

Index

- Abbott, F.M. 354
Abbott, R. 115
Abel, I. 102
Adidas 289, 298, 305, 310, 312, 318, 322
AI (artificial intelligence) 163
alienation of rights 14–15, 171
Almeling, D. 91
Amazon 218
Amazon/Austro-Mechana 217
American Broadcasting v. Aereo 219
Amgen Inc. v. Hoechst Marion Roussel 27
Anderman, S.D. 7, 339, 345, 347
Angelopoulos, C. 214
Annand, R. 313
Apple Inc. v. Motorola Inc. 354, 360
applied art 227–8, 232–3
Areeda, P. 349
Arezzo, E. 144, 158, 197, 223, 334, 346, 349
Armstrong, A. 370
Arrow, K. 82
Asahi Glass Co. v. Pentech Pharmaceuticals 335, 347
Ascarelli, T. 313
Aspirin 279, 332
Associated Press v. United States 349
AstraZeneca v. Commission 58, 359
Atnasiu, I. 335
Austria 137
Auteri, P. 172
Authors Guild v. Google Inc 199

Babyliss v. Commission 278
Balganesh, S. 158
Banca Intesa 298
Bang & Olufsen 315, 317

Barbie, Mattel v. MCA Records 307
Baron, J.C. 360–61, 363
Basheer, S. 32, 115
Baumol, W. 60, 356–7, 366
Bayer Co. v. United Drug Co. 321
Bayh-Dole Act 1980 (US) 18
Beatle/The Beatles 271
Beebe, B. 304–5, 384
Beier, F.-K. 37
Bentham, J. 13, 19
Bently, L. 182, 295
Bergqvist, J. 313
Berman, B. 278
Berne Convention 1886 14
 alterations and amendments 179
 applied art 227–8, 232–3
 authors' moral rights 48, 171, 173–4
 commercial publication 175–6
 compulsory licensing 47
 computer software, as literary works 240–41
 copyright duration 227–8
 copyright protected works 168–9, 173
 creative character 173–4, 176
 derivative works 179–80, 184–5, 240–41
 discretionary exclusions 47–9
 exceptions 198–9
 free uses entitlements 191–3
 individual rights to IPR 16
 industrial vs. intellectual rights 4–5, 176, 227–8
 quotation right 210–11
 three-step-test 200
 translations 184–5
Bessen, J. 114

- Best IT World (India) Private Ltd v. Telefonaktiebolaget LM Ericsson* 371
- BestWater* 193
- biodiversity, equitable sharing 41, 106–7
- biotechnological inventions, patentability 53, 88–9, 97, 110
- Birnhack, M. 55
- Bjoerkenfeld, M. 306
- Blakeney, M. 69
- Blind, K. 357
- BMW* 276
- BMW-Motorhaube* 312
- Bochovic, J. 112
- Bolar* clauses 99, 104
- Bolton, M.K. 102
- Bonito Boats* 102
- Botolist and Botacyl/Botox* 271
- Bowe, C. 115
- Brandeis, J. 102
- Braun, A. 295
- BRCA1/BRCA2 genes 88–9
- Bresnahan, T.F. 236
- Broccoli II* 109
- Brown, A.B.L. 26, 282
- Brown, R.S. 221
- Bryer, L. 278
- Bugbee, B. 35
- Burk, D.L. 169
- Calboli, I. 275, 312–13
- Calvados/Verlados* 265, 315, 333
- Camel/Camelo* 271
- Campus, G. 188
- Canada 199
- Carlo Roncato/RV Roncato e Roncato* 271
- Carrier, M. 351
- Cassina* 229
- Cavani G. 291
- Centrafarm* 120, 339, 346
- Chace Act 1891 (US) 35
- Chien, C.V. 366
- Chin, D. 199
- China 360
- Ciani, J. 166
- Citi/Citibank* 271
- Claeryn* 295
- cloud technology 218–19
- Coca Cola* 290, 312–13, 317
- Cohen, F. 20, 303
- Colangelo, G. 332, 344, 356
- collaborative production models 44
- collecting societies
- conflicts of interest 30–31
 - online platforms, interaction with 222–3
- collective management
- out-of-commerce works, use by cultural heritage institutions 215–16
- Colman* 55
- Coombe, R. 29
- Commission Communication on Guidelines on Article 101 TFEU and horizontal co-operation agreements 95, 140, 343, 351, 354, 367
- Commission Communication on Online Platforms and the Digital Single Market 165, 224, 243
- competition
- and computer software
 - benefits for 244–7
 - conflicts 48, 243–4, 336
 - databases 243–4
 - de facto* industry standards 350–55
 - network effects 245–6
 - PC market, vertical integration 236–7
 - technological dominance 336
 - trade secrets 336
- conflicts with IPR 6–7, 17, 45–6, 59–60, 338–54
- access vs. exploitation 59–60
 - collective interests 339–40
 - de facto* industry standards 350–55
 - de jure* industry standards 354–5
 - duty to share 345–58
 - exercise of holders' powers 339–45
 - existence vs. permitted exercise 345–6

- free movement of goods 339
- geo-blocking 340–41
- group innovation 342–3
- horizontal and vertical agreements 342–5
- importance for 18–20
- indispensability 347–8
- judicial interference 340–41
- and licensing 340–41, 356–8
- network effects 351–4
- paradox, (non)existence of 356–8
- parallel imports 121–2, 341, 344–5
- pro-competitive aspects of IPR 331–3, 354–5
- and rule of reason 342
- and secondary markets 352–4
- technology pools 343–4
- Technology Transfer Block Exemptions 342
- and cooptation 78–9, 280–81, 340
- and copyright 18–19, 48, 169
 - market dominance 335–6
 - neighbouring rights 190–91
 - pro-competitive aspects 332
- corrective role 7, 59–60
- databases 243–4
- dominant position 9–10, 334
 - copyright 335–6
 - definition 337–8, 359
 - market partitioning 340
 - patents 334–5
 - trademarks 336–8
- and industrial design protection 230–31
- and innovation 42, 69–72, 114
 - derivative inventions 131–8
 - high-tech dependent inventions 131–8
 - implementation 132–4
 - substitutive innovation 92–6, 129–31
- and new technology 42
- numerus clausus* principle 51–3, 169
- and patents
 - conflicts 80–81, 116–17
 - derivative inventions 131–8, 332
 - disclosure vs. exclusivity 123–5
 - economic significance 134
 - equivalence 115–16, 130–31
 - essential facilities doctrine 45, 49, 56–7, 60–61, 335, 345–54, 357–8
 - exhaustion principle 120–22, 340–41
 - first to file 128, 145–8
 - high-tech dependent patents 131–8
 - imitation, by 101–4
 - implementation rights 132–4
 - indispensability 347–8
 - influences on 123–38
 - knowledge sharing 125–8
 - licensing, benefits of 134–5
 - market dominance 334–5
 - observation, study or testing 128
 - parallel imports 121–2, 341, 344–5
 - pro-competitive aspects 332
 - role in 18–19, 71–4, 80–81
 - substitutive innovation 92–6, 129–31
 - trade secrets 125–8
 - unitary patents 30
- pro-competitive aspects of IPRs 331–3, 353–4
- and trademarks
 - consumer loyalty 278–9
 - dominant position 336–8
 - impacts on 266–79, 306–8
 - implicit abrogation principle 316–17
 - importance for 18–20, 266–7
 - imported goods 274–5
 - law reform proposal impacts 285–91
 - licensing, and 337–8
 - market entry 272
 - market leverage 288–9, 293–4, 305–6
 - market power 277–9
 - misleading uses 280–83
 - multiple licensing 287–8
 - pro-competitive aspects 332–3

