

**IPRIA International Developments in IP
Update February 2009**
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WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Singapore Treaty on the Law of Trademarks to enter into force

Following its ratification by Australia on 16 December 2008, the Singapore Treaty on the Law of Trademarks will enter into force on 16 March 2009. Australia is the tenth ratification of the Treaty, enabling it to enter into force. The Treaty standardises procedural aspects of trade mark registration and licensing. By establishing common standards, the Treaty intends 'to create a level playing field for all economic operators that invest in branded goods.' Through an Assembly of contracting parties, the Treaty also creates a regulatory framework with a built-in review mechanism to help ensure that the international legal framework is attuned to the practical concerns of trade mark owners as well as to the needs of developing countries.

For more information, click here

http://www.wipo.int/pressroom/en/articles/2008/article_0068.html

Global financial crisis impacts 2008 international patent filings

According to a report issued by WIPO on **27 January 2009**, international patenting activity has been affected by the world economic downturn. Compared to an average 9.3% rate of growth in the previous three years, international patent filings under WIPO's Patent Cooperation Treaty (PCT) grew by 2.4% in 2008, to nearly 164,000 applications. The largest number of international PCT applications, just under a third of the total for 2008 were filed by inventors in the USA, maintaining a ranking that has spanned some thirty years. Japan, took the number two spot in 2008, followed by Germany, Republic of Korea, France, China, United Kingdom, Netherlands, Sweden, Switzerland, Canada, Italy, Finland, Australia, and Israel. The largest proportion of PCT applications published in 2008 related to medical technology, computer technology, and pharmaceuticals sectors. The fastest growing technology areas are information technology methods for management, and micro-structures and nanotechnology.

For more information, click here

http://www.wipo.int/pressroom/en/articles/2009/article_0002.html

SCT addresses areas of convergence regarding non-traditional marks, trade mark opposition procedures and industrial designs

WIPO's Standing Committee on the Law of Trademarks, Industrial Design and Geographical Indications (SCT) concluded on **5 December 2008** after endorsing agreement on matters relating to non-traditional marks and trade mark opposition procedures, and considering issues relating to industrial designs. First, the SCT reaffirmed the agreement adopted last session related to requirements for the representation and description of non-traditional marks, such as three-dimensional,

colour, sound or hologram marks. In seeking to identify areas of convergence, the aim is to promote more consistent outcomes in the trade mark registration process across different jurisdictions. Secondly, the SCT reaffirmed its agreement on areas of harmonisation relating to trade mark opposition procedures. These areas include grounds of opposition, entitlement to file an opposition, the availability of observations made by third parties, and a ‘cooling off’ period allowing for settlement negotiations. Lastly, the SCT examined a range of topics relating to industrial design law and practice in its review of a recently published survey based on responses from over 70 Member States. The SCT agreed to continue work on these questions at its next session with a view to identifying possible areas of convergence in design law and practice.

For more information, click here

http://www.wipo.int/pressroom/en/articles/2008/article_0066.html

EUROPEAN UNION

PATENTS

European Commission publishes Preliminary Report regarding Pharmaceutical Sector Inquiry

The European Commission recently published a Preliminary Report on the Pharmaceutical Sector Inquiry. The Inquiry was launched in 2008 because information relating to innovative and generic medicines suggested that competition may be restricted or distorted. The Preliminary Report examines the pharmaceutical sector in relation to the EC competition rules and the current patent system. In their submissions, both ‘originator’ companies (those active in R&D, manufacturing, marketing and supply of innovative medicines) and ‘generic’ companies (whose activity in R&D is limited) support the creation of a single Community patent to amend the present system consisting of a bundle of national patents. Interested stakeholders were invited to submit their comments on the Preliminary Report by **31 January 2009**. The Final Report of the sector inquiry is expected later in the year.

For more information and to access the Preliminary Report, click here

<http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/index.html>

RESEARCH & DEVELOPMENT (R&D)

European Commission publishes two calls for proposals on projects related to innovation

The European Commission recently published two calls for proposals regarding EU-funded projects on innovation. The first was launched by COST (European Cooperation in the field of Scientific and Technical Research). COST invites proposals for actions contributing to the scientific, technological, economic, cultural or societal development of Europe. The collection date for Preliminary Proposals is **27 March 2009**. The second proposal was launched by ESPON (European Spatial Planning Observation Network) for expressions of interest regarding the ESPON 2013 Knowledge Support System. ESPON aims to enlarge the existing pool of experts in

the field of territorial research and analysis, in particular in themes such as ‘Land Use’, ‘Accessibility’, ‘Innovation’ and ‘Globalisation’. The deadline for submissions is **12 February 2009**.

