charlotte Wilding is a partner of the trademark practice at Keltie LLP. An expert in her field, she specializes in providing strategic IP advice, as well as the prosecution, maintenance, and enforcement of IP rights. Charlotte is also an active member of the International Trademark Association's Publication Committee.



Beata Wojtkowska – Partner, Kulikowska & Kulikowski. Poland

Beata is a practice-oriented IP specialist, focused on Client's needs. Beata's key areas of activity are trademarks, trade names, geographical indications, combating unfair competition, and managing disputes.

Echoes of ethics: protecting voices and likeness in the era of AI

Ian DiBernardo, Partner and Chair of the Intellectual Property Litigation Practice Group, and Marcus Strong, Associate, of Brown Rudnick evaluate the infringement of voice and likeness in AI-generated works by reflecting on the recent case between Scarlett Johansson and OpenAI and the *Lovo* case.

Résumés

Ian DiBernardo is a Partner and Chair of the Intellectual Property Litigation Practice Group. He is also Co-Practice Group Leader of the US Technology group. His dual leadership roles reflect his decades of experience counseling clients throughout the entire lifecycle of IP, from creating worldwide patent portfolios, to bringing products to market, to licensing IP and technology, to litigating bet-the-company cases. Ian counsels IP owners in creating, monetizing, asserting, and defending their IP assets, and investors in sourcing, evaluating, and executing on various IP-centric investments.
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Marcus Strong is an associate in the Firm's Litigation & Arbitration Practice Group. As a general litigator, he focuses on contractual disputes involving large and small businesses, state criminal matters, civil RICO claims, trademark infringement suits, trade secret misappropriation, shareholder derivative actions, and securities fraud lawsuits.
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Ian DiBernardo

Marcus Strong

While AI companies, media providers, and individuals remain understandably concerned about copyright litigation over generative AI, novel disputes concerning AI and intellectual property law are beginning to emerge. One area that has seen significant news coverage and even litigation recently is the rise of AI voice products and the potential infringement of individuals' voices or likeness. It is now almost commonplace to see unauthorized "soundalike" music of Drake and Kendrick Lamar or facsimile performances of deceased performers like George Carlin appear online. More recently, however, voice products by generative AI companies such as OpenAI have raised questions about how these voices are created and whether they may be infringing on a lesser-known intellectual property right: the right of publicity.

As generative AI product offerings advance, it will be useful to understand the claims being brought, other existing common law and statutory mechanisms to assert, and any proposed legislation that seeks to address the same issues.

Scarlett Johansson and OpenAI

A recent example involving Scarlett Johansson and OpenAI highlights the risk of using AI to replicate existing voices. After OpenAI debuted its ChatGPT-4o voice assistant dubbed "Sky" (one of five voice assistant options), many news outlets reported the similarities to Scarlett Johansson and her character, a virtual voice assistant, in the well-known Spike Jonez movie *Her*. Soon, the actress herself released a statement detailing her account OpenAI's CEO multiple offers to her to voice the ChatGPT-4o, her refusals, and the subsequent release of the "Sky" voice. And recently, the House oversight subcommittee on cybersecurity invited Ms. Johansson to testify regarding her allegations that ChatGPT-4o sounds similar to her own voice.

Open AI has since removed the Sky voice option from ChatGPT-4o, but questions still remain about whether their actions would constitute infringement, what claims, if any, could have been brought by Ms. Johansson, and what changes, if any, may be needed to protect individual rights. OpenAI has stated publicly that the "Sky" voice was developed independently based on the voice of another actress using her natural speaking voice and was one of five voices narrowed down from over 400 submissions. However, OpenAI's CEO Sam Altman himself made the connection between the ChatGPT-4o voice assistant and the movie *Her* clear, by both tweeting the single word "her" on X after the launch event for ChatGPT-4o and publicly voicing his love for the film. Researchers from Arizona State University have also analyzed the similarity of the "Sky" voice to other popular actresses, and determined that Ms. Johansson's voice is more similar to "Sky" than 98% of the other actresses demoed. However, their research indicated that Ms. Johansson was not always the top hit in the various AI models, and other popular actresses were often rated more similar to the AI voice than Ms. Johansson.

Though none of the above facts are necessarily dispositive, they could potentially support claims of infringement on Ms. Johannson's unique intellectual property: her likeness based on her voice. Whereas copyright claims are specific to expression in existing works, a person may assert claims based on infringement of their likeness via right of publicity laws. These laws vary by state and may depend on whether the person is living, deceased, or a marketable presence. Generally, however, they provide for damages based on unauthorized uses of a person's name, voice, signature, photograph, or likeness.

California, where Ms. Johansson spends a lot of time working, has one of the strongest right of publicity laws, and allows civil claims for any unauthorized commercial use of a person's likeness under both common law and statute. Cal. Civ. Code § 3344; *Comedy III Prods. v. Saderup*, 21 P.3d 797 (Cal. 2001). California also provides for a post-mortem right, allowing for causes of action for up to 70 years after a person's death. Cal. Civ. Code § 3344.1. New York, where Ms. Johansson famously resides, has a similar right of publicity law, and allows civil claims for any unauthorized use of a person's name, portrait, picture, or voice for advertising or trade purposes. N.Y. Civ. Rights Law §§ 50, 51. New York does not have a common law right of publicity, but the state does have a statutory post-mortem right that allows for causes of action for up to 40 years after a person's death. N.Y. Civ. Rights Law § 50-F.

While OpenAI and Scarlett Johansson may have reached an agreement behind closed doors, the above statutes likely demonstrate some of the potential claims that could have been at issue. That said, many questions remain, such as what constitutes a distinguishable voice, whether approximation is equivalent to unauthorized

use, and what evidence may be persuasive in proving unauthorized approximation and use.

The Lovo class action

While neither Scarlett Johansson nor any other individual has filed suit against OpenAI for infringement of their voice to date, the recently filed *Lovo* class action lawsuit presents an active example of the types of claims that may be brought against companies selling AI voice products.

Filed in May in the Southern District of New York, the lawsuit alleges that Lovo, an AI voice generator startup, used radio ad job postings and other fraudulent means to obtain several voice actors' recordings and create millions of voiceover productions without permission or compensation. For a monthly fee, users of Lovo's software can input text and create voice-overs in natural language for marketing materials and videos. The two lead plaintiffs, both voice actors, allege that they discovered their voices being used as narration in YouTube videos, podcasts, and in Lovo's marketing and investor pitch materials.

Lovo claims to compensate voice actors for their vocal data and in some cases provide revenue share. However, the lead plaintiffs allege that they were paid $1,200 and $400 respectively for reading radio ad scripts, which they were told would only be used internally or solely for academic purposes. Now they seek to bring a class action on behalf of similarly situated voice actors whose voices may have been misappropriated by Lovo, depriving them of their proper value and potential business opportunities. Notably, as SAG-AFTRA members, they also claim potential damages based on interference with their union agreements, which require the voice actors to abide by union rules in any voiceover work.

In their complaint, the plaintiffs assert several claims: violation of New York's right of publicity laws, N.Y. Civ. Rights Law §§ 50, 51; violations of the New York Deceptive Business Practices Act, N.Y. GBL § 349; false advertising in violation of the New York False Advertising Act, N.Y. GBL § 350; unfair competition and false affiliation in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a); false advertising in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a); common law unjust enrichment; common law tortious interference with the plaintiffs' business relationship with SAG-AFTRA; and common law fraud.

The claims in the Lovo class action demonstrate the breadth of available claims that even a narrow class may be able to assert against companies selling AI voice products. While framed around a right of publicity, the Lovo case further implicates issues of false advertising, fraud, and deceptive business practices that could easily be applicable in other jurisdictions.

> **"In contrast with some state statutes, neither bill requires that a claimant prove the commercial value of their likeness, which would allow virtually anyone to bring a potential cause of action."**

Proposed legislation

As disputes unfold in the media and in the courtroom, some officials have sought to address public concern over unauthorized AI voice and likeness replicas via proposed legislation that would create a federal right of publicity for digital depictions of a person's voice or likeness.

The first bill proposed by a bipartisan group of senators in October 2023 is the Nurture Originals, Foster Art, and Keep Entertainment Safe Act (the "NO FAKES Act"). In addition to creating a federal right of publicity for digital depictions of a person's likeness, the proposed bill would define the right to create digital replicas as transferable and descendible rights, establish rights for licensing the digital replication right, and allow for civil claims against infringement of that right.

Similarly, a bipartisan group of congressmen introduced the No Artificial Intelligence Fake Replicas and Unauthorized Duplications Act (the "NO AI FRAUD Act") in January 2024. This bill similarly defines individual rights to replicate their own likeness and prohibits unauthorized use of any "personalized cloning service" that produces digital replicas of an individual's likeness. However, the NO AI FRAUD Act broadly defines the scope of both a likeness and the technology to infringe that likeness, as a "personalized cloning service" is defined as any "algorithm, software, tool, or other technology, service, or device the primary purpose or function of which is to produce one or more digital voice replicas or digital depictions of particular, identified individuals."

While individuals and rightsholders may no doubt benefit from the proposed legislation in some form, they both have been criticized for their limitations and conflict with preexisting law. First, neither proposed bill seeks to preempt state law, creating potential conflicts with existing statutes and common law. In contrast with some state statutes, neither bill requires that a claimant prove the commercial value of their likeness, which would allow virtually anyone to bring a potential cause of action. Similarly, each proposed bill would allow for a statutory damages amount per violation (or actual damages, if greater). In addition, neither proposed bill references any safe harbor for intermediaries similar to Section 230 of the Communications Decency Act. Rather, the bills appear to target the AI model companies themselves to the extent they participate in the publication, distribution, or transmission of an unauthorized digital replica. Moreover, each bill attempts to address First Amendment concerns by including general First Amendment exceptions, but do not contemplate the broader First Amendment protection and existing frameworks established in case law.

Though both bills are far from being voted on, they are examples of the potential future legal framework and the avenues that any citizen may one day have to bring claims.

Conclusion

Overall, as OpenAI, Lovo, and others' AI product offering advances, both individual rightsholders and companies creating and using AI products should take heed of ongoing litigation and the types of claims brought in state and federal courts. It will be just as important to stay aware of the existing and proposed mechanisms to protect individuals' rights of publicity, as the law, though slow to change, may soon change with the technology itself.

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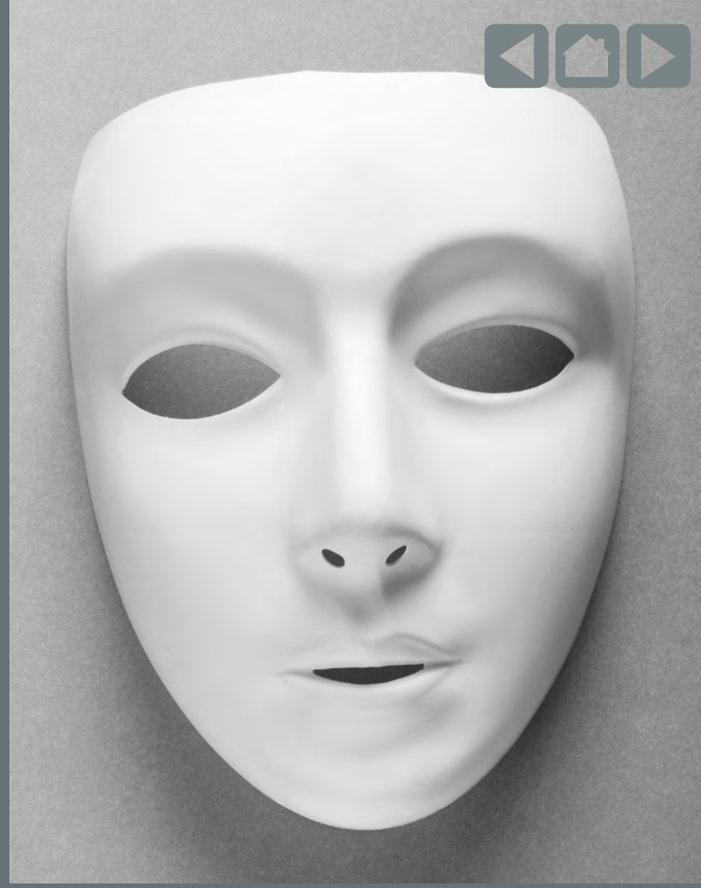

An interview with Danny Marti, Head of Public Affairs and Global Policy at Tencent

Danny sits down with *The Trademark Lawyer* to discuss his extensive experience in the IP field, Tencent's core values and their continued commitment to the protection of IP, and advice for the protection of IP in the dynamic and creative industries of entertainment and gaming.