- renowned trademarks 277–9, 282–3, 305–8, 337–8
- selective distribution 275–6
- territoriality 274–5, 293, 306–8
- 3-D shapes 311–20
- trademark-patent linkages 278–9
- unfair competition 289, 295–8, 303, 306–8, 318–20
- vulgarization 274, 278–9, 291, 320–23, 338
- unfair competition
 - assessment criteria, influences on 388–90
 - boycotts 333, 388
 - competitive interest conflicts 385–6
 - consumer dependence 388
 - focus of 333–4
 - IPRs, interaction with 333–4, 382–3, 385–6
 - law, development 383–5, 387–90
 - market, role of 387–8
 - misappropriation doctrine 304–5, 384, 386
 - multi-layered legislative approach 389–90
 - protections against 6, 17, 34, 103
 - regulatory limitations 381–2
 - renowned trademarks 289, 295–8, 303, 306–8, 318–20
 - 3-D shape trademarks 318–20
 - and tort law 126, 386
 - trade secrets 126–7, 336
- compulsory licensing
 - access vs. exploitation 59
 - copyright 47–9
 - criticism of 134–5, 137–8
 - and Developing and Least Developed Countries 40–41
 - essential facilities doctrine 43, 45, 49, 360–62
 - historical development 137
 - patents 104, 137–8
 - benefits and disadvantages 134–5
 - fair compensation 359–60
 - high-tech dependent patents 134–5
 - standard essential patents (SEPs) 358–60
 - TRIPs Agreement 40–41, 93, 137
- computer software
 - and competition
 - benefits for 244–7
 - conflicts 48, 243–4, 336
 - databases 243–4
 - de facto* industry standards 350–55
 - network effects 245–6
 - PC market, vertical integration 236–7
 - technological dominance 336
 - trade secrets 336
 - copyright protection
 - benefits 244–7
 - CONTU Commission (US) 238
 - derivative programs 240–41
 - EU law 238–41
 - historical development 235–8
 - innovative value certification 236–7
 - literary works, interpretation as 178, 238–41
 - need for, influences on 236–7
 - proportionality 241
 - rental and lending rights 186–8
 - reverse engineering, and 240–41
 - scope of 240–41
 - databases
 - and competition 243–4
 - sui generis* right 86, 241–4
 - patentability
 - judicial interpretation 237–8
 - policy development 239–40
 - product vs. process patents 108
 - reform proposals 144
 - rule of doubt 237–8
- conflicts of interest
 - assessment challenges 25
 - balance, challenges of 53–6
 - collecting societies 30–31
 - and collective interest 22, 57–8
 - competitive exploitation 23–5, 58–60
 - constitutional hierarchy 53–6
 - contractual 23

- copyright 23–4
- cultural 51–2
- Developing and Least Developed Countries 31–41
- dual concentric model of IPR 50–53
- essential facilities doctrine 56–7, 345–54, 357–8, 360–62
- exclusion vs. access 2–3, 21–2, 49–53, 56
- freedom of access to information 28
 - generally 20
- illegal exploitation 58–60
- information society 28
- knowledge vs. exploitation 21–2, 56, 60–61
- licensors vs. licensees 20–21
- normative solutions 51–3
- open access models 24, 49–50
- patents 22–3, 116–17
 - derivative inventions 57–8, 79–80, 125
 - product vs. process patents 107–10
- proportization of data 29
- and proportionality 54, 56–8
- protectionism 26–31
- qualification 54
- refusal to grant licence 22–3
- resolution 56
- societal conflicts 24–6
 - and systemic consistency 51
- trade secrets 29, 126–7, 336
- trademarks 24–5
- traditional knowledge 29
- unitary patents 30
- willing licensees 59–60
- constitutional hierarchy, conflicts of interest 53–6
- consumption, non-rivalry 81
- Contreras, J.L. 373
- Convention on Biodiversity 1992 41, 106–7
- Convention on the Grant of European Patents 1973
 - Implementing Regulations 75
- cooperative production models 44
- cooptation 78–9, 280–81, 340
- copyright *see also* computer software; industrial designs
 - access to knowledge vs. exploitation 61, 162–3, 191–4, 220–22
 - ancillary rights 28
 - benefits 50, 158–9
 - challenges
 - active vs. passive providers 165
 - exhaustion principle 186–8
 - fixation 165
 - technology platforms 164
 - collecting societies 30–31, 222–3
 - collective interests justification 178, 192–3
 - and competition
 - market dominance 335–6
 - neighbouring rights 190–91
 - pro-competitive aspects 332
 - relationship with 18–19, 48, 169
 - compulsory licensing 47–9
 - conflicts of interest 23–4, 28
 - and cultural innovation 168
 - derivative works
 - dependence/independence of 181–3
 - digital content 179
 - parodies 182–3
 - protection, generally 179–80, 179–83, 332
 - translations 184–5
 - derogations 61
 - digital content 46–7, 61, 158, 178, 185–6
 - Digital Rights Management (DRM) 202
 - duration 28, 47–8, 185–6
 - ergo omnes* protection 49–50
 - expressions vs. ideas 166, 177–8, 237–8, 335–6
 - freedom of economic enterprise 162
 - historical development 156–60
 - individual vs. corporate rights 16, 160–62
 - Information Society Directive (InfoSoc) 157–8, 194–5
 - exceptions and limitations, discretion 196–8

- exceptions and limitations,
 - harmonisation 194–6
- exceptions and limitations, strict interpretation 198–9
- harmonisation 195–6
- law reform 205–22
- legitimate interests of third party 199–201
- network controls 222
- open models, lack of 204–5
- risks 222–5
- scope 195–6
- Technological Protection Measures (TPMs) 47, 164, 201–6
- three-step-test 199–201
- intellectual labour, protection of 162
- law reform proposals 205–16
 - dispute resolution 216
 - fair remuneration for authors and performers 216
 - limitations 213–15, 222–5
 - mandatory cooperation between IPSs and copyright holders 213–15
 - out-of-commerce works, use by cultural heritage institutions 215–16
 - private copying levies 217–19
 - socio-economic influences on 219–22
- limitations 47–9, 159
- moral rights vs. moral interests 170–73
- neighbouring rights 16, 163, 184, 188–91
- non-commercial exclusions 16
- notice and take down procedure 171–2
- and open access 50, 197–8
- patent law, convergence and divergence 162, 166, 172–3, 176–7, 185–6
- performers' rights 188–91
- principles 156, 161–3
- private access 61
- private controls 49
- producers' rights 188–91
- proportionality 162, 193–4
- protected works
 - Berne Convention, under 168–9
 - commercial publication, aptness for 175–6
 - conflicts 176
 - creative character requirement 173–5
 - creative conditions 166–8
 - derivative works 179–85
 - dichotomy principle 177–9
 - expressions vs. ideas 166, 177–8, 237–8, 335–6
 - free uses entitlements 191–4
 - infringements, rights of removal 171–2
 - interpretation 165–6
 - patent overlaps 162, 166
 - substantive requirements 173–7 and protectionism 27, 34–5, 159, 219–20
- protections
 - conservation rights 176–7
 - criticisms 164
 - direct and indirect appropriation, from 179
 - duration 28, 47–8, 185–6
 - economic rights 170–71, 185–6
 - exclusion, rights of 164
 - fair use doctrine 199, 203–4
 - limitations 164
 - moral rights 171–3
 - right to access 163
 - rights holders, categories 163–5
 - third-party rights, producers and performers 188–91
- publication right 170–72
- purpose 158
- regime 161–2
 - expansion 28, 162, 168–9
- rental or lending rights 186–7
- reproduction
 - private copying 217–19
 - rights 170
- reworking right 170
- second degree uses 186–7
- technology copyright 158, 164–5