For more information regarding the COST proposal, click here <http://cost.esf.org/index.php?id=opencall>

For more information regarding the ESPON proposal, click here http://www.espon.eu/mmp/online/website/content/programme/1455/1496/2154/index_EN.html

European Commission publishes two reports on innovation performance

On **22 January 2009**, the European Commission published the ‘2008 European Innovation Scoreboard’ and the ‘Innovation Progress Report’ based on data that precede the financial crisis. The Scoreboard shows the EU making substantial progress in its innovation performance. Across the EU, particular progress has been made in human resources and availability of finance for innovation. However, innovative investments by businesses are still relatively weak especially if compared to the US and Japan. The ‘Innovation Progress Report’ presents independent analysis of developments in national innovation policies and governance. The Report shows a trend towards support for innovative start-ups and strategies which address new challenges such as climate change and resource productivity. The findings of both publications will be used by the European Commission to help assess the success of current innovation policies and identify future priorities.

For more information, click here <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/112&format=HTML&aged=0&language=EN&guiLanguage=en>

European Commission publishes report on R&D investment by ICT industry

On **25 November 2008**, the Joint Research Centre of the European Commission published a report titled ‘Mapping R&D Investment by the European ICT Business Sector’. The report shows that the ICT (Information and Communication Technologies) industry is Europe’s largest R&D-investing sector, contributing 26% of total business expenditures in R&D, ahead of the automotive and pharmaceutical industries. The report finds that the EU’s ICT industry spends some 50% less on R&D than its counterparts based in the US, in absolute amounts and as a share of Gross Domestic Product. The difference in ICT business sector R&D accounts for half the overall R&D gap between the EU and the US. The report is the first in a series of studies that will be extended to provide further analysis of data from the 27 EU Member States and to incorporate public financing for ICT R&D. Future reports will aim to measure EU ICT R&D performance vis-à-vis other leading world economies.

To access the report, click here http://ec.europa.eu/dgs/jrc/downloads/jrc_reference_report_2008_11_ict_rd.pdf

ENFORCEMENT OF IPRs

Rome II Regulation enters into force and introduces new conflict of law rules

On **11 January 2009**, Regulation 864/2007 on the law applicable to non-contractual obligation (Rome II Regulation) entered into force. With respect to IP, the Regulation establishes uniform conflict of law rules to be applied by the courts of EU Member States to determine the laws applicable to claims regarding:

- acts of unfair competition and acts restricting free competition (Article 6 of the Regulation);
- infringements of national IP rights (Article 8.1); and
- infringements of Community IP rights (Article 8.2).

The Regulation is complemented by the Rome I Regulation on the law applicable to contractual obligations. The Rome I Regulation is due to come into force in December 2009.

To access the text of the Rome II Regulation, click here

http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_199/l_19920070731en00400049.pdf

OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET (OHIM)

New edition of Locarno Classification for registered Community designs

As of **1 January 2009**, the OHIM will apply the ninth edition of the International Classification for Industrial Designs (Locarno Classification) to all registered Community designs (RCD) applications filed on or after that date. Pending RCD applications or already registered Community designs having a filing date prior to 1 January 2009 will not be reclassified. The major changes introduced by the ninth edition are:

- the introduction of a new class 32-00 titled ‘Graphic symbols and logos, surface patterns, ornamentation’ for products such as graphic designs and get-up;
- the deletion of class 99-00 and the reclassification of its products to other classes; and
- the introduction of 99 new product terms.

For more information, click here

<http://oami.europa.eu/ows/rw/news/item844.en.do>

ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

OECD stocktakes its existing work on innovation

On **2 February 2009**, the OECD released a Working Paper titled ‘OECD Work on Innovation – A Stocktaking of Existing Work’. The Working Paper draws on OECD work from the last decade to provide a broad-brush overview regarding policy practices for innovation. The stocktaking highlights that much work, both theoretical and empirical, has already been done to identify the policies, institutions and framework conditions that can provide the most effective means of supporting

innovation. However, evaluation of specific government support policies and their impacts on innovation is generally sparse and there is a need for more evidence on the costs and benefits of government support for innovation.

To access the Working Paper, click here

<http://www.oecd.org/dataoecd/14/32/42095821.pdf>

OECD releases publication on global open innovation

On **16 December 2008**, the OCED published a Working Paper titled ‘Open Innovation in a Global Perspective – What Do Existing Data Tell Us?’. The Working Paper presents different indicators using existing data on R&D investments, innovation survey data, patent data and data on licensing to illustrate the different characteristics of open innovation across companies, industries and countries. Some of the results include:

- companies collaborate in innovation most frequently with suppliers and customers while co-operation with competitors, private R&D labs and consultants seems to be somewhat less important;
- larger firms innovate more openly than small firms; and
- international technology collaboration (based on innovation survey data and co-application patent data) is found to play a prominent role in the innovation process but companies seem to privilege innovation partners that are geographically close.

To access the Working Paper, click here

<http://www.oecd.org/dataoecd/25/38/41885837.pdf>