Can you start by introducing yourself, Tencent, and your role at the company?
I am the Head of Public Affairs and Global Policy at Tencent and serve as a member of Tencent America's Management Committee and as the Executive Sponsor of the Diversity, Equity and Inclusion Council. In this public affairs role, I lead a global team that supports Tencent businesses in their external engagements and policy development on a range of issues. With a broad international footprint, the team works in a fast-paced, rapidly evolving, multicultural environment.

Throughout my career, I have been fortunate to have a number of exciting roles in both the public and private sectors, including serving as the "IP Czar" at the White House during the Obama Administration; Vice Chairman of the US Chamber of Commerce's Global Innovation Policy Center (GIPC); Head of Global Government Affairs for a FTSE 10 company headquartered in London; and as Managing Partner of the Washington D.C. office of an AMLAW 100 law firm.

What initially drew me to Tencent was its status as one of the world's most dynamic technology and entertainment companies, with leading positions in video game development and publishing, music streaming, sports media, and TV and film production and distribution. Additionally, Tencent operates communication platforms like WeChat and mobile payment solutions like Weixin Pay.

Danny Marti

What are Tencent's core values? And how does this impact your work in the IP space?
Tencent deeply believes in applying technology for good, and ensuring decisions put people and our users at the center of what we do. This is a core guiding value across all parts of our business.

Tencent enjoys IP-intensive business models as a creator and leading licensor, licensee, and distributor of premium entertainment and other offerings. Today, we create, own and license a huge body of IP and are privileged to work with iconic global brands on a daily basis. This IP helps to connect people, bringing communities around the world together, enriching peoples' daily lives.

We work with everyone from members of the Fortune 500 to leading creators of premium content such as music labels, Hollywood studios, TV, and leading game developers and publishers. For example, we are the largest licensee of western content across Asia for movies, music, sports, and games. We've partnered with the likes of the BBC on its iconic 'One Planet' series and HBO on the hugely successful 'Succession', to name just two recent examples.

With an active global portfolio of more than 50,000 trademark applications and registrations, we are also a global leader in developing, investing in and supporting IP across global markets. We are an active contributor to the global IP conversation and are engaged with the world's leading IP organizations and brands to promote and protect IP.

What strategies does Tencent implement to protect innovation?
Tencent has a deep understanding of the important role IP plays in our communities – it is fundamental to our business, to our partners' success, and to protecting consumers the world over. This is what attracted me to my current role – it is a unique opportunity to help shape and share the story of how Tencent is advancing IP-centric business models and practices in China and internationally.

Tencent applies a comprehensive, proactive approach to combatting IP infringement and counterfeiting and provides tools and solutions to minimize the advertising and sale of counterfeit products. In addition to large in-house teams, we also employ a network of top-tier law firms, IP specialists and technical experts to help us. And we work closely with rights holders, government agencies, law enforcement and other stakeholders to address infringement.

Our platforms do a great job connecting users, companies and content, which means that bad actors may try to exploit our services in their attempt to engage in counterfeit trade or piracy. To combat this, we use data analytics and interception tools to detect, prevent, and proactively block infringing activities, while also providing users and rights holders with tools to report and address copyright or trademark infringement on platforms like Weixin, our flagship messaging app in China. Our built-in Weixin user reporting tools represent one of the largest crowd sourced IP mechanisms found in any communication or social networking platform in the world.

We use data analytics and interception tools to detect, prevent, and proactively block infringing activities, while also providing users and rights holders with tools to report and address copyright or trademark infringement.

iStock.com/Nikada

We recently published our Weixin Brand Protection Report, which outlines the work of our Brand Protection Platform (BPP) over the past year. We publish the report annually as part of our ongoing work to provide brands and industry stakeholders with insights into how we are protecting IP, including implemented improvements and enhancements as we continue to target new trends and practices.

How does protecting IP in the field of technology differ from other fields in your experience? What should IP professionals look out for?

Almost everything today is tech-enabled at some level, so it is less about technology-versus-other-fields and more about seeing things across a spectrum. Differences in the technology field are more about the speed of change - which presents a unique challenge at times, but also exciting opportunities. Today, community discussions revolve around generative AI and the evolution of digital spaces.

IP professionals must proactively embrace the rapid advancements in technology, continuously learning and staying informed about developments in digital brand marketing. As technology merges more closely with creative branding, we are poised to enter new realms over the next decade, characterized by a blurring of digital and physical spaces. This evolution necessitates innovative IP portfolio management strategies and enhanced enforcement tools. In this increasingly interconnected digital environment, the traditional "do it alone" approach to enforcement is no longer effective. Instead, success requires deeper collaboration across various sectors to navigate and protect the expanding landscape of intellectual property.

You led the development of a national strategy on IP rights enforcement under the Obama administration. Can you speak about:

- **The strategies you implemented and why?**
- **How your time in this position has influenced your decisions and ways of working at Tencent?**
- **The advice you would give to IP professionals based on your experience?**

It was an honor to work with President Obama and then-Vice President Biden to develop a whole-of-government IP policy to support businesses and consumers alike, as well as to act against illicit trade fueled by sophisticated organized criminal networks and other actors.

The three year "Joint Strategic Plan" (JSP) covering 2017-2019 was prepared through the work of two interagency committees that I chaired from the White House, and the group solicited views and input from a variety of individual stakeholders across government, industry, educational institutions, trade organizations, and public interest groups. The JSP laid out four primary, overarching goals to guide the work of Federal agencies and other stakeholders: (1) to enhance national understanding of the economic and social impacts flowing from misappropriation of trade secrets and the infringement of intellectual property rights; (2) the promotion of a safe and secure digital space by minimizing counterfeiting and IP-infringing activity online; (3) securing and facilitating lawful trade; and (4) enhancing domestic strategies and global collaboration in support of effective IP enforcement.

> **We've created an innovative crowd-sourced reporting system empowering users to report violations occurring within private features.**

One of my largest takeaways from my time in the White House is the importance of strategy setting, that is, rigorously identifying and defining the scope of the problem we are attempting to solve so that our initiatives are strategically aligned. Too often, I have policy experts and legal practitioners speed past understanding the problem, jumping to the solution generation stage. This is where we see misalignment as a result.

What challenges are the worlds of entertainment, gaming, and technology facing? And how would you advise IP professionals to prepare to combat these issues?

At the risk of stating the obvious, change is happening at a faster rate now than it has at any time during my career. The creative sector is arguably under new and greater threats of IP infringements - for example, the debates around generative AI - but also exciting opportunities to push new creative boundaries. Keeping abreast of these issues is important for IP professionals to support the evolution of the businesses they work with, both in terms of positive developments but also more defensively when it comes to enforcement of one's rights.

How are you helping brands and creators to protect their IP online?

We are proud of how we have helped brands protect their IP on digital platforms – especially on Weixin. As I mentioned, our 2023 Weixin Brand Protection Report details the work of our Brand Protection Platform (BPP). BPP was created to serve brands and help them protect their intellectual property, in much the same way Tencent values and invests in its own IP.

Our 2023 BPP Report shows we have made significant progress both in protecting IP rights and Weixin users from potentially counterfeit goods, and in deterring and punishing bad actors across Weixin's private and public features. We have done this through innovative new solutions such as increased proactive reviews of user content and advertisers' IP credentials and escalated penalties for infringing accounts while also stepping up support for offline enforcement. Additionally, we've created an innovative crowd-sourced reporting system empowering users to report violations occurring within private features. I am not aware of any similar program in the world.

As part of our enhanced transparency efforts, we also created a new one-stop portal, where brands can access, submit and/or review infringement leads and submitted takedown notices across all Weixin features.

What opportunities do you foresee for the IP landscape in the next few years?

As the boundaries between physical and digital worlds dissolve, new forms of connectivity and commerce will emerge for brands, businesses, and consumers. There's a tremendous opportunity to create new industries and transform existing ones. At Tencent, we call this concept "Hyper Digital Reality."

This has captured people's imaginations, including ours. I think about it differently, applying a more expansive, yet practical view. Anything that makes the virtual world more realistic and makes the physical world richer through virtual experiences can become part of this immersive world.

> **A trademark is a symbol of trust. We need more, not less, trust in both the physical and digital worlds.**

From an IP perspective, those who create value and great experiences should be rewarded for their efforts. That's doubly true in immersive environments. We believe IP will be an essential building block toward the creation of a thriving and sustainable ecosystem that protects businesses and consumers and benefits everyone. As I have said publicly numerous times, a trademark is a symbol of trust. We need more, not less, trust in both the physical and digital worlds.

Contact
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UKIPO: 3-year strategy 2024-2027: IP for an innovative and creative UK

The Trademark Lawyer **sat down exclusively with Steph Dales, interim Strategy Director at the UKIPO, to discuss the IPO's refreshed strategy that sets out to assist with the growth of the UK economy.**

Can you start by introducing yourself and your role at the UK intellectual property office (UKIPO)?

I'm Steph Dales and I have been the interim Strategy Director since January this year. I'm an economist by training and spent 10 years supporting policy development in analytical roles across Whitehall. I joined the IPO in 2015 and have since worked in both analytical and policy roles within the organization. Most recently, I led our organizational response to understand the impact of the Retained EU Law Bill on the IP framework and implement the subsequent legislative changes needed.

I am responsible for our planning as an organization, ensuring our governance remains effective and that our strategy and corporate plans allow us to realize our ambitions. I am also responsible for functions such as external communications, analysis, and our relationship with the minister's private offices. The connecting thread between these aspects is that they help the whole organization deliver in service of our mission and they help to frame and inform our future direction.

The diversity of my previous experience has helped me tremendously, and previous roles have afforded me an understanding of the breadth of the work across the IPO, which helps me to see decisions in context and make the linkages. My previous experience working on SME policy in government means that I see intellectual property as part of the wider set of interdependent strategic choices that businesses take daily, rather than something in isolation. One of my key areas of focus since joining the IPO is trying to demystify intellectual property, given it is a complex, sometimes legalistic topic but one that affects every major sector of our economy. This is so that citizens, users, and owners are

better informed about how best to interact with, protect, and exploit this important right.

What is the mission behind the new strategy and what is the UKIPO hoping to achieve with its implementation?