- three-step-test 28, 199–201
- Copyright Act 1980 (US) 238
- Copyright Act 1985 (Can) 199
- Copyright (Industrial Process and Excluded Articles)(No. 2) Order 1989 (UK) 233
- Copyright (Industrial Process and Excluded Articles) Order 1989 (SI 1989/1070) 233
- Coquet, L. 34
- Cornish, W. 157, 186, 233
- Cornu, E. 295
- Cotter, T. 366
- creative commons model 50
- Cue Publishing v. Colgate-Palmolive* 300
- Curley, D. 313
- D'Annunzio v. Scarpetta* 182
- data
 - free flows of 243–4
 - privatization, disadvantages 86
- Data Cash Systems* 237–8
- data mining 207–8
- databases
 - and competition 243–4
 - sui generis* right 86, 241–4
- David, P.A. 37, 85
- Davidoff* 289, 305, 310
- Davies, G. 48
- Davison, M. 243
- Deleige-Sequaris, M. 284–5
- Denmark 185
- Denozza, F. 337
- De Pamphilis, D.M. 278
- Der Gruene Punkt – Duales System Deutschland GmbH v. Commission* 338
- Derclaye, E. 312
- derivative works/inventions
 - computer software 240–41
 - copyright protection 179–85, 240–41, 332
 - parodies 182–3
 - patentability 57–8, 79–80, 109–10, 113–16, 125, 131–8, 332
 - translations 184–5
- Design Act 1988 (UK) 227, 232–3
- Deutsche Grammophon GmbH v. Metro-SB-Grossmaerkte* 70, 339
- Develey v. OHIM* 319
- Developing and Least Developed Countries
 - definition 31–2
 - and globalization 32
 - IPR conflicts of interest 31–41
 - legal framework asymmetry 32–3
 - legitimate interests, conflicts 39
 - neo-colonial influences 31–41
 - rule adoption timetable 34
 - technology spillover 38, 40
 - TRIPs Agreement
 - adoption timetable 34–5, 38–9
 - applicability 5, 31–4
 - competitive incentives 35–6
 - compulsory licensing 40–41
 - fairness 34–8
 - local working requirement 36–41, 105
 - TRIPs Plus Agreements 33–4
 - WIPO Development Agenda 39
- DHL* 293
- Di Cataldo, V. 6, 99, 110, 304
- digital content *see also* Information Society
 - copyright 158, 178, 185–6, 217–19
 - data mining 207–8
 - derivative works, as 179
 - geo-blocking 340–41
 - hyperlinks 196
 - IPR conflicts 46–7, 340–41
 - law reform proposals 185–6
 - data mining 207–8
 - ISP cooperation requirements 213–15
 - press publisher access 209–12
 - multi-territorial licensing 222–3
 - online platforms 222–3
 - private copying levies 217–19
 - user generated content 15
- Digital Millennium Copyright Act (DMCA) 1998 (US) 203–4
- Digital Rights Management (DRM) 202
- Dinwoodie, G. 11, 23, 171
- Dior* 276, 318

- Directive 84/450/EC on misleading and comparative advertising 283
- Directive 89/104/EEC on trademarks 259, 263, 274–5, 308, 313, 318
- Directive 91/250/EEC on computer programs and databases 169, 238–41
- Directive 92/38/EC on free movement of persons 350
- Directive 92/100/EEC on rental and lending rights 186–7
- Directive 93/98/EC on rental and lending rights 185
- Directive 96/9/EC on protection of databases 147, 193, 202, 241–4, 305
- Directive 98/44/EC on protection of biotechnology inventions 53, 89, 97, 110
- Directive 98/71/EC on industrial designs 169, 228–9, 233–5, 315
- Directive 2000/31/EC on E-Commerce 215
- Directive 2001/29/EC on Information Society *see* Information Society
- Directive 2001/83 on medicinal products for human use 104
- Directive 2004/48/EC on the enforcement of intellectual property rights 17, 203, 214
- Directive 2005/29/EC on unfair commercial practices 265, 297, 315, 382, 389
- Directive 2006/115/EC on rental and lending rights 187, 190
- Directive 2006/116/EC on term of copyright protection 28, 189
- Directive 2008/95/EC on trademarks 259, 268, 270, 280, 290–91, 302, 307, 312
- Directive 2009/24/EC on computer programs and databases 169, 187
- Directive 2011/77/EU on term of copyright protection 28, 189
- Directive 2014/26/EU on collective management of copyright 30–31, 223, 340
- Directive 2015/2436/EU on trademark reform 259–61, 263–5, 268, 270, 273, 280–82, 287, 289–92, 294, 302, 307, 310, 314, 320
- Directive 2016/943/EU on protection of trade secrets 83, 125–8, 336
- Doherty, B. 349
- Dolmans, M. 335
- domain names 268
- Dominicé, A.M. 85
- Drahos, P. 13, 32, 73, 303, 354
- Drassinower, A. 103
- Drexler, J. 29, 51, 86, 223, 243, 313, 332
- Dreyfuss, R. 88, 103, 133, 305, 335, 343, 384
- Drug Price Competition and Patent Term Restoration Act, 1984 (US) 99
- DSM/Roche Vitamins* 135
- Dubilier* 16
- Dunwoodie, G. 56
- Dusollier, S. 11
- Dutfield, G. 32–3
- DVD cases 343–4
- eBay Inc. et al. v. Mercexchange LLC* 19, 354, 356–7, 360
- EGEDA* 218
- Ehlerman, C.D. 88, 335
- Eisenach, J.A. 351
- Eisenberg, R. 85, 112, 131, 343
- electronic commerce *see also* digital content; Information Society
- domain names 268
- geo-blocking 340–41
- Elizabeth Emanuel* 263
- Enterprise and Regulatory Reform Act 2013 (UK) 227, 233
- equitable sharing 41, 106–7
- Ericsson Inc. v. D-Link Systems Inc.* 371
- Errico, P. 91
- essential facilities doctrine 45, 49, 56–7, 60–61, 79–80, 335, 345–54, 357–8 *see also* standard essential patents (SEPs)
- appropriate remuneration 361–2

- judicial interpretation 360–62
- over-disclosure 357–8
- Établissements Consten Sàrl and Grunding-Verkaufs GmbH v. Commission* 340
- ETSI Rules 363–4
- EU Charter of Fundamental Rights 13, 54–5, 162
- European Patent Convention 1989 53, 104
 - alternative patenting 119–20
 - applied vs. basic research, interpretation 82–3
 - disclosure requirements 74–5
 - individual rights to IPR 15–16
 - industrial application 83–4, 92, 97
 - industrial vs. intellectual rights 4
 - inventive step 110–11, 119
 - prior art/non-dependent patents 131
 - product vs. process patents 107–9
 - publication requirements 76–7
 - reform proposals 117
 - trade secrets protection 126
 - utility models 118–19
- evergreening 115–16
- Evrard, S.B. 349
- exhaustion principle 186–8, 340–41
 - patents 120–22
 - trademarks 274–6
- Ezrachi, A. 339
- fair use doctrine 199, 203–4
- Falce, V. 223, 382
- Fapil* 174
- Farrell, J. 368
- Faull, J. 368
- Federal Trade Commission 367, 370
- Federal Trade Commission Act 1914 (US) 333, 389
- Federal Trade Commission v. Actavis* 348–9
- Federico, P.J. 37, 77, 106
- Feist Publications, Inc. v. Rural Telephone Service Co* 158, 212, 242
- Feldman, R. 346
- Fezer, K.-H. 312
- Firth, A. 312, 314
- Flamagas* 315, 317
- Flos* 229
- Football Dataco* 174
- Foro* 112
- Foundation Alberto et Annette Giacometti v. Stitchin Fondaz* 183
- Fox, E. 333, 360, 389
- France 104, 203, 381
- Franchi, L. 175
- FRAND royalties, assessment criteria 362–3, 363–74
 - ex ante* assessment 365–9
 - fair dealing 365–9
 - incremental value 365–9
 - optional standards 365
 - royalty stacking 369–74
 - technical features 363–5
 - top down approach 371–4
- FRAND terms 48–9, 60, 235, 354–8
 - judicial interpretation 360–63
- Frankel, S. 201, 312
- Franklin Machinery v. Albany Farm Centre* 233
- Franzosi, M. 374
- free movement of goods 339–40
- free-riding
 - IPR influences on 7, 10, 19
 - protections from 78–9, 136–7
- freedom of contract 11–12, 50, 78
- freedom of economic enterprise 1, 13, 55, 281–2, 339–40
- freedom of expression 2
- freedom of information 28
- Frischmann, B.M. 349
- fundamental freedoms
 - access to knowledge, without exploitation 60–61
 - constitutional hierarchy 54–6
 - economic enterprise 1, 13, 55, 281–2, 339–40
 - exceptions to, IPR as 2–3, 60–61
 - hierarchy of 54–5
 - IPR ownership by individual 13
- Gal, M.S. 216, 243
- Galatovic, A. 366
- Garrison, B. 23

