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U.S. Supreme Court Issues Long-awaited *Bilski* Opinion

Business methods are patentable, according to the long-awaited decision, *Bilski v. Kappos*. While the Supreme Court found Mr. Bilski's method for hedging transactions in the energy markets to be an unpatentable abstract idea, the Court found no per se bar against business method patents. The Supreme Court approved the Federal Circuit's machine-or-transformation test as one way to determine whether a method is patentable subject matter, but held that it is not the only test under Section 101.

***Solo* Decision Completes the Trilogy on False Marking**

The most recent false marking case to come out of the Federal Circuit has clarified that marking products with expired patents can be false marking. But the *Solo Cup* decision also reiterated that there can be no liability for false marking unless an intent to deceive the public with the patent marking is shown.

ITC Rejects Technology Community's Effort to Restrict Non-Practicing Entities' Ability to Stop Importation of Goods

Recent ITC Commission ruling makes it more difficult for non-practicing entities to bring patent infringement suits in the ITC. Patent owners cannot rely solely on their litigation expenses to establish a domestic industry. Litigation expenses must have nexus with domestic licensing activities.

Hot Topics in Domain Names

Domain name developments will change the face of the internet and all companies need to be aware. Internationalized domain names in Cyrillic, Arabic, and other alphabets increase opportunities to communicate with new audiences in many countries, but also pose increased challenges to brand monitoring and cybersecurity.

New top-level domains are also on the horizon as the world of .com, .net and .org will explode to an unlimited number of new domains for anyone who has the resources to apply to run a new registry. New opportunities, but also new challenges to brand protection, are also imminent. Comments are open and brandowners must be aware of developments and have their voices heard.

The End of the Shrink-wrap License?

A recent 9th Circuit case may jeopardize the standard business practices of the entire software industry. An eBay entrepreneur challenges a software titan in *Vernor v. Autodesk, Inc.*

Patent Office Announces Proposed New Initiative to Provide Applicant-Customized Examination Tracks

The PTO has announced a new initiative that offers three tracks for examination. Applicants can choose to expedite or defer examination, or maintain a traditional timetable. Applications claiming priority from a foreign-filed application will be placed on hold until certain steps are fulfilled, after which they will be eligible for expedited or standard examination only.

PTO Announces Green-er Pilot Program

The U.S. PTO has relaxed its requirements for entering the Green Technology Pilot Program. Effective May 21, 2010, the program is **no longer limited** to the categories of Alternative Energy Production; Energy Conservation; Environmentally Friendly Farming; and Environmental Purification, Protection, or Remediation. The relaxed requirements will allow more applications to enter the Green Technology Pilot Program.

PTO "Project Exchange": A Chance to Advance Your Most Important Patent Applications out of Turn

The U.S. Patent and Trademark Office recently announced the expansion of the "Project Exchange" program. This program allows any applicant with more than one pending patent application to receive expedited review of one application in exchange for withdrawing a second, providing the applicant with the ability to expedite the examination of important applications.

Credit Card Processors Fail to Win Dismissal of Trademark Infringement Suit Based on Doing Business With Counterfeiters

A New York federal court will allow a trademark infringement case brought by a famous luxury goods manufacturer to proceed against three credit card processors who did business with a counterfeiter. The judge found sufficient facts were pled that the credit card processors contributed to the infringements of Gucci's trademarks because they knew or should have known the counterfeiter was selling fake goods.

Venable's Advertising & Marketing Practice Wins *Chambers USA* Award for Excellence

The award recognizes firm's leading edge work across the full spectrum of advertising and marketing law, including direct response, interactive, mobile platforms and social media, as well as privacy/data protection; heavy regulatory component to modern advertising practice – Where Madison Ave. meets Pennsylvania Ave.

Venable has formed a strategic alliance in Europe with Field Fisher Waterhouse, LLP and presents the following article of interest from our FFW colleagues.

L'Oreal's Success in Extending Protection for European Community Trademarks is Reluctantly Acknowledged by English Court

The Court of Appeal in the EU struck a blow to comparative advertising by deciding that a party's use of another's trademarks in comparison lists was bound to interfere with the "communication, investment and advertising" function of trademarks, in violation of Article 5(1)(a) of the EU Trade Marks Directive. This creates a problem for comparative advertisers because all comparative advertising impinges to some extent on the value of the trademarks to which comparison is being made.

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