Our IPO strategy, *IPO 2027: IP for a creative and innovative UK* was published in May. It is a refreshed strategy, which will enable us to be clearer in our intent to meet challenges within a more rapidly changing landscape. Our new mission highlights and puts front and center the impact that IP has on the economy. **Our mission is to help people grow the UK economy by providing an IP system that encourages investment in creativity and innovation.**

As an organization, we want to continue to respond to the changing expectations of our customers, wider society, and our people. This refresh refocuses us to ensure we continue to have the desired impact for the economy and society, recognizing the importance of what we do. The work we do in granting IP protections and advising on IP policy has a direct and material impact on the UK economy. The more effective we are as an organization, the more benefit we bring to creators and innovators, and the bigger the impact we have.

We are an ambitious organization and there is so much we want to achieve. But to do this, we need to prioritize our work effectively. This strategy helps us be clear in how we do this.

Can you detail the overarching objectives for the strategy?

The strategy will help us to make choices over where to put our energies and be clear on the actions and culture that will help us to deliver on our mission over time. It has three pillars that will help us prioritize, plan, and perform for our customers and society.

> **Our mission is to help people grow the UK economy by providing an IP system that encourages investment in creativity and innovation.**

Steph Dales

Résumé

Steph Dales joined the IPO in 2015 and has held both analytical and policy roles within the organization. Most recently she was Deputy Director for Strategic Policy and Legislative coordination. She became interim Director of Strategy in January 2024.

Steph has worked in several Whitehall departments as an economist since 2005, including roles within private office and an independent review of the postal services sector. Her economics roles have encompassed both macro and micro perspectives covering the economics of adult skills, productivity and small and medium sized enterprises. In 2021 she completed an Executive Masters in Public Policy at the London School of Economics. She has a degree in Economics from the University of Durham and a Masters Degree in Economics and Development Economics from the University of Nottingham.

We are not aiming for a change of direction, because we are building on strong foundations, amplifying the things that are successful, but looking to improve where we can. There is a renewed focus on whether the activities we invest in provide the greatest impact and deliver the best value for money. The strategy sets out an overarching focus on helping people use IP to grow the economy. In doing so we will look to enable innovative SMEs to use IP to prosper and grow as this will boost innovation across the UK economy. Approaches that contribute to net zero outcomes and innovation will also be pivotal to our own operations, and our approach to new policy development.

We are operating in a complex and challenging environment. If we are to succeed in our mission, we must focus on where we can achieve the greatest impact – boosting investment and innovation in technologies and sectors. And where we can, we must help others to grow the economy through IP.

Can you explain the three pillars for delivering this new mission?

The strategy is focused on the services we provide, the policy we develop, and the people who make it happen. The three pillars support this and the use of a triangle, the strongest geometric shape, to depict the strategy within our organization is no accident.

Our three pillars each have three strategic goals beneath them within which we have focused on what we are trying to achieve, and how we will do it, but the primary focus is on having the right outcome to aim for. There is also a corporate plan for this first year of the new strategy which sets out in more detail what we will deliver.

The first pillar relates to services and the goals under it look to our transformed services and how we support businesses in using them and IP more broadly.

The second pillar relates to our policy for the IP Framework end enforcement under it. It is more pragmatic in what we are aiming for domestically and internationally.

The third pillar targets consistent high-performance through our culture, improved governance, and planning, all with sustainable finances. When you consider the impact of the three collectively, they add up to more than the sum of their parts, with strong reinforcing interdependencies and complementarities between them.

How will the new strategy aid with the protection of IP in the AI landscape?

Making sure the IP system adapts, so that it can provide the right incentives and the appropriate breadth of protection for new types of technology is always challenging. This is even more true when we have the incredible rate of development that we are seeing in the newly burgeoning AI sector.

We are working across all rights areas to make sure we fully understand the implications that AI has for the IP system and the IPO, but also to ensure that the IP framework itself fully supports government ambitions.

This is a difficult and fast-moving policy area, and one that requires careful consideration and balance of competing interests. This strategy helps us navigate this difficult policy landscape by setting out a clear mission – to provide an IP system that encourages investment in creativity and innovation.

Where there are trade-offs to be made, or a balance to be struck, having such a clear overall direction of travel is invaluable when formulating policy positions and provides a consistent framework to discuss those positions with Ministers and stakeholders.

The new strategy also emphasizes the need for our staff to be adaptable. This is increasingly important as the policy work we do in rapidly developing areas like AI can require changes of direction or tackling new challenges in quite compressed timescales. We need staff who feel comfortable working in that way.

How will the strategy assist SMEs, start-ups, and scale-ups?

Our strategy recognizes the importance of SMEs to the UK economy because IP protection is positively associated with various indicators of business success. We want to play our part in helping more SMEs thrive and grow whether that be through their experience of using us to protect their ideas, or to assist their understanding of how they can respect the ideas of others. I think we forget when we have worked in the field for a while quite how complex intellectual property can be to understand the first time you come across it.

In terms of the pillars, we aim to provide efficient, timely, and accessible IP registration services. For SMEs, start-ups, and scale-ups, this means smoother processes for registering IP rights. Streamlining our processes and improving our services via our transformation program will reduce the costs associated with registering and protecting rights, making it easier for businesses to safeguard their intellectual assets.

We provide tools and support to empower businesses to make informed decisions about their IP strategies, helping them thrive in competitive markets.

Our policy pillar focuses on encouraging innovation in the UK. This includes ensuring that UK law incentivizes innovation and creativity, which can directly benefit businesses. Clear and supportive IP policies create a favorable environment for firms to develop and commercialize their IP, as they can confidently navigate IP regulations knowing their rights are protected.

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We also work to shape an international IP system that supports innovation, which will benefit SMEs, start-ups, and scale-ups with global ambitions.

This ensures that their IP rights are respected not only within the UK but also in international markets. This is crucial for businesses looking to expand globally, as it provides assurance that their innovations are protected wherever they operate.

The IPO has a network of IP attaches, experts based in priority countries around the world who are at the heart of delivering on our international objectives overseas. Our attaches support UK rightsholders seeking advice on local IP matters, and liaise with host governments and stakeholders on local and international IP regimes.

We currently have attaches operating in China, India, ASEAN, USA, Latin America, and Europe, with two attaches also based in UKMIS Geneva for the World Intellectual Property Organisation (WIPO) and the World Trade Organisation (WTO).

The combination of the support we offer to SMEs through our rights granting and other services, our work supporting those exporting overseas and looking at what we can do to help firms unlock their investment in IP, all add up to a system which aims to help SMEs make the most of the ideas and innovation they are creating.

Can you tell us about the increased demands on services at the UKIPO and how this has shaped the 2024-2027 strategy?

For some of our registered rights (trademarks and designs in particular), we have seen massive increases in demand for these rights since the UK left the EU. This has also led to very high volumes of work at the IPO Tribunal.

For trademarks, this year has been the second highest year on record for filings, surpassed only by 2021/22 when we exited the European Union and many European trademarks had to be transferred into UK trademarks. In the Tribunal, the number of live cases is roughly double what it was before 2016.

For patents, demand has not increased so steeply, and the picture is more complicated because UK patents can also be obtained from the European Patent Office, but requests for patent examination and grant by the IPO are at their highest level for decades.

Of course, this level of increased demand also comes against an ongoing backdrop of wider change - across society, in technology,

and the global economy. An ongoing challenge is to ensure that we, as an IP office, can continue to adapt where we need to. We need to embrace the opportunities in a way that helps our customers to flourish.

Accurate, evidence-driven forecasting is an important enabler. To continue to have enough capacity to respond to this new demand we have improved the way we forecast, recruit, and how we quality assure our products too. We are about to launch a new quality assurance method – making use of new real-time sampling methodology – the results of which will be included within our customer service standards information.

Ultimately, as our strategy sets out, it's about ensuring we take the right steps and ensure we are a high-performing organization. We believe this work will put us in a great position to make good on our mission.

To sum up, our job is to provide the best possible customer experience, adding value to our economy and society.

Our strategy sets out how we'll remain focused on achieving this, in an environment where – at the risk of sounding cliched – the one constant is change.

How do you feel the UKIPO is shaping up in comparison to other Intellectual Property Offices?

Internally, one of the core strengths that makes the IPO pretty unique is that we benefit from having policy and operations for all IP rights together in one organization. This is not the case for many other offices.

So, what we have is the benefit of our collective expertise and capability across many areas, including operations, digital, legislation, and communications teams working closely together. This helps us to be agile in how we respond to our customers' needs, and co-ordinated in how we deliver a balanced and effective IP framework. It's part of what we mean by being a connected organization – a wealth of expertise across specialisms, unleashed in service of our mission.

We attach a huge amount of importance to collaboration - both internally and with our partner organizations across government, industry, law enforcement and around the world. The high regard in which we're held globally really does reflect this. I'm proud that the UK continues to be recognized as a role model for its intellectual property standards, scoring highly in the recent US Chamber of Commerce IP Index report - which highlighted the UK's sophisticated IP environment, and injunctive-style relief for rightsholders battling online infringement as particular strengths.

We invest a lot of our effort working with other IP offices to share best practice and learn from one another, helping build a global IP system that benefits its users. Just recently, we've supported examiner training in South Africa and China, and - as a founder member of the European Patent Organization - we also work through forums like the Vancouver group and G7.

> **"To continue to have enough capacity to respond to this new demand we have improved the way we forecast, recruit, and how we quality assure our products too."**

Effective partnerships such as these enable us to play a leading role in developing a stronger IP system globally. Our team in Geneva is closely engaged in discussions at the WTO and WHO to support our IP objectives throughout the UN system, complementing our work with WIPO to support other IP offices. Our attachés and international teams, while supporting British businesses exporting to other countries, are also engaged closely with other IP Offices. All these activities help us to maximize our impact globally, and to uphold a rules-based approach to advancing and protecting IP throughout the world.

We've all experienced some pretty seismic shifts in the global economy since we published our last strategy – and at the same time we've all had to develop and adapt to new ways of working, with new technologies continuing to evolve at pace. Effective collaboration will remain crucial to continued success, and our partners ultimately share similar goals to ourselves. Working with them to help deliver our mission – and embrace the opportunities that lie ahead - is, for me, a big part of what makes the IPO - and the wider world of IP - an exciting and stimulating place to continue to want to work.

This interview took place prior to the call for the UK General Election.

Contact

UK IPO
www.gov.uk/government/organisations/intellectual-property-office

New barriers you may encounter in trademark assignment in China

Jiuyang ZHOU of Beijing Sanyou Intellectual Property Agency Ltd. details the new factors that affect trademark assignments due to the "intent-to-use" legal provision and the change of requirement on necessary documents.

It is known that trademark assignment is a way for trademark owners to dispose of their trademark rights, usually accompanied by merger(s), division, and dissolution. At the same time, it can also serve as a means for trademark applicants to eliminate trademark conflicts during trademark application procedure. As an urgent issue in commercial activities, change of ownership of trademarks may encounter new barriers, which have emerged in recent years and attracted wide attention.

Jiuyang ZHOU

Possibility of requirement of trademark use evidence or evidence of intention to use

Background of the requirement

The requirement of trademark use evidence or evidence of intention to use is a new kind of office action you may encounter during trademark assignment procedure; it is mainly for combatting bad faith filings.

China has a first-to-file system for trademark registration, "use in commerce" or "intent to use" was not legislative obligation for trademark applicants. Therefore, many applicants did not apply for trademark registration for actual use in practice, which had systemically disrupted trademark registration and damaged the rights and interests of other applicants.

On November 1, 2019, a new Chinese Trademark Law came into force and Article 4 became the highlight in the amendment, i.e. "trademark applications filed in bad faith without intent to use shall be rejected."