- Geiger, C. 200–201, 281
 generic signs, trademarks 291, 320
 genes, patentability 88–9
 Geneva Convention on phonograms
 1971 16
 Genovesi, L.M. 33, 312, 316
 geo-blocking 340–41
 geographical indications 279
 Geradin, D. 368
 Germany 16, 181, 201, 209, 384, 390
 Gervais, D. 312
 Gervais, G. 201
 Ghidini, G. 12, 33, 41, 44, 56, 144,
 244, 261, 281, 303, 312, 316,
 354, 389
Giacometti v. Stitchin Fondaz 182–3
 Gibson, J. 279
 Gilat, D. 99
 Ginsburg, J. 35, 156, 166, 197, 201,
 221, 305, 384
Giur 55, 95, 104, 112, 144, 307, 310
GlaxoSmithKline v. Commission 344
Glivec 115–16
 Gnyawali, D.R. 11
 Goethe, W. 26, 239
Google/Motorola Mobility 139, 352
Gottschalk v. Benson 144, 237
Graham v. John Deere 102
 Grasso, R. 366
*Graver Tank and Mfg. Co. v. Linde
 Air Prods. Co* 113
 Griffiths, J. 201
Grundig Consten v. Commission
 340–41
GS Media 193, 196
 Guglielmetti, G. 240
 Gutenberg, J. 19

 Hager, J. 320
 Haracoglou, I. 105
 Hasenzahl, C. 37, 105
 Hatch-Waxman Act 1984 (US) 104
 Heller, M.A. 343
Henkel/Loctite 278
Henkel v. OHIM 319
Hewlett-Packard Belgium v. Reprobel
 209
 Hilty, R. 208, 332

 Hobsbawn, E. 1
*Hodgkinson & Corby and Roho v.
 Ward* 305, 385
 Hooks, J. 349
 Hovenkamp, H.J. 332, 334, 366
*Huawei Technologies v. ZTE
 Deutschland* 139, 347–8, 352–5,
 361, 363, 365
 Hugenholtz, B. 243
 human rights 13, 54–5, 281, 359
 hyperlinks 196

 ICT sector *see also* digital content;
 internet service providers
 cloud technology 218–19
de facto industry standards 350–55
 domain names 268
 hyperlinks 196
 Internet of Things 46
 open access licensing models 24,
 44–5, 49–50
 standardization 45
 3-D printing 99–100
 user generated content 15
 value, influences on 81–2
 IEEE Byelaws 364, 367, 371
Illinois Tool Works v. Independent Ink
 334
 Ilrdi, A. 69
IMS Health v. NDC Health 140,
 347–8, 353
 India 115–16, 360
 individuals, rights of 12–14
 alienation 14–15
 copyright 16
 corporations, copyrights of 14–17
 patents 15–16
 industrial application 82–3, 91–4, 97
see also research and
 development
 industrial designs
 aesthetic features, separability
 226–7
 applied art 226–8, 232–3
 artistic value and creative nature
 requirement 229–30
 challenges and limitations 228–32
 competition impacts 230–31

- copyright, expansion of 226
- design modifications 231
- development 53, 226–7
- duration 228
- ex ante* registration 229
- FRAND terms, and 235
- hybrid system for 6, 232–5
- judicial interpretation 231–2, 234–5
- law reform proposals 232–5
- retroactive effects 230–31
- shapes 229–30
- ‘spider juicer’ 234
- 3-D shapes 14–15
- industrial rights *vs.* intellectual rights 3–5
- Infopaq International v. Danske Dagblades Forening* 174, 178, 193, 196
- Information Society Directive (InfoSoc)
 - copyright exceptions and limitations
 - data mining 207–8
 - discretionary approach 196–8
 - harmonisation 194–6
 - law reform 205–22
 - legitimate interests of third party 199–201
 - network content 222
 - open models, lack of 204–5
 - scope 195–6
 - strict interpretation approach 198–9
 - Technological Protection Measures (TPMs) 47, 164, 201–6
 - three-step-test 199–201
 - user generated content 15
 - Digital Rights Management (DRM) 202
 - fair use doctrine 199, 203–4
 - law reform proposals 205–16
 - data mining 207–8
 - dispute resolution 216
 - fair remuneration for authors and performers 216
 - limitations 213–15, 222–5
 - mandatory cooperation between IPSs and copyright holders 213–15
 - out-of-commerce works, use by cultural heritage institutions 215–16
 - press publisher access 209–13
 - private copying levies 217–19
 - socio-economic influences on 219–22
 - online platforms, role and powers 222–5
 - open access 197–8
 - risks and conflicts of interest 28, 222–5
- Innovatio, In re* 372, 374
- innovation
 - collective interest, and 57–8
 - and competition 42, 69–72, 114
 - derivative inventions 131–8
 - implementation rights 132–4
 - substitutive innovation 92–6, 129–31
 - costs of 42
 - data privatization, disadvantages of 86
 - and implementation 132–4
 - patents
 - consent to exploit 133–4
 - derivative inventions 57–8, 79–80, 91, 93, 109–10, 113–16, 125, 332
 - evergreening 115–16
 - general formulae hypothesis 96–8
 - high-tech dependent patents 131–8
 - incremental 113–14
 - inventive step 93, 97–8, 110–13, 115–16
 - and scientific theory 85–6
 - substitutive innovation 92–6, 129–31
 - utility models 118–20
 - and proportionality 57–8
- institutional framework
 - exclusion *vs.* access 2–3, 21–2, 49–53
 - fundamental freedoms 1–3