For example, a large number of applications for trademark registration in a short period, as well as applications filed by an entity who has had a large number of cumulative applications and registrations, are likely to be refused or be issued Examination Opinion, requiring actual use evidence or evidence of intention to use. If the required evidence cannot be provided or the evidence is invalid, the trademark applications will be refused ultimately.

Over the course of 2019-2023, the government frequently introduced a series of policies and documents to combat malicious trademark registration, enforcing the importance of fighting and containing trademark squatting.

As an approach to improper benefits, trademark assignment procedure began to attract the attention of our Office. If the assignor has a large number of applications and registrations under its name, it may be suspected of improperly occupying administrative resources and disrupting the order of trademark registration. Then, the examiners will issue a Notification of Amendment

Résumé

Jiuyang ZHOU joined Sanyou in 2016. She has practised as a trademark attorney for more than 10 years. She has handled and supervised many trademark prosecution cases for many well-known companies in China and abroad. She has rich experience in strategy-planning on trademark management and protection, trademark prosecution in China, and Madrid international trademark application.

She engaged in research for the Trademark Law and Trademark practice in China and have published several articles and case analysis periodically in China, e.g.,"On Perfecting the Application System of Trademark Division" published in the magazine of *China Trademark*, etc.

requiring evidence of actual use or intention to use to be submitted in a prescribed period (one month upon receipt of the Notification). If the evidence cannot be provided without justifiable reasons or the evidence is invalid, the assignment shall not be approved. Even if the evidence is valid, the subsequent examination may take more than six months, in other words, a normal trademark assignment takes about three-six month to complete, and one with such a Notification to respond is likely to be extended to more than one year for completion.

How to avoid the Notification and how to respond to the Notification?

A. **Measures to avoid the Notification**
➢ **Due diligence before reaching assignment agreement.**

There are some situations which may prompt the Notification of Amendment:

- There are too many (hundreds of) trademarks in the name of the assignor (especially when natural person(s) are the assignor(s), and legal person(s) are the assignor(s) with relatively small registered capital;

- The assignor(s) are "Consulting Companies" and "Management Companies" with hundreds of trademarks covering a wide range of classes;

- Suspected shell company registered in Hong Kong but with the name started with a name of foreign country;

- The assignor has multiple assignment records to quite a number of different assignees;

- The assignor has multiple records of disapproved trademark assignment applications;

- Registration applications from 2020 to 2023 have been rejected and subsequently not approved for registration;

- Bad records in commercial registration of the assignor publicly disclosed, such as any administrative penalties, etc.

➢ **Proper draft of terms and conditions for assignment agreement.**

- It is agreed in advance in the assignment contract that if the assignment is not approved, the assignor should file removal application for the target trademark registration at the request of the assignee;

- It is agreed in advance in the assignment contract that the assignee, upon the execution of the contract, obtains the exclusive trademark license of the assignor before the completion of the assignment, has the right to use the target trademark. (So that once the Notification were issued, some evidence of trademark use may be provided to complete the assignment procedure).

> **If relevant documents cannot be provided, the assignment application will not be approved.**

B. **Practicable response to the Notification**
➢ **Evidence of actual use:** product images, product web pages, advertising, sales contracts, invoices, etc.;

➢ **Evidence of intention to use:** product proposal, internal communication records, commercial contract, product design drawings, media reports on the upcoming launch of new products, preliminary risk investigation communication records with the agency, and proof of the potential expansion into the same industry product distribution in the future;

➢ **Evidence of defensive registration and trademark reserve purposes:** Detailed introduction of the assignor's business scale, industry field, reputation, etc,

➢ **Others:** Judgments and rulings confirming the high popularity of one's own brand, proof of the brand ranking, records of the trademark being registered by others, etc.

If the trademark rightsholder dissolves and the assignee unilaterally applies for trademark assignment, it is necessary to provide proof documents or legal documents showing its identity as inheritor of the target trademark right

At present, CNIPA takes strict examination on document requirements when the trademark assignment is filed by the assignee unilaterally. Proof documents or legal documents showing the assignee's identity of inheritor of the target trademark right is necessary for this special trademark assignment. The following documents may be accepted:

- a liquidation report involving trademark rights;

- a consent transfer statement signed by the assignor during its existence, or a consent transfer statement issued by the assignor's investor(s), etc.

If relevant documents cannot be provided, the assignment application will not be approved. Even if the assignee is the assignor's acquiring party, once the assignor is no longer in existence, the acquiring party will lose this important intellectual property in China if the aforesaid documents cannot be provided. (It is known that, if the assignor is an Australian entity, once it has been dissolved or merged into another company, but without an individual clause, statement regarding the disposal of trademark rights, the trademark rights is likely to be nationalized and the enforcement of trademark rights by its acquiring party in China may be hindered.)

Other situations may encounter Notification of Amendment in trademark assignment procedure

Except for the aforesaid two new obstacles, there are some common obstacles encountered in trademark assignment deserves attention:

- Same or similar trademarks of the assignor in respect of same or similar goods/services should be transferred altogether, otherwise, a Notification of Amendment will be issued.

- The target trademark is approaching its expiration date or has entered its grace period; in such occasion, an application for renewal needs to be recorded in advance;

> **Even if the assignee is the assignor's acquiring party, once the assignor is no longer in existence, the acquiring party will lose this important intellectual property in China if the aforesaid documents cannot be provided.**

- If the assignor is a natural person or an individual business owner and their ID number does not match the registrant's ID number in the trademark file, an application for the applicant's information change needs to be recorded with the CNIPA in advance;

- If the assignor is a branch office of a headquarter company, the filing of trademark assignment requires authorization from its headquarter to dispose of trademark rights.

To sum up, in consideration of the severe actions against the malicious trademark registrations and applications after the amendment of the Trademark Law, as well as the strict examination of procedural documents in the trademark assignments, it is advisable for market entities to think twice before acting, i.e., to take due diligence before negotiation with the trademark proprietor for assignment. Besides, it is necessary to conclude on individual clauses for intellectual property disposal issues in merger and acquisition procedures so as to clarify the transfer of IP rights for smooth subsequent recordal procedures to prevent unnecessary economic losses.

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Women in IP Leadership

Celebrating achievements and continuing the empowerment of women

This segment is dedicated to women working in the IP industry, providing a platform to share real accounts from rising women around the globe. In these interviews we will be discussing experiences, celebrating milestones and achievements, and putting forward ideas for advancing equality and diversity.

By providing a platform to share personal experiences we aim to continue the empowerment of women in the world of IP.

If you would like the opportunity to share your experiences with *Women in IP Leadership*, would like to nominate an individual to be involved, or would like to learn more about sponsorship, please contact our Editor.

Laetitia d'Hanens: Partner, Gusmão & Labrunie

An interview: inspirations, experiences, and ideas for equality.

Senior Partner of Gusmão & Labrunie, Laetitia joined the firm in 1996 working as a Litigation, Consultancy, and Trademark Lawyer. After heading the Trademark team, she became the leading partner of the Contracts and Consultancy team in 2012, providing risk assessment, strategy building, advice, and negotiation support for clients in the most diversified industries.

What inspired your career?

That's a big question! I fell in love with IP progressively; I was pretty much an idealist law student and, in the beginning, very revolutionary. I started working at the firm in IP just by chance – I had a friend working in my current firm who said that the firm needed a French speaker, because we have a lot of French clients, and she asked, "have you ever wanted to try IP?".

So, I started my career in IP and found so much alignment with my personal values. Our Founding Partners were inspiring tutors to me, both academic teachers but with very different profiles and skills that transformed me.

I was in an environment and a firm where I felt that I wouldn't need to break any of my values nor defend parties or companies that, ethically speaking, would not align with my personal values. That's why IP, amongst other law fields, is where I could find space for my ideas and ideals. When you defend people who innovate and create, and are trying to develop authorship and inventorship and bring new solutions to the market, you feel that you are supporting something important. I could identify myself and my values more broadly and that was inspiring for me.

How have you found the pathway to your current position? And can you offer advice from your experience?

I finished my law studies and started working at the firm for two years before deciding to leave to pursue a Master's degree in Brussels. I studied Comparative Law at the Université Libre de Bruxelles (ULB).

Then I came back to Brazil, and I was invited to come back to the firm where I have been for my whole career. I've been at the firm for 28 years, and even though I've been in the same place for a long period, I feel that the challenges as a professional evolved and changed all the time.

> **"I started my career in IP and found so much alignment with my personal values."**

My personal relationship with the work has changed as well. When you are starting your career, you want to develop, improve, learn, be trained, and be guided; it is a period for absorbing IP knowledge. From the beginning, the partners were really generous; I was with them in

"My advice for a young practitioner is do not be afraid to test yourself and go out of your comfort zone."

meetings listening to clients, working on important cases, and being exposed to all situations. I was given a lot of opportunities to learn and, as part of the culture of our firm, they were not afraid to put me on the frontline, for example, inviting me to be a speaker at conferences to represent the firm. That was really inspiring! After that, I was invited to lead a team, to learn leadership skills, to learn how to train other people with the knowledge I absorbed.

I've been a partner since 2007. Before becoming a partner, the founding partners invited the people that they think would become partners to attend the administrative and managing meetings of the firm to introduce the problems we have to solve relating to the management of the firm: human resources, finances, investments, etc. So first, I learned the technical work and then became part of management, then a partner and got more responsibilities in terms of client hunting, representing the firm, and also leading the firm.

In that perspective, my relationship with my work also changed. I am now 50, and my role at the firm has evolved. My work also became a personal purpose as building my small legacy. I have a lot of pleasure in training people and watching their development, having a great team, and thinking about the firm as an institution that will continue to exist after my time there.

I will summarise by saying that I've been at the firm for 28 years, but my role has completely changed in that time, my challenges have changed, and I've been constantly asked to step outside of my comfort zone.

My advice for a young practitioner is do not be afraid to test yourself and go out of your comfort zone. You will not change from water to wine, but if you want to become a partner you must experience all skills and challenges, even those a little bit out of your comfort zone. Be more flexible, and be open, sometimes it's hard but try – it's possible!

What challenges have you faced? And how have you overcome them?

Each time I was asked to assume a new responsibility for a new role, like representing the firm, writing articles, teaching at IP associations and law schools, managing people, and being responsible for a team, I face new challenges. We learn law at law school, but we do not learn how to be a leader. Sometimes it was really hard as I was in a new function and I had to transform myself – especially when I became a partner and the responsibilities were much broader. I had to deal with these challenges by myself and invest in learning to perform a new role and overcome my personal limits. I was initially very shy, and it was hard to teach and be a speaker at, for example, INTA meetings in English for a large audience.

The firm has given us many tools to become a leader and manage a team. The partners invested in coaching and management training, so when I would assume new responsibilities, I was taught new skills and trained. But of course, the learning process must include the personal will to overcome limits. You have different types of lawyers, and each one has a strength and particular features that will contribute to the whole. If you are a shy person, you may not become the biggest client hunter, and be more comfortable in performing the technical work. But you have to be open to try. The natural evolution at a law firm is different from an in-house counsel; you have to evolve at some point to acquire all different skills that becoming a partner demands and and part of that is working on yourself and your limitations. You cannot transform someone who was born an academic into the biggest hunter, but you can combine and balance a bit of both. Also, time and age contribute a lot because you become more self-confident. Now when I go to the conferences and represent the firm in different associations it feels much more natural because of the experience acquired and of the relationships I built with peers and colleagues.