- and market economy 2–3
- mercantile system, of 2
- intangible goods
 - production, stimulation of 82
 - public property, as 81–2
- integrated circuits
 - protection, development 53
- Intel* 271, 298
- intellectual property rights, generally
 - see also* copyright; patents;
 - trademarks
 - alienation of 14–15
 - balance, need for 50–53
 - book value interpretation 262
 - commercial development 14–15
 - and competition law
 - conflicts 6–7, 17, 45–6
 - essential facilities doctrine 45, 49, 56–7, 60–61, 335, 345–54, 357–8, 360–62
 - importance for 18–27
 - constitutional coherence, and 51
 - corporate/employer ownership 14–17
 - definition 13–14
 - distinctive signs 3–5
 - diversification 3–5
 - dual concentric perspective 50–53
 - exclusion, powers of 7–8, 10–11
 - and free-riding 7, 10
 - historical development 3–5, 34–5, 383–4
 - historical influences 62
 - hybrid systems 6
 - inclusion, powers of 7–8, 11–12
 - individuals, rights of 12–14
 - industrial vs. intellectual rights 3–6
 - investment function 300–301
 - legal conditions, role of 300–305
 - limitations 9–12
 - moral rights 14–15
 - numerus clausus* principle 51–3
 - non-commercial use exceptions 16
 - principles 8–12
 - purpose 2–4, 383–4
 - separatist approach 7–8
- Interflora* 268, 270, 302, 310
- International Intellectual Property Alliance 31
- International News Service v. Associated Press* 102, 304
- Internet of Things 46
- internet service providers
 - complaint and redress mechanisms 215
 - cooperation duties 213–15
 - definition 214
 - role and powers 222–5
- inventive step
 - patents 93, 97–8, 110–13, 115–16
 - utility models 118–20
- Irish Continental Group/CCI Morlaix* 349
- Iron & Smith* 293
- Italy 16, 29–30, 104, 172, 184, 211, 228, 241, 280, 286, 382–5
- Jacob J (R.) 305, 385
- Jacobs Adv. Gen. (F.) 318, 322
- Jaffe, A.B. 114
- Janis, M. 72
- Jehoram, H.C. 276
- Johan Deckmyn and Vrijheidsfonds VZW v. Helena Vandersteen* 182
- Jorde, T.M. 343
- justice, theories of 55–6
- Kallaugher, J. 339, 347
- Kaseberg, T. 348
- Katz, M.L. 351
- Kelloggs* 337
- Kernochnan, J.M. 35
- Kimberly-Clark/Scott* 338
- Kingston, W. 72–3
- Kirin-Amgen v. Hoechst Marion Roussel* 27
- Kitkat* 317
- Kornspitz* 322
- KRS International v. Teleflex* 117–18
- Kuhn, J.M. 356–7
- Kur, A. 312–13, 382
- Kwok, K. 348
- Ladas, S. 185
- Laddie, H. 219

- Lai, J.C. 85
- Lametti, D. 158
- Lande, R.H. 388
- Landes, W. 272
- Lanjouw, J.O. 20
- Law on Copyright and Neighbouring Rights 2006 (Fr) 203
- Lawrence, M.G. 166
- Lawson, C. 32
- Layne-Farrar, A. 351–2, 368–70
- Le Chapelier, I. 14
- Leahy-Smith America Invents Act (AIA) 2011 (US) 75, 117
- Learned Hand, J. 320
- Least Developed Countries *see* Developing and Least Developed Countries
- Lee, E. 275
- Lee, J. 360
- Lee, N. 382
- Leepuengtham, T. 90
- Lego* 314, 317
- Lehmann, M. 188
- Leidseplein Beheer v. Red Bull* 302
- Lemley, M.A. 18, 91, 194, 203, 237, 306, 366–70
- Lenard, T.M. 351
- Leno* 286
- Lerner, J. 77, 114, 366
- Lessig, L. 221
- Levine, M. 139
- Levitt, T. 102
- Li, Y.B. 360
- licensing
- compulsory licensing
 - access vs. exploitation 59
 - benefits and disadvantages 134–5
 - copyright 47–9
 - criticism of 134–5, 137–8
 - Developing and Least Developed Countries, and 40–41
 - essential facilities doctrine 45, 49, 360–62
 - high-tech dependent patents 134–5
 - historical development 137
 - patents 104, 137–8
 - standard essential patents (SEPs) 358–60
 - TRIPs Agreement 40–41, 93, 137
 - creative commons model 50
 - duty to licence 79–80
 - competition conflicts 345–58
 - standard essential patents (SEPs) 358–60
 - essential facilities doctrine 45, 49, 345–54, 357–8, 360–62
 - FRAND royalties, assessment
 - criteria 362–3, 363–74
 - ex ante* assessment 365–9
 - fair dealing 365–9
 - incremental value 365–9
 - optional standards 365
 - royalty stacking 369–74
 - technical features 363–5
 - FRAND terms 48–9, 60, 235, 354–8
 - multi-territorial licensing 222–3
 - open access models 44–5
 - Technology Transfer Block Exemptions 342
 - willing licensees, access vs. exploitation 59–60, 79–80
- Lim, D. 10, 334–5
- Linde* 314–15
- Lindner v. Germany* 55
- Lindt* 317
- Liotta, F. 226
- Llewellyn, D. 233
- Loblet, G. 368–9
- Locke, J. 13, 88
- Loewenheim, U. 305
- L'Oréal v. eBay* 214
- L'Oréal SA* 295
- L'Oréal v. Bellure* 306–7
- Louis Vuitton Malletier v. Haute Diggity Dog* 307
- Lundqvist, B. 360–61
- Luxembourg Convention 1975 4
- Machlup, F. 73
- Mackie Designs v. Behringer Specialised Studio Equipment* 233
- Madison, M.J. 85

- Mag Instrument v. OHIM* 319
Magill 347, 353
 Malbon, J. 32
 Manuzio, A. 19, 156
 market partitioning 340
MarktinternVerlag GmbH and Klaus Beerman v. Germany 55
Martin y Paz 302
 Maume, P. 347
 Maurer, S. 242
 McCarthy, J.T. 262, 295
 McCormick, N. 51
 McManis, C. 23, 186
Meltwater 197
 Mendis, D. 100
 Menell, V.P. 237–8
 Ménière, Y. 370
Merck 122, 361–2
Merck/Primecrown 362
Merck/Stephar 361–2
 Merges, R.P. 35, 117, 156, 221, 332, 343, 356–7
Microsoft 12, 59, 246, 353, 358, 360, 364, 368, 370
 Mimler, M. 11
Mineral SPA 271
 Minervini, G. 1
 misappropriation doctrine 304–5, 384
Moosehead/Whitbread 340
 moral rights
 alienation 171
 protection 48–9, 170–71
 retention 14–15
 vs. economic rights 170–73
 Moscati, L. 13, 19, 226
Moseley 299–300
MPEG 343–4
Murphy v. Media Protection Services 361
 Musso, A. 197
Myriad Genetics 88–9, 93, 97, 169

 Naranjo-Valencia, J.C. 102
nasdaq/Nasdaq 271
 National Commission on New Technological Uses of Copyrighted Works (US) 238
 Nelson, R.R. 82

neminem laedere rule 381
 Netanel, N.W. 182
 Nikpay, A. 368
 Nimmer, D. 199
Ninei La Perla 271
Nintendo 174, 204
Nissan Motor Co v. Nissan Computer Corporation 300–301
Nokia 218
 Norman, H. 313
numerus clausus principle 51–3, 169
Nungesser KG and Kurt Eisele v. Commission 340

Odol 295–6, 304–5
 Ohly, A. 102
Opel 307
 open access models 44–5
 benefits 50
 and copyright 197–8, 204–5
 Information Society, in 204–5
 IPR conflicts 24, 49–50, 205
 Opperman, C.P. 332
Opus 218
Oracle America, Inc. v. Google, Inc 24
Oscar Bronner 348
Otter Tail Power Co. v. United States 349

Padawan 217–18
 Padilla, J.A. 351–2
 Pagenberg, J. 319
Pago International 293
Painer 174
 Pardessus, J.M. 350
 Paris Convention 1883 259
 compulsory licensing 104
 industrial vs. intellectual rights 4
 local working requirement 15, 36–7
 similar trademarks 309
 trademarks, limitations 296–7
 unfair competition 17, 381, 383–4
 Park, B.J.R. 11
Parke Davis v. Probel 339, 345–6
Parker 319
 parodies, copyright protection 182–3
 Parr, R.L. 262

- passing off 6, 304–5, 386
- Patent Act 1790 (US) 345
- Patent Act 1883 (UK) 136–7
- Patent Act 1977 (UK) 16, 104, 143
- patent thickets 114
- patents
 - access vs. exclusion 70
 - benefits 69, 74–7
 - biotechnological inventions 88–9, 97, 110
 - co-patenting 44
 - and competition
 - conflicts 80–81, 116–17
 - derivative inventions 131–8, 332
 - disclosure vs. exclusivity 123–5
 - economic significance 134
 - first to file 128, 145–8
 - high-tech dependent patents 131–8
 - imitation, by 101–4
 - implementation rights 132–4
 - influences on 123–38
 - licensing, benefits of 134–5
 - market dominance 334–5
 - observation, study or testing 128
 - patent-trademark linkages 278–9
 - pro-competitive aspects 332
 - role in 18–19, 71–4, 80–81
 - substitutive innovation 92–6, 129–31
 - trade secrets protection 125–8
 - computer software
 - judicial interpretation 237–8
 - policy development 239–40
 - product vs. process patents 108
 - reform proposals 144
 - rule of doubt 237–8
 - conflicts of interest 22–3
 - derivative inventions 57–8, 79–80, 125
 - product vs. process patents 107–10
 - description 74–5
 - disadvantages 70
 - disclosure and publication 74–6
 - duration of protection 75–6, 101–4
 - essential facilities doctrine 10, 45, 49, 56–7, 60–61, 79–80, 335, 345–54
 - appropriate remuneration 361–2
 - judicial interpretation 360–62
 - over-disclosure 357–8
 - evergreening 115–16
 - exceptions and limitations 53, 73–4, 75–6
 - applied research 81–92
 - Bolar* clauses 99, 104
 - challenges 113–14
 - compulsory licensing 104
 - derivative inventions 57–8, 79–80, 109–10, 113–16, 125, 131–8, 332
 - equivalence 115–16, 130–31
 - expiry of term of protection 101–4
 - field of use 105–6
 - Galenic exception 98–9
 - high-tech dependent patents 131–8
 - imports vs. produced goods 104–5
 - insufficiency of exploitation 104–5
 - inventive step 110–13, 115–16
 - knowledge-spreading 105
 - local working requirement 104–5
 - non-commercial private use 98–100
 - non-obviousness 111, 117–18, 332
 - novelty and originality 110–13
 - prior art 92–6, 106–7, 112, 131
 - product-by-process patents 108–10
 - product vs. process patents 107–10
 - right to exclude, of 98–100
 - secondary and additional use 106–7, 115–17
 - stockpiling exception 103, 143
 - 3-D printing 99–100
 - utility models 118–20
 - exclusionary powers and duties
 - duties to licence 79–80

- exhaustion, principle of 120–22
- field of use limitations 105–6
- limitations 98–100, 105–7, 120–22
 - new and different use 106–7
 - paradox of 78–80
 - right to exclude 98–100
- freedom of contract, and 78
- historical development 27, 113–14
- inclusivity 78–80
- individual *vs.* commercial rights 15–16
- innovation
 - consent to exploit 133–4
- innovation, relationship with 69–72, 114
- intangible goods
 - public property, as 81–2
 - stimulation of production 82
- interpretation 71–2
- investment function 300–301
- knowledge dissemination, role in 74–7
- licensing
 - compulsory 134–5
 - disadvantages 134–5
 - duty to licence 79–80
 - open access models 44–5
 - standard essential patents (SEPs) 358–60
 - willing licensees 79–80
- local working requirement 15, 36–41, 104–5
- monopolist tools, as 71–4
- patent thickets 114
- pharmaceutical patents 115–16, 145
 - and proportionality 81, 107–9
- protectionism 27, 80, 113–14
- purpose 71–4
- reform proposals 72–3
 - computer software patent protection 144
 - cross-licencing 140–41
 - dispute settlement mechanisms 142–3
 - employee invention ownership 143
 - existing rules, for 142–3
 - first to file principle 145–8
 - FRAND criteria 140–42
 - grant of licences 139–40
 - new rules 139–42
 - publication time periods 142
 - purpose 138–9, 145–6
 - stockpiling exception 143
 - Supplementary Protection Certificates 58, 144–5
 - refusal to grant licence 22–3
 - requirements 74–6
 - research, patentability
 - basic *vs.* applied research 82–4, 88–92, 94
 - benefits for 77
 - and collaboration 95
 - and competitive advantage 87–8, 94–8
 - dependence/independence relationships 92–6, 131
 - derivative inventions 91, 93, 109–10
 - economic influences 87–9
 - exclusions 84–92
 - fruits of, patentability 81–92
 - general considerations 84–6
 - general formulae hypothesis 96–8
 - industrial application 83–4, 91–2, 91–4, 97
 - intermediate products 84
 - inventive step 93, 97–8, 115–16
 - pharmaceutical intermediaries 95
 - prior *vs.* subsequent innovation 92–6, 129–31
 - research *vs.* application 91
 - research *vs.* development 90–91
 - and rule of reason 93
 - scheduled obsolescence 87
 - scientific theories and discoveries 82, 84–6
 - targeted research 84, 87–8, 90–98
 - thresholds, interpretation
 - challenges 90–92
- risks 77, 113–14
- secrecy periods 75–6
- and trademarks
 - differences from 272

- links with, competitive effects 278–9
- unitary patents 30
- unsubstitutability 79–80
- voluntary inclusion 78–9
- Patents Act 1883 (UK) 136–7, 143
- Patterson, D. 349
- Patterson, M. 373
- Peczenik, A. 51
- Pentheroudakis, C. 360–61, 363
- Pepequello/Pepe e Pepe Jeans* 271
- PepsiCo v. Coca Cola* 288, 337
- Peritz, R. 356–7
- Peukert, A. 62, 274
- Pfizer, In Re* 103, 115
- pharmaceutical patents
 - equivalence 115–16
 - orphan drugs 145
- Philips* 310–11, 313–14
- Phillips, T. 312
- Picasso/Picaro* 310–11
- Picht, P. 373
- Pila, J. 312
- Pitofsky, R. 349, 353
- Portakabin* 276
- Posner, R. 79, 171, 221, 272, 334–5, 347, 349, 384
- Prashant Reddy, T. 115
- Premier League Ltd v. QC Leisure* 10, 194, 196, 361
- prices
 - IPRs influences on 9
- prior art
 - patent exceptions 92–6, 106–7, 112, 131
- Procter and Gamble* 313
- ProLitteris v. Aargauer Zeitung* 201
- proportionality
 - computer software protection 241
 - and conflicts of interest 54, 56–8
 - copyright 162, 193–4
 - and patents 81, 107–9
- protectionism
 - conflicts of interest 26–31
 - copyright 27, 34–5, 159, 219–22
 - criticism of 42–4, 219–20
 - economic basis 41–2
 - exceptions 52–3
 - exhaustion principle 120–22
 - and innovation 42–5
 - patents 27
 - regional scope 122
 - risks and dangers 42–4
 - trademarks 27
 - trends 43–4
- public goods
 - intangibles as 81–2
- quotation right 210–11
- Rambus* 357–8
- Rangel Ortiz, H. 33
- Ranks* 187
- Reese, R. 194, 203
- Regulation 417/85 on specialization agreements (EU) 261
- Regulation 418/85 on research and development agreements (EU) 261
- Regulation 40/94 on Community Trade Marks (EU) 259, 261, 274, 292
- Regulation 2100/94 on Community plant variety rights (EU) 142
- Regulation 1239/95 on Community plant variety proceedings (EU) 142
- Regulation 2869/95 on Community trademark fees (EU) 259
- Regulation 2236/97 on specialization and R&D agreements (EU) 261
- Regulation 6/2002 on Community designs (EU) 169
- Regulation 953/2003 on trade diversion avoidance in medicines (EU) 141
- Regulation 873/2004 on Community plant variety rights (EU) 142
- Regulation 816/2006 on compulsory licensing of pharmaceutical products (EU) 141
- Regulation 207/2009/EC on Community trademarks (EU) 259, 261, 263–4, 271, 274, 280, 290–92, 299, 302