What would you consider to be your greatest achievement in your career so far?

I am very proud to have been part of important businesses and be considered relevant for clients to get them efficient solutions. I started my career as a Trademark Lawyer, then became the Head of the Trademark Group, and then I trained one of my lawyers to become the Head of the Trademark Group when I became a Partner. Even as a Trademark Lawyer, I would work with contracts, litigation, IP advice in general, counseling, etc. Now I give some technical support to the Trademark Prosecution Group, but I'm more focused on dealing with IP transactions, licensing, strategy building of the IP aspects of the client's businesses, and IP advice and counseling. I have had the opportunity to be involved in important IP transactions that were really pleasing, and I was very grateful to see the results, overcome obstacles, and give a good solution for my clients.

Right now, my biggest achievement is how I can inspire, train, and develop the people working with me. Many of them are still at the firm and I'm pleased to see them shine, see their evolution and adoption of new responsibilities. They are evolving brilliantly. When people who worked with me or clients say that I made a difference, that they are grateful I worked on a particular case, or that I was important for someone's development and evolution in their career, that's my biggest achievement.

What are your future career aspirations? And how will you work to achieve them?

That's the easiest question! IP is evolving, and our careers are evolving in parallel with technological evolution - we will no longer be needed for many things we previously performed. Work which is now provided by an intermediate person won't be necessary soon. AI tools can perform translations, it can build contracts, etc., and it provides good-quality work for simple tasks. So, we must transform ourselves and continue to provide intelligent solutions beyond the outputs of machines.

Our firm growth was not based on bureaucratic work and those simple tasks. It's much more about the intelligent work that we can provide to clients; strategic thinking, building new strategies for clients, creative solutions, and interpreting law. Brazil's IP legal system aligns with the Continental European Law culture, not with the Common Law culture, but we must continue to interpret statutes and bring a new way of thinking in terms of what law provides when it comes to these new challenges that the evolution of technology brings to society.

Being in IP at this moment is a privilege, and I see the evolution of my career as learning to deal with the new challenges of technology but also learning to build a law firm differently. We cannot deny generative AI tools. A junior lawyer in the past would start researching precedents and looking up facts of other cases to see if they apply to the new case. This will not be the case with the inevitable adoption of new technologies. The sooner law schools and universities learn how to absorb AI and develop students to prepare them for a new reality, and a critical approach on how to build creative solutions beyond AI contents, the better.

In a law firm, we need to absorb new technologies and transform the way we ask our people to work. If AI can give a brief summary of frontier discussions on topics of law, how can you train your junior lawyer to process the information critically or creatively? To apply this information or use it favorably to the client's problem you're dealing with? Creativity comes from man, so being stimulated to work in this field, doing what machines cannot do, and being able to train people to do the same is the biggest challenge.

What changes would you like to see in the IP industry regarding equality and diversity in the next five years?

Unfortunately, Brazil is still a very conservative country and we have much to learn when it comes to diversity and inclusion. At our firm, we have a diversity and inclusion committee, and we've been working on our culture and recruitment processes, and there is so much to do.

Being a country that used to be a Portuguese colony, Brazil has a lot of Afro-Brazilian people and it is our social responsibility to integrate them. Black people in particular in Brazil still have less access to education and opportunities; we are trying to build up the firm for how we can integrate them better and also be a good place to work for all genders, the LGBTQ+ communities and other diversity groups

In the last few years, law schools, mainly the public ones, have begun to implement policies for positive inclusion, and there are many initiatives to reserve places for these less integrated communities. However, the problem is not just getting them into the schools, it's also what can be offered to support their need to fill in the blanks that they had in their basic education in order to respond to the law school requests and tests. So we are trying to build that at the firm as well.

We encourage diversity in our recruitment process, and we are aligned with some institutions to do so. It is an ongoing process, but Brazil is far, far behind the US with positive actions and policies. In the US there is a huge amount of case law, precedents, ensuring that these communities and groups are protected. Those cases have long ago been submitted to the superior courts and transformed case law, then were absorbed into society. When I visit US law firms, I see that diversity and inclusion is part of reality; Brazil is far behind. It's a country that's still in an ongoing development process. We have a very fragile democracy and had a military coup that lasted 21 years. Like everywhere else in the world, we have been watching polarization in terms of politics between far right and far left – and this also affects diversity and inclusion for sure.

I think all law firms should adopt positive action measures and do more in terms of diversity, to have diverse people integrated into teams with support to respond to the challenges in the IP world. It's not just about hiring, it's about making the environment receptive, making them feel comfortable, and giving them the support they need to respond to career challenges.

How do you think the empowerment of women can be continued and expanded in the IP sector?

I will be kind of controversial here, Brazil is still a very sexist country. I felt that I could overcome sexist prejudice with age. As a younger female professional, I felt that my voice had less relevance, not within the firm but in the market

"My biggest achievement is how I can inspire, train, and develop the people working with me."

> **As a younger female professional, I felt that my voice had less relevance, not within the firm but in the market and also from the client's perspective.**

and also from the client's perspective. That was long ago, in the late 90's and society has also evolved. Now, with age, people have to respect you more, so I think my voice has been heard much more.

I still believe that there is so much to evolve. I was a nerd at school, very good in math, physics, and chemistry as well. Yet, when dealing with clients in the science-based fields, when wanting to understand the nature of the technology and asking pertinent questions that would show some scientific knowledge, I've received looks and reactions of surprise from male technicists because I am a woman. They were often shocked and said 'oh… you know that?' as if women could not be great scientists or mathematicians! So Brazil is still very far behind. Women are still objectified in mass culture and advertisements in Brazil and this continues to have an impact on the perception of women when working.

When I participate in debates in the IP associations in Brazil and we discuss sexism and gender inclusion they say, 'Oh well now many men are our allies.' It is true but the problem has not been solved. I'm always the contesting voice to remind of a still existing sexist reality.

In public careers there is a bit of a difference. I see brilliant women who became judges, public prosecutors, and public lawyers. There is a huge increase in women occupying public positions in legal careers. In the private sector and in corporate culture, Brazil is still behind. In a general manner, we still do not see it as a requirement that 'X' corporate positions shall be occupied by women, Black people, or other diversity groups. Now we see that society is claiming a different corporate approach not only for the goods offered to the market but also for how companies behave internally, so this reality is also changing.

IP, in particular, attracts a lot of women. In our firm, we are 65%+ women, and a lot in leading positions such as partners.

CTC Legal Media

Aurélia Marie: Of Counsel, Beau de Loménie

An interview: inspirations, experiences, and ideas for equality.

Aurélia is a European and French Trademark and Design Attorney.

Aurélia started her career in IP in 1986 at the Régie nationale des usines Renault. She then became an Attorney-at-law at the Paris Bar in 1987, a profession she practiced in an IP law firm. In 1993, she joined Beau de Loménie where she qualified as a European and French Trademark and Design Attorney. In 2003, she became a partner in the firm and led the Trademarks and Designs department. She held this position until 2021.

Aurélia Marie has been Of Counsel since January 2022. She now focuses on her long-time passion for IP law, which she has made her career, and devotes herself to Beau de Loménie's clients. She handles their cases, thus continuing to give them the benefit of her know-how and experience.

With a career of more than 30 years, Aurélia is a specialist in the law of distinctive signs (trademarks, company names, trade names, domain names), designs, and copyright. Her expertise includes obtaining rights, as well as their exploitation and protection. She has also developed a recognized know-how in the field of audits of trademark portfolios, designs, contracts, advertising law, and unfair competition. Also, she works in the fields of mediation and arbitration.

> **I've seen the IP world changing a lot and I think we have to continue harmonizing IP.**

CTC Legal Media

Aurélia is a member of FICPI, ACPI, APRAM, INTA, ECTA, AIPPI and PTMG. Very involved in professional associations in the IP sector, she has been secretary and then president of the AIPPI French group for several years and remains very active in various committees (Trademarks, Alternative Dispute Resolution, Office Practices and Procedures). She frequently intervenes as a speaker at annual international congresses.

What inspired your career?

I always liked IP. I've been involved in IP since the very beginning. I wanted to work internationally. I started as an attorney at law, as a barrister, and then I chose to become a trademark attorney because I'm very interested in the international part of the business.

Is there any advice you'd offer from your experiences?

It's a question of meeting people, chance, and working hard. Always be involved in your plans and with your colleagues and make sure you enjoy what you do!

What challenges have you faced and how have you overcome them?

When I started working I was 23 and I looked very young, so the first challenge I had to face was to create trust. I started as a barrister and I had to appear in court to represent my clients with people older than me – mostly men – so the first challenge was to be able to create this trust so that clients would have confidence in me.

This is also partly why I chose to do IP because of the link to creation, designs, and passion – which I like very much. Being very technical, IP requires one to be an expert in a specific area of the law which enabled me to feel confident in myself. I had to make people see that I knew what I was talking about and that they could trust me.

> I would like women to trust in themselves and their capacity. Don't limit your possibilities because if you think you can do it, you can do it.

The second challenge was to be a woman in a world dominated by men, to be a lawyer amongst engineers, and to find a balance between my family life and my career – they were all a challenge!

What would you consider to be your greatest achievement in your career so far?

I'm very happy to say that I've been working with some of my clients from the very beginning when I joined the firm. That's very important.

Secondly, I managed the trademark team for almost 20 years which was a big challenge. You never know whether you have the right answers to the problems you face, but I tried to build up this team the best I could and I think people are happy with me.

Also, my best clients were always people who retained their working relationship with me across job roles or came via recommendation. It's very nice when you've been working with people for years and they go elsewhere but contact you again as a 'new' client or they recommend you to others. These are the best clients you can have!

What future career aspirations do you have and how will you work to achieve them?

Today, I'm Of Counsel so I've left the managing part of the business and I'm focusing only on my files. I'm not going to be retiring just yet but a major part of my career is now behind me and so I think my aspiration now is to make sure the transition with people who will take the files after me is smooth. I also have to make sure the junior I work with is a good professional.

What changes would you like to see in the IP industry regarding equality and diversity in the next five years?

In terms of IP, we are working on harmonization at the EU level and I think this is a very important issue. I've seen the IP world changing a lot and I think we have to continue harmonizing IP. It's good to have differences, and we need to understand the different systems. Of course, they can be interpreted differently depending on the country and the system but it's good to have similar reasoning so that brands understand why they need to develop for harmonization. I think this is the most important thing.

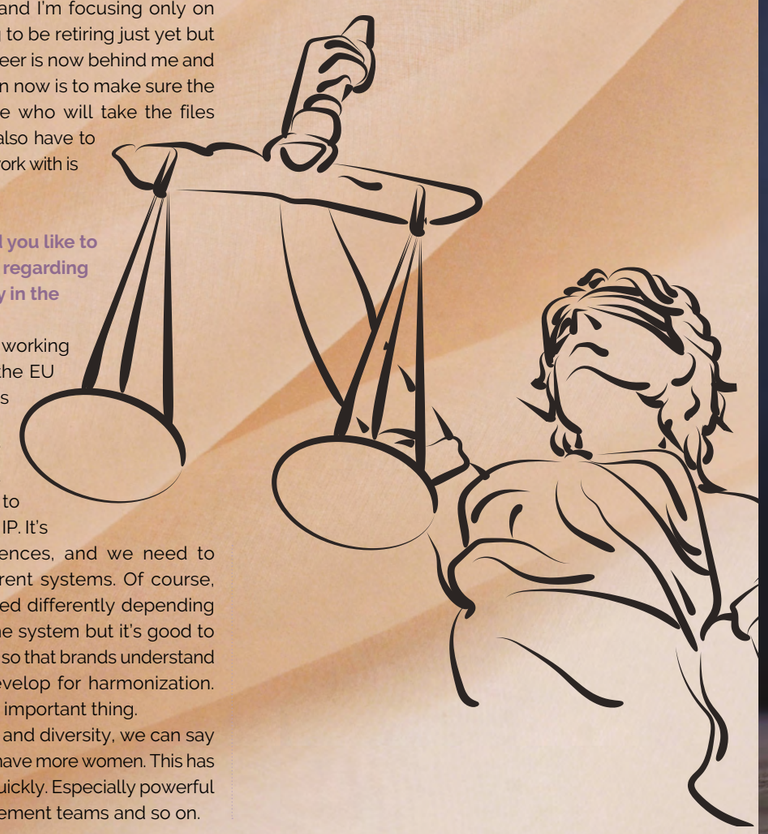
In terms of equality and diversity, we can say that many firms could have more women. This has improved but not so quickly. Especially powerful women in the management teams and so on.