- Regulation 330/2010 on the application of Article 101(3) TFEU on vertical agreements (EU) 276
- Regulation 772/2010 on technology transfer (EU) 342
- Regulation 1217/2010 on research and development agreements (EU) 342
- Regulation 1218/2010 on specialization agreements (EU) 342
- Regulation 1025/2012 on European standardization (EU) 335
- Regulation 1152/2012 on quality schemes for agricultural products (EU) 280
- Regulation 1257/2012 on unitary patents (EU) 30
- Regulation 1260/2012 on unitary patent translations (EU) 30
- Regulation 316/2014 on technology transfer (EU) 121, 342
- Regulation 2015/2424 on Community trademarks (EU) 259–61, 263–4, 271, 274, 280, 290–92
- Regulation 2015/2436 on Community trademarks (EU) 260, 302
- Reich, N. 57
- Reichman, J. 5, 24, 27, 29, 37, 42–3, 72–3, 105, 171, 242, 305
- research and development
 - cooperative/collaborative production models 44
 - costs 42
 - IPR, benefits for 245–7
 - open vs. closed models 44–5
 - patentability
 - basic vs. applied research 82–4, 88–92, 94
 - benefits for 77
 - and collaboration 95
 - and competitive advantage 87–8, 94–8
 - dependence/independence
 - relationships 92–6, 131
 - derivative inventions 91, 93, 109–10
 - economic influences 87–9
 - exclusions 84–92
 - fruits of, patentability 81–92
 - general considerations 84–6
 - general formulae hypothesis 96–8
 - industrial application 83–4, 91–2, 91–4, 97
 - intermediate products 84
 - inventive step 93, 97–8, 115–16
 - pharmaceutical intermediaries 95
 - prior vs. subsequent innovation
 - 92–6, 129–31
 - research vs. application 91
 - research vs. development 90–91
 - rule of reason, and 93
 - scheduled obsolescence 87
 - scientific theories and discoveries
 - 82, 84–6
 - targeted research 84, 87–8, 90–98
 - thresholds, interpretation
 - challenges 90–92
 - and specialized standardization 44
- Ricketson, S. 157
- Ricolfi, M. 194, 308
- Riis, T. 313, 360–61
- Ringling Bros* 299–300
- Robart, J. 12
- Roche v. Bolar* 99, 104
- Rodriguez, E.B. 33
- Rome Convention 1961 188–9
- Rosati, E. 174
- Rose, M. 160
- Rosenberg, A.M. 51
- Rosenthal Kwall, R. 133
- royalties, assessment criteria 362–3, 363–74
 - ex ante* assessment 365–9
 - fair dealing 365–9
 - incremental value 365–9
 - optional standards 365
 - royalty stacking 369–74
 - technical features 363–5
 - top down approach 371–4
- RTI v. Editoriale L'Espresso* 197
- Rubik* 317
- Rubinfeld, D.L. 216, 243
- Ruskin, J. 113
- Ryan, M.D. 33

- Sabam v. Netlog* 165, 214
 Salop, S.C. 388–9
Samsung 353
 Samuelson, P. 20, 29, 171, 237
 Santore, R. 343
 Sarti, D. 186–7, 189, 232
Sasso 294
 Saunders, M.K. 11
 Say, J.-B. 71
Scarlet v. Sabam 165
 Schankerman, P. 20
 Schechter, F. 295–6, 304–5
 Scherer, F.M. 72
 Schnaars, S.P. 102
Schokoladenverpackung 320
 Schovsbo, J. 313
 Schricker, G. 37
SCIC v. Dentalica 387
 scientific research *see* research and development
 scientific theories, patentability 82, 84–6
 Scotchmer, S. 114, 343
Sea Container v. Stena Sealink 349
 Sena, G. 311, 346
 Senftleben, M. 200, 214
 separatist approach 7–8
SGAE 196
 shapes
 industrial designs 229–30, 314
 3-D shapes 311–20
 industrial designs 314–15
 trademarks 311–14
 trademarks 290–91
 competition impacts 311–20
 confusion, risk of 318–20, 322–3
 duration of protection 315
 law reform 314–18
 Shapiro, C. 351, 366–70
 Shenkar, O. 102
 Sherman, B. 295
Silos 316
 Simensky, M. 278
 Smith, G.V. 262
Smith, Kline and French Laboratories v. Sterling-Winthrop Group 311
 Snapper, J.W. 20
 snippets, copyright exceptions 209–13
 Sokol, D. 360
 Sonny Bono Copyright Term Extension Act 1998 (US) 28, 185
Sony v. Universal Studios 158
Soulier and Doke 216
SPA Finders/SPA 271
 Spada, P. 203
 Spain 201, 209
 standard essential patents (SEPs)
 358–60
 FRAND royalties, assessment
 criteria 362–3, 363–74
 ex ante assessment 365–9
 fair dealing 365–9
 incremental value 365–9
 optional standards 365
 royalty stacking 369–74
 technical features 363–5
 top down approach 371–4
 standard setting 44–5
 de facto industry standards 350–55
 de jure industry standards 354–5
 optional standards 365
 Starck, P. 234
 Statute of Anne 1710 3, 157, 162
 Statute of Monopolies 1624 3, 162
 Stazi, A. 12, 44, 261, 281
Stihl v. OHIM 311
Stokke 317
 Stolfi, N. 156, 174
Storck v. OHIM 319
 Straus, J. 37
 Supplementary Protection Certificates
 58, 115, 144–5
Supply of Photocopies of Newspaper Article by a Public Library, Re
 201
 Suzor, N. 224
Svensson 193, 196
 Swanson, D. 366
 Switzerland 201
Syfait 121
Synetairismos Famakopoion v. GlaxoSmithKline 121
Tamaro v. Luttazzi 182
TDK/TDK 271

- TDM (text and data mining)
 - exceptions 207–8
- Technische Universität Darmstadt v. Eugen Ulmer KG* 192
- Technological Protection Measures (TPMs) 47, 164, 201–6
- Technology Transfer Block
 - Exemptions 342
- Teece, D.J. 343
- Tetra Pak Rausing SA v. Commission* 340
- 3-D printing
 - private use exception 99–100
- 3-D shapes
 - industrial design 314–15
 - trademarks
 - competition impacts 311–20
 - confusion, risk of 318–20
 - duration of protection 315
 - judicial interpretation 317–18
 - law reform proposal 314–18
- Tirole, J. 366
- Tomato II* 109
- Torremans, P.L.C. 13, 54–5, 316
- trade secrets protection 29, 125–8, 336
- trademarks
 - assets, value as 262–3, 283–5
 - free transferability, impact on 286–7
 - multiple licensing 287–8
 - renowned trademarks 288–9
 - co-existence agreements 289–90
 - and coincidence 305–6
 - collective trademarks 279
 - and competition
 - consumer loyalty, and 278–9
 - dominant position 336–8
 - impacts on 266–79, 306–8
 - implicit abrogation principle 316–17
 - importance for 18–20, 266–7
 - imported goods 274–5
 - law reform proposal impacts 285–91
 - licensing 337–8
 - market entry 272
 - market leverage 288–9, 293–4, 305–6
 - market power 277–9
 - misleading uses 280–83
 - multiple licensing 287–8
 - pro-competitive aspects 332–3
 - renowned trademarks 277–9, 282–3, 305–8, 337–8
 - selective distribution 275–6
 - territoriality 274–5, 293, 306–8
 - 3-D shapes 311–20
 - trademark-patent linkages 278–9
 - unfair competition 289, 295–8, 303, 306–8, 318–20
 - vulgarization 274, 278–9, 291, 320–23, 338
 - conflicts of interest 24–5, 262–3
 - imported goods 274–5
 - de facto* trademarks 306–8
 - domain names, and 268
 - functions 262–3
 - confusion, avoidance of 266–8, 270–71, 294–6
 - distinctiveness 266–70, 285–6, 291
 - exclusivity 272
 - identification 272–3
 - investment 300–305
 - need to keep free 272–4, 285–6, 312, 320–23
 - qualitative information, conveyance of 279–83
 - generic signs 291, 320
 - geographical indications 279
 - individual vs. corporate rights 17, 263
 - infringement
 - production quotas, breach of 277
 - unauthorized imports 276–7
 - law reform 259–61, 285–6
 - co-existence agreements 289–90
 - competition, likely impacts on 285–91
 - free transferability 286–7
 - generic signs 291
 - multiple licensing 287–9
 - renowned trademarks, special protections 288–9, 291–2