How can we continue to empower women in the IP sector?

The issue we have most often is the balance we have to make with our family and work. I can talk only for France but here I have seen many changes and I can see that today men are more active and involved with the family and children.

Secondly, sometimes, particularly in big firms, women are considered less reliable than men which is completely wrong. When women get responsibilities like I had in the firm, I think they work more than men because we have to prove more and this is very difficult because, again, this question of balance is very difficult to solve. As far as I'm concerned I've spent years working very, very hard, and maybe in another world, I could have had more time for my children, for instance, and I wouldn't have felt guilty because I could take care of my children when not at work. But I was conscious that I had responsibilities so I spent the majority of my time working, but maybe this could have been done differently. I hope that in the future it will be different for women.

I would like women to trust in themselves and their capacity. Don't limit your possibilities because if you think you can do it, you can do it. The first point is to go and try!



The Trademark Lawyer
GLOBAL REACH, LOCAL KNOWLEDGE
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LAW FIRM RANKINGS 2024

Asia Pacific

A comprehensive list of the 10 most well-respected law firms from the Asia Pacific region

The Trademark Lawyer

GLOBAL REACH, LOCAL KNOWLEDGE

Throughout the next few pages, you will view a comprehensive list of the 10 most well-respected law firms from Asia-Pacific, in alphabetical country and company order. Our focused list is derived from a multifaceted methodology, which uses months of industry research and feedback from our readers, clients, and esteemed connections around the world. All firms are ranked top 10 in their jurisdiction but are displayed alphabetically to avoid bias.

China

- Beijing Sanyou Intellectual Property Agency Ltd.
- CCPIT Patent and Trademark Law Office
- Chang Tsi & Partners
- Corner Stone & Partners
- HFG Intellectual Property
- Hong Fang Law
- King & Wood Mallesons
- Liu, Shen & Associates
- Unitalen Attorneys at Law
- Wanhuida Intellectual Property

Australia

Allens
Ashurst
Baker McKenzie
Banki Haddock Fiora
Corrs Chambers Westgarth
Gilbert + Tobin
Griffith Hack
King & Wood Mallesons
McCullough Robertson
Sparke Helmore

Hong Kong

Baker McKenzie
China Patent Agent (HK)
DLA Piper
East IP
ELLALAN
Marks & Clerk
Robin Bridge & John Liu
Vivien Chan & Co.
Wenping Patent & Trademark Agent Ltd.
Wilkinson & Grist

India

Anand & Anand
Dhaira Shah & Associates
Inttl Advocare
K & S Partners
KAnalysis
Khaitan & Co
LexOrbis
R. K. Dewan & Co.
Remfry & Sagar
RNA, Technology and IP Attorneys

Indonesia

Am Badar & Am Badar
Biro Oktroi Roosseno
HHP
Inter Patent Office
Januar Jahja & Partners
K&K Advocates
KASS International
SKC Law
Soemadipradja & Taher
Tilleke & Gibbins

Japan

Abe, Ikubo & Katayama
Asamura Patent Office
Hiroe and Associates
KUBOTA
MARKS IP Law Firm
Nakamura & Partners
Nishimura & Asahi
Sonoda Kobayashi IP
TMI Associates
Yuasa and Hara

Malaysia

Adastra IP
Lee Hishammuddin Allen & Gledhill
MarQonsult
Rahmat Lim & Partners
Raja, Darryl & Loh
Shearn Delamore & Co
Shook Lin & Bok
Skrine
Tay & Partners
ZUL RAFIQUE & Partners

Philippines

ACCRALAW
Baranda & Associates
Cruz Marcelo & Tenefrancia
Federis & Associates
Follosco Morallos & Herce (FMH)
Hechanova Group
Quisumbing Torres
Romulo Mabanta Buenaventura Sayoc & De Los Angeles
SyCip Salazar Hernandez & Gatmaitan
Villaraza & Angangco (V&A)

Singapore

Amica Law
Donaldson & Burkinshaw
Drew & Napier
Francine Tan Law Corporation
Gateway Law Corporation
Marks & Clerk
Mirandah Asia
Rajah & Tann
Ravindran Associates
RHTLaw Asia

South Korea

Bae Kim & Lee
JIPYONG LLC
Kim & Chang
Lee & Ko
Lee International
Shin & Kim
Yoon & Yang
Yoon & Lee International Patent & Law Firm
YOU ME Patent & Law Firm
Yulchon

Pakistan

Abeed Legal & IP Attorneys
ABS & Co
Ali & Associates
ALIPA IP Services
Bharucha & Co
Codex & Co.
Daudpota International
United Trademark & Patent Services
Vellani & Vellani
Zafar & Associates

Taiwan

ALIPO
Deep & Far Attorneys-at-Law
Giant Group
Lee and Li Attorneys-at-Law
Saint Island Intellectual Property Group
Tai E International Patent & Law Office
TOPTEAM International Patent & Trademark Office
Tsai Lee & Chen
Tsar & Tsai Law Firm
Winkler Partners

Julius & Creasy
estd.1879

Julius and Creasy is one of the oldest civil law firms in Sri Lanka. Founded in 1879, the firm has established itself on rich tradition and the highest professional principles. Julius and Creasy's wealth of expertise and experience in a wide range of different fields of Law.

We have a specialized IP department and advise on all aspects of Intellectual Property matters such as contentious as well as non-contentious matters.

We represent clients both at the National Intellectual Property Office in opposition proceedings and in infringement proceedings before Courts,

We have substantial portfolio of patents including PCT applications filed in Sri Lanka. We have trained staff for Patent drafting. We also file design applications for overseas clients in Sri Lanka and for Sri Lankan clients overseas. We also advise on copyright issues including reviewing of copyright agreements and advise publishers. We engage ourselves in IP due diligence work and also file applications for registration at the Sri Lanka Customs.

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Sri Lanka

- D.L. & F. De Saram
- FJ & G de Saram
- IP Chambers
- John Wilson Partners
- Julius & Creasy
- LegalBase
- Neelakandan & Neelakandan
- Nithya Partners
- Sudath Perera Associates
- Varners

Thailand

- Ananda Intellectual Property
- Domnern Somgiat & Boonma
- ILAWASIA Co., Ltd.
- ILCT
- LawPlus
- LEXEL
- Satyapon & Partners
- SCL Nishimura & Asahi
- Tilleke & Gibbins
- TMP Intellectual Property

SCL NISHIMURA & ASAHI

[Chavalit & Associates Limited, is now known as SCL Nishimura & Asahi]

SCL Nishimura & Asahi's IP team has many years of experience in the Intellectual Property (IP) field, and is widely considered one of Thailand's top-tier IP, IT, & telecommunications law practices. Our team handles all kinds of IP work for domestic and foreign clients in various fields and industries. We offer one-stop IP services, including general IP advice, prosecutions, transactions (e.g., licensing and assignments), IP enforcement and protection, and litigation. We regularly assist our clients with IP strategy, to help them identify and exploit their intellectual property rights effectively.

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Vietnam

- Annam IP & Law
- Baker McKenzie
- Gintasset
- Indochine Counsel
- INVEST IP
- IPMAX
- Pham & Associates
- S&O IP
- Vision & Associates
- WINCO

Jurisdictional Briefing, US: exploring the impact of artificial intelligence on your everyday trademark practice before the USPTO

Michelle Ciotola and David Kincaid of Cantor Colburn discuss considerations of using artificial intelligence-based tools when practicing before the USPTO.

Artificial intelligence (AI) is infiltrating all aspects of our lives and is on course to impact our daily practice in the field of intellectual property law. According to the World Intellectual Property Organization (WIPO) there are approximately 80 AI initiatives in IP offices around the world, including in the United States.

Recently, the United States Patent and Trademark Office (USPTO) issued guidance on the use of artificial intelligence (AI)-based tools in practice before the USPTO (the "Guidance"). 89 Fed. Reg. 25609 (Apr. 11, 2024)[1]. The Guidance informs those practicing before the USPTO of the rules and policies that apply when AI-based tools are used in proceedings before the USPTO. The Guidance also alerts such individuals of the risks associated with the use of AI and provides some suggestions for mitigating those risks. For example, the Guidance advises that practitioners must confirm that facts and statements provided in submissions to the USPTO are true and have appropriate evidentiary support. This aims to avoid submissions that contain AI-introduced errors or hallucinations.

In the case of trademarks, the Guidance cautions against submitting specimens that not show actual use: "Particular care should be taken to avoid submitting any AI-generated specimens, which do not show actual use of the trademark in commerce, or any other evidence created by AI that does not actually exist in the marketplace." (Guidance p. 25616). In an extreme case, it is foreseeable that an ill-intentioned party may willfully use AI to create a specimen that does not show actual use of the trademark in commerce. Such specimens do not satisfy the specimen requirements for trademark filing in the USPTO. In a less extreme case, a practitioner may submit a specimen not known to be AI-generated. For example, a company's marketing department might use AI to generate images or videos of a potential product, which include trademark markings. It is possible that these images or videos are then passed to the company's legal counsel as a "specimen" when legal counsel is preparing to file trademark applications. This could result in legal counsel submitting a trademark application with a non-conforming AI-generated specimen that does not show actual use of the trademark in commerce. It is imperative then that practitioners inquire as to the origin of specimens before submitting to the USPTO.

In addition to the Guidance provided by the USPTO and the various initiatives being considered and implemented by the USPTO and various IP offices around the world, the cautious use of AI can enhance the day-to-day practice of trademark practitioners. AI systems can be used to prepare the identification of goods and services to by practitioners in the preparation of acceptable identifications of goods and services. For example, AI systems can be used to classify goods and services according to the Nice Classification system. Through Natural Language Processing (NLP), AI can be used to generate acceptable identifications of goods or services, even where the products or services are more complex or novel. But caution must always be taken to ensure accuracy and relevancy of the identification generated by AI. There are nuances and strategies to preparing the identification for filing. While accurate, an overly specific and nuanced identification may result in a narrower scope of protection for the rights holder. An overly broad identification may leave the application open to refusal based on likelihood of confusion or more vulnerable to a third-party objection. An AI-generated identification of goods or services should always be treated as a draft and carefully reviewed by an experienced practitioner for accuracy and to ensure the identification aligns with the filing strategy.

The integration of AI by the USPTO and the careful use of AI tools by practitioners is already impacting the way we practice. These tools have the power to enhance the practice by streamlining the preparation process, improving accuracy, and increasing efficiency.