- shape marks 290–91, 314–18
- licensing and transfers
 - co-existence agreements 289–90
 - consent, role of 289–90
 - cooperation 280–81
 - enforcement 280–81
 - free transfers 286–7
 - information, duties regarding 264
 - and merchandising 287
 - multiple licensing 287–9
 - non-connected sectors, in 282–4, 296–7, 307–8
 - renowned trademarks 282–4
- and market identity
 - consumer perceptions, importance of 264–6
 - fragmented identity problem 262–5
- origin of goods
 - importance of 266–7
 - notions of 264–5
- passing off 304–5, 386
- and patents
 - differences from 272
 - links with, competitive effects 278–9
- per se goods*, interpretation as 261–3, 283–5
- renowned trademarks 297–9
- protection regime
 - actual use requirement 285–6
 - availability requirement 272–4, 285–6, 312, 320–23
 - challenges 274–6
 - coincidence *vs.* misrepresentation 305–6
 - confusion, avoidance of 266–8, 270–71, 294–6, 302, 322–3
 - development 27, 259–60, 283–5
 - distinctiveness 266–70, 285–6, 291
 - and double identity 270, 310
 - duration 269
 - electronic commerce influences 261–2
 - exhaustion principle 274–6
 - false representation 270–71
 - generic signs 291, 320
 - intensity, criticism of 305–6
 - law reform 259–61, 285–91
 - limitations 268–9
 - and misappropriation doctrine 304–5
 - misleading information/use 280–82
 - prior market use 269–70
 - purpose 260–62
 - renowned trademarks 271, 288–9, 291–6
 - scope of 269–70
 - secondary meanings 320–23
 - shape marks 290–91
 - similar trademarks 270–71, 304, 308–11, 332–3
 - territoriality principle 274
 - unregistered *de facto* trademarks 308–9
- protectionism
 - competition, impacts on 306–8
 - disadvantages of 296–308
- qualitative information
 - conveyance of 279–83
 - misleading information/uses 280–83
- renowned trademarks 271
 - competition impacts 277–9, 282–3, 305–8
 - confusion by association, avoidance 294–6, 302, 322–3
 - connections, relevance of 296–8
 - distinctiveness, dilution of 297–8
 - and double identity 270, 310
 - investment function 300–305
 - licensing in non-connected sectors 282–4, 296–7, 307–8
 - and market identity 294–5
 - patronage effect 265, 294, 298–300
 - protection extension 288–9, 292–6
 - protectionism, disadvantages of 296–305
 - and reputation 292–3, 297–300
 - secondary meaning 320–23
 - and similar trademarks 304, 308–11, 332–3

- territorial protection 293, 307
- and unfair competition 295–8, 303, 306–8
- unregistered (*de facto*)
 - trademarks, extension to 308–9
 - vulgarization 320–23, 338
- revocation 280–82, 290
- shape marks 290–91
 - confusion, risk of 318–20, 322–3
 - judicial interpretation 317–18
 - 3-D shapes 311–20
- technical truth, protection of 280
- unregistered (*de facto*) trademarks,
 - protection extension 308–9
 - vulgarization 274, 278–9, 291, 320–23, 338
- traditional knowledge
 - IPR conflicts of interest 29, 48
 - out-of-commerce works, use by cultural heritage institutions 215–16
- translations, copyright protection 184–5
- Treaty of the Functioning of the European Union (TFEU) 6, 21
 - free movement of goods 339
 - horizontal cooperation, applicability to 95, 140, 337–8, 351, 354
- TRIPs Agreement 1994 (WTO) 3
 - compulsory licensing 40–41, 93, 137
 - computer software 239
 - copyright 166
 - expressions vs. ideas 177
 - databases 241
 - Developing and Least Developed Countries
 - adoption timetables 34–5, 38–9
 - applicability 5, 31–4
 - competitive incentives 35–6
 - compulsory licensing 40–41
 - fairness 34–8
 - local working requirement 15, 36–41, 105
 - equitable sharing 41
 - fundamental principles 6
 - general principles 39, 41
 - legitimate interests, conflicts 39
 - minimum standards 5
 - patents
 - derivative inventions 79–80, 109, 125, 131
 - discrimination prohibition 104–5
 - exhaustion principle 120–22
 - inventive step 110–11
 - local working requirement 15, 36–41, 104–5
 - non-obviousness 111
 - product vs. process patents 107–9
 - technical advance of economic significance 134
 - trade secrets protection 126–7
 - trademarks 17
 - renowned trademarks 271, 294, 296
 - unfair competition 381
- TRIPs Plus Agreements 33–4
- Turgot, A.R. 14
- Ullrich, H. 7, 112, 303, 331, 344, 354–5
- unfair competition
 - assessment criteria, influences on 388–90
 - boycotts 333, 388
 - competitive interest conflicts 385–6 and consumer dependence 388
 - focus of 333–4
 - IPR, interaction with 333–4, 382–3, 385–6
 - laws on
 - development 383–5, 389–90
 - limitations 381–2
 - misappropriation doctrine 304–5, 384, 386
 - multi-layered approach 389–90
 - reform 387–90
 - scope of protections 6, 17, 34, 103, 126–7
 - tort law 126, 386
 - market, role of 387–8
 - renowned trademarks 295–8, 303, 306–8
 - 3-D shape trademarks 318–20
 - trade secrets 126–7, 336

- United States
 Civil Code, 17 USC 1201 204
 Civil Code, 35 USC 75, 92, 345
 Constitution, article 1.8.8 2–3, 158
United States v. Paramount Pictures
 158
United States v. Terminal Railroad
 Association 349
 Universal Copyright Convention
 1952 161, 171, 184
 Universal Declaration of Human
 Rights 1948 13, 54, 281, 359
Unwired Planet v. Huawei 363, 372–4
UPC Telekabel v. Constantin Film 165
Usedsoft 187–8
 user generated content (UGC) 15,
 160, 179, 199, 206, 207, 213,
 256
USM Corp. v. SPS Technology Inc.
 334
 utility models, inventiveness 118–20

Vaessen/Moris 340
 Van Bunnem, L. 284–5
 Vanzetti, A. 263–4, 303
VCAST Limited v RTI SpA 219
VG Wort 218
VIPS/VIPS 271
 Visanath, R. 360–61
 Vivant, M. 302
 Volokh, E. 306

Volvo v. Erik Veng 335
 von Hippel, E. 44
 Vorti, V. 360–61
Voss 317

Wal-Mart v. Samara 319
 Waller, S.W. 349
Warner Brothers, Metronome Video v.
 Erik Viuff Christiansen 346
 Washington, G. 37
 Weil, V. 20
Whelan Associates v. Jaslow Dental
 Laboratory 238
Whirlpool 313
 WIPO
 Copyright Treaties 1996 161,
 196–7, 202
 Development Agenda 39
 Model Provisions on Unfair
 Competition 382
Wolf 272, 298–9, 308

 Xalabarder, R. 222

Yahoo v. RTI 165
Yale Electric Corporation v.
 Robertson 300
 Yu, P.K. 54

 Zheng, W. 360
 Zhou, K.Z. 102