Michelle Ciotola

David Kincaid

[1] https://www.federalregister.gov/documents/2024/04/11/2024-07629/guidance-on-use-of-artificial-intelligence-based-tools-in-practice-before-the-united-states-patent

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Résumés

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Michelle counsels clients on protecting and enforcing their trademark, trade dress, copyright, and related IP rights, including unfair competition, Internet, advertising, and promotions law. She counsels clients in developing and exploiting their trademark and copyright portfolios, including clearance; prosecution; and identifying important overseas jurisdiction and filing or coordinating with local counsel overseas. Michelle develops strategies for the enforcement of her clients' IP rights. She also develops strategies for enforcement of her clients' intellectual property rights online, including handling Uniform Domain Name Dispute Resolution Policy proceedings. Michelle attends and speaks at International Trademark Association (INTA), MARQUES, European Communities Trade Mark Association (ECTA), and the Asociancion InterAmericana de la Propriedad Intelectual (ASIPI).
Author email: mciotola@cantorcolburn.com

David Kincaid, Partner & Co-Chair, Artificial Intelligence Practice, Cantor Colburn
David concentrates on assisting clients in solving IP problems and protecting their investments in product development and has significant experience protecting inventions related to or incorporating artificial intelligence (AI), augmented reality (AR), virtual reality (VR), cloud computing, and other emerging technologies. David has prepared and prosecuted patent applications about: artificial neural network architectures and algorithms for image processing, natural language processing, and the like across various industries; reinforcement learning for autonomous driving; AR for 3D data visualization; VR user feedback systems; and cloud architecture and infrastructure management systems. David is a thought leader in the AI technology space being active in the Intellectual Property Owners Association committees on Software Related Inventions and AI & New Emerging Technologies.
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Are we ready for round 2?

Stuart Fuller, Chief Commercial Officer of Com Laude, presents the general attitudes towards the upcoming ICANN registration window for dotBrand domains which will open in 2026, offering advice for interested brands to consider.

We are now less than two years away from the beginning of the application window for ICANN's next phase in the expansion of its new gTLD program. It has been over 12 years since organizations last had the opportunity to apply to run their own top-level domain, and so the anticipation has been building on who will apply and for what.

Whilst we are not yet under starter's orders, we are most definitely on the right track to the second application round, which according to ICANN's updates in late 2023, is due to open in the second quarter of 2026. This has been further ratified with the publication of sections of the Application Guidebook – the new gTLD "Bible" – for public comment, a sure sign that ICANN means business.

There is a very different feeling this time around than there was back in 2011, with a new determination and focus within ICANN on ensuring the whole community is ready for a second application round. There is still plenty of work to be undertaken by the organization and its stakeholder groups, but a critical path has been defined which encompasses the resolution of the outstanding recommendations from the Subsequent Procedures (SubPro) Implementation Review Team (IRT).

In her first address to the Generic Names Supporting Organization (GNSO) Council on ongoing planning for the second application round, ICANN's Interim CEO, Sally Costerton paraphrased Sir Winston Churchill when she said that "we should be aware of perfect being the enemy of good", which many saw as a message to the community as a whole that everyone needed to be focused on delivering the second round, with as many of the outstanding issues either resolved or removed from the roadmap. In practice this means that whilst there is a need to ensure that hot topics such as Internationalized Domain Names and Closed Generic applications are addressed, they should not be insurmountable obstacles on the path to the second application round.

Stuart Fuller

> **The anticipation has been building on who will apply and for what.**

There have already been significant changes announced based on lessons learned from the 2012 application process. A communication and awareness building program has already begun, as has development of a new TLD application system. A new evaluation process for Registry Services Providers is due to start in late 2024, which will ensure that the technical elements of any TLD application will be assessed in a much more efficient way.

Later in 2024, the Applicant Support Programme is due to open. This is an ICANN funded initiative that will provide underprivileged new Top-Level Domain applicants with financial and non-financial support through access to pro-bono services and reduced application fees, with an initial $2 million set aside for the program.

Many organizations have been keeping their powder dry in terms of whether they are going to apply for a dotBrand TLD, awaiting announcement of the ICANN fee for applying. It is likely that this information will be published this summer, as part of the updated Applicant Guidebook, and subject to what is likely to be lively debate and public comment.

Whatever that price point is, it will generate a significant amount of comment from community stakeholders, applicants (current and future), registrars and registry operators. In and around the meeting rooms and corridors of ICANN events over the past year, rumors of numbers as high as $330,000, and as low as $190,000 have been discussed. What is almost a certainty is that it will be more than the Round 1 application fee of $185,000 per TLD.

But is the price, or the absence of it, the reason many organizations have not yet committed to a dotBrand TLD application, or even started the preparation work for one? How much of an issue is the price tag if an organization has a solid business case, built around some use case scenarios that will provide a return on investment, either in financial or non-financial terms (or both) over a number of years?

The application fee is a one-off payment made to ICANN upon the application submission of the TLD. Should the application pass the ICANN evaluation process, then the applicant will be invited to sign the Registry Agreement with ICANN before the TLD is delegated and can be actively used. The Registry Agreement covers an initial 10-year term to operate the TLD with a presumption of automatic renewal. Upon renewal, the fee does not have to be paid again, so the cost of the application fee could be amortized as a non-tangible fixed asset over a long period of time, such as 20 years. Naturally, most organizations would need to gain authorization for such a level of spend on an asset, which can take time and could span budgeting periods.

More of a concern for some potential applicants is whether there could be competing applications for the same TLD. Since the last application round in 2012, the growth of new businesses that use a generic word, or words, as their business name means there could easily be several applications for the same string. Telegram, Chime, Ripple, Bolt, and Bird – all generic words, all names of global brands with billion-dollar valuations formed since the last application round, and whilst all of those organizations have trademark coverage, which would not preclude a third-party generic application (or multiple applications) being made. How would you react if you did not apply, only to find another applicant applies for your brand as a TLD?

Why are organizations considering a dotBrand application in the next round? Whilst each organization will have its own reasons for making an application, there are a number of compelling value propositions for owning your own dotBrand:

- A dotBrand infers trust because all domain names ending in the dotBrand are controlled by the brand owner. This ensures that an organization's reputation is protected, and communications between stakeholders and clients can take place in a secure environment.

- DotBrands provide a zero-abuse space, ensuring that customers have full confidence they are interacting with a trusted environment, whether that be a website, email, or other internet resource using a dotBrand domain name.

- A dotBrand simplifies naming conventions and URL structures, enhancing website user experience by removing long, meaningless strings of characters and providing intuitive ways for customers to navigate a website.

- Using a dotBrand domain name as unique customer identifiers can provide additional security, authentication, and innovative approaches to customer verification, tracking, and validation.

- A dotBrand TLD can offer SEO opportunities in fiercely competitive local and global markets by enabling the creation of domain names that are readable, meaningful, memorable, and relevant to the search experience.

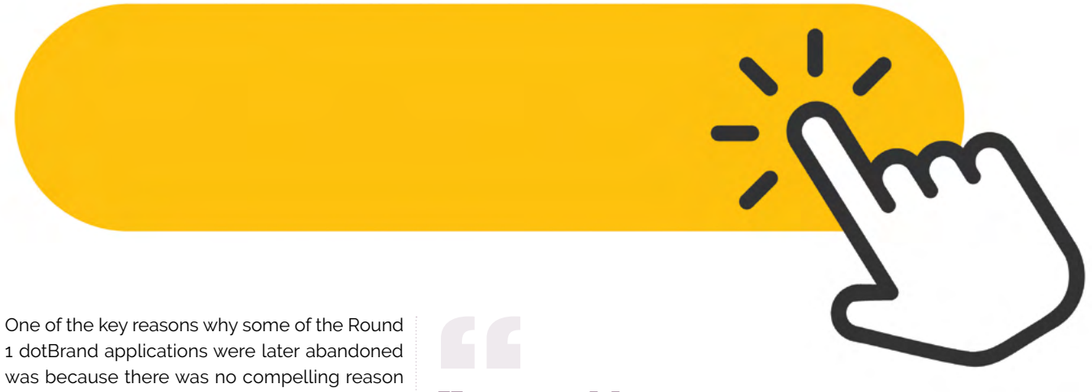
- DotBrands offer organizations a "Lift and Shift" business continuity plan should there be an interruption in the availability of standard TLDs, such as a specific country code TLD becoming unavailable due to conflict or natural disasters in the region.

Brand holders need to be clear on what they want to achieve from a dotBrand application, how it aligns with the organization's strategy and objectives, and what potential return on investment it wants to see from a dotBrand application. That ROI will not just be measured in financial terms. It could be through operational and process improvements, a more intuitive customer experience, security, and stability of internal infrastructure, or achieving a new source of competitive advantage.

> **A new evaluation process for Registry Services Providers is due to start in late 2024.**

Résumé

Stuart Fuller is Com Laude's Chief Commercial Officer. Stuart has nearly 20 years of experience in the domain name and brand protection industry, having previously held senior commercial positions at NetNames, CSC, CentralNic, and OpSec Security. Stuart played a big role in the first round of the new gTLD program in 2012, working with a number of global brands in creating dotBrand strategies and use case scenarios whilst he was at NetNames, and brings that expertise and experience to Com Laude. Stuart is a published writer, both on subjects around domain names and intellectual property protection but also on football culture.



One of the key reasons why some of the Round 1 dotBrand applications were later abandoned was because there was no compelling reason to apply, no organization-wide buy in, and no metrics to demonstrate success.

In the first application round, back in 2012, many organizations scrambled to submit applications at the last minute, for fear of missing out and consequently, did not develop their dotBrand strategy or align internal stakeholders accordingly. This saw some potential applicants struggle to find the experts who could manage the application for them. Consequently, some organizations have struggled to see the value in their application(s) and are yet to actively use their dedicated digital space. We have also seen some brand holders decide to terminate their unused and unloved dotBrands, or even agree to transfer the management of their TLD to third parties, who have repurposed the string for generic use, albeit in very small numbers.

Preparation is the key to a successful dotBrand application, both to take advantage of the opportunities that owning a Top-Level Domain bring, but also to mitigate any internal and external risk in making an application. That preparatory work should include the following tasks, to ensure that any work, resources, and budget are focused in the right areas and enable an organization to make the right decisions long before the application deadline:

- Whether a dotBrand TLD application(s) is likely to be successful based on a review of intellectual property, the competitive landscape, and a check against ICANN's reserved and banned names list.
- Who internally within the organizations should be involved in the planning and preparation phase, creating the project team and the terms of reference around that?
- Developing the compelling business plan and budget for a successful dotBrand application, based on key financial and non-financial objectives.

> **How would you react if you did not apply, only to find another applicant applies for your brand as a TLD?**

- Beginning to develop clear use cases and implementation plans for the dotBrand so that the benefits can be realized in short order after activation.
- Understanding the key partners you need to successfully operate a dotBrand, including: a Registry Services Provider that will manage the technical infrastructure of the dotBrand; a registry manager that can ensure compliance with your obligations to ICANN; and a data escrow provider to provide redundancy in case of technical issues.

In conclusion, ICANN's second application round scheduled for quarter two of 2026 for dotBrand TLDs represents a significant evolution in digital branding and online presence for ambitious brands. By providing enhanced security, brand authenticity, and improved customer trust, dotBrand TLDs will allow organizations to create more personalized, secure, and reliable digital experiences. As businesses increasingly prioritize online engagement, the strategic implementation of dotBrand TLDs could be crucial for an organization in maintaining their competitive advantage.

With just over 18 months to go before the application window is due to open, now is the time to begin internal planning and consideration of the dotBrand opportunity to ensure the highest possible opportunity for success.

As Benjamin Franklin once said, "By failing to prepare, you are preparing to fail."

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Decoding the new copyright guidelines for AI-generated content: ensuring human authorship and navigating risks

Andy Pham, General Counsel, and Joseph T. Miotke, Partner & IP Litigation Group Co-Chair at Dewitt LLP, evaluate the available protection for content produced by, or with assistance from, AI under the newly issued *Copyright Registration Guidance*.

Introduction

In response to the growing role of artificial intelligence (AI) in the creation of artistic content, the US Copyright Office has issued fresh guidelines for the examination of such works. *Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence*, 88 Fed. Reg. 16190 (Mar. 16, 2023) (to be codified at 37 CFR pt. 202). This development follows the registration approval of an AI-assisted comic book, "Zarya of the Dawn." US Copyright Office, *Decision Affirming Registration of Zarya of the Dawn* (Feb. 21, 2023), *https://www.copyright.gov/docs/zarya-of-the-dawn.pdf*. As of March 16, 2023, the new guidelines allow works integrating AI-produced material to be considered for copyright protection and registration, given they demonstrate significant human authorship. 88 Fed. Reg. 16190 (2023). But only the human-generated content is eligible for protection. *Id.* at 16191–92. Both new copyright applications and existing registrations are now required to disclose the involvement of AI-produced content, and substantial AI-created content must be explicitly excluded from the filing. *Id.* at 16193.

Generative AI and copyright in the contemporary creative process

As generative AI increasingly becomes a

cornerstone of modern creative endeavors, it's essential to seriously consider and address the resulting copyright issues. The transformative role of AI in generating content, ranging from visual art and music to written works, poses new challenges to traditional frameworks of copyright law. In this rapidly evolving landscape, key questions about authorship, originality, and ownership emerge, particularly when human creators and AI tools collaborate. Understanding how to integrate AI into the creative process while preserving and protecting human authorship is critical. The recently updated guidelines from the US Copyright Office offer a starting point for this conversation, emphasizing the need for substantial human authorship and comprehensive disclosure of AI-generated content in works seeking copyright protection. See *Copyright Registration Guidance*, 88 Fed. Reg. 16190 (2023).

Highlighting the importance of human creativity

The US Copyright Office's guidance stresses that copyright protection solely covers products of human creativity. *Id.* at 16192-93. Consequently, the Copyright Office will meticulously assess each AI-assisted work to gauge the extent of human involvement. Works that predominantly reflect human creativity, with AI providing assistance for certain components, stand a higher chance of being deemed eligible for copyright registration. *Id.* In contrast, works primarily conceived and executed by AI technology are less likely to receive copyright protection. *Id.*

Andy Pham

Joseph T. Miotke

Understanding the role of AI tools

The guidelines further clarify that the operation of the AI tool and its role in creating the work will significantly influence copyright eligibility. *Id.* Works simply generated by AI tools operating on human prompts might not meet the criteria for copyright protection. *Id.* On the other hand, if a human author considerably alters AI-produced material or organizes AI-created content in a creative manner, such work may be deemed worthy of copyright protection. *Id.*

Résumés

Andy Pham, General Counsel

Andy Pham is a distinguished General Counsel with over 20 years of expertise in intellectual property law, mergers and acquisitions, patent litigation, contract negotiation, and corporate governance. Currently, he is a strategic advisor to one of Asia's premier IT service companies, advising the CEO and executive team on artificial intelligence and innovation.

Previously, Andy served as General Counsel at Builder.ai, an AI-powered software platform. He played a key role in boosting the company's valuation from $200 million to over $1 billion, achieving unicorn status. As the Senior Vice President, Business & Counsel at Talkdesk, he significantly contributed to increasing the company's valuation to $3 billion. Earlier in his career at Verint Systems, he positioned the company as a top patent holder in its market and initiated a lucrative patent licensing program.

Andy holds a JD, MBA, and BSEE from Marquette University.

Joseph T. Miotke, Partner & IP Litigation Group Co-Chair, Dewitt LLP

Joe is the Co-Chair of the firm's Intellectual Property Litigation practice group. For more than 20 years Joe has distinguished himself as a leading IP litigator, patent attorney, and IP strategist. Recognized by leading IP publications as among the top patent attorneys and IP attorneys in the United States, he has worked across a wide spectrum of patent, trade secret, copyright, and trademark matters involving technologies ranging from artificial intelligence and machine learning to energy production and hydraulic fracturing. Joe speaks across North America and publishes frequently on IP-related matters.

While outside the scope of this paper, the use and output of generative AI tools may also trigger liability for copyright infringement. For example, copyright owners have filed lawsuits against Stability AI, Inc., a company that allegedly used copyright protected images to train its generative-ai product to generate new images. *See,* e.g., *Getty Images (US), Inc. v. Stability AI, Inc.*, Case No. 1:23-cv-00135-UNA (D. Del. filed February 3, 2023); *Sarah Andersen, et al., v. Stability AI Ltd.*, Case No. 3:23-cv-00201 (N.D. Cal. filed Jan. 13, 2023). The marketplace will closely follow how the district and appellate courts rule in these and other similar lawsuits that will almost certainly be filed.

Duty to disclose AI-created content

All copyright applicants, as per the guidelines, must disclose AI-created content in their applications, along with providing details about the human author's contributions. 88 Fed. Reg. 16190, 16193 (2023). Only content primarily authored by humans is eligible for registration; substantial AI-generated content needs to be disclaimed and excluded from copyright protection. *Id.* Crucially, employing an AI tool for creation does not grant co-authorship status to the AI tool or its provider. *Id.* at 16192.

Extending responsibilities for pending applications and registered works

This duty to disclose AI-generated content applies to applicants with pending applications and copyright owners with existing registrations as well. *Id.* at 16193. Pending applicants must inform the Copyright Office's Public Information Office about the AI-produced content in their applications. *Id.* Meanwhile, registration owners should amend public records by submitting a supplementary registration, which describes the human-generated content and disclaims the AI-created material. *Id.*

Potential consequences of non-compliance

Failure to update public records for AI-assisted works could lead to severe consequences for copyright owners, including possible cancellation of their registrations. *Id.* They also run the risk of having their copyright registration overlooked in an infringement lawsuit if it's determined that they knowingly supplied misleading information, leading to a refusal of registration. *Id.*

Recommendations

Given the recent guidance from the US Copyright Office, it is crucial for companies to develop internal policies and usage guidelines for AI, particularly generative AI. This is especially important when companies seek to secure copyright ownership for materials, such as marketing content. Since the Copyright Office does not permit the registration of works exclusively generated by a machine, the use of generative AI necessitates careful administration, scrutiny, and legal vetting.

> **If a human author considerably alters AI-produced material or organizes AI-created content in a creative manner, such work may be deemed worthy of copyright protection.**

However, there exists a provision for works featuring AI-generated material to qualify for copyright protection, as long as they also demonstrate substantial human authorship. Id. at 16192-93. In these instances, it is crucial to remember that copyright protection exclusively covers the human-authored elements of the work. *Id.* Such an approach aligns with the office's emphasis on safeguarding human creativity and ensures a balanced integration of AI into the creative process.

Conclusion

Given the evolving nature of AI in the creative process, copyright applicants and owners must ensure their filings accurately reflect and disclaim AI-generated content to safeguard their rights. They should also be prepared to respond to examiners' queries about the nature of the AI tool and its specific function in the creation of the work. As the Copyright Office initiates an extensive study into the implications of AI on copyright law and policy, the rules governing AI-generated content will likely continue to adapt in response to the rapidly advancing technology.

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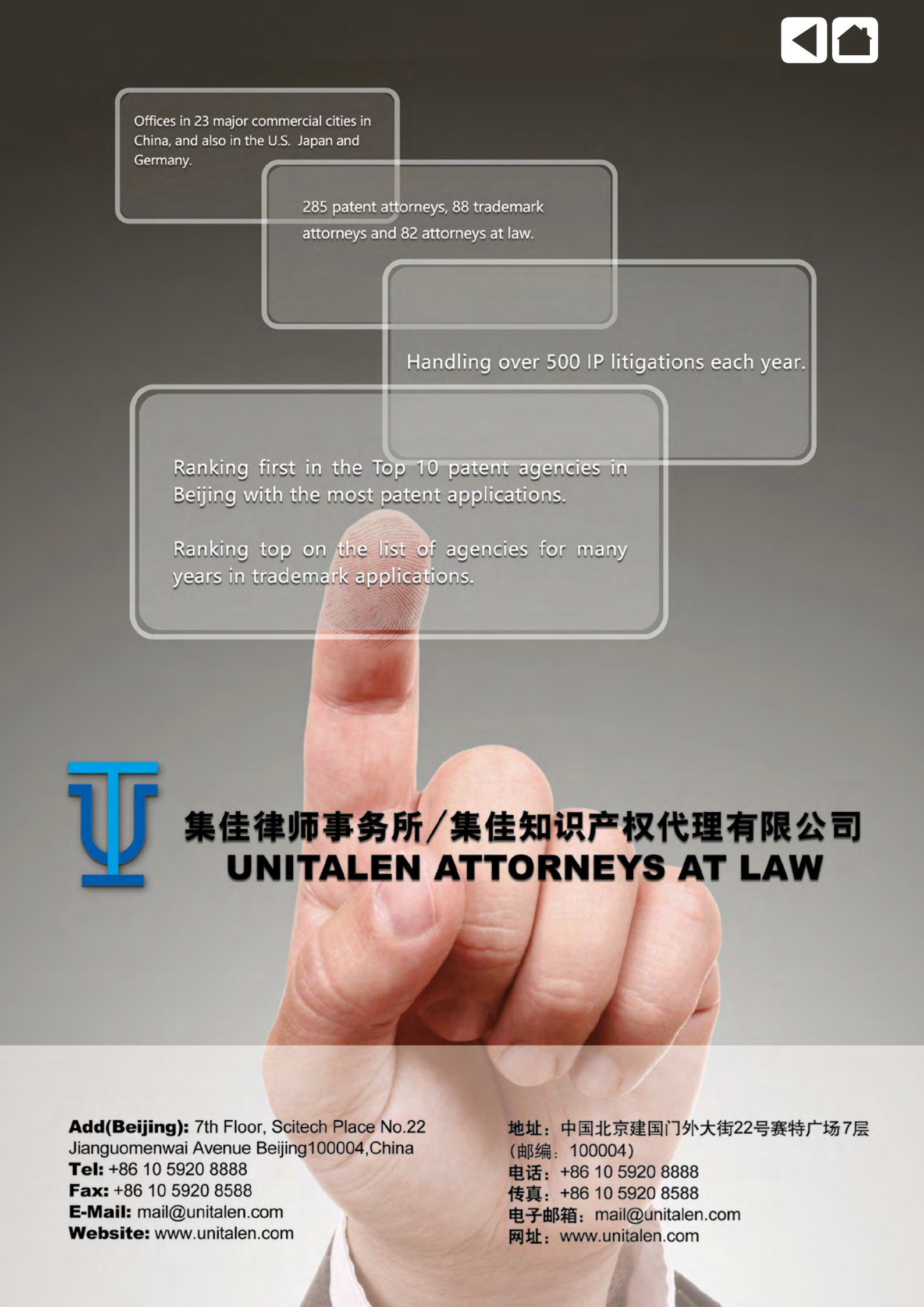

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